



# TOWN OF HILTON HEAD ISLAND

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## Town Council

**TO:** Mayor Alan R. Perry & Town Council Members  
**FROM:** Ben Brown, *Senior Advisor to the Town Manager*  
**CC:** Marc Orlando, ICMA-CM, *Town Manager*  
**DATE:** June 18, 2024  
**SUBJECT:** Northpoint Workforce Housing Development Agreement. Negotiations Incident to Proposed Contractual Arrangements for the Northpoint Public-Private Partnership Workforce Housing Project.

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### **RECOMMENDATION:**

The Northpoint Public-Private Partnership Housing Advisory Committee supports the enclosed Workforce Housing Development Agreement (“Development Agreement”) and recommends formalizing the Town’s partnership with OneStreet Residential, LLC (“OSR”) for the development and management of a sustainable workforce housing neighborhood at Northpoint.

### **BACKGROUND:**

The Development Agreement outlines the responsibilities of OSR and the Town regarding the development of a workforce housing apartment community on the Town’s 11-acre Northpoint property. It details the project phasing, including Due Diligence, Planning, and Preliminary Models (Phase I), Zoning (Phase II), Pre-Development (Phase III), Construction (Phase IV), and a 65-Year Ground Lease (Phase V). It also includes expectations for programming, management, amenities, aesthetics, energy efficient design, financial contributions, tenant qualification criteria, insurance, assignment rights, target schedule and legal compliance. There are several events which led up to the Town embarking on its first public-private partnership to develop a best-in-class workforce housing neighborhood on Hilton Head Island.

In 2018, the Town commissioned a Workforce Housing Strategic Plan which outlined strategies the Town should implement in collaboration with the private sector.

In 2020 and 2021, the Town adopted policy incentives to encourage the construction of workforce housing. These incentives included the conversion of commercial buildings into living units and allowed for higher density in certain residential zoning districts.

On February 22, 2022, Town staff facilitated a workshop with Town Council to discuss workforce housing initiatives. During the workshop, the Town Manager proposed a public-

private partnership to develop a workforce housing neighborhood on the Town's Northpoint tract.

On April 1, 2022, the Town issued a Request for Qualifications (RFQ) seeking qualified development firms to provide professional services in support of the proposed Northpoint location. The RFQ closed on May 20, 2022. Ten submittals were received.

To assist in reviewing and vetting these submissions, the Town Manager requested that the Town Council consider the creation of a Northpoint Public-Private Partnership Housing Advisory Committee. On June 21, 2022, the Town Council approved a resolution authorizing the creation of the committee.

Town staff met with the Northpoint Public-Private Partnership Housing Advisory Committee in July and August before releasing a Request for Proposals (RFP) to the top seven respondents from the RFQ. Staff also completed workforce housing research and evaluated the Northpoint property to better understand development potential.

In October, the Town received seven development proposals. In November, the Northpoint Public-Private Partnership Housing Advisory Committee interviewed all seven firms. There was one firm that stood out as a diverse team with extensive experience in design, financing, construction, leasing, and property management. The team was led by OSR.

In January 2023, the Town Manager invited OSR to meet with the Northpoint Public-Private Partnership Housing Advisory Committee and tour Hilton Head Island. The team visited various locations around the Island to explore the environment and designs of local architecture. Among the tour stops were the Northpoint site, the Boys and Girls Club, the Island Recreation Center, and Palmetto Village, the workforce apartment complex created by the Sea Pines Resort. OSR's goal was to intimately understand the people and families they would be building for and to better understand the need for workforce housing on the Island.

In February 2023, Town staff began negotiating a partnership framework with OSR. These negotiations resulted in a thoroughly negotiated Term Sheet. On May 16, 2023, the Town Manager reviewed the Term Sheet with the Town Council during Executive Session.

On June 1, 2023, members of the Northpoint Public-Private Partnership Housing Advisory Committee met with OSR and toured communities that were developed and managed by OSR in the Atlanta Metro area. The committee members returned with positive feedback about the quality of OSR's construction, professional property management and innovative culture.

During the summer of 2023, the Northpoint Public-Private Partnership Housing Advisory Committee discussed the challenging financial markets with OSR.

On September 27, 2023, Mayor Perry and Town Manager Orlando announced OSR as the Town's preferred development partner during a news conference at Town Hall. This was followed by a press release and positive feedback from members of the community.

Shortly after announcing OSR as the Town's preferred development partner, the Town Manager began negotiating the Development Agreement for the Town Council's consideration. This included retaining the services of Neil Robinson, an experienced development attorney with Maynard Nexen as the Town's lead counsel for preparing and negotiating the Agreement. Neil Robinson will also lead the preparation of the 65-year ground lease.

In March 2024, the Town Manager reviewed the Development Agreement with the Northpoint Public-Private Partnership Housing Advisory Committee. Following feedback from the committee and subsequent conversations with Town Attorney Coltrane, Neil Robinson, and OSR's leadership team, the Development Agreement was again presented to the Northpoint Public-Private Partnership Housing Advisory Committee in April. Representatives from OSR participated in the April committee meeting.

On May 21, 2024, the Development Agreement, Executive Summary, and Target Schedule were distributed to the Town Council during Executive Session.

### **SUMMARY:**

The Northpoint Public-Private Partnership Housing Advisory Committee supports the enclosed Development Agreement and recommends formalizing the Town's partnership with OSR for the creation of a sustainable workforce housing neighborhood at Northpoint. Following Town Council executing the Development Agreement, OSR will proceed with Phase I to include Due Diligence, Planning and Preliminary Models. The Town Manager will concurrently proceed with preparing an application to rezone the Northpoint property to support the workforce housing development. The Town Council will have the ultimate approval authority as the project progresses through its phases towards the execution of the long-term ground lease. The draft ground lease will be prepared during Phase I and executed in Phase III, before commencing construction. The ground lease will become effective after the first certificate of occupancy is received. The attached Target Schedule provides a summary of activities within the project phases.

### **ATTACHMENTS:**

1. Executive Summary
2. Northpoint Workforce Housing Development Agreement
3. Target Schedule

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

**WORKFORCE HOUSING  
DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT FOR THE DEVELOPMENT OF WORKFORCE HOUSING (“Agreement”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2024 (the “Effective Date”) by and between **One Street Residential, LLC**, a Georgia limited liability company (the “Developer”) and **The Town of Hilton Head Island South Carolina**, a South Carolina municipal corporation (the “Town”). The Developer and the Town may from time to time be referred to individually as a “Party” and collectively as the “Parties.”

**WITNESSETH**

WHEREAS, the Parties, cognizant of the public’s need for Workforce Housing within the Town, have expressed the shared goal of facilitating the development of Workforce Housing on real property owned by the Town situate within Beaufort County; and,

WHEREAS, land cost is one of the primary impediments to providing and developing Workforce Housing within the Town; and,

WHEREAS, the Town is the record owner of that certain parcel of real property consisting of approximately eleven (11) acres located within the Town on the William Hilton Parkway, known as the Northpoint Tract described more fully on **Exhibit “A”** attached hereto and which is fully incorporated herein by reference (the “Property”) and,

WHEREAS, the Town intends to place covenants on the Property, restricting its use to Workforce Housing in perpetuity (the “Affordability Covenants”) and,

WHEREAS, the Parties desire to jointly develop Workforce Housing on the Property as more fully set forth on **Exhibit “B”** hereto and which is fully incorporated herein by reference (collectively, the “Project”); and,

WHEREAS, in conjunction with a Request for Proposals issued by the Town on September 2, 2022, for the construction of workforce housing on the Property, the Town competitively selected the Developer; and,

WHEREAS, the Parties anticipate that the Project will be developed in four (4) phases all as described in **Exhibit “E”**; and,

WHEREAS, the Parties anticipate that (i) Developer will form a for profit, single purpose, South Carolina legal entity (the “Project Owner”) to enter into a ground lease of the Property with the Town, construct, own and operate the Project on the Property, consisting of affordable workforce housing rental units for Hilton Head Island employees with an annual income between sixty percent (60%) and one-hundred fifty percent (150%) of the Beaufort County Area Median Income; (ii) the Project Owner will be comprised of an affiliate of the

Developer as Manager/General Partner and investors (“Investors”) which will provide equity contributions to the Project Owner pursuant to governance documents to be negotiated with such Investors; and (iii) the Developer will identify and procure construction and permanent financing for the Project from lender(s) (“Lenders”) on such terms as are available in the market for similarly situated Projects; and

WHEREAS, the Developer, by and through an affiliate, will furnish all guaranties required from Investors and Lenders to the Project which may include the personal guarantees of one or more of the Developer’s Principals; and

WHEREAS, on the Effective Date, the Town will grant a license to the Developer to allow for predevelopment activities of Developer related to the Project, which license will be replaced by a long term financeable ground lease with the Project Owner (the “Ground Lease”) upon the closing of construction financing with Investors and Lenders to the Project; and,

WHEREAS, the Town will grant the Project Owner One Million and no/100 (\$1,000,000.00) Dollars in eligible Project costs (the “Town Grant Contribution”) which contribution will come from Town funds secured from the American Rescue Plan Fund; and

WHEREAS, the Town will actively promote contributions from Community resources to help defray Project costs; and

WHEREAS, the Parties involved desire to enter into this Agreement in order to set forth the specific rights, obligations, and responsibilities of the Parties in connection with carrying out the activities contemplated hereunder.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do agree as follows:

### **ARTICLE I**

#### **RECITALS; PURPOSE; DEFINITIONS;**

Section 1.1: Recitals and Exhibits. The Recitals set forth above and the Exhibits attached to this Agreement are incorporated herein by reference as if set forth in their entirety herein.

Section 1.2: Purpose. The purpose of this Agreement is to provide for (i) the pre-development land planning, due diligence, application for Coastal Zone Consistency Review, initial general contractor selection and financial modeling of the Project (“Phase 1”), (ii) the pursuit of approval of zoning (“Zoning Approval”) (“Phase II”), (iii) approval of a Coastal Zone Consistency Review for the Project by the State of South Carolina, permitting, financing party selections, final general contractor selection and general contract negotiation, financial

underwriting of the Project, and closing of construction and permanent financing (or commitments) for the Project (“Phase III”), the lien free completion of site preparation and construction of the Project (“Phase IV”) and the long term ownership operation and maintenance of the Project, pursuant to the Ground Lease, all as set forth in more detail at **Exhibit “E”** hereto (“Schedule of Performance”). This Agreement is intended to set forth the Parties’ responsibilities and obligations regarding all phases of the development, construction and management of the Project, and to outline the Parties’ expectations with respect to each phase of the Project.

Section 1.3: Definitions. The capitalized terms used in this Agreement shall, unless the context clearly requires otherwise or such terms are defined elsewhere herein, shall have the meanings set forth on **Exhibit “C”** hereto.

Section 1.4: Project Costs. The Costs associated with this Project and each phase of this Project, shall be the sole responsibility of the Developer, without any Cost to the Town other than the Town Grant Contribution.

Section 1.5: Disclaimer of Responsibility by the Town. Notwithstanding its approval rights set forth in this Development Agreement and those of functioning Town committees or departments, the Town neither undertakes nor assumes, nor will have any responsibility or duty to Developer or to any third party to review, inspect, supervise, pass judgment upon or inform Developer or any third party of any matter in connection with the development or construction of the Project, whether regarding the quality, adequacy or suitability of the Plans and Specifications, any labor, service, equipment or material furnished to the Property or the Apartments, any person furnishing the same or otherwise. Developer and all third parties shall rely upon its or their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Developer, or to any third party by the Town in connection with such matter is for the public purpose of developing the Property, and neither Developer (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon. The Town shall not be responsible for any of the Work of construction, improvement or development of the Property.

Section 1.6 Risk of Loss. Excepting all activities on the Property by, or at the direction of the Developer, from the Effective Date until issuance of a building permit to Developer, all risk of loss with respect to issuance of a building permit, the Property or any portion thereof shall be borne by the Town; provided however, that from the issuance of a building permit forward, risk of loss to the Property and all Infrastructure Improvements and other Improvements thereon, shall pass to the Project Owner for the purposes of this Agreement.

**ARTICLE II:**  
**DUE DILIGENCE, PLANNING, PRELIMINARY MODELS**  
**(PHASE I)**

Section 2.1. Due Diligence Generally. The Developer shall have one hundred-eighty (180) days from the Effective Date to conduct due diligence of the Property (“Phase I”, or the

“Due Diligence Period”) and to complete the Phase I deliverables (“Phase I Deliverables”) set forth for Phase I on the Schedule of Performance. During the Due Diligence Period, the Developer shall be obligated and responsible for conducting all inspections reasonably necessary for the completion of the Project including (i) any and all customary studies, tests, examinations, inspections or investigations of or concerning the Property (including, without limitation, engineering and feasibility studies, environmental assessments, evaluation of drainage, wetlands, flood plain, and surveys); and (ii) to review all due diligence materials, if any, with respect to the Property as delivered or made available by the Town to the Developer or Consultants (collectively, the “Developer Inspections”). On or before the expiration of Phase I as may be extended hereunder, (i) Developer shall present the Phase I Deliverables to the Town for approval, such approval not to be unreasonably withheld, conditioned, or delayed, and (ii) Developer and the Town shall submit the Zoning Application and the Coastal Zone Consistency Review application for the Project to the appropriate jurisdiction.

Section 2.2. Consultants. Developer shall retain the services of Architect, Engineer, Land Planner, Contractor, and such other Consultants as are necessary for the design, engineering and planning of all construction of Infrastructure and the Units on the Property.

Section 2.3. Property Assessments. Developer acknowledges that prior to the Effective Date, the Town delivered to Developer or Consultants all reports and studies in its possession for the Property, if any.

Section 2.4 Project Schematic Plans and Elevations.

(a) During Phase I:

- (i) The Town Manager shall propose and process an application for a Zoning Map Amendment of the Property under § 16-2-103(C), *Municipal Code of the Town of Hilton Head Island, South Carolina* (1983), to a zoning classification that allows the use category applicable to the Project; and,
- (ii) the Town Manager shall propose and process a zoning text amendment establishing a Zoning District under § 16-2-103(B), *Municipal Code of the Town of Hilton Head Island, South Carolina* (1983), to Town Council which, if adopted and applied to the Property, will allow the necessary density and development standards to support the Project.

The Developer shall supply such plans, specifications and other documentation that is necessary for the drafting and review of the text of the proposed Zoning District.

- (iii) The Developer shall deliver a complete application to the South Carolina Department of Health and Environmental Control for Coastal Zone Consistency Review (“CZC Application”).

(b) During Phase III, the Developer shall:

- (1) deliver complete applications for and obtain outside agency approvals and, as applicable, commitments to serve from these agencies:
  - (i) Hilton Head Number 1 Public Service District
  - (ii) Palmetto Electric Cooperative, Inc.;
- (2) deliver to the Town a complete application, including all documentation required, for the building permits for the vertical construction for each of the multi-family buildings, the swimming pool and the amenity center that comprise the Project. The Developer is required to submit all necessary applications for Town and other relevant permits by the end of Phase III. However, the Developer has the option to submit these applications prior to Phase III.

The documents described in this Section 2.4(b) and (c) shall be completed by the Developer and Consultants, including the Architect, and shall include all drawings, surveys, plans, specifications, and models (the “Plans and Specifications”), and shall be considered the property of both Parties to this Agreement. In the event that any Consultant shall not agree with joint ownership, then Developer shall include a provision in any contract with a Consultant to provide for the Plans and Specifications to be assignable to the Town in accordance with Section 7.5 (d) herein.

(c) *Ongoing Refinement of Plans and Specifications:* After Town approval of the Plans and Specifications, Developer shall have the right to modify and refine the Plans and Specifications as permitting and feasibility requirements demand, and as required by Lenders and Investors to the Project. Such ongoing modifications and refinements shall not require further Town review or approval, so long as no material changes are made to the structural and aesthetic components of the Project or the overall unit count or mix of units and amenities of the Project, however, Developer will keep the Town advised of all such modifications and refinements, as they occur. The foregoing notwithstanding, Developer acknowledges that any such modifications and refinements must be in compliance with the requirements of § 16-1-101, *Municipal Code of the Town of Hilton Head Island, South Carolina* (1983) (the “Land Management Ordinance”), then in effect, and the applicable building code, and Developer acknowledges that where either the Land Management Ordinance or the applicable building code require further review and approval by the Town of any modifications or refinements, Developer will seek such review and approval.

Section 2.5. Project Budget. Prior to the expiration of the Due Diligence Period, Developer shall prepare and provide to the Town with a proposed development budget and operating pro forma that organizes the Project’s (A) total development budget to include and identify all Costs, (B) Projected operating revenues and expenses to evaluate cash flow alternatives, and (C) potential sources of funding, including debts, grants, and Project Owner’s equity and loan amounts (collectively, the “*Project Budget*”). The Project Budget shall address all of the major components of the Project, and will provide for developer’s fees in an amount of no less than 5 % of Total Development Costs (“Developer’s Fees”), subject to approval by



Investors and Lenders. If the Parties are unable to agree on any of the terms of the Project Budget, then either Party may terminate this Agreement and the Parties shall have no further obligations to each other except as otherwise set forth in this Agreement. Town and Developer acknowledge that Developer will be required by Investors and Lenders to defer payment of Developer's Fees in order to fund overruns in Total Development Costs. Developer acknowledges that Town has no obligation to pay or advance Developer's Fees to Developer.

(a) *Town Review.* During the Review Period, the Town shall either approve the Project Budget as submitted by Developer, or request revisions to the Project Budget due to (A) design omission or error; (B) field conditions; (C) aesthetic concerns; or (D) changes deemed in the best interests of the Project by the Town, provided however, the Town shall not require that Developer accept Developer Fees of less than 5 % of Costs as a means to resolve shortfalls in the Project Budget.

(b) *Developer Response.* During the Response Period, the Developer shall cause any corrections or modifications requested by the Town to be made in such Project Budget.

(c) *Common Area and Road Maintenance.* The Project Budget shall include an Operating Expense Budget consistent with market underwriting standards utilized by lenders and investors for similar Projects, which shall include an appropriate amount of funding to maintain all landscaped areas, amenities, and road rights-of-way (collectively, the "Common Areas") to be constructed as part of the Project in good repair. Prior to the execution of the Ground Lease, the Developer will advise the Town in writing of the manner by which sufficient future reserve funding will be maintained by the Project Owner in amounts which are consistent with Town, Investor and Lender requirements for such reserves.

Section 2.6. Remediation of Property Condition. In the event any report, study or assessment recommends any remedial actions, Developer shall submit or cause to be submitted to the Town all proposed remediation plans and specifications for the purpose of reviewing such submissions and plans; provided, however, the Town shall bear no responsibility or liability for plans and specifications for Site Preparation Work or remediation as a result of its review and approval thereof. All Costs associated with identifying, investigating and remediating Environmental Conditions are the responsibility of the Project Owner. If prior to the expiration of the Due Diligence Period, the Developer and the Town are unable to reach an agreement on the scope of remediation to address an identified condition, either Party may terminate this Agreement upon written notice to the other and the Parties shall have no further obligations to each other except for those items that may survive the termination hereof.

Section 2.7. RELEASE. AS A MATERIAL PART OF THE CONSIDERATION TO THE TOWN FOR ENTERING INTO THIS AGREEMENT, EXCEPT TO THE EXTENT OF ANY FRAUD OR MATERIAL MISREPRESENTATION OF ITS REPRESENTATIONS AND WARRANTIES MADE HEREIN, DEVELOPER, ON BEHALF OF ITSELF, AND ITS SUCCESSORS AND ASSIGNS, HEREBY IRREVOCABLY WAIVES, AND RELEASES THE TOWN, ITS OFFICIALS, AGENTS, REPRESENTATIVES, ATTORNEYS AND

EMPLOYEES (the "TOWN PARTIES") FROM ANY AND ALL CLAIMS, DEMANDS, OBLIGATIONS, DAMAGES, CAUSES OF ACTION AND LIABILITY, WHETHER KNOWN OR UNKNOWN, THAT ARE BASED DIRECTLY OR INDIRECTLY ON, ARISE FROM OR IN CONNECTION WITH, OR ARE RELATED TO: (A) ANY PAST, PRESENT OR FUTURE CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE PROPERTY'S PROXIMITY TO ANY GEOLOGICAL HAZARD, OR THE PRESENCE OF HAZARDOUS SUBSTANCES AT THE PROPERTY, WHETHER IN COMMON LAW OR UNDER ANY EXISTING OR HEREINAFTER ENACTED FEDERAL, STATE OR LOCAL LAW, REGULATION, OR ORDINANCE, INCLUDING, WITHOUT LIMITATION, CERCLA AND RCRA, AS AMENDED. DEVELOPER HEREBY ACKNOWLEDGES AND AGREES THAT (i) DEVELOPER MAY HEREAFTER DISCOVER FACTS DIFFERENT FROM OR IN ADDITION TO THOSE NOW (OR AS OF THE CLOSING) KNOWN OR BELIEVED TO BE TRUE REGARDING THE PROPERTY, (ii) DEVELOPER'S AGREEMENT TO RELEASE, ACQUIT AND DISCHARGE THE TOWN AND EACH OF THE OTHER TOWN PARTIES AS SET FORTH HEREIN SHALL REMAIN IN FULL FORCE AND EFFECT, NOTWITHSTANDING THE EXISTENCE OR DISCOVERY OF ANY SUCH DIFFERENT OR ADDITIONAL FACTS, AND (iii) DEVELOPER KNOWINGLY AND VOLUNTARILY WAIVES ANY AND ALL RIGHTS, BENEFITS AND PRIVILEGES TO THE FULLEST EXTENT PERMISSIBLE UNDER ANY FEDERAL, STATE, LOCAL, OR OTHER LAWS WHICH DO OR WOULD NEGATIVELY AFFECT VALIDITY OR ENFORCEABILITY OF ALL OR PART OF THE RELEASES SET FORTH IN THIS AGREEMENT. The provisions of this Section, including, without limitation the waiver and release contained herein, shall survive the termination of this Agreement.

Section 2.8. Title and Survey. Within five (5) business days of the Effective Date, Developer shall order at its own expense, a Title Commitment for the Property and an ALTA Survey. Prior to the expiration of the Due Diligence Period, Developer or Developer's attorneys shall deliver to the Town and/or the Town's attorneys, written notice of Developer's objections to any title or survey matters ("Title and Survey Objections"). Town shall have a period of ten (10) business days to respond to Developer's Title and Survey Objections. In the event that Town elects not to cure any Title and Survey Objections which render title to the Property unmarketable, or which materially and adversely affect Developer's ability to develop the Project as contemplated herein, Town shall be deemed to have terminated this Agreement for Convenience. Upon receipt, Developer shall provide a copy of the Title Commitment and the Survey to Town, for Town's information. If Developer or Developer's attorneys do not deliver any such objection notice within the Due Diligence Period, Developer shall be deemed to have waived its right to object to any and all matters that would be disclosed by a survey of the Property.

Section 2.9. Reports and Supplemental Assessments. The provisions of this paragraph shall survive the termination of this Agreement, and if not so terminated, shall survive the execution and delivery of the Long-Term Lease to Developer upon substantial completion of the Project. Developer agrees to immediately deliver all materials produced or created as part of the Developer Inspections, including but not necessarily limited to all reports, studies, assessments and the Survey to the Town upon the termination of this Agreement or upon written request by the Town.

**ARTICLE III:  
ZONING APPROVAL (PHASE II)**

Section 3.1. Zoning Approval. Developer acknowledges that a rezoning of the Property for the Project and the adoption of a Zoning District (the “Zoning Approval”) must be completed in order for the Project to move forward. As stated in Section 2.4 above, during Phase I, the Town shall propose and process the applications for the Zoning Approval, and the Developer shall cooperate with reasonable diligence to respond to requests from the Town to (i) furnish information regarding the Project; (ii) review, approve and incorporate appropriate revisions to the documentation submitted as a part of the applications for Zoning Approval and (iii) participate, support and advocate for the Zoning Approval and the Project in public and other hearings related to the Town’s review of the applications. Developer acknowledges that rezoning and zoning text amendments are legislative functions of the Town Council, and that Town Council cannot contract to legislate. The Zoning Approval is a condition of this Agreement and the failure of a motion for approval of the ordinance to rezone the Property or the motion to approve a zoning text amendment to establish a Zoning District shall be treated as a Termination for Convenience by the Town under Section 8.6 of this Agreement.

Section 3.2. The Developer and Town acknowledge and agree that the Project cannot be fully priced or modeled, and full financial underwriting of the Project cannot take place, until any and all required changes to the Project resulting from the zoning process are identified, designed and priced. Accordingly, Phase III shall commence upon procurement by the Developer and the Town of Zoning Approval for the Project.

**ARTICLE IV:  
PRE-DEVELOPMENT (PHASE III)**

Section 4.1. Phase II and Phase III Deliverables. Subject to Section 4.5 below to allow for approval of Coastal Zone Consistency by the State of South Carolina, Phase II shall commence upon submission of the rezoning application. As set out in Section 2.4 above, during Phase III, the Developer shall deliver to the Town a complete application, including all documentation required, for:

- (i) a Major Development Plan Review, under § 16-2-103(G), *Municipal Code of the Town of Hilton Head Island, South Carolina* (1983); a Major Corridor Review under § 16-2-103(I), *Municipal Code of the Town of Hilton Head Island, South Carolina* (1983); a Development Name Application under § 16-2-103(N), *Municipal Code of the Town of Hilton Head Island, South Carolina* (1983); and a Street Name(s) Application under § 16-2-103(O), *Municipal Code of the Town of Hilton Head Island, South Carolina* (1983); and,

during Phase III, the Developer shall deliver to the Town a complete application, including all documentation required, for:

- (i) a complete application, including all documentation required, for the building permits for the vertical construction of the buildings and other amenities that comprise the Project.

During Phase III, Developer shall initiate, coordinate, carry out, and contract for all design, engineering, and pre-construction activities in connection with the development of the Project, in compliance with all applicable statutes, ordinance and regulations, including § 16-1-101, *Municipal Code of the Town of Hilton Head Island, South Carolina* (1983) (the “Land Management Ordinance”), and the applicable building code, and the authority of the Town to approve material components related to architectural design, infrastructure material selection, site planning, interior design of the Units and material choices for the interior of the Units. The services and activities to be performed by Developer in its capacity as developer of the Project as set forth in this Article IV, and in the Schedule of Performance at **Exhibit “E”** shall constitute Phases II and III Deliverables under this Agreement.

Section 4.2. Construction Contract. During Phase III, Developer shall negotiate a fixed price or guaranteed maximum price contract (“Construction Contract”) between the Project Owner and the Contractor for the construction of the Project in accordance with the Project Budget and Project Schedule. The Construction Contract must include provisions for liquidated damages in the event the Project Schedule is not met. Prior to execution of any Construction Contract, the Developer shall submit a final draft to the Town for its review and approval. The Town shall approve or disapprove the proposed Construction Contract on or before the expiration of the Review Period. Such approval shall not be unreasonably withheld, conditioned or delayed. If the Town shall disapprove of the Construction Contract, then the Town shall do so by written notice to the Developer stating the reasons for such disapproval. The Construction Contract shall be consistent with the terms of this Agreement, shall be subject to reasonable audit and Cost certification (provided, however, that the provision to the Town of any such certification prepared for the Project’s investors and lenders shall satisfy the Cost certification require), and shall provide for assignment to the Town in the event of default by the Developer under this Agreement, such assignment to be subordinate, however, to the rights of any Lender or Investor after the closing of construction financing. The Developer shall establish standards for the selection of some or all subcontractors by the Contractor to the Developer’s reasonable satisfaction, and may reserve to itself the right to approve some or all subcontractors, provided that in any event such standards shall comply with applicable requirements of this Agreement; provided, however, the Developer shall, upon request of the Town provide the Town with a listing of all subcontractors performing any services or work on the Project greater than \$50,000.00.

Section 4.3. Project Financing. During Phase III, Developer shall be responsible for pursuing the award and commitment of all sources of construction, and permanent financing needed for the Project in accordance with the Project Budget. During Phase III, the Developer will provide the Town with copies of all Investor and Lender commitments received together with a summary analysis and assessment of the proposals. Final selection of financing for the Project shall be the right and sole responsibility of the Developer, provided that such selection does not materially increase the risk or responsibility of the Town from that contemplated pursuant to this Agreement. The Developer shall disclose, in writing, to the Town all direct and

indirect relationships which the Developer or any of its Affiliates has with the potential investors or Lender(s). The Developer will not make an application for such financing that, in the reasonable determination of the Town, materially increases the responsibility or risk of the Town relative to that contemplated in the Project Budget or this Agreement without the Town's prior written approval. THE TOWN'S FEE SIMPLE OWNERSHIP OF THE PROPERTY WILL NOT BE SUBORDINATED TO DEVELOPER OR LENDER FINANCING. ANY LIEN FILED AGAINST THE PROPERTY AS THE RESULT OF ANY ACTION OR INACTION OF DEVELOPER, PROJECT OWNER, CONTRACTOR OR SUB-CONTRACTOR WILL BE FULLY BONDED OFF BY DEVELOPER WITHIN TEN (10) DAYS OF FILING. Developer will notify the Town Manager of any changes in financing following Town approval of the financing. Such changes are subject to approval by the Town Manager, which approval shall not be unreasonably withheld. No changes in financing in a manner inconsistent with the terms of this Agreement will be approved.

Section 4.4. Permits and Approvals. Except as otherwise provided in this Agreement, Developer shall be required to submit, process and prepare all applications, plans, specifications, permits and approvals, and related information and documents as may be required by any and all Governmental Authorities having jurisdiction over the Project and the performance of Developer's obligations under this Agreement (together, the "Permits and Approvals"). In furtherance of this provision, prior to the expiration of the Due Diligence Period, Developer will deliver to the Town an inventory of the Permits and Approvals, a schedule of when the Permits and Approvals are anticipated to be obtained (to the extent not already issued), and copies of any existing Permits and Approvals (together, the "*Permit Schedule*"). Developer shall be responsible for overseeing the implementation and performance of its obligations hereunder in compliance with the Permits and Approvals. In the event of the termination of this Agreement, Developer, shall be obligated to assign and transfer the Permits and Approvals to the Town.

Section 4.5. Special Condition regarding Coastal Zone Consistency Review by State of South Carolina. During Phase II, the Developer and the Town shall cooperate with reasonable diligence to procure approval of the Coastal Zone Consistency ("CZC") review for the Project from the State of South Carolina if such approval has not already been obtained. Developer shall use commercially reasonable efforts to submit the CZC Application during Phase I. Thereafter, Developer and Town will cooperate with reasonable diligence to (i) furnish information and respond to requests from the applicable jurisdiction and staff, (ii) review, approve, and incorporate appropriate revisions to the plans submitted with the CZC Application, and (iii) participate, support, and advocate for the Project in public and other hearings related to the CZC Application. In the event that the CZC Application has not been approved by the end of Phase III, then Phase III shall be extended on a day-for-day basis for each day required from the commencement of Phase III until the date of approval of the CZC Application by the State of South Carolina.

Section 4.6. Town Contribution. During Phase III, the timing of the Town Grant Contribution shall be finalized by and between the Town to the Project Owner in a manner satisfactory to Investors and Lenders to the Project.

Section 4.7. Town Assistance. Town, through its Town Manager, will seek the financial support of community resources to assist with approved budgeted Project expenses.

**ARTICLE V:**  
**CONSTRUCTION**  
**(PHASE IV)**

Section 5.1. Site Preparation. During Phase IV, Project Owner shall be responsible for preparing the Properties for construction, which shall include grading and relocation/abandonment of existing utilities (as necessary) and leaving the Property in a clean and buildable condition, and the construction of all new or improved infrastructure improvements necessary for the construction and occupancy of the Project, expressly including but not limited to any road beds and road surfaces; underground utilities, sewers, drains, pipes and wires; all curbs, curb cuts, and sidewalks; and any other infrastructure improvements set forth in the Town-approved Plans and Specifications and Approvals and Permits, and such other services as may be mutually agreed by the Parties to be performed during the Developer Site Preparation Period (the “Site Preparation Services”). Subject to the provisions of this Agreement, Project Owner shall be solely responsible for the payment of all Costs related to the Site Preparation Services, including but not limited to the Costs for the construction and completion of the Infrastructure Improvements pursuant to the Construction Contracts, including any cost overruns. The provisions of this Section 5.1 are intended to set forth the general obligations of the Developer during the Site Preparation Period and the Parties agree to use all commercially reasonable efforts to make effective and complete the activities set forth herein.

Section 5.2. Construction of the Project. During the Construction Period, Developer shall be responsible for causing the Project to achieve the Substantial Completion of the Site Preparation Services, development, construction, and installation of the Units, the utilities, amenities, and all other improvements in each case in material accordance with the Plans and Specifications, subject only to such modifications and change orders that will require the prior written approval of the Town (as set forth herein), the Lenders, Investors, and such other services as may be mutually agreed by the Parties to be performed by the Developer (the “*Construction Services*”). Subject to the provisions of this Agreement, Developer and the Project Owner shall be jointly responsible for the payment of all Costs related to the Construction Services, including but not limited to the Costs for the construction and completion of all Improvements pursuant to the Construction Contract, including any cost overruns.

**ARTICLE VI:**  
**GROUND LEASE**

Section 6.1. Execution. At Construction Loan Closing, the Town and Project Owner will execute the Ground Lease substantially in the form to be developed and agreed upon during the Due Diligence Period, and attached hereto as **Exhibit “F”**. The Town acknowledges and agrees that the Ground Lease must meet the criteria of a “financeable ground lease” pursuant to commercial lending standards. The Parties may execute the Ground Lease at an earlier date if

required by the terms of Developer's permanent financing for the Project, which financing must be approved by the Town. Prior to execution of the Ground Lease, upon request of Investor, Lenders or other Project participants, the Town and Developer may enter into an Option to Ground Lease consistent with this Agreement in order to evidence the Project Owner's rights to enter into the Ground Lease.

Section 6.2. Termination of Agreement. Upon execution of the Ground Lease, this Agreement will terminate, except for those provisions which specifically, by their terms, survive termination.

Section 6.3. Lease Term. The Lease will commence at construction loan closing and the Term of the Lease will extend for a period of sixty-five (65) years, from the date the Project first receives a certificate of occupancy for any building comprised of units (the "Commencement Date") suitable for occupancy by tenants.

Section 6.4. Rent. Developer will pay the Town annual rent in the amount of \$100.00, with the first payment to be made on the Commencement Date of the Lease, and annually thereafter on or before the anniversary date of the first payment.

Section 6.5. Project Owner Responsibilities. The Project Owner, as the Lease Tenant, will be responsible for the operation, management, care, maintenance, repairs, and security of the Project for the purpose of providing housing for persons employed on Hilton Head Island who meet the Tenant Criteria set forth in **Exhibit "D"**, titled Workforce Housing Tenant Qualification Criteria. All private roads, utilities, amenities and the residential units are to be maintained to a high standard and on a timely basis, as further provided for in Section 2.5 (c) above. The Project Owner will maintain reserves sufficient, in the Town's opinion, to assure a high level of maintenance of all elements of the Project at all times.

Section 6.6. Sale/Agreement. The Developer may cause the Project Owner to sell the Project and assign this Agreement and the Ground Lease after the Project achieves Stabilization as that term is defined in the Operating Agreement of the Project Owner. However, Developer and Project Owner must include the Town in all correspondence, conferences and meetings by Project Owner, Developer or its broker with third parties regarding such a proposed sale and assignment, and the Town will have the right of first refusal exercisable within 10 business days after receipt of an executed Sale or Assignment Agreement to (i) purchase the Project on the same terms and conditions as set forth in the sale agreement between the Developer or Project Owner and the buyer, (ii) take an assignment of Developer's obligations under this Agreement and (iii) take an assignment from the Developer or Project Owner of the Ground Lease. In any event the Town may request commercially reasonable information about a potential buyer/assignee to operate the Project, verify the experience level of the buyer/assignee to operate the Project, and will have the reasonable right to approve any buyer/assignee, who must agree in writing to assume all responsibilities of the Developer set forth in the Agreement and the Ground Lease. The Town shall have 10 business days after receipt of such information to notify Developer whether it approves the buyer/assignee, which approval will not be unreasonably withheld. Failure to respond with such 10 business day period shall be deemed approval of such buyer/assignee, but the Town will continue to be included in all correspondence, conferences and

meetings between the Developer, Project Owner and/or its broker with all third party potential buyers.

Section 6.7. Post-Construction Management and Leasing of Units. One Street Residential Services, LLC, an affiliate of the Developer shall be responsible for maintenance of the Property and management of the community, including the enforcement of use restrictions, and including the Workforce Housing Criteria Requirements (the “Management Services”) pursuant to a Management Agreement to be agreed upon by Developer, Project Owner, Lender, Investor and the Town. The provisions of this Section 5.4 are intended to set forth the general obligations of the Parties after the issuance of the final Certificate of Occupancy for the last Unit constructed on the Property and the Parties agree to use all commercially reasonable efforts to make effective and complete the activities set forth herein. The Management Services will be more fully set forth in the Ground Lease. Developer will remain liable to the Town for all of its duties and responsibilities set forth in the Ground Lease and the Management Agreement.

Section 6.8. Prohibition Against Transfers. During the term of this Agreement and after the Closing Date, Developer shall not, except as permitted by this Agreement or the Ground Lease, make any total or partial sale, transfer, or conveyance of the whole or any part of the Property or the Improvements thereon, without prior written approval of the Town.

Section 6.9. No Encumbrances. (i) Developer shall not encumber the Property for any purpose, (ii) Developer shall notify the Town in advance of any proposed financing as required elsewhere in this Agreement, and (iii) Developer shall not enter into any agreements for financing requiring a conveyance of security interests in the Property other than Project Owner’s Leasehold Interests under the Ground Lease. Further, Developer shall promptly notify the Town of any leasehold security interest created or attached to the Property whether by voluntary act of Developer or otherwise.

Section 6.10. Prohibition on Subleasing and Short-Term Rentals. The Developer or its successors are expressly prohibited from allowing any subleasing or short-term rentals (as defined in the Municipal Code of the Town of Hilton Head Island) on the Property.

## **ARTICLE VII:** **DEVELOPER OBLIGATIONS, RESPONSIBILITIES, AND DUTIES**

Section 7.1. Appointment of Developer. Subject to the terms of this Agreement, the Town hereby engages Developer to perform the duties and services of Developer set forth herein, and Developer hereby agrees to perform such duties and services, all in accordance with the terms and conditions of this Agreement. Developer shall be an independent contractor and nothing contained in this Agreement shall be construed to create a partnership or joint venture relationship between the Town and Developer.

Section 7.2. Deadlines and Schedule of Performance. Throughout this Agreement, certain deadlines and time periods are created in which one or both of the Parties must perform their obligations. These deadlines and time periods are set forth and defined on **Exhibit “E”** (the



“Schedule of Performance”) attached hereto and made an integral part hereof. Additionally, a non-binding, target schedule is included as **Exhibit “G”** (the “Target Schedule”) to provide further guidance on the intended timeline for the performance of obligations under this Agreement.

Section 7.3. Deadline Extensions. Subject to the terms hereof, the Deadlines and time for performance of any of the Developer’s actions hereunder as set forth in the Schedule of Performance may be extended by the mutual written consent of the Parties (each, a “Deadline Extension”), which such consent shall not be unreasonably withheld in the event that the economic variables for labor or materials or interest rates are too unstable to reasonably proceed under the existing contract terms. In the event of a Deadline Extension, any corresponding Town obligations shall be similarly extended at no cost to the Town. Any request for a Deadline Extension shall be asserted in writing no less than ten (10) days prior to such Deadline.

Section 7.4: License to Developer and Consultants. Subject to the terms and conditions of this Agreement, the Town shall grant and does hereby grant to Developer and its Consultants a temporary, non-exclusive license, commencing on the Effective Date and terminating on the closing of construction financing of the Project and the Town’s entry into the Ground Lease with the Project Owner to enter onto the Property to perform the Developer Inspections and the Developer Services. Notwithstanding the foregoing, Developer shall permit the Town to have a representative present during all Developer Inspections conducted at the Property or at any time when Developer or Consultants are performing any Developer Services related to this Project.

Section 7.5: Developer Services. Without limiting any other term of this Agreement, throughout the term of this Agreement, Developer shall perform the following services and have the right to perform the following services (collectively, the “Developer Services”):

(a) *Developer Reports.* Developer shall distribute or cause to be distributed to the Town Manager regular written updates on the Project, which shall include updated Schedule of Performance and Project Budget (with change orders and notations identifying any Cost reductions or increases), field reports of any Consultants, and summaries of progress on the Developer’s Services (the “Developer’s Reports”). The Developer, with the assistance of the Consultants, shall routinely and regularly evaluate the Project and the Project Budget, each in terms of the other, and provide such evaluations to the Town as part of the Developer Reports. In addition to regular reports, Developer shall keep the Town Manager advised generally as to any and all developments affecting the Property and the Project and respond, coordinate, and cooperate with all reasonable requests by the Town Manager inquiring as to the status of the progress of the Project for the purpose of enabling the Town to monitor Developer’s progress and the Project’s progress. Further, the Developer shall assist the Town in responding to questions, complaints, or concerns from neighborhood groups, local organizations, or any members of the public interested in the Project.

(b) *Project Supervision.* Developer shall supervise completion of the Developer Inspections, the Developer Services, including all construction, and/or any other work reasonably necessary for the completion of the Project (including but not

necessarily limited to the work of the Consultants) and administer the Contract Documents to maintain compliance with the Plans and Specifications, the Project Budget, and the Schedule of Performance, and shall oversee the coordination and administration of the Consultants employed in connection with the design, entitlement, development, construction, rental, completion, and management of the Project.

(c) *Copies of Notices Affecting the Project.* In the event Developer receives any service of process or any notice of (or similar document relating to) any action, omission, violation or circumstance which could have a material effect on the planning, development, design, or management of the Project, Developer shall deliver a copy of same to the Town Manager as soon as practicable.

(d) *Books and Records.* Developer shall keep, or cause to be kept, accurate, full and complete books of account on a calendar year basis showing assets, liabilities, income, operations, transactions and the financial condition of Developer for the design and development and management of the Project. The books, accounts and records of Developer for the Project shall be at all times maintained at Developer's principal office and shall at all reasonable times and upon prior reasonable notice be accessible to the Town and during the term of the Long Term Lease, upon ten (10) days' notice to Developer, the Town may, at its option and at its own expense, conduct audits of the books, records and accounts of Developer related to the Project. Developer shall provide the Town's auditors, accountants and advisors with access to all of its information related to the design, development, construction, and management of the Project.

(e) *Other Services.* The Developer shall perform any and all other services and responsibilities of the Developer which are set forth in any other provision of this Agreement (including but not necessarily limited to any phase-specific Developer Service) or which are reasonably requested by the Town with respect to the design, entitlement, development, and financing of the Project pursuant to this Agreement and which are within the general scope of the services of the Developer described herein.

Section 7.6: Developer's Performance.

(a) *Developer Covenants.* Developer covenants to (i) perform its obligations hereunder in accordance with industry standards, in a professional manner consistent with the orderly and expeditious design, development and construction of the Project in the Town of Hilton Head and in accordance with the terms of the Project Documents; (ii) take all steps usually and customarily taken by prudent and experienced developers seeking with due diligence to achieve the objective to which their particular effort pertains; (iii) devote as much time and resources as is necessary to manage the design, development, construction, and management of the Project in accordance with the requirements of the Project Documents; and, (iv) act at all times in good faith and in the best interests of the Town and the Project, seeking to minimize Costs of the Project and achieve Substantial Completion by the Substantial Completion Date, subject to the terms and conditions of this Agreement. The Developer shall require the Property Owner, affiliates, contractors and sub-contractors to agree in writing to these covenants.

(b) *Skill Level; Delivery of Approvals and Consents.* Developer recognizes the necessity of a close working relationship with the Town and hereby covenants and agrees to furnish the level of skill, efforts and judgment in the performance of its duties and responsibilities under this Agreement which is appropriate and consistent with the coordination of the development of the Project and to provide Developer's knowledge, ideas, experience and abilities relating to the development and management of the Project. Developer and the Town hereby covenant and agree to render approvals, consents or decisions in a timely manner to requests submitted by the other Party hereto; provided, however, that the foregoing shall not be deemed to reduce or extend any time periods for any actions or responses otherwise set forth in this Agreement, unless otherwise expressly stated in this Agreement.

Section 7.7. Indemnification.

(a) *Breach.* Developer shall indemnify, defend and hold harmless the Town from and against any liability, cost, damage, lien, loss or expense (including reasonable attorney's fees and disbursements) incurred or suffered by the Town as a result of Developer's failure to pay in a timely manner any Cost or expense for which Developer is obligated to pay as provided in this Agreement, including, without limitation any and all payments due Consultants under their respective contracts.

(b) *Negligence; Willful Misconduct.* Developer shall indemnify, defend and hold harmless the Town (and its officers, agents and employees) from and against any and all liability, cost, damage, lien, loss or expense (including attorney's fees and disbursements) in any matter related to, arising out of or resulting from any negligence, fraud or willful misconduct of Developer or its officers or employees.

Section 7.8: No Partnership or Joint Venture. The Parties recognize that the Agreement requires substantial contributions of services and resources by both Parties, and requires close coordination and consensus at all stages and on all elements, as well as the fact that the financial benefit for the Developer is significantly dependent upon successful implementation of the terms hereof. Notwithstanding the foregoing, nothing contained in this Agreement shall be deemed or construed to create a relationship of partners, co-venturers, or principal and agent between the Town and the Developer. The Developer shall have no power or authority to create any obligation on the part of the Town, as obligor, guarantor, or surety, with respect to any obligation to third parties incurred by the Developer.

**ARTICLE VIII:**  
**DEFAULT; TERMINATION**

Section 8.1. Default by Town. The following shall constitute a default by the Town under this Agreement: (i) a breach of any material provision of this Agreement by the Town whether by action or inaction and such breach continues and is not remedied within sixty (60) days after Developer has given written notice specifying the breach; provided, however, that if

such breach cannot be with due diligence cured within a period of sixty (60) days, the Town shall be allowed such longer period of time as is reasonably necessary to cure such breach.

Section 8.2. Remedy for Town Default. To the extent permitted by law, if the Town shall default in any of its obligations to be performed on or before any applicable Deadline (as extended by any Uncontrollable Event), Developer shall have the right to (a) terminate this Agreement as its sole remedy by reason thereof (in lieu of prosecuting an action for damages or proceeding with any other legal course of conduct, the right to bring such actions or proceedings being expressly and voluntarily waived by Developer), or (b) seek specific performance of the Town's obligations hereunder (it being expressly acknowledged that the remedy of specific performance is an appropriate remedy in the event of a default by the Town under this Agreement), provided that any action for specific performance shall be commenced within six (6) months of the occurrence of such default. In the event the Developer decides to terminate this Agreement, the Developer shall provide written notice of such termination to the Town.

Section 8.3. Event of Default by Developer. As used in this Agreement, an Event of Default shall mean one or more of the following events:

(a) *Deadlines.* Prior to Project Owner's entry into the Ground Lease, failure of the Developer to complete any Work or Developer Service by the applicable Deadline set forth in this Agreement for a period of ninety (90) days after Town has provided written notice to Developer of Developer's failure and Town's intent to declare an Event of Default for such failure, if such failure shall have a reasonably adverse impact upon the timely completion of the Project and if such failure is attributable primarily to acts or failure to act on the part of the Developer or an Affiliate.

(b) *Developer Insolvency.* Developer, an Affiliate of Developer, or any of its members becoming insolvent, making an arrangement with or for the benefit of its creditors, acquiescing in the appointment of a receiver, trustee or liquidator, instituting or becoming the subject of any proceeding commenced under any law for the relief of debtors, or otherwise objectively demonstrating financial incapacity to carry out its obligations hereunder.

(c) *Developer Debarment.* Debarment, suspension, or other exclusion of the Developer, or any Affiliate thereof, from participation in any Federal or State program which shall exclude the Developer from qualifying for award of Federal or State assistance (including allocation of low-income housing tax credits).

(d) *Unauthorized Assignment.* Developer assigns, directly or indirectly, whether voluntarily, involuntarily or by operation of law, any of its rights or obligations under this Agreement without the prior consent of the Town.

(e) *Intentionally omitted.*

(f) *Financial Default.* Failure of Developer to make payment to any third party when such sums are due and/or to permit a mechanic's lien or materialman's lien be

placed against the Property or the failure of Developer to pay, when due, any tax, assessment, lien or other charge having priority over this Agreement.

(g) *Criminal Activities and Fraud.* Fraud, theft, criminal misappropriation of funds, or embezzlement by Developer or its employees or agents; provided however, that with respect to fraud, material theft or embezzlement by an employee or agent that is not a principal of Developer (or one of its members) of which Developer was unaware, such fraud, material theft or embezzlement is not cured within thirty (30) days after discovery by Developer.

(h) *Gross Negligence.* Gross negligence or willful misconduct perpetrated by Developer against the Town in connection with construction and development of the Project; provided however, that with respect to gross negligence or willful misconduct by an employee or agent that is not a principal of Developer (or one of its members) of which Developer was unaware, the same is not cured within thirty (30) days after discovery by Developer.

(i) *Material Breach.* Developer's act, event or omission constituting a failure to comply with its obligations under this Agreement, which failure continues for a period of thirty (30) days after written notice by the Town to Developer of such failure (or such longer period if compliance is not reasonably possible within thirty (30) days, so long as Developer is diligently pursuing a cure of such failure; provided however, that such period shall in no event exceed ninety (90) days), including but not limited to a material default by Developer on any Project financing documents and the failure to cure such material default within the financing documents' applicable time period to cure.

(j) *Breach of Representations.* Material breach of any representation, warranties, covenants, or certifications made in this Agreement.

Section 8.4. Remedies of the Town Due to Event of Default. Upon the occurrence and during the continuance of any Event of Default, and at any time thereafter, the Town, at its option (after the lapse and expiration of any applicable notice and cure periods) may (i) terminate this Agreement in accordance with Section 7.5 hereof; and/or (ii) exercise any such remedies available to the Town at law, in equity, or by statute.

(a) *Notice of Event of Default.* If an Event of Default occurs under Section 7.3(g) through Section 7.3(i) (beyond such applicable notice and cure periods, if any), in addition to the other rights of the Town, the Town may deliver written notice of such Event of Default to Developer (the "Default Notice"), which shall contain (i) information regarding the act, failure to act, condition, or event that constitutes the Event of Default, (ii) the actions required to be taken by the Developer to cure the Event of Default, and (iii) the time within which Developer shall respond with a showing that all required actions have been taken and the Event of Default cured. Unless otherwise instructed by the Default Notice, during any such cure period, the Developer shall proceed diligently with performance of any Work required by this Agreement which is not the subject of the claimed Event of Default.

(b) *Remedies Cumulative.* The Town's rights and remedies set forth in this Article VII are cumulative and in addition to its other rights and remedies in this Agreement and available at law or in equity, including but not limited to the right to seek specific performance of any of the Developer's obligations hereunder. The Town's exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. The Town's delay or failure to exercise or enforce any of its rights or remedies shall not constitute a waiver of any such rights or remedies. The Town will not be deemed to have waived any cause or right or remedy hereunder unless such waiver expressly is set forth in an instrument signed by the Town. If the Town waives in writing any cause, then such waiver shall not be construed as a waiver of any covenant or condition set forth in this Agreement except as to the specific circumstances described in such written waiver.

Section 8.5. Termination of Agreement. In addition to any and all such other rights provided in Section 7.4 hereof, upon the occurrence of an Event of Default (after the lapse and expiration of any applicable notice and cure periods), the Town shall have the right to terminate this Agreement.

(a) *Notice of Termination.* In the event the Town decides to terminate this Agreement, the Town shall provide written notice of such termination to the Developer (the "Notice of Termination") specifying the effective date of the termination and the extent to which performance of Work under this Agreement is terminated. Developer, upon receipt of the Notice of Termination, shall immediately discontinue any Developer Services being provided, except to the extent specified in the Notice of Termination from the Town.

(b) *Delivery of Documents and Records.* Within five (5) days of the receipt of the Notice of Termination, Developer shall promptly deliver to the Town all Project Documents, Project Contracts, memoranda, accounting and other books and records, warranties, Plans and Specifications, Supplemental Assessments, reports, and any other documents regardless of physical form relating to the Project then in Developer's possession. In addition, Developer shall promptly account for any monies advanced to or on behalf of Developer or Project Owner by Town under this Agreement. Developer shall also furnish such information, take all such other action (at no cost, expense or liability to the Town) and shall cooperate with the Town, as the Town shall reasonably require in order to effectuate an orderly and systematic termination of Developer's duties and activities hereunder.

(c) *Assignment of Permits and Plans.* In the event of a termination of this Agreement due to an Event of Default, or if the Town terminates the Agreement for convenience, Developer must assign all of its ownership and rights in and to the Plans and Specifications to the Town, with the Assignment of Permits and Plans to be executed and delivered to the Town by the Developer within forty-eight (48) hours of the date that the Notice of Termination is provided to the Developer in accordance with Section 7.5(a). The Town may, in its discretion, use any or all of the Plans and Specifications prepared

hereunder for the purpose of completing the Project, with or without the involvement of the Developer. Developer acknowledges that the Plans and Specifications prepared under this Agreement are specific to the Property for this particular Project and are not appropriate for use on any other Project, or on any extension of this Project without the express written consent of the Town. Developer shall indemnify and hold harmless the Town from all claims, damages, losses and expenses including reasonable attorney's fees arising out of or resulting from, or alleged to arise out of or result from, any use of the Plans and Specifications.

Section 8.6 Termination for Convenience. In addition to the Town's Termination Rights in the Event of Default, the Town may terminate this Agreement for convenience prior to Town's entry into the Ground Lease with the Project Owner, upon payment to the Developer of the greater of the Developer's provable costs or the fair market value of Developer's work-in-place. For sake of clarity, any termination by Town for reason(s) other than Events of Default enumerated in Section 7.3 hereof shall be deemed a Termination for Convenience.

Section 8.7. Dispute Resolution; Venue. In the event of a dispute between the Town and Developer regarding any matters arising under this Agreement, the Town and Developer each covenant and agree to engage in good faith negotiations with the other in an attempt to promptly resolve such dispute. Except as otherwise specifically provided in this Agreement or as otherwise mutually agreed in writing by Developer and the Town, any dispute between the Parties arising from or in connection with this Agreement shall be resolved by judicial proceedings, with venue in Beaufort County, South Carolina.

## **ARTICLE IX: REPRESENTATIONS AND WARRANTIES**

Section 9.1: Representations and Warranties of Developer. Developer hereby makes the following representations and warranties to the Town, each of which is true and correct as of the Agreement Date:

(a) *Organization; Good Standing*. Developer is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Georgia, is qualified to do business in the State of South Carolina, and has the requisite power and authority to enter into this Agreement, and generally to consummate the transactions contemplated by the terms of this Agreement.

(b) *Authorization; Enforceability*. Developer has taken all requisite action to enter into and deliver this Agreement and all requisite action to execute and deliver each and every document required to be executed and delivered by Developer under this Agreement. All terms of this Agreement are binding on Developer and are enforceable in accordance with their terms, except as such terms may be limited by (a) any applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar law affecting creditors' rights generally; (b) general principles of equity, whether considered in a proceeding in equity or at law; or (c) other provisions of this Agreement;

and do not and will not result in a breach of the terms and conditions of, or constitute a default under or violate the organizational documents of Developer, or any other document, instrument, agreement, stipulation, judgment or order to which Developer is a party or by which Developer is bound.

(c) *No Bankruptcy.* Neither Developer nor any of its members or affiliates have filed any proceedings under the United States Bankruptcy Code or any other similar federal or state law or statute regarding relief from creditor's claims, and Developer has not received any actual notice of any such proceedings having been instituted or threatened by any party against it.

(d) *No Litigation.* There are no legal actions pending (or to the best of Developer's actual knowledge, threatened) against Developer nor any of its members, officers or directors, nor any Affiliates of Developer, which would materially impair Developer's ability to perform its obligations in accordance with this Agreement.

(e) *No Suspensions/Debarment.* Neither Developer nor any of its members, officers or directors, nor, to the actual knowledge of Developer, any Affiliates of Developer have ever been debarred or suspended by any department or agency of the federal government or of any state government from doing business with such department or agency.

(f) *No Convictions.* Neither Developer nor any of its members, officers or directors has ever been convicted of commission of a felony or is presently the subject of a complaint or indictment charging commission of a felony.

(g) *Delivery of Developer's Organizational Documents.* Developer has delivered a copy of Developer's limited liability company agreement, articles of organization, and any other agreements between the members of Developer or any Affiliates of any member (including without limitation, the Contractor) directly or indirectly related to the Project to the Town for the Town Manager's review. During the Term, Developer, represents, warrants and covenants that it shall not enter into any agreements, contracts, or binding documents with any member (or Affiliate of any member) of Developer that directly or indirectly relate to the Project, except on terms and conditions of engagement that are reasonable, competitive and customary in the applicable marketplace; and provided further, a copy has been sent to the Town for the Town's approval (or such portion of the agreement, contract or document as it relates to the Project), which approval shall not be unreasonably withheld, conditioned or delayed.

Section 9.2: Representations and Warranties of the Town. The Town hereby makes the following representations and warranties to Developer, each of which is true and correct as of the Agreement Date:

(a) *Organization.* The Town is a duly created municipal corporation of the State of South Carolina and is a validly existing political subdivision of the State of South



Carolina, and has the requisite power and authority to enter into this Agreement, and generally to consummate the transactions contemplated by the terms of this Agreement.

(b) *Authorization; Enforceability.* The Town has taken all requisite action to fully authorize the Town to execute and deliver each and every document required to be executed and delivered by the Town under this Agreement. Except as otherwise provided within this Agreement, all terms of this Agreement are binding on the Town and are enforceable in accordance with their terms (except as such terms may be limited by (1) any applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar law affecting creditors' rights generally or (2) general principles of equity, whether considered in a proceeding in equity or at law) and do not and will not result in a breach of the terms and conditions of any document, instrument, agreement, stipulation, judgment or order to which the Town is a party or by which the Town is bound.

## **ARTICLE X: AMENDMENTS; ASSIGNMENT**

Section 10.1. Amendments. Except as expressly provided herein to the contrary, all proposed amendments of and to this Agreement, including but not necessarily limited to the right to change, modify, alter, remove, renew or add new any words, provisions, sections or articles, in whole or in part, must be approved by the written agreement of the Parties. The Parties must execute an addendum to this Agreement, which shall set forth the amendment and the effective date of the amendment. Notwithstanding the above provision to the contrary, however, to the extent this Agreement expressly gives a Party the express right to approve, modify, waive, limit, condition or rescind the effect or application of any definition, restriction or other provision of this Agreement, then such approval, modification, condition, waiver, limitation or rescission may be given or withheld solely by the applicable party in accordance with the express provisions of this Agreement (and, if given by such Party, shall be given effect in accordance with the provisions of this Agreement as if the provisions approved, modified, conditioned, waived, limited or rescinded were originally part of this Agreement).

Section 10.2: Assignment. Without the prior written consent of the Town, in its sole discretion, Developer may not assign or attempt to assign all or any part of this Agreement, or any interest herein other than to an Affiliate controlled by Developer. Notwithstanding the foregoing, it is the express intent of the Parties that Developer may engage Consultants, engineers and other professionals during the course of the performance of Developers Services and that the delegation of certain Developers Services to such Persons retained directly by Developer to assist in the performance of Developer's obligations hereunder are not considered assignments under this Section for which the Town's consent is required. Developer will fully guarantee all obligations assigned to any Affiliate.

## **ARTICLE XI: INSURANCE REQUIREMENTS**

Section 11.1: Insurance. Throughout the term of this Agreement, Developer shall provide and maintain, or cause the Contractor and any subcontractors to provide and maintain, at no cost to the Town, the following insurance:

(a) *Builder's Risk*. Once construction commences, a "special perils" or equivalent policy form of builder's risk insurance in the amount of one hundred percent (100%) of the completed value of each structure, plus the value of subsequent Construction Contract modifications, if any, and cost of materials supplied or installed by others, comprising the total value of the structure, which shall be converted to permanent property hazard insurance upon issuance of a certificate of occupancy for each such building, and, for both forms of coverage, Developer's, Lender's and the Town's interests shall be protected under a loss payable clause. The builder's risk insurance policy must provide (A) a permission to occupy endorsement (B) include coverage for the perils of fire, lightning, wind, collapse, flood and/or surface water, earthquake/volcanic action, theft, vandalism, malicious mischief, and terrorism, (C) include coverage for soft costs and (D) include coverage for materials temporarily stored off site and/or in transit (unless such risk of loss is transferred to others by written contract). The Town shall be included as a named insured if permitted by law.

(b) *General Commercial Liability*. Once Due Diligence commences, a policy of commercial general liability insurance during the lifetime of the Agreement having minimum limits of not less than \$1,000,000.00 per claim, \$2,000,000.00 per occurrence for Bodily Injury, and Property Damage Liability. The Town shall be named as additional insured on Developer's, General Contractor's and all subcontractor's policies. Coverage shall include Premises and/or Operations, Independent Contractors, Products and/or Complete Operations, Contractual Liability and Broad Form Property Damage Endorsements. Coverage shall not contain an exclusion or limitation endorsement for Contractual Liability or Cross Liability. Coverage for the hazards of explosion, collapse, and underground property damage (XCU) must also be included.

(c) *Worker's Compensation*. Once construction commences, Worker's Compensation Insurance and Employer's Liability Insurance having limits not less than those required by the South Carolina Code of Laws, covering all Persons employed by the Developer, Contractor and sub-contractors in the conduct of their operations at the Project.

(d) *Umbrella Policy*. Once construction commences, an umbrella policy of commercial general liability insurance having a limit of not less than \$2,000,000.00 per occurrence and \$5,000,000 general aggregate.

(e) *Professional Liability*. Developer shall maintain (or cause Consultants to maintain) Professional Liability or equivalent Errors & Omissions Liability at a limit of liability not less than \$1,000,000.00 per occurrence.

(f) *Performance and Payment Bonds*. Developer will require the Contractor

to secure performance and payment bonds equal to one hundred percent (100%) of the Project contract price, with the Town named as an additional obligee on each bond.

Such insurance policies shall be issued by insurance companies with a rating of not less than A-Class VIII in the latest edition of Best's Insurance Guide.

Section 11.2: Town as Additional Insured. Except as to Worker's Compensation and Employer's Liability, the Town shall be listed as an additional insured party on all insurance policies, and Developer shall deliver to the Town certified copies of such insurance policies, together with certificates evidencing the coverage of the Town under the liability policy, promptly upon issuance or renewal thereof, with such certificates to clearly provide the following endorsement: "The Town of Hilton Head Island, a municipality of the State of South Carolina, its officers, agents and employees as additional insureds." Coverage for the Town as an Additional Insured shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible maintained, by or provided to the Additional Insured. All policies shall be endorsed to waive subrogation rights against the Town. Developer shall not take or fail to take any action that would cause the cancellation of, diminish coverage under or result in an increased premium for any of the insurance described in this Section. The Certificate of Insurance shall unequivocally provide thirty (30) days' written notice to the Town prior to any adverse change, cancellation, or non-renewal of coverage thereunder.

## **ARTICLE XII: MISCELLANEOUS**

Section 12.1. Review Procedure. The Parties agree that the development will be subject to all normal development review applications and processes that are required by the Town. All exterior plans, designs, and finishes submitted for Town approval will use the Palmetto Village complex in Hilton Head as a reference to ensure high-quality architecture and construction. Subject to the terms and conditions of this Agreement, by making this Agreement, the Town is specifically not obligating itself or any other agency in the Town, with respect to any discretionary action related to the development or operation of the improvements to be constructed on the property, including, but not limited to, variances, rezoning, and environmental requirements, or any other governmental agency approvals which are or may be required.

Section 12.2. Local and SDBE Vendor Preference. Except as set forth herein, the Developer will endeavor in good faith to utilize local vendors, including small and minority-owned businesses as defined and recognized by the Town's Small and Minority-owned Disadvantaged Business Enterprise Utilization Program, to the extent possible and practical, for the construction of quality infrastructure, horizontal, and vertical improvements, and will require its Contractor to do the same.

Section 12.3. Americans With Disabilities Act. Any party undertaking construction of the Improvements pursuant to the terms of this Agreement or providing any Developer Service shall comply with applicable laws, including, but not limited to, the Americans With Disabilities Act.

Section 12.4. Eminent Domain Rights. Nothing in this Agreement shall interfere with or cause the Town to lose any eminent domain rights it has on the subject property.

Section 12.5. Paragraph Headings. Paragraph headings, where used herein, are inserted for convenience only and are not intended to be part of this Agreement or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer.

Section 12.6. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of South Carolina.

Section 12.7. Notices. Any notice required to be sent to either Party under the provisions of this Agreement shall be deemed to have been properly sent, and notice thereby given, when deposited in the United States mail or overnight delivery service (such as FedEx, UPS or DHL) in a sealed envelope with proper postage affixed and addressed to such Parties address as shown below. Notwithstanding the foregoing, a Party may designate another form of acceptable notice, including but not limited to standard electronic transmittals, e.g., e-mail, or facsimile; however, such designation shall not affect the validity of any notice sent in accordance with the terms of this Agreement.

In the case of notice to the Town, the Notice shall be addressed as follows:

TOWN MANAGER  
Town of Hilton Head Island  
One Town Center Court  
Hilton Head Island, SC 29928

With copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In the case of notice or communication to Developer, shall be addressed as follows:

ONE STREET RESIDENTIAL, LLC  
104 Interstate N. Pkwy East SE  
Atlanta, GA 30339  
Attention: David H. Dixon  
dave@onestreetres.com

With copy to:

Hunter Maclean  
200 E. St. Julian Street  
Savannah, GA 31401

Attention: Adam G. Kirk  
akirk@huntermaclean.com

Section 12.8. No Implied Liabilities or Duties. THIS AGREEMENT SHALL NOT EXPRESSLY OR IMPLIEDLY CREATE ANY DUTY OF CARE TO ANY TENANT, PERMITTEE, OR INVITEE.

Section 12.9. No Third Party Beneficiaries. The Parties intend that the rights, obligations, and covenants in this Agreement shall be exclusively enforced by the Town and Developer and their respective successors and assigns. There are no third party beneficiaries to this Agreement.

Section 12.10. Time of the Essence. TIME IS OF THE ESSENCE AS TO ALL MATTERS UNDER THIS AGREEMENT.

Section 12.11. Binding on Successors. This Agreement shall be binding not only upon the Parties hereto but also upon their personal representatives, assigns, and other successors in interest.

Section 12.12. Additional Documents. Developer and Town agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement. The Parties acknowledge that ancillary contracts, agreements, and consents between the Parties, will be necessary to fulfill the intent this Agreement and further define the obligations of the Parties. Such agreements include, but are not limited to, construction management agreements and access and construction easements and licenses. The Parties shall work in good faith to execute any such ancillary agreements. Whenever in this Agreement a Party or Parties are required to execute documents, the Parties shall execute such documents without unreasonable delay so long as the document is in material compliance with this Agreement.

Section 12.13. Entire Agreement; Modification. This Agreement constitutes the entire agreement between Developer and Town pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the Parties. This Agreement, including the Exhibits hereto, may only be amended by a written document signed by each Party hereto. This Agreement, including the Exhibits hereto, is the entire agreement between the Parties relating to the subject matter. All prior or contemporaneous representations and negotiations are merged herein.

Section 12.14. Appropriations. The Parties agree that any financial obligations imposed upon the Town under this Agreement shall be binding only to the extent of appropriations authorized by the Town Council of the Town of Hilton Head Island, South Carolina, and only to the extent specifically provided for in this Agreement.

Section 12.15. Severability. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

Section 12.16. Business License Requirement. Developer shall verify and ensure that at all times during the term of this Agreement that Developer, Consultants, Contractor, and any subcontractors shall be in possession of a current license to do business in the Town of Hilton Head Island, South Carolina.

Section 12.17. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which counterparts together shall constitute but one and the same instrument.

Section 12.18. No Waiver. Neither the failure of either Party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the Parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. Any party may waive the benefit of any provisions, contingency or condition for its benefit contained in this Agreement, but such waiver shall not be of any force or effect unless in writing and no such waiver shall be construed to be a continuing waiver.

Section 12.19. Effective Date. The effective date of this Agreement shall be the latter date of the execution dates below.

Section 12.20. Dates/Days. In the event that any of the deadlines set forth herein end on a Saturday, Sunday or legal holiday, such deadline shall automatically be extended to the next business day which is not a Saturday, Sunday or legal holiday. The term "business days" as may be used herein shall mean all days which are not a Saturday, Sunday or legal holiday.

Section 12.21. Exhibits Attached. All Exhibits to this Agreement shall be an integral part of this instrument and are incorporated herein as if fully set forth herein verbatim:

SCHEDULE OF EXHIBITS TO AGREEMENT	
IDENTIFICATION	DESCRIPTION
EXHIBIT A	Property Description
EXHIBIT B	Project Description
EXHIBIT C	Definitions
EXHIBIT D	Workforce Housing Tenant Criteria Requirements
EXHIBIT E	Schedule of Performance
EXHIBIT F	Sample Long Term Ground Lease (Final to be attached prior to end of due diligence)
EXHIBIT G	Target Schedule

[Remainder of Page Intentionally Omitted. Signature Page(s) and Exhibit(s) to Follow.]

SIGNATURE PAGE TO WORKFORCE HOUSING DEVELOPMENT AGREEMENT

FOR DEVELOPER:

**ONE STREET RESIDENTIAL, LLC**

WITNESSES:

[Signature]  
Max Lahn  
PRINT NAME

[Signature]  
Angel Crawley  
PRINT NAME

By: [Signature]  
**DAVID H. DIXON**

Its: CHIEF EXECUTIVE OFFICER

Dated: 6-17-24

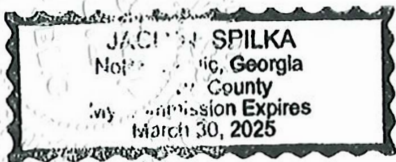
STATE OF Georgia  
COUNTY OF Forsyth

ACKNOWLEDGMENT

I, Jaclyn Spilka, Notary Public for the State of Georgia, do hereby certify that David H. Dixon (NAME) as Chief Exec. Off (TITLE) of **ONE STREET RESIDENTIAL, LLC**, a Georgia limited liability company personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of such entity.

SWORN and SUBSCRIBED to before me this 17 day of June, 2024.

Notary Public for Forsyth County, GA [Signature]  
My Commission expires: 3/30/25 (SEAL)



**SIGNATURE PAGE TO WORKFORCE HOUSING DEVELOPMENT AGREEMENT**

FOR TOWN:

**HILTON HEAD ISLAND, SC**

By: \_\_\_\_\_  
**MARC ORLANDO, ICMA-CM**

Its: TOWN MANAGER

Dated: \_\_\_\_\_

WITNESSES:

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
PRINT NAME

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

**ACKNOWLEDGMENT**

I, \_\_\_\_\_, Notary Public for the State of \_\_\_\_\_,  
do hereby certify that \_\_\_\_\_ (*NAME*) as \_\_\_\_\_ (*TITLE*)  
of **HILTON HEAD ISLAND, SC**, a \_\_\_\_\_ personally appeared before me this  
day and acknowledged the due execution of the foregoing instrument on behalf of such entity.

SWORN and SUBSCRIBED to before me this \_\_\_\_ day of \_\_\_\_\_, 2024.

Notary Public for \_\_\_\_\_

My Commission expires: \_\_\_\_\_ (SEAL)



**EXHIBIT "A"**  
***(Property Description)***

The Property consists of sixteen (16) adjacent parcels located north of William Hilton Parkway in the Town of Hilton Head Island, and bearing Beaufort County Tax Map Parcel numbers R510 007 000 021, 0219, 0230, 0232, 0233, 0234, 0235, 0236, 0237, 0238, 0239, 0240, 0241, 0242, 0243 and 0265, all as shown on the attached survey prepared by Atlas Surveying, Inc. and dated May 20, 2022.



1:25,000 SCALE  
PROPERTY MAP

1. THESE NOTES AND THE SURVEY MAP CONSTITUTE THE WHOLE AGREEMENT BETWEEN THE SURVEYOR AND THE CLIENT.
2. THE CLIENT'S RESPONSIBILITY IS TO VERIFY THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT AND TO OBTAIN NECESSARY PERMISSIONS FROM THE APPROPRIATE AGENCIES.
3. THE SURVEYOR IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT OR FOR THE ACTIONS OF ANY AGENCIES.
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10. THE SURVEYOR IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT OR FOR THE ACTIONS OF ANY AGENCIES.

PREPARED FOR:  
THE TOWN OF MILTON HEAD  
11101 18th Street East  
Milton Head, Ontario  
Williams Mill Road Parkway

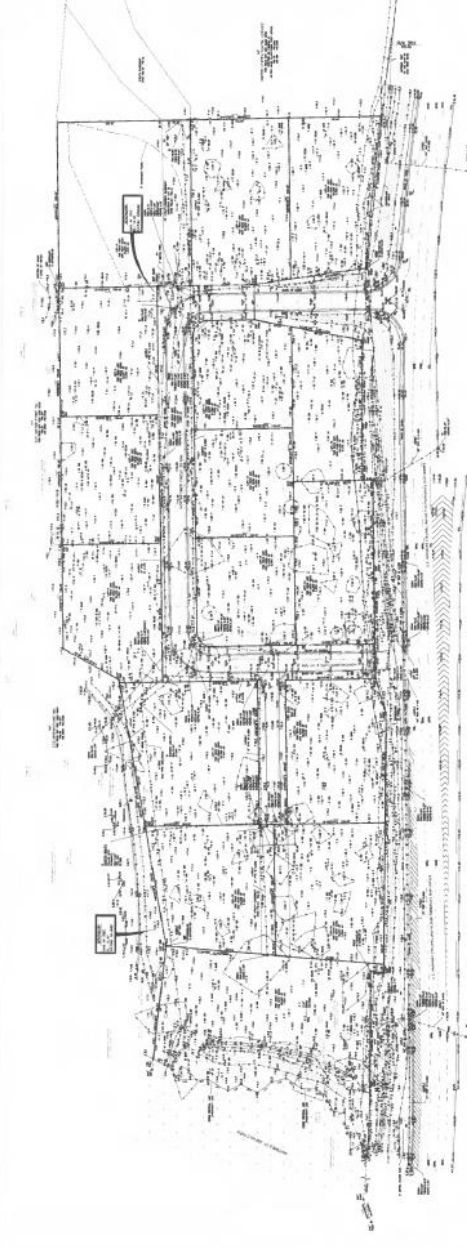
**COVER SHEET**

**ATLAS**  
SURVEYING, INC.  
11101 18th Street East  
Milton Head, Ontario  
Phone: 416-291-7700  
Fax: 416-291-7701  
www.atlasesurveying.com



Owner Name	Address	Phone
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Lot No.	Area (sq. ft.)	Area (sq. m.)	Owner Name
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**LEGEND**

**BOUNDARIES**

- 1. SURVEYED BOUNDARIES
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**FEATURES**

- 1. ROAD CENTER LINE
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## **Exhibit “B”**

### *(The Project Description - Northpoint Tract)*

**Summary:** The Project, which shall be developed in phases as set forth in the Schedule of Performance at **Exhibit “E”**, shall consist of no less than 140 high quality rental units (the “Units”) and associated infrastructure and common areas, with such Units to be made available for rent and to be occupied on a mixed-income bases as more fully set forth herein and in the incorporated Term Sheet submitted by the Developer in response to the Town’s RFP, which is fully incorporated herein by reference. All construction shall be designed in a manner which is historically and architecturally sensitive to the Town and consistent with generally understood urban design criteria, which may include designs suitable for high-density and mixed-income development.

**Ownership:** Fee simple ownership of the Northpoint Tract shall remain with the Town, who shall enter into a ground lease with a term of 65 years, from the date the Project receives certificates of occupancy for all units and its otherwise suitable for occupancy by tenants. Developer will own the improvements to the Northpoint Tract during the term of the ground lease.

**Design:** The Units shall consist of approximately 140-170 high quality rental units, with the final number of units and percentage breakdown of one-, two- and three-bedroom apartments to be determined during Phase 1 of the Project.

**Income Mix:** The Project is anticipated to be a mixed-income development with area median incomes between 60% and 150% based on the U.S. Department of Housing and Urban Development AMI reports for Beaufort County, South Carolina. At least 50.1% of the residents shall have a household income at or below 79.9% of AMI, and up to 15% of the residents may have household incomes greater than 120% and up to 150% of AMI. A Workforce Housing Tenant Qualification Criteria is included as **Exhibit “D.”**

**Affordability:** The Affordability Covenants shall attach to the Property and shall commence on the Effective Date and continue in perpetuity after the date of issuance of the Certificate of Occupancy for the last Units constructed on the Property as part of the Project. It is anticipated that the Affordability Covenants shall be recorded at the beginning of Phase 3 of the Project.

**Phasing:** The Project will be developed in phases as set forth in the Schedule of Performance at **Exhibit “E”**.

### **Project Components and Programming**

#### Programs and Amenities

The Developer will provide, at a minimum, the following programs and amenities:

1. Onsite property management services.
2. A community building constructed onsite, with the Developer offering programs tailored to residents’ needs, such as educational, economic empowerment, and recreational activities. The Developer will collaborate with the Town and nonprofit organizations to develop, implement, and consistently manage these programs. The Developer will oversee program facilitation and submit

reports to the Town outlining the programs' success and effectiveness. High-speed wireless internet will be available in the community building.

3. Outdoor communal spaces featuring grilling/dining stations and covered pavilions to encourage social interaction, inclusivity, and a sense of community among residents.
4. Provision of outdoor space amenities, such as benches, tables, and greenery.
5. Walking trails for the residents to enjoy physical activity and social interaction.
6. Green space and a park within the Project.
7. Playground areas designed for creative or imaginative play (e.g., colorful ground markings, moving elements), cooperative play areas (e.g., sandboxes, building blocks), and physical play areas (e.g., monkey bars, climbing walls).
8. Indoor and outdoor fitness stations, including a gym.
9. Well-lit entrances, pathways, and parking areas to enhance visibility and deter criminal activity.
10. Laundry appliances, including a washer and dryer, inside of each individual dwelling unit.
11. Onsite trash and recycling facilities.

The Town will pursue funding to establish high-speed wireless internet infrastructure for each unit.

### Sustainability

The Project will incorporate sustainable community design elements, including but not limited to energy-efficient design and construction, as follows:

1. Adherence to construction methods in line with LEED, Green Globes multi-family ratings, or equivalent standards approved by the Town.
2. Incorporation of energy-efficient design and construction practices.
3. Installation of solar-covered carports, bicycle shelters and maintenance stations, and electric vehicle charging stations, subject to site feasibility.
4. Evaluation of solar building components for integration with the Project, subject to site feasibility.
5. Integration of storm water eco-infrastructure, such as rain gardens or bioswales, to enhance the landscape while capturing, treating, and infiltrating storm water runoff. An attractive green infrastructure strategy, including but not limited to pervious material and water-neutral site features, will also be employed.
6. Establishment of community garden beds and edible gardens onsite to offer residents easy access to fruits and vegetables, and to promote physical activity and social interaction.

7. Creation of restorative gardens.
8. Designation of the Project as a tobacco and smoke-free campus.
9. Use of primarily native landscaping and minimal turf grass to reduce water consumption from irrigation.

**EXHIBIT “C”**  
***(Definitions)***

The capitalized terms used in the Agreement shall, unless the context clearly requires otherwise or such terms are defined elsewhere within the Agreement, have the meanings set forth below

*Affiliates* means (i) any entity which has the power to direct the management and operation of another entity, or any entity whose management and operation is controlled by such general partner; or (ii) any entity in which an entity described above has a controlling interest; or (iii) any entity a majority of whose voting equity is owned by such entity; or (iv) any entity in which or with which such general partner, its successors or permitted assigns, is merged or consolidated, in accordance with applicable statutory provisions for merger or consolidation, so long as the liabilities of the entities participating in such merger or consolidation are assumed by the entity surviving such merger or created by such consolidation. It shall be a presumption that control with respect to a corporation or limited liability company is the right to exercise or control, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the management or policies of the controlled entity.

*Agreement* means the *Workforce Housing Development Agreement* between the Developer and the Town of the Property (including all attached exhibits, which by this reference, are made a part of this Agreement), as amended from time to time.

*Applicable Law* shall mean all applicable laws, ordinances, statutes, codes, orders, decrees, rules, regulations, official policies, standards and specifications (including any ordinance, resolution, rule, regulation, standard, official policy, condition, or other measure) of the United States, the State of South Carolina, the County of Beaufort, Town of Hilton Head Island, or any other political subdivision in which the Project is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over Town, Developer or the Project.

*Architect* shall mean DTJ Design, Inc., and any successor reasonably approved in writing by the Town.

*Area Median Income* or *AMI* shall mean and have reference to the median family income, based upon applicable family size of a Qualified Household for Beaufort County as most recently published by the United States Department of Housing and Urban Development (“*HUD*”). If HUD shall no longer compile and publish such statistical information, the most similar information compiled and published by HUD, or any other branch or department of the federal government of the state of South Carolina, or the County of Beaufort, shall be used for the purpose of determining Area Median Income.

*Change Order* or *Change Orders* mean any modification, addition or other change either to any Contract Document to the extent permitted under the Agreement or under any Loan

Documents or to the scope or specification of the Project to the extent permitted under the Agreement, subject however to the Town's absolute approval.

*Construction Contract* shall mean any and all construction contracts related to the Project entered into between Developer and a contractor for the delivery, installation, construction, testing, with professional and technical personnel, labor, supervision, administration, materials, transportation, supplies, tools, equipment, and such other work and materials necessary to be performed or supplied to meet the requirements of the Construction Contract, including any work which is not expressly described in the Construction Contract but which is nevertheless necessary for the proper execution of the work, and any change orders, as more fully set forth in the Agreement.

*Consultant* shall mean any third party professional or firm, as well as its agents, employees, affiliates, subsidiaries, subcontractors, and/or assignees, appointed or retained by the Developer to assist with the Developer's Services and/or the completion of the Project.

*Contract Documents* shall mean the Construction Contract, the Plans and Specifications, any bid forms, any Consultant contracts, the Permits and Approvals, the Project Budget, the Project Schedule, any and all addenda, modifications, and Change Orders thereof, and any such other matters and agreements relating to the construction of the Project as reasonably required by the Town.

*Contractor* shall mean (To Be Determined) acting as general contractor for the Project, and any successor reasonably approved in writing by the Town.

*Costs* shall mean all hard and soft costs incurred in connection with the design (including all engineering expenses), construction and installation of the Project, including, but not limited to, costs of labor, materials and suppliers, engineering, design and consultant fees and costs, blue printing services, construction staking, demolition, soil amendments or compaction, any processing, plan check or permit fees for the Project, engineering services required to obtain a permit for and complete the Project, costs of compliance with all applicable laws, costs of insurance required by this Agreement, costs of any financial assurances, any corrections, changes or additions to work required by the Governmental Authorities or necessitated by site conditions, state and county taxes imposed in connection with construction of the Project, any impact fees, any warranty work, and any other costs incurred in connection with the performance of the obligations of the Parties (as applicable) hereunder to complete the Project.

*Developer* means One Street Residential, LLC a Georgia limited liability company, and/or its successors and assigns, in collaboration with Southern Visions Realty, Inc.

*Effective Date* shall mean the latter date of the execution dates of the Agreement.

*Engineer* shall mean Seamon, Whiteside & Associates, Inc., a South Carolina corporation, and any successor reasonably approved in writing by the Town.

*Environmental Condition* means the presence of Hazardous Materials in the environment at, on, in, under or about the Property.

*Environmental Law* means any present or future federal, state or local law, ordinance, rule, regulation, permit, license or binding determination of any governmental authority relating to, imposing liability or standards concerning, or otherwise addressing Hazardous Materials, the environment, health or safety, including, but not limited to: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (“*CERCLA*”); the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (“*RCRA*”); the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq. (“*TSCA*”); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq. and any so-called “Superfund” or “Superlien” law, and the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq. (“*OSHA*”).

*Fair Market Rent* applicable to each Affordable Unit shall mean and have reference to the schedule of Fair Market Rents for Beaufort County as published annually by HUD.

*Governmental Authorities* in addition to the Town, shall mean any nation, government, state, political subdivision or any entity, authority, agency or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any government authority, agency, department, board, commission or instrumentality of any government or any political subdivision thereof, court, tribunal, arbitrator, the governing body of any securities exchange, and self-regulatory organization, in each case having competent jurisdiction (with each a “*Governmental Authority*”).

*Hazardous Materials* means any solid, liquid, or gaseous materials, chemical, waste or substance that is regulated by a federal, state or local governmental authority and includes those substances listed or defined as “hazardous substance” under CERCLA and “hazardous waste” under RCRA or otherwise classified as hazardous, dangerous or toxic under an Environmental Law and shall specifically include petroleum, oil and petroleum hydrocarbons, radon, radioactive materials, asbestos, lead-based paint, urea formaldehyde foam insulation and polychlorinated biphenyls.

*Household Income* shall mean and have reference to all sources of financial support, both cash and in kind, of all adult members of a household, including, without limitation, wages, salaries, tips and commissions, all forms of self-employment income, interest dividends, net rental income, income from estates or trusts, social security benefits, railroad retirement benefits, supplemental security income, aid to families with dependent children or other public assistance welfare programs, other sources of income regularly received including veterans’ (VA) payments, unemployment compensation, child support and alimony, awards prizes, lottery income, government or institutional of eleemosynary loans, grants or subsidies, and contributions made by family or others for medical, financial, personal or educational needs.



*Landscape Plan* shall mean a fully dimensional plan drawn at the same scale as the Site Plan that provides a visual representation of all natural elements of the Project, including trees, shrubs, flowers, grass, and any man-made elements, as well as irrigation and lighting.

*Lender* is anticipated to mean RBC Community Investments, LLC, as an equity investor for the construction and development of the Project in accordance with such financing terms as agreed to between Developer and Lender, and any successor reasonably approved in writing by the Town.

*Master Plan* shall mean the duly adopted master plan or development plan for the Property showing the individualized Project components, the Units and the Infrastructure Improvements.

*Month* shall mean calendar month.

*Plans and Specifications* shall mean the plans (including mechanical, electrical and structural plants), drawings, specifications and scope of Work, prepared by the Architect, the Land Planner, and/or the Engineer, sufficient in all respects for obtaining the final Permits and Approvals for the complete construction of the Project and in compliance with Applicable Laws, and all amendments and modifications thereof made from time to time (including by Change Orders) pursuant to this Agreement and as reasonably approved by the Town to the extent required by this Agreement. The phrase Plans and Specifications shall include Design Development Submissions, the Site Plan, Schematic Designs, Landscape Plan, Grading Plan, and the Master Plan.

*Rent* shall mean monthly Rent, inclusive of a reasonable Utility Allowance as provided in HUD guidelines that does not exceed the respective amounts set forth in the Workforce Housing Criteria Requires (**Exhibit “D”**).

*Schematic Designs* shall mean such schematic design plans indicating partition locations and preliminary floorplans and appliance layouts within the Units and proposals to establish the interior design concept of the Units indicating the types and quality of finishes, materials, and appliances, as applicable.

*Substantial Completion* shall mean the point in time when all of the following shall have occurred: (i) issuance of a permanent certificate of occupancy by the Town for all of the Improvements to be constructed as part of the Project; (ii) recordation of a Notice of Completion by Developer or its contractor for all of the Improvements (iii) certification by the Project architect that construction of all of the Improvements (with the exception of minor “punch list” items) has been completed in a good and workmanlike manner and substantially in accordance with the Plans and Specifications; and (iv) any mechanic’s liens that have been recorded or stop notices that have been delivered for any of the Improvements have been paid, settled or otherwise extinguished, discharged, released, waived, bonded or insured against.

*Sustainability Consultant* shall mean SK Collaborative, LLC.

*Town Council* shall mean the governing body of the Town of Hilton Head Island, composed of duly elected officials.

*Uncontrollable Event* shall mean acts of God, labor disputes, casualty (whether or not insured), materials shortages, strikes, civil commotion, war, war-like operations, terrorist activities, sabotage, governmental or judicial regulations, delays caused by utility companies, and inability to obtain (after using reasonable efforts) any approvals of any Governmental Authority or utility company or other authority for the issuance of required Permits or licenses, provided that neither unavailability of financing or funds nor the COVID-19 pandemic (except due to mandatory governmentally ordered closures) shall be an Uncontrollable Event constituting an excuse for delay in the performance of obligations under this Agreement or otherwise.

*Unit* shall mean one of the Units on the Property offered by the Developer to be rented at Affordable Rents.

**EXHIBIT “D”**  
***(Workforce Housing Tenant Criteria Requirements)***

**Workforce Housing Tenant Criteria Requirements**

- A. The Town and Developer will establish a Workforce Housing Tenant Qualification Criteria (“***Tenant Criteria***”) with the intent of providing housing for people who work, or will work, on Hilton Head Island, subject to compliance verification of such Tenant Criteria with applicable state and federal laws.
  
- B. The residences will be rented in accordance with the Tenant Qualification, including but not limited to:
  - 1. Accommodating a diverse range of residents with area median incomes (“***AMI***”) between sixty percent (60%) and one hundred twenty percent (120%) based on the U.S. Department of Housing and Urban Development (“***HUD***”) AMI reports for Beaufort County, South Carolina. In addition, the Developer may, in collaboration with the Town and after further evaluation of the Project’s financial feasibility and of Hilton Head Island’s essential workforce housing needs, designate up to fifteen percent (15%) of the Project’s total units as eligible to households earning up to one hundred fifty percent (150%) percent of AMI.
  
  - 2. Setting rents in accordance with HUD’s imputed income averages at or below thirty percent (30%) of the gross maximum household income for the applicable AMI category. The total rent and utility costs for each housing unit will not exceed forty percent (40%) of a household’s gross annual income.
  
  - 3. Workforce housing eligibility requirements will include:
    - a. Qualifying AMI Ranges.
  
    - b. Ensuring that at least fifty point one percent (50.1%) of the residents will have a household income at or below seventy-nine point nine percent (79.9%) AMI.
  
    - c. Requiring full-time employment within the municipal boundaries of Hilton Head Island, inclusive of property east of the main bridges to Hilton Head Island.
  
  - 4. The Developer will accept Housing Choice Vouchers for up to fifteen percent (15%) of the residents to qualify for resident eligibility, and if conditions warrant, and it is deemed to be in the best interest of the Project, up to twenty percent (20%) of the residents may use Vouchers.

5. A resident transition process will be included in the Development Agreement to clarify the protocols for residents who no longer meet the Tenant Criteria.
- B. A minimum of one (1) person shall work full time, as defined as a minimum of thirty (30) hours per week, on Hilton Head Island and shall be a lessee on the lease. Rent plus utilities shall not exceed forty (40%) of the total household income as defined by HUD standards.
- C. The minimum lease term for residences will be twelve (12) months.
- D. Intentionally Omitted.
- E. All household income and employment status will be recertified annually at lease renewal.
- F. The annual recertification requires the household to complete a new certification form, verifying employment on the Island and qualifying income levels. The recertification process will begin 120 days before the resident's move-in anniversary.

The Community Manager will recertify residents according to the following procedure:

- 120 days prior Resident notified of recertification.
  - 90 days prior Release signed for employment and income check.
  - 60 days prior: Review verified employment and income.
  - 30 days prior: Certification process complete and Certification form signed.
- G. If at any time of recertification, a household's income exceeds 140% of the limit designated for the unit, the Community Manager will:
    1. Will re-designate the unit at the higher AMI level (i.e., 80 AMI to 120 AMI):
    2. Will increase the maximum rent to the level applicable to the unit at a higher income level, and:
    3. Designate the next available comparable unit as a unit at the income level originally applicable (i.e., 120 AMI to 80 AMI) to household until the unit mix required by the Development Agreement or ground lease is achieved.
  - H. A unit shall be deemed "comparable" if it has the same number of bedrooms as the original unit.

- I. If at any time of recertification, a household's income exceeds 140% of the maximum AMI, the household will be required to terminate the lease without penalty and vacate the unit within one hundred eighty (180) days of the lease renewal date.
- J. Once the unit becomes vacant, it will revert to the last AMI before becoming over-income.
- K. If, prior to or at any time of recertification, a household's employment is terminated, and the household is unable to produce proof of employment per the regulations, the Community Manager:
- Will issue a 60-day notice to vacate the unit because the resident no longer meets the requirements of the regulatory agreement.
  - The lease will be terminated without penalty.

**EXHIBIT “E”**  
*(Schedule of Performance)*

	<b>PHASE DELIVERABLES</b>	<b>PHASE ENDS</b>
Phase I (“Due Diligence, Planning, Preliminary Models”)	<p>Submission of initial Schematic Site and Unit Plans with elevations sufficient for the submission of a zoning application (“Zoning Application”).</p> <p>Financial Proforma with supporting Market Study rents.</p> <p>Issuance and Award of an RFQ for a General Contractor and solicitation of input in pricing and modeling.</p> <p>Development Budget based on market assumptions- detailed construction pricing not to be delivered until Phase III.</p> <p>Letters of interest or soft commitments from Construction Lender, Permanent Lender, and Investors; financing commitments to be delivered in Phase III, with financing gaps identified by Developer.</p> <p>Fair Housing Analysis demonstrating to Developer’s and Town’s satisfaction that the Project’s residency and employment requirements comply with Fair Housing Laws and Completion of Management Leasing Policy.</p> <p>Financing gaps identified, Developer to propose and Town to consider possible tax abatement or exemption structures (provided however, Town shall have no obligation to accept, approve, or cooperate with any proposed abatement or exemption of sheriff’s department or school taxes).</p> <p>Title and Survey reviewed; objections resolved.</p>	<p>180 - 220 days from the Effective Date</p> <p>Subject to Town requirements and zoning docket</p>

	<p>Phase 1 and Phase 2 Environmental Studies completed.</p> <p>Acquisition of ROW from the US Postal Service for purposes of providing access to the Project procured BY TOWN AT TOWN EXPENSE.</p> <p>Agreement on preliminary form of Ground Lease and attached hereto as <b>Exhibit “F.”</b></p> <p>Coastal Zone Consistency review; application submitted as approved by Town.</p> <p>Preparation of Ground Lease by Town for preliminary approval by Developer.</p>	
<p>Phase II  (“Zoning &amp; Approval”)</p>	<p>Developer and Town pursue approval of Zoning Application and conditions identified.</p> <p>Zoning Application as approved by Town and Developer submitted.</p> <p>Developer and Town pursue approval of Rezoning of Property and Zoning Map and Text Amendment to establish the Zoning District affecting the Property.</p>	<p>Subject to Town requirements and zoning docket</p>
<p>Phase III  (“Predevelopment”)</p>	<p>Coastal Zone Consistency approval pursued (if not obtained during Phase I or Phase II).</p> <p>Developer to obtain Major Development Plan Review, under § 16-2-103(G), Municipal Code of the Town of Hilton Head Island, South Carolina (1983);</p> <p>Developer to obtain Major Corridor Review under § 16-2-103(I), Municipal Code of the Town of Hilton Head Island, South Carolina (1983); and,</p> <p>Developer to obtain Development Name</p>	<p>Expires 180 days after expiration of Zoning Approval</p> <p>Extends day for day for each day the Coastal Zone Consistency Review is incomplete</p>

	<p>Application under § 16-2-103(N), Municipal Code of the Town of Hilton Head Island, South Carolina (1983).</p> <p>Developer to obtain Street Name(s) Application under § 16-2-103(O), <i>Municipal Code of the Town of Hilton Head Island, South Carolina</i> (1983).</p> <p>Final selection of General Contractor.</p> <p>Final Plans &amp; Specs including all engineering in consultation with General Contractor.</p> <p>Pricing and Drafting of General Contract within 60 days of final plans &amp; specs as permitted, with changes required by permit comments, or construction costs, as approved by the Town.</p> <p>Development Budget with detailed construction pricing.</p> <p>Financing Commitments obtained from Construction Lender, Permanent Lender, Investor and proceed to underwriting for closing.</p> <p>Gap financing analysis and value engineering if necessary.</p> <p>Gap financing commitments such as grants, soft loans or tax abatement obtained, analysis and value engineering as approved by Town if necessary.</p> <p>Negotiation of final Closing Documents with Construction Lender, Permanent Lender and Investors.</p> <p>Developer to furnish all guaranties required by Town, Investors and Lenders through a suitable affiliate, including personal guaranties of Developer's principals.</p> <p>Developer and Town to cooperate and finalize</p>	
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	<p>any tax exemption or abatement structures approved by the Town.</p> <p>Developer to obtain building permits for the vertical construction for each the multi-family buildings, the swimming pool and the amenity center that comprise the Project. Application for Land Disturbance Permit and Town approval obtained – permit issued.</p> <p>Execution of all Closing Documents.</p> <p>Closing on all financing and execution and commencement of Ground Lease.</p>	
Phase IV ("Construction")	<p>Oversight of site preparation construction.</p> <p>Prepare and submit construction draws.</p> <p>Enforce construction contract terms.</p> <p>Ensure lien free completion and receipt of certificate of occupancy with best efforts to begin Leasing Units by month 13, with estimated residential Unit deliveries each month starting 15 months after commencement through completion.</p> <p>Manage and pursue punch list items to completion.</p>	18 Months from notice of commencement
Ground Lease Term	<p>Commences at construction closing.</p> <p>Substantial Terms in Ground Lease.</p>	65 years

**EXHIBIT "F"**

*Sample Long Term Ground Lease  
(Final to be attached prior to the end of Phase I)*

**GROUND LEASE**  
**&**  
**OPERATING AGREEMENT**

NORTHPOINT WORKFORCE HOUSING COMMUNITY

Hilton Head Island, South Carolina

Contract/Agreement: Town of Hilton Head Island (the “Town”) and  
One Street Residential, LLC and[/or] [NAME OF SPECIAL PURPOSE  
ENTITY] (“OSR”)

Effective Date: \_\_\_\_\_, 2024

Term: 65 years

Total Pages:  pages (excluding Exhibits)

Lease Exhibits:

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

**LEASE AGREEMENT**

**THIS LEASE AGREEMENT (“LEASE”)** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024 (“Effective Date”), by and between the Town of Hilton Head Island, a political subdivision of the State of South Carolina (“Lessor” or “Town”), and [PROJECT OWNER ENTITY NAME TO BE FORMED], a [TYPE OF ENTITY] (“Lessee” or “Project Owner”).

**RECITALS**

1. The Town is the record owner of that certain parcel of real property consisting of approximately eleven (11) acres located within the Town on the William Hilton Parkway known as the Northpoint Tract described more fully on Exhibit “A” attached hereto and which is fully incorporated herein by reference (the “Property”).
2. The Town and One Street Residential, LLC (“Developer”), cognizant of the need for Workforce Housing within the municipal limits of the Town of Hilton Head Island, South Carolina, entered into a Workforce Housing Development Agreement dated \_\_\_\_\_, 2024 (as the same may have been amended and/or extended from time to time, the “Development Agreement”), a copy of which, together with all amendments thereto, if any, has been provided to Lessee.
3. The Town [intends to/has] place[d] covenants on the Property restricting its use to Workforce Housing in perpetuity (the “Affordability Covenants”).
4. The Developer has formed a for-profit, single-purpose South Carolina legal entity, identified herein as the “Lessee”, to enter into this Lease with the Town, own, and operate the Project (as defined herein) on the Property consisting of workforce housing rental units.
5. Lessee agrees to manage, operate and maintain the Premises as required under this Lease.

**NOW, THEREFORE**, in consideration of the rents to be paid and the covenants and agreements to be kept and performed by the Tenant, the Town hereby leases to the Tenant the Property and grants unto Tenant the rights and privileges hereinafter enumerated subject to the following terms, conditions, covenants, and agreements.

**SECTION 1**

## **LEASE OF PROPERTY**

1.1 Grant of lease. Upon the terms and conditions hereinafter set forth, Town grants to Lessee the right to occupy and use the real property described as approximately eleven (11) acres located on William Hilton Parkway, Hilton Head Island, South Carolina, as more fully described in Exhibit “[X]” attached hereto and incorporated herein by reference (the “Property”) for the purpose of owning and operating Workforce Housing in accordance with the terms of this Lease. The Property and the Improvements shall be herein referred to as the “Premises.” The Town grants the Premises to Lessee together with the non-exclusive right to utilize all of Lessor’s rights, privileges, easements, and appurtenances in, over, and upon adjoining and adjacent public and private land, highways, roads and streets reasonably required for ingress and egress to and from the Premises. The rights and privileges granted herein are subject to prior easements, rights of way and other matters affecting title to the Property. All surviving terms and conditions of the Workforce Housing Development Agreement are incorporated herein by reference. Lessee acknowledges that Lessee has received a copy of the Workforce Housing Development Agreement.

1.2 Use of Premises. Lessee shall have the right to manage, operate, and maintain the Premises for the Workforce Housing Community. The Premises shall be utilized for no other purposes without the Lessor's prior written consent, which may be withheld in the Lessor's sole discretion. All Improvements on the Property, including but not limited to all structures and buildings, shall transfer to the Lessor at the time of termination of this Lease.

### **SECTION 2 INTENTIONALLY OMITTED**

### **SECTION 3 TERM**

3.1 Lease Term. The term of this Lease (the "Term") commences on the date [all Units have received a certificate of occupancy] (the “Effective Date”). The Lessee shall occupy and Lease the Premises from the Lessor for an initial term (the "Lease Term") of Sixty-Five (65) years, which shall expire, unless sooner terminated as provided in this Lease, on the last day of the calendar month that is Sixty Five (65) years after the Effective Date (the “Expiration Date”). Lessee shall have no right to occupy the Premises after that date.

3.2 Surrender of Premises. Upon the expiration or earlier termination of this Lease or on the date specified in any demand for possession by Lessor after any Default by Lessee, Lessee covenants and agrees that it will remove such of its fixtures, equipment and personal property as it desires and shall surrender the Premises to Lessor in good order, condition, and repair, reasonable and ordinary wear and tear and damage from casualty and condemnation excepted. Lessee’s fixtures, equipment and personal property not removed by Lessee at expiration or sooner termination of this Lease or within a reasonable time after the expiration or sooner termination of this Lease shall be considered abandoned and Lessor may dispose of that property, at Lessor’s sole cost and expense, in accordance with the law governing abandoned property in effect at the time of abandonment.

3.3 Holding Over. If Lessee holds over after termination of this Lease, thereafter Lessee's occupancy shall be at sufferance at a monthly rental, payable in advance, equal to 125% of the monthly Rent in effect immediately prior to termination of this Lease, but otherwise Lessee shall be bound by all terms and conditions as herein provided in the absence of a written agreement to the contrary.

Nothing herein shall be construed to give Lessee the right to hold over at any time, and Lessor may exercise any and all remedies provided herein, at law or in equity to recover possession of the Premises, as well as any actual damages incurred by Lessor.

#### **SECTION 4 RENT**

4.1 Rent. In consideration of the leasehold interest granted to Lessee under this Lease, during the Lease Term, beginning on the "Rent Commencement Date", which shall be the earlier of (i) the date on which Lessee receives a Certificate of Occupancy for the Lessee Improvements or (ii) twenty-four (24) months after the execution of this Lease, and continuing through the Lease Term, Lessee shall pay monthly "Rent" in the amount of **\$100.00**.

4.5 Place and Manner of Payments. All sums payable to Lessor hereunder shall be made without notice at the following address:

Town of Hilton Head Island  
1 Town Center Court  
Hilton Head Island, SC 29928

or at such other place as the Lessor may hereafter designate by notice in writing to Lessee. Lessor shall also have the option of having Rent and other payments made by automatic deposit (ACH) or other electronic method, at the Lessor's discretion. All sums shall be made in lawful money of the United States of America.

#### **SECTION 5 OPERATION AND USE OF PREMISES**

5.1 Operations. Lessee agrees to operate its facilities on the Premises in the following manner:

(a) Lessee shall operate its facilities in a first-class manner reasonably satisfactory to the Lessor and consistent with all State and Federal Laws.

(b) Lessee agrees to obtain at Lessee's expense, and maintain at all times, all licenses and certificates necessary for its operations on the Premises that are the responsibility of Lessee.

5.2. Permitted Use. The Premises shall be used by Lessee solely for the ownership, operation, and maintenance of workforce housing rental units for Tenants meeting the Workforce Housing Tenant Qualification Criteria set forth in **Exhibit [X]**.

5.3. Community Programming. Lessee shall provide all programs and amenities as set forth in **Exhibit [X]**.

5.4. Smoking Policy. Lessee agrees that it will prohibit smoking by the public or its employees in any buildings located on the Premises.

5.3. Care of Area. Lessee agrees that it will keep the Premises in a neat, clean, safe, sanitary, and orderly condition at all times, and further agrees that it will keep such area free at all times of all paper, rubbish, spills, and debris. Lessee, at its own expense, shall collect and remove all trash and refuse at frequent intervals from the Premises. Accumulation of boxes, cartons, barrels or other similar items shall not be permitted outside enclosed areas on the Premises.

5.4 Compliance with All Laws and Regulations. Lessee agrees not to use or permit the Premises to be used for any purpose prohibited by the laws of the United States or the State of South Carolina or the ordinances of Beaufort County or the Town of Hilton Head Island or not authorized hereunder, and it further agrees that it will use the Premises in accordance with the terms of this Lease and all applicable Laws and all rules established by the Lessor for the management, operation and control of the Premises. Lessee further agrees to submit any report or reports or information which the Lessor is required by law or regulation to obtain from Lessee or which the Lessor may request relating to Lessee's operations.

5.5 Environmental Compliance.

(a) Lessee shall comply, and shall cause its invitees to comply, with all environmental laws applicable to the Premises, including, without limitation, all laws, rules and regulations of the United States Environmental Protection Agency (the "EPA").

(b) Lessee shall take all actions necessary or advisable to ensure that no release of Hazardous Materials (as defined below) occurs on the Premises.

(c) In the event of a release of Hazardous Materials on or from the Premises, Lessee shall remediate, or cause to be remediated, the affected area to the condition pre-dating the Lease and shall secure the South Carolina Department of Health and Environmental Control ("DHEC") written confirmation that the remedial effort is satisfactory and complete.

(d) Lessee shall notify the Lessor within five (5) days of learning of:

- (1) a reportable release (under DHEC regulations) of Hazardous Materials on or from the Premises;
- (2) a violation of environmental law by Lessee, Residents, or invitees; or
- (3) a claim asserting liability of the Lessee, Residents, or its invitees for violation of environmental laws or response costs at the Premises.

(e) In the event of a release or threatened release of Hazardous Materials relating to or arising out of the Lessee's use or occupancy of the Premises, or in the event any claim, demand, action or notice is made against the Lessee with regard to the Lessee's failure or alleged failure to comply with any requirement hereunder, Lessee shall immediately notify Lessor in writing and shall provide the Lessor with copies of any written claims, demands, notices or actions so made. Lessees shall also undertake all actions necessary to remedy or remove any Hazardous Materials and any other contamination discovered on or under the Premises introduced by or affected by Lessee as is necessary to restore the Premises to either its condition immediately prior to the initiation of the Lease and to a condition in compliance with all applicable local, state, federal, rules, regulation or orders. This work shall be performed at Lessee's expense and at any time using consultants and representatives of Lessor's choice. Lessee shall further conduct all necessary

prudent activities hereunder to ensure compliance with applicable laws, rules, regulation and permits.

(f) Lessee shall copy the Lessor simultaneously on any environmental reports (including reports of a release or threatened release of Hazardous Material on, under or about the Premises), registrations, applications or other documents submitted to a governmental agency. Lessee shall copy Lessor on all filings and correspondence to any governmental regulator or agency concerning Lessee's demonstration of financial assurance as to any legal obligation including without limitation closure and cleanup of petroleum storage tanks. Lessee shall make available to the Lessor for inspection or duplication, at no cost to Lessor, Lessee's environmental records concerning the Premises.

(g) Lessee shall make the Premises available to the Lessor at reasonable times to monitor Lessee's compliance with this section.

(h) Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, fees, remedial action requirements, enforcement actions of any kind, expenses (including attorney's fees) or other liability arising from (i) Lessee's breach of the terms of this Section, and (ii) any environmental damage, whether caused by Lessee or Lessee's invitees, Residents, employees, or agents, to the Premises during the Lease Term, except as to damage caused directly by the Lessor.

(i) Lessor may cure at Lessee's expense any default which Lessee fails to correct or take steps to correct the default within 30 days of written notice by the Lessor to Lessee unless Lessee has commenced a cure of the alleged default and continues to pursue said cure with reasonable diligence.

(j) The provisions of this Section 5.6 shall survive the termination of this Lease.

(k) Definitions:

(1) "Affordable Rent" shall mean the monthly Rent, inclusive of a reasonable Utility Allowance as provided in HUD guidelines that does not exceed the respective amounts set forth in the Workforce Housing Tenant Criteria Requirements (Exhibit "X").

(2) "Affordable Unit" shall mean one of the Units on the Premises offered by the Developer to be rented at Affordable Rents.

(3) "Agency" means any agency with authority to enforce environmental laws as to the Premises.

(4) "Applicable Law" shall mean all applicable laws, ordinances, statutes, codes, orders, decrees, rules, regulations, official policies, standards and specifications (including any ordinance, resolution, rule, regulation, standard, official policy, condition, or other measure) of the United States, the State of South Carolina, the County of Beaufort, Town of Hilton Head Island, or any other political subdivision in which the Project is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over Town, Developer, [Project Owner Entity to be formed], or the Premises.



(5) "Area Median Income" or "AMI" shall mean and have reference to the median family income, based upon applicable family size of a Qualified Household for Beaufort County as most recently published by the United States Department of Housing and Urban Development ("HUD"). If HUD shall no longer compile and publish such statistical information, the most similar information compiled and published by HUD, or any other branch or department of the federal government of the state of South Carolina, or the County of Beaufort, shall be used for the purpose of determining Area Median Income.

(6) "Claim" means administrative, regulatory or judicial action, suit, dispute, liability, judgment, penalty, damages, directive, order or claim.

(7) "Developer" means One Street Residential, LLC a Georgia limited liability company, and/or its successors and assigns, in collaboration with Southern Visions Realty, Inc.

(8) "Environmental" means relating to the management of any substances or the protection of human health, public safety, occupational safety and health, the environment or natural resources.

(9) "Environmental Law" means any present or future federal, state or local law, ordinance, rule, regulation, permit, license or binding determination of any governmental authority relating to, imposing liability or standards concerning, or otherwise addressing Hazardous Materials, the environment, health or safety, including, but not limited to: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq. ("TSCA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq. and any so-called "Superfund" or "Superlien" law, and the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq. ("OSHA").

(10) "Fair Market Rent" applicable to each Affordable Unit shall mean and have reference to the schedule of Fair Market Rents for Beaufort County as published annually by HUD.

(11) "Hazardous Material" means any solid, liquid, or gaseous materials, chemical, waste or substance that is regulated by a federal, state or local governmental authority and includes those substances listed or defined as "hazardous substance" under CERCLA and "hazardous waste" under RCRA or otherwise classified as hazardous, dangerous or toxic under an Environmental Law and shall specifically include petroleum, oil and petroleum hydrocarbons, radon, radioactive materials, asbestos, lead-based paint, urea formaldehyde foam insulation and polychlorinated biphenyls.

(12) "Household Income" shall mean and have reference to all sources of financial support, both cash and in kind, of all adult members of a household, including, without limitation, wages, salaries, tips and commissions, all forms of self-employment income, interest dividends, net rental income, income from estates or trusts, social security benefits, railroad retirement benefits, supplemental security income, aid to families with dependent children or other public assistance welfare programs, other

sources of income regularly received including veterans' (VA) payments, unemployment compensation, child support and alimony, awards prizes, lottery income, government or institutional of eleemosynary loans, grants or subsidies, and contributions made by family or others for medical, financial, personal or educational needs.

(13) "Indemnify" means to indemnify, defend and reimburse the designated indemnitee and its successors and assigns on an after-tax basis.

(14) "Investor" shall mean \_\_\_\_\_

(15) "Invitees" means any persons who enter onto to the Premises in relation to Lessee or with Lessee's consent, and include without limitation Lessee's employees, customers, contractors, subcontractors, owners, officials and tenants, and said tenants' employees, customers, contractors, subcontractors, owners, and officials.

(16) "Lender" shall mean \_\_\_\_\_ as an equity investor for the construction and development of the Project in accordance with such financing terms as agreed to between Developer and Lender, and any successor reasonably approved in writing by the Town.

(17) "Month" shall mean calendar month.

(18) "Permit" means permission of a public authority to conduct an activity.

(19) "Release," with respect to any material, means any spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of such material into the environment, or any other act or event, the occurrence of which would require containment, remediation, notification or similar response under any law.

(20) "Response costs" means all costs necessary to assess and remediate a property to a condition satisfactory to governmental agencies with jurisdiction over contamination and other environmental conditions on the Premises.

(21) "Storm water" means "storm water" as defined under the applicable Environmental Law.

(22) "Town Council" shall mean the governing body of the Town of Hilton Head Island, composed of duly elected officials.

(23) "Workforce Housing Development Agreement" means that the Workforce Housing Development Agreement executed on [date] by and between the Town of Hilton Head Island and One Street Residential, LLC

(l) Notwithstanding anything to the contrary in this Lease, Lessee shall have no liability of any kind to Lessor as to Hazardous Material on the Premises caused by (i) Lessor, the County, or their agents, employees, contractors, or invitees, or, (ii) any other person or entity located outside of the Premises prior to the Effective Date. Lessor shall not authorize or cause any party (a) to bring any Hazardous Material upon the Premises in violation of applicable law or (b) to transport, store, use, generate, manufacture or release any Hazardous Material in or about the Premises in violation of applicable law.

5.6 Waste or Impairment of Value. Lessee agrees that nothing shall be done or kept on the Premises which might impair the value of the Lessor's property or which would constitute waste or a public or private nuisance.

5.7 Structural or Electrical Overloading. Lessee agrees that nothing shall be done or kept on the Premises and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Lessee Improvements which might result in an overload of utility lines serving the Premises or interfere with electric, electronic or other equipment on the Premises. In the event of violations hereof, Lessee agrees to immediately remedy the violation at Lessee's expense.

5.8 Accessibility. Lessee shall not do or permit to be done anything which might interfere with or hinder police, firefighters or other emergency personnel in the discharge of their duties.

5.10 Title to Improvements. Fee simple title to the Lessee Improvements shall be and remain in Lessee throughout the Term of this Lease. Upon the expiration or other termination of this Agreement, fee simple title to all Lessee Improvements and any permanent fixtures remaining on the Premises shall immediately vest in the Lessor. Fee simple title to the Property shall at all times be and remain in the Town.

5.11 Lessor's Obligations. Lessor represents, warrants and makes the following covenants and assurances to the Lessee:

(a) The Lessor shall act reasonably to cooperate with the Lessee in executing such documents and instruments, as shall be required by governmental agencies to construct the Lessee Improvements, and to obtain the licenses and permits required by applicable law in accordance with the permitted use thereof. If necessary, Lessor shall join, but without incurring any liability or expense, in the application for any such permits, licenses, or authorizations to the extent such action may be legally required by applicable laws and shall acknowledge to issuing governmental authorities the existence of this Lease and the respective obligations of the parties under this Lease as may be necessary for the issuance of such permits, licenses, or authorizations.

(b) The Lessor covenants and agrees with the Lessee that so long as Lessee is not in default hereunder beyond any applicable notice and cure periods set forth herein, the Lessee may peaceably and quietly enjoy the Premises subject, nevertheless, to the terms and conditions of this Lease, and the Lessee's possession will not be disturbed by anyone claiming by, through, or under the Lessor.

## **SECTION 6 UTILITIES, DRAINAGE, MAINTENANCE AND SERVICES**

6.1 Utilities.

(a) Lessee, at its sole cost and expense, shall make and obtain all utility connections, hook-ups or taps as necessary for the operation of the improvements on the Premises and shall secure all necessary applications and permits and shall pay all application and permit fees, hook-up or tap fees. Unless prohibited by the utility provider, Lessee shall contract directly with the utility provider and be responsible for the direct payment of all utilities required for operations on the Premises.

(b) Lessee shall have the right to use any and all of the existing appurtenances and easements benefiting the Premises. Upon reasonable request by Lessee, Lessor shall grant utility easements across the Property in favor of the utility companies for utilities required to serve the Premises in locations and pursuant to terms reasonably required by Lessee, subject to Lessor's and the Town's reasonable approval of the locations and agreements or instruments necessary to effect the easements, which approval shall not be unreasonably withheld, conditioned or delayed. Lessee assumes full and complete responsibility for (i) locating the utilities within the portion of the easements located within the Property and Lessor's adjoining property, (ii) coordinating the utility location, installation, and connection with existing utilities, and (iii) paying all costs and expenses and locating, installing, and connecting same.

6.2 Drainage. Lessee shall have the right to connect to and use Lessor's existing shared storm water retention system (the "Storm Water System") located off-site from the Premises and on Lessor's separate property. Lessor agrees that it will grant, upon commercially reasonable terms any necessary easements for Lessee to construct, maintain, and access the Storm Water System. In the event that the existing Storm Water System is insufficient and additional storm water retention improvements are required by law in order to construct or obtain permits for the Lessee Improvements on the Premises, Lessee shall be responsible for the cost of designing, constructing, operating, maintaining and improving the Additional Storm Water System. Lessee shall not design or construct such Additional Storm Water System without the prior written consent and approval of the Lessor. Lessee shall be responsible for the developed flow from its improvements and discharging such flow to the Storm Water System and/or the Additional Storm Water System via drainage facilities constructed upon the Premises, and Lessee shall maintain such drainage facilities on the Premises. Lessee shall ensure that any drainage crossing or slope created by Lessee's construction and any discharge point from the Property shall be constructed in strict compliance with all applicable federal, state and local laws, statutes, ordinances, rules and regulations governing such construction. Lessee shall keep such drainage ways clear of debris and obstructions and maintain them in good condition for the passage of the required flow and avoid erosion degradation.

6.3 Storm Water Management and Permits. Lessee shall comply with all applicable provisions of any applicable [governing authority] Permit issued to the Lessor by the [issuing authority] or EPA, whether such permit shall have been issued in the Lessor's own name or with Lessee as a co-permittee. Lessee shall comply with the applicable provisions of all plans prepared to satisfy Permit requirements. Lessee shall not introduce any substance into the storm water discharge system of the Property, whether separately or mixed with Storm Water discharge, except as such substance is allowed by the Storm Water Permit issued to the Lessor, or to the Lessor and Lessee as co-permittees.

6.4 Maintenance. The cost and performance of all maintenance, care and any necessary replacement of the Premises shall be borne solely by and shall be the responsibility of Lessee, including, without limitation, the following:

(a) Lessee shall keep the Premises in good order and condition and will make all necessary and appropriate repairs and replacements thereof promptly and in a good and workmanlike fashion without diminishing the original quality of such improvements;

(b) Lessee shall not permit rubbish, debris, waste materials or anything unsightly or detrimental to health, or likely to create a fire hazard, or conducive to deterioration, to remain on any part of the Premises or to be disposed of improperly;

(c) Lessee shall provide and maintain obstruction lights and all similar equipment or devices now or at any time required by any applicable law, ordinance or municipal, state or federal regulation;

(d) Lessee shall be responsible for the maintenance, replacement and upkeep of the grass, shrubs, trees and all landscaped areas on the Premises;

(e) Lessee shall appropriately light, maintain and repair all access roadways and circulation and pedestrian areas located on the Premises; and

(f) The Lessor shall have the right to make reasonable objections regarding the maintenance and appearance of the Premises that are inconsistent with the terms of this Lease. Lessee agrees to promptly discontinue or remedy any nuisance, breach of the Lease, or within fifteen (15) days after written notice by the Lessor, or if Lessee cannot discontinue or remedy said condition within fifteen (15) days, Lessee shall commence such actions to discontinue or remedy said condition and pursue the same with reasonable diligence to completion;

6.5 Trash and Refuse Removal and Recycling Services. Throughout the term of the Lease, Lessee or Lessee's tenants shall provide for its own trash and refuse removal and recycling services.

6.6 Interruption of Utility Services. Lessee agrees that Lessor shall not be liable for failure to supply any utility services, except as provided for herein. Lessor reserves the right to temporarily discontinue utility services at such time(s) and for so long as may be reasonably necessary by reason of accident, unavailability of employees, repairs, alterations or improvements or whenever by reason of strikes, lockouts, riots, acts of God or any other happenings beyond the control of the Lessor. The Lessor shall not be liable for damages to persons or property for any such discontinuance, nor shall such discontinuance in any way be construed as cause for abatement of rent or operate to Lease the Lessee from any of its obligations hereunder, except in the event Lessee or its subtenants are unable to occupy the Premises or reasonably perform their business in the ordinary course due to a stoppage or interruption caused or created solely by Landlord for a period of more than two (2) business days, in which case Rent will be abated for each business day that passes until such services are restored.

6.7 Lessor's Maintenance of Access and Roadways. Lessor shall maintain in good order and repair, (a) all private roads, streets, driveways and drive isles located on the Premises, except for those dedicated to a public entity, that are reasonably required for ingress and egress to and from the Premises, including but not limited to any roadways constructed by Lessee which are not located on the Premises (except in the event that said roadways constructed by Lessee are publicly dedicated to, and subsequently maintained by, the applicable government authority).

## **SECTION 7 INDEMNITY, INSURANCE AND BONDS**

7.1 Indemnity. Lessee hereby agrees to indemnify and save harmless the Lessor, its officers, agents and employees from and against any and all loss of or damage to property, or injuries to or death of any person or persons, including property and employees or agents of the Lessor, and shall defend, indemnify and save harmless the Lessor, its officers, agents and employees from any and all claims, damages, suits, costs, expense, liability, actions, penalties or proceedings of any kind or nature whatsoever, including worker's compensation claims, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, its construction and/or operations in connection herewith, or its use or occupancy of the Premises and including acts and omissions of officers, employees, representatives, suppliers, invitees, contractors and agents of the Lessee; provided, that the Lessee need not indemnify or save harmless the Lessor, its officers, agents and employees from damages resulting from the sole negligence or intentional misconduct of Lessor, the Lessor's officers, agents and employees,

or New Hanover County as the master landlord. The minimum insurance requirements prescribed herein shall not be deemed to limit or define the obligations of Lessee hereunder.

7.2 Insurance. Lessee further agrees to secure at its own expense, and to keep in force at all times during the Term hereof, the insurance listed on the Insurance Exhibit attached as **Exhibit C**.

7.3 Waiver of Subrogation. The Lessor and the Lessee waive any and all rights of recovery, claims, actions, or causes of action against the other, its agents, officers, and employees for any injury, death, loss, or damage that may occur to persons or the Premises, or any personal property of such party, by reason of fire, the elements, or any other cause which is insured against under the terms of the policies of insurance maintained by the Lessor or the Lessee or that the Lessor or Lessee is required to provide or maintain hereunder, regardless of cause or origin, including negligence by the other party, its agents, officers, or employees.

7.4 Subordinate and Subject to Leasehold Mortgage. Notwithstanding anything to the contrary contained herein, the terms and conditions of the Lease with respect to any proceeds from property insurance, condemnation proceeds and other loss proceeds, specifically including the use, application and disbursement thereof, except for any condemnation proceeds not affecting the Lessee Improvements to be constructed on the Premises, are subject and subordinate to any leasehold Deed of Trust or Leasehold Mortgage, and/or related leasehold loan documents and the rights of the Leasehold Mortgagee (all defined in Section 11, below) thereunder. To the extent the terms of this Lease with respect to proceeds from property insurance, condemnation awards and loss proceeds are inconsistent with the terms of any Leasehold Mortgagee's loan documents, the terms of the Leasehold Mortgage and loan documents shall govern and control. Further, Lessee's obligation to perform any restoration shall be subject to any Leasehold Mortgagee making sufficient loss proceeds available therefor

7.5 No Personal Liability. No employee, agent or representative of the Lessor or Lessee shall be held personally liable under this Lease or because of its execution or attempted execution.

7.6 Taxes, Licenses, Liens and Fees.

(a) Lessee agrees to promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operations hereunder and the Lessee Improvements, and to take out and keep current all municipal, state or federal licenses required for the conduct of its business at and upon the Premises and further agrees not to permit any of said taxes, excises, license fees or permit fees to become delinquent"); provided, however, that Lessee will not pay any taxes associated with the Lessor's fee interest in the real property.

(b) Lessee may, in its own name or in Lessor's name, but at Lessee's sole cost and expense, dispute and contest any assessed value on the Premises and any taxes on the Premises. Lessor shall cooperate with Lessee, execute any and all documents required in connection therewith and, if required by any law, rule or regulation of the taxing authority, shall join with Lessee in the prosecution thereof.

(c) Lessee also agrees not to permit any mechanic's or materialman's or any other lien to become attached or be foreclosed upon the Premises, or any part thereof, by reason of any construction work or labor performed or materials furnished by any mechanic or materialman. Lessee further agrees to promptly pay when due all bills, debts and obligations incurred by it in connection with its operations hereunder and not to permit the same to become delinquent and to suffer no lien, encumbrance, judgment or execution to be filed against the Premises which will in any way impair the rights of the Lessor under this Lease.

**SECTION 8**  
**DEFAULT AND REMEDIES**

8.1 Default. Lessee shall be in default under this Lease if Lessee:

(a) Fails to timely pay when due to Lessor any Rent or any other payment required hereunder and such failure or refusal shall continue for a period of ten (10) days after written notice from Lessor of such failure or refusal; or

(b) Becomes insolvent, or takes the benefit of any present or future insolvency or bankruptcy statute, or makes a general assignment for the benefit of creditors, or consents to the appointment of a receiver, trustee or liquidator of any or substantially all of its property; or

(c) Transfers its interest under this Lease, without the prior written approval of the Lessor (when said approved is required by the terms of this Lease) by reason of death, operation of law, assignment, Lease or otherwise, to any other person, entity or corporation, except as expressly permitted by the terms of Section 10.3, below; or

(d) Fails to operate for a period of thirty (30) consecutive days or otherwise abandons or deserts the Premises; provided, however, it shall not be a default of this Lease for the Premises to be vacant and not occupied by any subtenants of the Lessee, so long as Lessee continues to properly maintain the Premises, parking lots, landscaping, and any buildings thereon in compliance with this Lease and such that the Premises, continues all utility services for the Premises, and is actively seeking a new subtenant to occupy and conduct business at the Premises; or

(e) Suffers any lien or attachment to be filed against the Premises or Lessor's Property because of any act or omission of Lessee, and such lien or attachment is not discharged or contested by Lessee in good faith by proper legal proceedings within 30 days after receipt of notice thereof by Lessee; or

(f) Fails to keep, perform and observe any other promise, covenant or agreement set forth in this Lease and such failure continues for a period of more than 30 days after delivery by Lessor of a written notice of such breach or default, except where a shorter period is specified herein, or where fulfillment of its obligation requires activity over a period of time and Lessee within 30 days of notice commences in good faith to perform whatever may be required to correct its failure to perform and continues such performance without interruption except for causes beyond its control; or

(g) Gives its permission to any person to use for any illegal purpose any portion of the Premises made available to Lessee for its use under this Lease, and Lessee fails to cease any illegal purpose at the Premises within 10 days of written notice from Lessor;

8.2 Remedies. If Lessee defaults in any of the covenants, terms and conditions herein, the Lessor may exercise any one or more of the following remedies, provided that the Lessor shall mitigate its damages to the extent required by applicable law.

(a) The Lessor may elect to allow this Lease to continue in full force and effect and to enforce all of Lessor's rights and remedies hereunder, including without limitation the right to

collect Rent as it becomes due, together with interest on all past due payments at the Past Due Interest Rate; or

(b) The Lessor may cancel and terminate this Lease and repossess the Premises, with process of law, and without liability for so doing, upon giving 30 days written notice to Lessee of its intention to terminate, at the end of which time all the rights hereunder of the Lessee shall terminate, unless the default, which shall have been stated in such notice, shall have been cured within such 30 days. Notwithstanding the foregoing, Lessee shall be allowed only two notices of default for the same issue within one (1) calendar year which it may cure within the 30-day time specified in this section. The third and any additional notice thereafter shall be cured by Lessee within 15 days and if Lessee fails to cure within such time frame, then Lessor at its sole option may (1) cancel and terminate all or the rights hereunder of the Lessee, and the Lessor may, upon the date specified in such notice, reenter the Premises and remove therefrom all property of the Lessee and store the same at the expense of the Lessee, or (2) elect to proceed under subparagraph C, below.

If the Lessor elects to terminate, Lessee shall be liable to Lessor for all amounts owing at the time of termination, including but not limited to past due Rent due plus interest thereon at the Past Due Interest Rate together with any other amount to fully compensate Lessor for all loss of rent, damages, and costs, including attorney's fees, caused by Lessee's failure to perform its obligations hereunder, or which in the ordinary course would likely result therefrom.

(c) The Lessor may elect to reenter and take possession of the Premises and expel Lessee or any person claiming under Lessee, and remove all effects as may be necessary, without prejudice to any remedies for damages or breach. Such reentry shall not be construed as termination of this Lease unless a written notice specifically so states; however, the Lessor reserves the right to terminate the Lease at any time after reentry. Following reentry, the Lessor may relet the Premises, or any portion thereof, for the account of Lessee, on such terms and conditions as the Lessor may choose and may make such repairs or improvements as it deems appropriate to accomplish the reletting. The Lessor shall not be responsible for any failure to relet or any failure to collect rent due for such reletting.

(d) Lessee shall be liable to Lessor for all reasonable costs of reletting, including attorney's fees and repairs or improvements. Notwithstanding re-entry by the Lessor, Lessee shall continue to be liable for all amounts due as Rent under this Lease, on the dates specified and, in such amounts, as would be payable if default had not occurred.

8.3 Remedies Cumulative. The remedies provided in this Lease shall be cumulative and shall in no way affect any other remedy available to Lessor under law or equity.

8.4 Dispute Resolution. The parties shall attempt in good faith to settle any dispute or controversy arising under, out of, or in connection with or in relation to this Lease, or any amendment hereof, or the breach hereof, by negotiation and mutual agreement; provided that if the parties are not able to agree within a reasonable period of time, then any such dispute or disagreement may be resolved by submitting such dispute to mediation in Beaufort County, South Carolina. Either party may make written demand for mediation, in which case the parties shall mediate the dispute or disagreement with the mediator appointed by the Judicial Arbitration & Mediation Services, ("JAMS") or another party upon mutual agreement of Lessor and Lessee. Fees and costs of the mediation shall be borne equally by the parties and each party shall pay its own professional fees and costs. Either party may pursue any remedy available under the terms of this Lease, at law or in equity.



8.5 Waivers. No failure of Lessor to insist upon the strict performance of a term, covenant or agreement contained in this Lease, no failure by Lessor to exercise any right or remedy under this Lease, and no acceptance of full or partial payment during the continuance of any default by Lessee shall constitute a waiver of any such term, covenant or agreement or a waiver of any such right or remedy or a waiver of any default by Lessee.

8.6 Mitigation. Notwithstanding anything contained herein to the contrary, in the event of Lessee's default and removal from the Premises, Lessor will make reasonable efforts to mitigate its damages as may be required by, and in accordance with, applicable law. However, Lessor shall not be obligated to lease the Premises to a tenant whose use, reputation, experience, or financial status Lessor, in its sole judgment, deems undesirable, or to re-let the Premises before leasing other land or space Lessor may have available. Nothing contained herein is intended to modify any of Lessee's obligations or Lessor's remedies under the Lease.

8.7 Lessor Default. The Lessor shall in no event be in default in the performance of any of the Lessor's obligations hereunder unless and until the Lessor shall have failed to perform such obligations within thirty (30) days (or such additional time as is reasonably required to correct any such default) after written notice by the Lessee to the Lessor properly specifying wherein the Lessor has failed to perform any such obligation. Lessor shall have no liability for any incidental or consequential damages of the Lessee, or anyone claiming by, through or under Lessee, for any reason whatsoever. If the Lessor fails to perform any of its obligations or covenants under this Lease, the Lessee shall be entitled to enforce any one or more of the following rights and remedies: (a) institute an action against the Lessor as the Lessee may deem necessary to compel performance hereunder or cease activities constituting the defaults by Lessor hereunder; or (b) exercise all other rights and remedies available to the Lessee under this Lease or otherwise available to the Lessee at law or in equity as a consequence of the Lessor's default. Lessee shall also have all other rights and remedies available at law or in equity, including but not limited to injunctive relief.

8.8 Special Damages. In no event shall either party be liable for indirect, punitive, consequential or special damages as a result of a breach or default under this Lease.

## **SECTION 9 DAMAGE, DESTRUCTION OR LOSS; EMINENT DOMAIN**

9.1 Damage to Or Destruction of Premises. If at any time during the Term the Lessee Improvements on the Premises are destroyed by fire, theft, the elements, or any other cause (a "Casualty"), then Lessee shall have the option of terminating this Lease if (a) the Lessee Improvements is rendered wholly untenantable; (b) the Lessee Improvements are damaged in whole or in part as a result of a risk which is not covered by Lessee's insurance policies; (c) Lessee's lender does not permit a sufficient amount of the insurance proceeds to be used for restoration purposes; (d) the Lessee Improvements are damaged in whole or in part during the last two (2) years of the Term; or (e) the Lessee Improvements are damaged to an extent of fifty percent (50%) or more of the fair market value thereof. If Lessee elects to terminate this Lease pursuant to this Section 9.1, Lessee shall provide notice of the termination to Lessor within one hundred twenty (120) days after date of the Casualty, and shall (unless waived by the Lessor in its sole discretion) either repair the Lessee Improvements or raze the Lessee Improvements and remove all debris from the Premises prior to surrendering the Premises to Lessor. If Lessee elects to terminate this Lease pursuant to this Section 9.1,

In the event that Lessee does not terminate the Lease as provided in this Section 9.1, then this Lease shall continue in full force and effect and Lessee, at Lessee's own cost and expense, shall be solely responsible, at Lessee's option, to repair and restore the damaged Lessee Improvements except as

otherwise herein specifically provided. Any work of repair or restoration shall be done in compliance with all applicable laws, rules, and regulations and the Architectural Guidelines. In the event of a Casualty, all insurance proceeds payable with respect to such Casualty shall be paid over to Lessee in order to repair and restore the Premises, but subject and subordinate to the rights of any mortgagee or leasehold mortgage.

## 9.2 Eminent Domain.

(a) In the event of any taking by condemnation or eminent domain of any portion of the Premises (a "Taking"), Lessor and Lessee shall share all compensation paid, or award given, for the portion of the Premises taken in accordance with the provisions of subsection 9.2(c) below, except that (1) any compensation paid or award given with respect to land only, Lessor's fee interest in the land, and lost rental income shall inure exclusively to the benefit of the Lessor and shall be paid to Lessor, and (2) any compensation paid or award given with respect to the furniture, furnishings, fixtures, equipment and other personal property on the Premises owned by Lessee and lost profits shall inure to the benefit of the Lessee and shall be paid to Lessee.

(b) If as a result of eminent domain proceedings there is a Taking of such portion of the Premises, including parking areas, or the right of access to the entire Premises, in a manner so that the Premises cannot thereafter be reasonably used for the operation of the Lessee's business in the ordinary course or Lessee's intended use with access and parking facilities in substantially the same manner as prior to the Taking, Lessee may terminate this Lease by giving written notice to Lessor within thirty (30) days after receipt of written notice of such a Taking, in which event such termination of this Lease shall take effect on the date that the condemning authority takes possession, and any Rent paid in advance will be returned to Lessee. If the condemnation is not such a Taking as would entitle Lessee to terminate this Lease, Lessee agrees to restore as far as possible the Premises to its condition immediately prior to the eminent domain proceedings, and Rent shall be adjusted in accordance with subsection 9.2(d) below. Lessor will advise Lessee immediately upon receipt of notice of the commencement of proceedings by any authority having eminent domain powers to acquire any part of the area in the Premises.

(c) In the event of a Taking of any portion of the Premises, Lessor and Lessee shall divide any sum received, awarded or paid with respect to the Premises by reason of such Taking (the "Award") by the ratio of the "Lessor's Interest" to the "Lessee's Interest"; provided, however, that the portion of any Award attributable to land only or Lessor's fee interest in the land shall be paid in its entirety to Lessor. "Lessor's Interest" and "Lessee's Interest" shall (A) be based on the values of their respective interests in the Lessee Improvements (including Lessor's reversionary interests) as determined immediately prior to the Taking and as if such Taking did not occur, and (B) take into account the length of the then current Term of this Lease remaining in effect at the time of the Taking. For example, if the value of Lessee's Interest is twice the value of Lessor's Interest, Lessee shall receive two-thirds of the remaining portion of the Award to be allocated under this subsection (iii), and Lessor shall receive the remaining one-third of such Award. If the values of Lessor's Interest and Lessee's Interest are determined in the condemnation proceeding, such values shall be conclusive upon Lessor and Lessee. If such values are not separately determined in the condemnation proceeding, the values shall be fixed by agreement between Lessor and Lessee, or if Lessor and Lessee are unable to agree upon such values within thirty (30) days after the Taking occurs, then the values shall be determined by appraisal prepared by a qualified appraiser mutually selected in writing by both parties. This Section 9.2(c) shall not apply to any separate award made to Lessee for relocation and moving expenses, which Lessee may retain in full.

(d) If a portion of the Premises is taken and this Lease is not terminated pursuant to the provisions of this Section, the Rent shall be proportionately reduced as of the Taking Date in the ratio that the rental value of the portion of the Land taken bears to the rental value of the Premises at the time of the Taking. However, in no event shall the percentage reduction in Rent exceed Lessor's Interest (expressed as a percentage) in the Award pursuant to Section 9.2 (c) above.

## **SECTION 10 PUBLIC USE**

10.1. Public Use. The Parties acknowledge that the Premises is being used to serve a public use, that is, the need for affordable workforce housing solutions within the Town of Hilton Head Island, South Carolina. The Premises shall continue to be used in such a manner to ensure that it serves the public purpose of provided affordable workforce housing on Hilton Head Island, South Carolina.

10.1. Americans with Disability Act. Lessee shall fully comply with all applicable provisions of the Americans With Disabilities Act of 1990, P.L. 101-336, 104 Stat. 327 (ADA), expressly including, but not limited to, all requirements otherwise imposed on the Lessor regarding the Premises and invitees of Lessee, insofar as the Premises is considered a place of public accommodation and invitees or employees are covered by the services, programs and activity provisions of Title II of ADA.

10.2. Non-Discrimination. Lessee for itself, its successors and assigns, agrees that in its operation and use of the Premises no person shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the Premises or Lessor's Property because of his or her race, color, sex or national origin and that Lessee shall not, on the grounds of race, color or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by 49 CFR Part 21 of the Department of Transportation Regulations. A breach of this provision shall constitute an event of default under the terms of this Lease.

## **SECTION 11 LEASEHOLD MORTGAGEE**

11.1 Lessee is hereby given the right by Lessor, to mortgage its interest and grant a security interest to lenders (a "Leasehold Mortgagee") in this Lease, including but not limited to a leasehold deed of trust, security agreement and assign its interest in this Lease (the "Leasehold Mortgage") as collateral security for such mortgage. The term "mortgage," as used in this Section 11, shall include all security instruments as used in the State of South Carolina, as well as financing statements, security agreements and other documentation required pursuant to the Uniform Commercial Code.

All rights acquired under such mortgage shall be subordinate to this Lease subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights and interests of Lessor herein, none of which covenants, conditions or restrictions is or shall be waived by Lessor by reason of the rights given Lessee to mortgage its interest in this Lease, except as expressly provided in this Section 1. Further, the mortgagee or beneficiary of such mortgage or assignment shall be a bank, savings and loan association, trust company, insurance company, public pension fund or retirement fund, private debt fund, or a special purpose entity formed to originate or hold commercial mortgages in connection with a securitization transaction. Lessee shall notify the Lessor at least thirty (30) days prior to the entering into

of such a Leasehold Mortgage and shall provide Lessor with a copy of the mortgage for Lessors review and comment.

11.2 If Lessee shall mortgage all or part of its interest in this Lease, the holder of such mortgage shall, within thirty (30) days of its execution, send to Lessor a true copy thereof together with written notice specifying the name and address of the mortgagee and the pertinent recording data with respect to such mortgage, Lessor agrees that so long as the Leasehold mortgage remains unsatisfied of record or until written notice of satisfaction is given by the holder to Lessor, the following provisions shall apply:

(a) **Mortgage Consent.** Except for the right of Lessor to unilaterally amend this Lease specifically set forth herein, if any, there shall be no cancellation, surrender or modification of this Lease by joint action of Lessor and Lessee without the prior written consent of the Leasehold Mortgagee.

(b) **Notices to Mortgagee.** Lessor shall, upon serving Lessee with any notice of default, simultaneously serve a copy of such notice upon the holder of the Leasehold mortgage. The Leasehold Mortgagee shall have the same period, after service of such notice upon it, to remedy or cause to be remedied the defaults complained of, and Lessor shall accept such Leasehold Mortgagee's acts if they had been performed by Lessee. In the event Lessor desires to terminate this Lease as a result of a default, Lessor shall provide the Leasehold Mortgagee with written notice (the "Termination Notice") of its intent to terminate this Lease. If Lessor desires to terminate this Lease a result of a monetary default, Lessor shall grant the Leasehold Mortgagee the right to cure or undertake the elimination of such default within thirty (30) days after the Leasehold Mortgagee's receipt of the Termination Notice. If Lessor desires to terminate this Lease as a result of a non-monetary default (including without limitation any default caused by Lessee's failure to discharge or cause to be discharged any lien, charge or encumbrance junior in priority to the Leasehold mortgage), Lessor agrees not to terminate this Lease if (a) the Leasehold Mortgagee shall, within thirty (30) days after receipt of the Termination Notice commence and diligently prosecute such actions as may be necessary to cause the foreclosure of its Leasehold mortgage (including without limitation seeking relief from the automatic stay provisions of Section 362 of the Bankruptcy Code or any successor statute in any bankruptcy proceeding affecting such foreclosure); (b) all rents and other charges payable by Lessee under this Lease shall be brought current within fifteen (15) days of the receipt of the Termination Notice and shall be kept current throughout such foreclosure proceedings; and (c) the Leasehold Mortgagee shall, within thirty (30) days of receipt of the Termination Notice, commence and diligently prosecute all actions to perform all non-monetary covenants and obligations of Lessee under this Lease reasonably capable of performance by the Leasehold Mortgagee throughout such foreclosure proceedings.

(c) **Insurance.** Lessor agrees that the name of the Leasehold Mortgagee may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Lessee under this Lease on the condition that the insurance proceeds be applied in the manner specified in this Lease and that the Leasehold mortgage or collateral document so provide.

(d) **Substitution of Leasehold Mortgagee.** Lessor agrees that in the event of termination of this Lease by reason of any default by Lessee, and the continued payment of Rent by the Leasehold Mortgagee, that Leasehold Mortgagee or its nominee will be substituted for and treated as Lessee for the Premises, subject to the consent of Lessor to the nominee with such consent not to be unreasonably withheld, for the remainder of the Term effective as of the date of such termination, at the Rent and other charges, and upon the terms, provisions, covenants and

agreement contained in this Lease, subject only to the rights, if any, of the parties then in possession of any part of the Leased Premises, provided:

1. The mortgagee or its nominee shall make written request upon Lessor to be substituted at the Lessee under the Lease and the written request shall be accompanied by any then due payment of Rent and other charges under this Lease; and the mortgagee or nominee shall execute and deliver any confirmation documents within fifteen (15) days after Lessor has delivered it.

2. The mortgagee or its nominee shall pay to Lessor, at the time of substitution, any and all sums which would then be due pursuant to this Lease but for such termination and, in addition thereto, any reasonable expenses, including reasonable attorney's fees, which Lessor shall have incurred by reason of such default, including the costs of negotiation, approval and recording the new Lease.

3. The mortgagee or its nominee shall perform and observe all covenants in this Lease to be performed by Lessee and shall further remedy any other conditions which Lessee was obligated to perform under the terms of this Lease.

4. The Leasehold Mortgagee or any other person succeeding to the interests of the Lessee through a foreclosure will be subject to all of the terms and conditions of this Lease except as otherwise expressly provided in this Lease including, but not limited to, Permitted Uses. Foreclosure for purposes of this Lease shall include a conveyance in lieu of foreclosure.

5. The substituted Lessee shall have the same right, title and interest in and to the Premises as Lessee has under this Lease.

(e) Confirming Documentation. Lessor shall, upon request, execute, acknowledge and deliver to each Leasehold Mortgagee an agreement prepared at the sole cost and expense of Lessee, in form satisfactory to the Leasehold Mortgagee and to Lessor, between Lessor, Lessee and the Leasehold Mortgagee confirming the provisions of this Section 11. Any additional reasonable costs incurred by Lessor in connection with the agreement, including reasonable attorneys' fees, shall be paid by Lessee or the Leasehold Mortgagee.

(f) Foreclosure of Leasehold mortgage. If a Leasehold Mortgagee should foreclose its Leasehold mortgage and should, as a result of such foreclosure, succeed to any of the rights of the Lessee hereunder, then such Leasehold Mortgagee shall be subject to all the terms and conditions of this Lease and shall be entitled to all the rights and benefits of this Lease; provided, however, that (1) such Leasehold Mortgagee shall not be liable for any act or omission of the Lessee unless of a continuing nature which continues following the foreclosure; (2) such Leasehold Mortgagee shall not be subject to any offsets or defenses which Lessor has, or might have, against the Lessee except as it relates to any default of a continuing nature which continues following the foreclosure; (3) such Leasehold Mortgagee shall not be bound by any material amendment, modification, surrender or waiver of the terms of this Lease that imposes additional and material obligations on Leasehold Mortgagee made without the prior written consent of such Leasehold Mortgagee (which consent shall not be unreasonably withheld or delayed); (4) such Leasehold Mortgagee shall have the obligation to pay all Rent; and (5) upon the written request of such Leasehold Mortgagee, the Lessor shall reaffirm, in writing, the validity of this Lease, and that this Lease is in full force and effect.

## **SECTION 12 MISCELLANEOUS PROVISIONS**

12.1 Signage. Lessee shall have the right to install, subject to Lessor's reasonable approval and all applicable federal, state and local codes, laws, regulations and ordinances, and the Architectural Guidelines, to erect, install, maintain and operate the building signage (including, without limitation, any building exterior signage, pylon, monument, and/or directional signage) as it may deem reasonably necessary.

12.2 Agreement Binding Upon Successors. This Lease shall be binding upon and extend to the heirs, personal representatives, successors and assigns of the respective parties hereto.

12.3 Assignment.

(a) Lessee shall not assign, pledge, transfer (directly or indirectly, through a merger, consolidation, acquisition, or sale of assets, or otherwise) or sublet its rights in this Lease, in whole or in part, nor grant any license or concession hereunder, except as otherwise provided herein, without the prior written consent of the Lessor, which may be withheld in the Lessor's sole discretion.

(b) In the event that Lessor consents to an assignment of this Lease, Lessee shall pay to Lessor an assignment fee in an amount equal to the one month's Rent being paid at the time of the assignment (the "Assignment Fee"). Any attempt by the Lessee, except as required herein, to assign or in any way transfer its interest in this Lease, in whole or in part, without such prior written consent of the Lessor shall, at the option of said Lessor, automatically terminate this Lease and all rights of the Lessee hereunder. Except as otherwise provided in this Lease, every assignment or Lease shall recite that it is and shall be subject and subordinate to the provisions of this Lease. Upon an assignment or transfer of this Lease, (i) the new Lessee shall succeed to and be fully responsible for all of the Lessee's obligations, including all obligations to Lessor, hereunder and ; (ii) Lessor shall be bound to the new Lessee to the same extent as it was bound to Lessee. Each assignment or transfer hereof shall be effectuated by a writing wherein the assignee or transferee agrees to assume and be bound by all of Lessee's obligations hereunder.

12.4 Additional Leases. Except as otherwise provided in this Lease, Lessee may enter into any Leases for tenant space within the Lessee Improvements without Lessor's consent, provided that any further Lease complies with the terms and conditions of this Lease and is consistent with the Permitted Use.

12.5 Governing Law; Jurisdiction; Venue. This Lease, its execution, interpretation and performance, shall be governed by and construed in accordance with the laws of the State of South Carolina, irrespective of applicable laws with respect to conflicts of law. Any controversy or claim arising out of or in any way related to this Lease or the relationship established by it, or the alleged breach thereof, whether at common law, in contract, in tort, or under statute, shall be governed by the laws of the State of South Carolina. Venue for legal proceedings involving any claim or controversy arising under or related to this Lease or the relationship between the parties shall be solely in the state courts of Beaufort County, South Carolina, and the parties hereby irrevocably consent to the jurisdiction of such courts over their persons and waive any defense based upon improper or inconvenient venue or lack of personal jurisdiction.

12.6 Force Majeure. Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Lease due to causes which were not reasonably foreseeable and beyond the control of that party which rendered the required performance impossible to perform or caused the delay or interruption of such performance, including, without limitation, strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of

the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage or any other circumstance for which such party is not responsible or which is not in its power to control, but in no event shall this paragraph be construed so as to allow Lessee to reduce or abate its obligations to pay the Rent or compensation as provided herein.

12.7 Notices. All notices required to be given to the Lessor or Lessee hereunder shall be in writing and shall be: (a) sent by certified mail, return receipt requested; or (b) personally delivered, including via overnight courier, to the Lessor and Lessee at the following addresses:

Lessor: Town of Hilton Head Island  
ATTN: Town Manager  
1 Town Center Court  
Hilton Head Island, SC 29928

Lessee: [Project Owner Entity to be Formed]  
ATTN:  
[Address]  
[City, State, Zip]

Either party hereto may designate in writing from time to time the address of substitute or supplementary persons within the State of South Carolina to receive such notices. The effective date of service of any such notice shall be the date such notice is actually received by Lessee or Lessor, as applicable.

12.8 Paragraph Headings. The paragraph headings herein are for convenience in reference only and are not intended to define or limit the scope of any provision of this Lease.

12.9 Security. Lessee shall cause its officers, contractors, agents and employees to comply with any and all existing and future security regulations adopted by the Lessor or imposed by Laws applicable to the Premises, the Lessee, its business or otherwise.

12.10 Severability. If any provision in this Lease is held by a court to be invalid, the validity of other provisions herein which are severable shall be unaffected.

12.11 Third Parties. This Lease shall not be deemed to confer upon any third party or parties any rights to claim damages or to bring any action or proceeding against either the Lessor or the Lessee because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

12.12 Short Form Memorandum of Lease. Simultaneously with the execution of this Lease or at any time during the Term of this Lease, the parties may, at the request of either party, execute and record a mutually agreeable memorandum of Lease, or short form of this Lease, memorializing the basic terms hereof, in a form which may be recorded in the New Hanover County Register of Deeds at the sole cost and expense of Lessee.

12.13 Entire Agreement. The parties agree that the provisions herein constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No amendments, unless expressly reserved to the Lessor herein, shall be valid unless executed by an instrument in writing by all the parties with the same formality as this Lease.

12.14 Business Day. If the date for performance of any act, obligation or delivery of any notice under this Lease shall fall on a day other than a business day, then the date for such performance or delivery of such notice shall be postponed until the next business day. For purposes of this Lease, any references to “business days” shall be deemed to be references to normal working business days (i.e. Monday through Friday of each calendar week, exclusive of federal or state holidays or such other dates upon which nationally-chartered banks of the United States of America are not open for business).

12.15 Final Approval. This Lease is expressly subject to and shall not be or become effective or binding on the Lessor until approved and fully executed by the Town of Hilton Head Island.

12.16 Estoppel Certificates. Within twenty (20) days after written request, Lessee or Lessor, as applicable, shall deliver to the requesting party a written estoppel certificate, in form supplied by or reasonably acceptable to the non-requesting party, certifying any facts that are then true with respect to this Lease, including that this Lease is in full force and effect, that no default exists on the part of Lessor or Lessee, that Lessee is in possession of the Premises, that Lessee has commenced the payment of rent, and that neither Lessee nor Lessor claims any defenses or offsets with respect to this Lease.

12.17 Execution in Counterparts. This Lease may be executed in two or more counterparts (including electronic, .PDF, DocuSign, or facsimile counterparts), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature page follows]



IN WITNESS WHEREOF the parties hereto have executed this Lease the day and year first above written.

**(CORPORATE SEAL)**

ATTEST:

By: \_\_\_\_\_  
Secretary

**LESSOR:**  
TOWN OF HILTON HEAD ISLAND

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Town Attorney

**SOUTH CAROLINA  
BEAUFORT COUNTY**

I, \_\_\_\_\_, a Notary Public of the State and County aforesaid, certify that \_\_\_\_\_ personally came before me this day and acknowledged that (s)he is [Title] of the Town of Hilton Head Island, and that by authority duly given and as the act of the Town, the foregoing instrument was signed in its name by its [title], \_\_\_\_\_, sealed with its corporate seal and attested by herself/himself as its [Title].

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission expires

ATTEST:

By: \_\_\_\_\_  
Secretary

**LESSEE:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the State and County aforesaid, certify that \_\_\_\_\_ personally came before me this day and acknowledged that he/she is the \_\_\_\_\_ of \_\_\_\_\_ and that by the authority duly given, the foregoing instrument was signed in its name by its \_\_\_\_\_, sealed with its corporate seal and attested by its Secretary.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission expires

SAMPLE

# EXHIBIT "G"

## Target Schedule

Northpoint PPP Schedule	2024												2025												2026											
	Q1			Q2			Q3			Q4			Q1			Q2			Q3			Q4			Q1			Q2			Q3			Q4		
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
<b>Development Agreement</b>																																				
Negotiate Development Agreement	X	X	X	X	X	X																														
Execute Development Agreement						X																														
<b>Phase I, Due Diligence, Planning, Preliminary Models</b>																																				
Site Inspections, Studies, Tests						X	X	X	X	X	X																									
Site and Unit Plans																																				
CZC Application																																				
Fair Housing Analysis																																				
General Contractor RFQ																																				
Update Pro Forma																																				
Project Budget, identifying financing gaps																																				
Soft Commitments from Investors and Lenders																																				
Title and Survey Review																																				
Draft Ground Lease - by Town																																				
Preliminary Programing																																				
<b>Phase II, Zoning</b>																																				
Zoning Map and Text Amendment - by Town						X	X	X	X	X	X																									
Submit Development Applications and Agency Approvals																																				
USFS Easements and Right-of-Way Acquisition - by Town																																				
<b>Phase III, Pre-Development</b>																																				
Approval of CZC													X	X	X	X	X	X																		
Final General Contractor Selection																																				
Final Plans and Specs																																				
Development Plan Review Permit																																				
Design Review Board Approval																																				
Development Name Approval																																				
Street Name Approval																																				
General Contractor Pricing																																				
Detailed Development and Construction Budget																																				
Financing Commitments																																				
Gap Financing Analysis and Value Engineering																																				
<b>Phase III, Pre-Development - continued</b>																																				
Final Programming													X	X	X	X	X	X																		
Gap Financing Commitments																																				

Northpoint PPP Schedule	2024												2025												2026											
	Q1			Q2			Q3			Q4			Q1			Q2			Q3			Q4			Q1			Q2			Q3			Q4		
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
<b>Financial Underwriting</b>																																				
Closing of Construction and Permanent Financing																																				
Permits for Buildings and Pool																																				
Developer to Furnish all Guaranties																																				
Execution of Closing Documents																																				
Closing on all Financing and Execution of Ground Lease																																				
Execute Construction Contract																																				
<b>Phase IV, Construction</b>																																				
Leasing Office and Community Building																			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
Lease-up																			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
Phased Delivery of Apartments																																				
Certificate of Compliance																																				
Certificate of Occupancy																																				
<b>Ground Lease - 65 Years</b>																																				
Workforce Housing Program Management																																				
Property Management																																				
Lease Terms and Rent																																				
Assignment																																				
Reporting																																				





# Northpoint

June 18, 2024





### Project Scope:

1. 11 acres of Town-owned property located close to HHI schools, the Island Rec Center, and the Boys and Girls Club
2. Energy efficient sustainable neighborhood with high-quality architecture and construction
3. 150 – 170 rental units, consisting of one-, two- and three-bedroom apartments
4. Amenities and programming that prioritize the well-being and quality of life of residents
  - Onsite property management
  - Community building with high-speed internet
  - Pool and outdoor communal spaces with grilling, pavilions, seating, and playground
  - Walking trails, indoor and outdoor fitness stations and a community garden
  - Laundry appliances within each individual unit

### Workforce Affordability:

1. Essential workforce, such as teachers, first responders, health care providers, and hospitality workers
2. 60% to 150% of Area Median Income (AMI), with at least 50% of households earning less than 80% AMI
3. Affordability Covenants





### Town's Role:

1. Project vision
2. 11 acres of land through a 65-year ground lease
3. \$1 million grant with contributions secured from ARPA
4. Zoning entitlements
5. Long-term programming support

### OneStreet Residential's Role:

1. Financing
2. Design and permitting
4. Project management
5. Construction
6. Lease-up
7. Long-term programming
8. Property management





## Next Steps:

1. Workforce Housing Development Agreement
  - ✓ Phase I, Due Diligence, Planning & Preliminary Models
  - ✓ Phase II, Zoning Approval
  - ✓ Phase III, Predevelopment
  - ✓ Phase IV, Construction
  - ✓ Phase V, Ground Lease
2. Target Schedule