

Exhibit C

MASTER AGREEMENT FOR THE DEVELOPMENT OF AFFORDABLE HOUSING **(1095 MAY RIVER ROAD; BLUFFTON, SOUTH CAROLINA)**

THIS MASTER AGREEMENT FOR THE DEVELOPMENT OF AFFORDABLE HOUSING ("*Agreement*") is entered into as of this 24th day of August, 2022, by and between WORKFORCE STATE OF MIND, LLC, a South Carolina limited liability company (the "*Developer*") and THE TOWN OF BLUFFTON, 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 Affordable Housing within Beaufort County, South Carolina, have expressed the shared goal of facilitating the development of Affordable Housing on real property owned by the Town without and within the Town of Bluffton, South Carolina, a municipality situate within Beaufort County; and,

WHEREAS, the Parties have identified rising land costs as one of the primary impediments to providing and developing Affordable Housing within Beaufort County; and,

WHEREAS, the Town is the record owner of that certain parcel of real property located within Beaufort County, identified on EXHIBIT "A" attached hereto and which is fully incorporated herein by reference (collectively, the "*Property*" or the "*Properties*"); and,

WHEREAS, the Parties desire to jointly develop Affordable Housing on the Properties 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 in 2019 for the construction of affordable housing on the Property and other properties owned by the Town, the Town competitively selected the Developer; and,

WHEREAS, the Parties anticipate that the Project will be developed in phases over a period of several years, with each Party's obligations being conditioned upon successful completion of each phase of the Project; and,

WHEREAS, during the first phase, the Developer shall be responsible for conducting all due diligence on the Properties and performing certain Master Development Services in furtherance of the Project, as more fully set forth herein; and,

WHEREAS, during upon the satisfactory completion of the Developer's due diligence and development planning, as shall be determined in the commercially reasonable discretion of the Town, the Town shall be obligated to reimburse the Developer for certain third-party costs incurred by Developer in performing the Master Development Services contemplated under this Agreement; and,

WHEREAS, upon reimbursement, all such drawings, deliverables, tracings, specifications, and other documents obtained by Developer in furtherance of this Agreement shall be assignable to the Town and shall be collaterally assigned to the Town; and,

WHEREAS, as a material consideration for the long-term assurances, vested rights, and other obligations of the Parties as set forth in this Agreement and as a material inducement for the Town to

reimburse certain third party expenses to Developer, Developer has offered and agreed to provide certain public benefits to the Town as specified herein; 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; RULES OF CONSTRUCTION;

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 complete pre-development land planning, due diligence, and other Phase One Developer Services on the Properties in furtherance of the Project. The Parties expect the Project to be completed in a series of phases with the Parties being responsible for completing certain specified deliverables within each phase. This Agreement is intended to set forth the Parties' responsibilities and obligations regarding the first phase of the development, construction and management of the Project, and to outline the Parties' expectations for the following phases 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: Rules of Construction. Unless otherwise stated or the context otherwise requires, when used in this Agreement:

(a) *Headings*. Titles and headings are for convenience only and will not be deemed part of such document for purposes of interpretation.

(b) *References*. References in a document to "Sections," "Schedules," "Exhibits," and "Appendices" refer, respectively, to Sections of, and Schedules, Exhibits and Appendices to, this Agreement. Each reference to a particular contract, agreement or other document is a reference to such contract, agreement or other document as it may be amended, modified, extended, restated or supplemented from time to time.

(c) *Interpretation*. The Parties agree that this Agreement is the result of negotiation by the Parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed more strictly against the drafter thereof.

(d) *Plurals*. In the case of defined terms, the singular includes the plural and vice versa.

(e) *Gender.* References to any gender include all others if applicable in the context.

(f) *Successors and Assigns.* Any reference to a Person includes such Person's successors and permitted assigns.

(g) *Parts of Speech.* Any definition in one part of speech of a word, such as definition of the noun form of that word, shall have a comparable meaning when used in a different part of speech, such as the verb form of that word.

(h) *Legal References.* References to any law, rule or regulation include any amendment or modification (in either case, prior to the date hereof) to such law, rule or regulation, and all regulations and rules promulgated thereunder and decisions of any Governmental Authority issued in interpretation thereof.

(i) *Interpretation.* The Parties agree that this Agreement is the result of negotiation by the Parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed more strictly against the drafter thereof.

Section 1.5: Property Description. The real property subject to this Agreement is described in EXHIBIT "A" to this Agreement, as amended from time to time.

Section 1.6: Intentionally Omitted.

Section 1.7: Project Costs. The Costs associated with this Project and each phase of this Project, as well as the Costs associated with all of the Developers Inspections and Developers Services herein, shall be the sole responsibility of the Developer, without any Cost to the Town other than the Town's contribution requirements in Section 5.1 and Section 6.1 of this Agreement.

Section 1.8: Disclaimer of Responsibility by the Town. 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 Units, 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 1.9: Affordability Covenants. The Parties recognize that on or about the Closing Date, the Town shall record against the Property those certain Affordability Covenants, which upon recording with the Office of the Register of Deeds for Beaufort County, South Carolina, shall attach to the Properties and shall constitute appurtenant easements, covenants, conditions and restrictions running with the Properties, are intended to be commercial in nature, and are expressly assignable to successors-in-title or interest to the Units and the Property. Any Person accepting any conveyance of title or interest to any portion of the Property shall be deemed to have accepted such title or interest subject to the Affordability Covenants. The Affordability Covenants are designed to ensure that all Units on the Property, whether constructed by Developer, a successor developer, a third party, or the

Town, meet the occupancy objectives and proper income criteria of this Agreement for the life of the Affordability Covenants. The Affordability Covenants are attached hereto as EXHIBIT "D".

Section 1.10: Risk of Loss. From the Effective Date through the Closing Date, all risk of loss with respect to the Property or any portion thereof shall be borne by the Town; provided however, that from the Closing Date forward, risk of loss of the Properties as conveyed to the Developer by the Town (and all Infrastructure Improvements and other Improvements thereon, if any) shall pass to the Developer for the purposes of this Agreement.

Section 1.11: Lender Not Obligated to Construct Improvements. No Lender shall be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit, or authorize any such Lender to devote the Property to any uses, or to construct any improvements thereon, other than those uses or Improvements provided for or authorized by this Agreement.

ARTICLE II:

DEVELOPER GENERAL OBLIGATIONS, RESPONSIBILITIES, AND DUTIES; INDEMNIFICATION

Section 2.1: 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 2.2. 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.

Section 2.3. 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 (e.g., the expiration of the term of the Due Diligence Period, the Closing Date, and/or the Final Completion Date) may be extended by one or more additional thirty (30) day periods 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 2.4: 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 Date 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 2.5: 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 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 may provide the Developer's Reports orally unless the Town specifically requests a written report. 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, 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, and, if applicable, the construction, marketing, sale, rental, and completion 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, or design of the Project, Developer shall deliver a copy of same to the Town Manager as soon as practicable in the manner set forth in this Agreement.

(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 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. Developer shall maintain the books and records for a period of three (3) years after expiration of the Agreement. During the term of the Agreement or at any point three (3) years after the Agreement's expiration or termination, 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, but not more than four (4) times per calendar year. Developer shall provide the Town's auditors, accountants and advisors with access to all of its information related to the design, development, management, and construction 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 2.6. Other Developer Contracts. The Parties acknowledge and recognize that the Town's selection of the Developer to provide the Developer Services hereunder for the Project was materially and substantially influenced by the Developer's commitment to providing Developer Services all of the Properties. The default by the Developer as to any of the Properties may constitute, in the sole discretion of the Town, a default hereunder and permit the termination of this Agreement.

Section 2.7: 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 Southern Beaufort County area 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 and construction 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 Final Completion by the Final Completion Date subject to the terms and conditions of this Agreement.

(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 in the Southern Beaufort County area and to provide Developer's knowledge, ideas, experience and abilities relating to the development 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 2.8. 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 2.9: 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 III: DUE DILIGENCE & TITLE REVIEW

Section 3.1: Due Diligence Generally. 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 and flood plain, and surveys); (ii) to confirm any and all matters which Developer or Consultants may reasonably desire to confirm with respect to the Property; and (iii) 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*”).

Section 3.2: Property Assessments. Developer acknowledges that prior to the Effective Date, the Town delivered to Developer or Consultants the Geotechnical Report and the Phase I Environmental Site Assessment for the Properties, if any.

Section 3.3: Supplemental Assessments. Prior to the expiration of the Due Diligence Period, Developer shall have the right but not the obligation to (1) engage geotechnical consultants to perform supplemental geotechnical evaluations of the Properties based on a preliminary site plan; and/or (2) if deemed warranted with respect to an existing or suspected Environmental Condition identified in the Phase I Environmental Site Assessment, may cause to be performed such Phase II environmental assessments, or any further testing or other evaluation reasonably necessary to determine the existence, scope and extent of an Environmental Condition (collectively, the “*Supplemental Assessments*”). The Town agrees that any reports, assessments or other information provided to the Developer regarding the Environmental Condition of the Property may be provided to the Consultants as needed to conduct any Supplemental Assessment. Developer acknowledges that any Supplemental Assessment will be the sole financial responsibility of the Developer. In the event a Supplemental Assessment recommends any remedial actions, Developer shall submit or cause to be submitted to the Town all proposed 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 plans as a result of its review and approval thereof. All Costs associated with identifying, investigating and remediating Environmental Conditions are the responsibility of the Developer. 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 a conditions shown within a Supplemental Assessment, 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 3.4: RELEASE. AS A MATERIAL PART OF THE CONSIDERATION TO THE TOWN FOR THE CONVEYANCE OF THE PROPERTY, 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 Closing (and shall not be merged therein).

Section 3.5. Title Work & Survey. Within five (5) days of the Effective Date, Developer shall order at its own expense, a title commitment for an owner's policy of title insurance (the "*Commitment*") and the 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 (the "*Title Objections*") to any survey matters, and to any liens, encumbrances or other title exceptions revealed by the Commitment which do not constitute Permitted Encumbrances. Developer shall provide a copy of the Commitment and the Survey, together with copies of the underlying exception documents 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 liens, encumbrances or other title exceptions of record or appearing on the Commitment or any and all matters that would be disclosed by a survey of the Property (and the same shall not constitute Title Objections and shall be deemed Permitted Encumbrances); provided, however, Developer shall have the right to object by delivery of written notice to the Town and Town's attorneys, on or prior to the earlier of (i) five (5) days after receipt of notice of a new exception or encumbrance (which is not a Permitted Encumbrance, and which was not revealed by the initial Commitment), and (ii) five (5) days prior to the Closing Date, to any items that become of record after the date of the Commitment and which would not otherwise be

a Permitted Encumbrance (the "*New Exceptions*"). It is expressly understood that in no event shall the Town be required to bring any action or institute any proceeding, or to otherwise incur any costs or expenses in order to attempt to eliminate any Title Objections or to otherwise cause title in the Property to be in accordance with the terms of this Agreement on the Closing Date. With respect to any New Exceptions or any Title Objections, the Town may elect to remove or cure such New Exceptions or Title Objections and shall notify Developer in writing prior to the expiration of the Review Period thereof whether the Town elects to cure or remove the same (the "*Title Response Notice*"). In the event the Town notifies Developer that the Town is unable or unwilling to cure any such Title Objections or New Exceptions, or fails to provide a Title Response Notice (which such failure shall be deemed to be a Town refusal to cure), then Developer shall notify Town of its intention to either terminate this Agreement, in which event the termination provisions of Section 7.5 shall apply, or proceed to Closing and accept title to the Properties subject to such Title Objections or New Exceptions remaining uncured by the Town, without any liability to the Town or reduction in obligations of Developer by reason of such Title Objections. Developer shall have until the expiration of the Response Period to notify the Town of its intention to either terminate or close over such Title Objections or New Exceptions. If Developer fails to do so, then Developer shall be deemed to have elected to close the transactions contemplated hereunder, subject to such Title Objections and/or New Exceptions.

Section 3.6. Reports and Supplemental Assessments. The provisions of this paragraph shall survive the termination of this Agreement, and if not so terminated shall survive the closing contemplated hereunder and delivery of the transfer deed to Developer. Developer agrees to immediately deliver all materials produced or created as part of the Developer Inspections, including but not necessarily limited to the Survey, the Supplemental Assessments, and the Title Commitment, to the Town upon the termination of this Agreement or upon written request by the Town.

ARTICLE IV: PHASE ONE DEVELOPER SERVICES

Section 4.1: Phase One Developer Services. During the Due Diligence Period, the Developer, directly or through Consultants, shall initiate, coordinate, carry out, and contract for all design, engineering and construction activities in connection with the development, construction and completion of the Project, subject to the authority of the Town to approve any and all matters 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, subject to the terms of this Agreement, shall be collectively referred to as the "*Phase One Developer Services*."

Section 4.2: Consultants. Prior to the expiration of the Due Diligence Period, 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 in accordance with the Project. Additional Consultants, including any replacements, shall be selected and engaged by Developer; provided that Town shall have given prior, written approval of the retention of all additional or replacement Consultants and the terms of their engagement (including the material provisions of their contracts). The Town's approval of any additional or replacement Consultants shall not be unreasonably withheld.

Section 4.3 Construction Contract. Developer shall negotiate a fixed price or guaranteed maximum price contract ("*Construction Contract*") between the Developer and the Contractor for the construction of the Project in accordance with the Project Budget and Project Schedule. 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, and shall provide for assignment to the Town in the event of default by the Developer under this Agreement. 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 provide the Town with a listing of all subcontractors performing any services or work on the Project.

Section 4.4: Project Plans and Specifications. Prior to the expiration of the Due Diligence Period, Developer shall deliver to Town a complete set of proposed annotated Plans and Specifications prepared by the Architect, General Contractor, Engineer or any Consultant or subcontractor, as applicable. Such Plans and Specifications shall be in form reasonably satisfactory to the Town. The Plans and Specifications created by Consultants, including but not limited to any drawings, schedules, specifications, and models, created by Architect as instruments of service, shall be considered the property of both Parties, with such ownership to be contractually agreed upon with the Consultants; provided, however, if a Consultant shall not agree with joint ownership, then Developer shall include a provision in any such contract with a Consultant to provides for the applicable Plans and Specifications to be assignable to the Town in accordance with Section 5.2 herein.

(a) *Town Review*. During the Review Period, the Town shall either approve the Plans and Specifications as submitted by Developer, or provide revisions to the Plans and Specifications 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.

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

Section 4.5: 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 the Parties' respective equity (collectively, the "*Project Budget*"). The Project Budget shall address all of the major components of a residential development or other development in size, scale, and prospective use of the Project based on the Plans and Specifications. 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 set forth in Section 5.4 and Section 7.5 of this Agreement.

(a) *Town Review*. During the Review Period, the Town shall either approve the Project Budget as submitted by Developer, or provide 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.

(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) *Phase Two Contribution.* Prior to the expiration of the Response Period, the Town and the Developer shall use best efforts to finalize the amount of the Town's financial commitment to the Project for reimbursement of Costs incurred by the Developer related to the completion of the Site Preparation Services during the Site Preparation Period (the "*Phase Two Contribution*"), which shall be incorporated into the Project Budget. The Phase Two Contribution shall be payable by the Town to the Developer upon the satisfactory completion of the Site Preparation Services set forth in Section 6.1 of this Agreement and the satisfactory evidence of the Developer's payment of all Costs related thereto, as both shall be determined in the commercially reasonable discretion of the Town.

(d) *Common Area and Road Maintenance.* The Project Budget shall include a determination of an appropriate amount of funding to maintain all common areas, amenities, and road rights-of-way (collectively, the "*Common Areas*") to be constructed as part of the Project in good repair for the length of the Affordability Term under the Affordability Covenants (the "*Common Area Reserve Funding*"). Prior to the expiration of the Response Period, the Parties shall mutually agree upon the amount of the Common Area Reserve Funding and which Party shall be responsible for funding the same. In the alternative, the Parties may agree to publicly dedicate and convey all Common Areas to the Town.

Section 4.6: *Project Financing.* Developer shall be responsible for pursuing the award and commitment of all sources of construction, gap and permanent financing needed for the Project in accordance with the Project Budget. During the Due Diligence Period, the Developer will provide the Town with copies of all investor and Lender proposals received together with a summary analysis and assessment of the proposals. Final selection of financing for the Project shall be the function and 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.

(a) *Loan Commitment.* Prior to the expiration of the Due Diligence Period, Developer shall provide to the Town satisfactory evidence of sufficient funding or financing to complete the Project in accordance with the Plans and Specifications and within the Project Budget and Project Schedule, with such limited conditions on final financing or funding as are acceptable in the sole discretion of the Town (the "*Loan Commitment*"). If the Developer enters into, amends, waives or updates any Loan Commitment or associated documentation in a manner inconsistent with the terms of this Agreement or any exhibit to this Agreement without prior written approval of the Town, then the Town shall not be required to comply with such Loan Commitment or associated documentation and, in its sole discretion, terminate this Agreement in which event the termination provisions of Section 7.5 shall apply.

(b) *Final Financing.* Prior to the expiration of the Response Period, the Developer shall submit to the Town such evidence reasonably satisfactory to the Town that the Developer has obtained all financing and funding necessary for the development of this Project in accordance with the Agreement, the Project Budget, and the Project Schedule, and as set forth

in this Agreement. Such evidence of financing shall include, but not necessarily be limited to the following: (i) a copy of any and all executed Loan Commitment(s), (ii) a copy of the fully executed Construction Contract(s), (iii) a copy of fully executed loan documents (*e.g.*, notes, mortgages, loan agreements, guaranties, etc.), or, if such documents are unavailable until the Closing Date, copies of the same documents approved for future execution by all parties to the applicable loan, and (iv) documentation reasonably acceptable to the Town of such other sources of capital sufficient to demonstrate that the Developer has adequate equity funds committed to secure any loans and complete the Project in accordance with the Plans and Specifications, the Project Budget, and the Project Schedule. The Town shall approve or disapprove such evidence of financing on or before the Closing Date. Such approval shall not be unreasonably withheld, conditioned or delayed. If the Town shall disapprove any such evidence of financing, then the Town shall do so by written notice to the Developer stating the reasons for such disapproval.

Section 4.7: 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 prior to the Closing Date, Developer, to the extent required by applicable law or permissible under applicable law, shall be obligated to assign and transfer the Permits and Approvals to the Town, in whole or in part as applicable, to the extent the same relate to or affect the Town's ownership, use or occupancy of the Property.

Section 4.8: 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 Date, 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 services related to this Project.

ARTICLE V:

ASSIGNMENT & LAND TRANSFER

Section 5.1: Phase One Contribution. Prior to the expiration of the Response Period, Developer shall provide to the Town satisfactory evidence of the Developer's payment of all Costs related to the satisfactory completion of the Phase One Developer Services set forth in Article IV, as both shall be determined in the commercially reasonable discretion of the Town. Subject to the terms of this Agreement and conditioned upon the assignments set forth in Section 5.2 of this Agreement, on the Closing Date, the Town agrees to pay the Developer an amount not to exceed TWO HUNDRED THIRTY-SIX THOUSAND AND NO/100 (\$236,000.00) DOLLARS (the "*Phase One Contribution*") for certain Costs incurred by Developer in performing the Phase One Developer Services.

Section 5.2 Assignment of Plans and Permits. As a material inducement for the Town to pay the Phase One Contribution, on the Closing Date, the Developer shall assign to the Town (or cause to be assigned by the Consultants, if necessary) all ownership and rights in and to the (a) Permits and Approvals, (b) the Plans and Specifications, and (c) all such other Project Documents that do not impose any requirement of performance or payment upon the Town; provided, however, to the extent necessary to complete the Project, the Town and Developer shall agree upon such limited licenses for use as needed (the "*Assignment of Plans and Permits*").

Section 5.3: Title Transfer. Subject to the terms and conditions set forth herein and in consideration of the other Party's obligations hereunder, on the Closing Date, the Town shall and intends to convey to Developer all of the Town's interest in the Properties subject to the Permitted Encumbrances; any specific, identified matters disclosed by the Survey; real property ad valorem taxes which are a lien but not yet due and payable (which will be the sole responsibility of Developer for the calendar year in which Closing occurs per S.C. Code Ann. § 12-37-220(A)(1) as to all of the Properties); any installment not yet due and payable of assessments affecting the Property or any portion thereof if applicable; and, the Affordability Covenants.

Section 5.4: Terms and Conditions of Conveyances. The Parties fully acknowledge and agree that the Town shall not be obligated to fulfill the responsibilities set forth in Section 5.1 and/or 5.3 hereof if the Developer fails, refuses, or is unable to perform any of its material obligations under this Agreement, including but not limited to the Phase One Developer Services. The Parties fully acknowledge and agree that the Town shall not be obligated to fulfill the responsibilities set forth in Section 5.3 hereof if (i) the Town and the Developer (or any Lender) are unable to agree on superiority of the Affordability Covenants over any security instrument, or (ii) the Agreement is terminated.

Section 5.5: Closing.

(a) *Closing Date*. If the Closing Date falls on a Saturday, Sunday, or other legal holiday, the Closing shall take place on the first following business day thereafter. The terms Closing and Closing Date may be used interchangeably in this Agreement.

(b) *Possession*. Subject to the easements and covenants contained herein, possession of the Property shall be transferred to the Developer at Closing.

(c) *Closing Documents*. At Closing, the Parties agree to execute and exchange such documents as the other Party may reasonably require to consummate the transaction contemplated by this Agreement; provided, however, that such documents are customary and/or in a form reasonably acceptable to the other Party and its counsel.

Section 5.6: Form of Deed. The conveyances contemplated under this Article V shall be completed via the execution and delivery of a limited warranty deed, in form and substance satisfactory to the Parties, conveying the title of the Town to the Property to the Developer, with limited covenants and warranties as to be determined by the Parties (the "*Deed*"). A Party shall be under no obligation to accept the Deed if such Party determines that the subject Property is subject to liens, encumbrances or other matters of title other the Permitted Encumbrances.

Section 5.7: AS-IS Transfer. The transfer of the Property is made and will be made without representation, covenant, or warranty (whether express, implied, or, to the extent permitted by applicable law) by the Town. As a part of the consideration for this Agreement, Developer agrees to accept the Property on an "AS-IS" and "WHERE-IS" "WITH ALL FAULTS, LIABILITIES, AND

DEFECTS, LATENT OR OTHERWISE, KNOWN OR UNKNOWN,” in its present state and condition as of the Effective Date, with no rights of recourse against the Town (or any related or affiliated party) for same. Developer acknowledges that the AS-IS nature of the transaction and the other terms and conditions described in this Section have been taken into account in the establishment of the Parties’ mutual obligations hereunder. Developer further acknowledges that neither the Town nor anyone acting or claiming to act for or on behalf of the Town has made any representations, warranties, promises or statements to Developer concerning the Property. Developer further acknowledges and agrees that all material matters relating to the Property will be independently verified by Developer to its full satisfaction within the time provided under this Agreement, and that, Developer will be acquiring the Property based solely upon and in reliance on its own inspections, analyses and conclusions. Without limiting the scope or generality of the foregoing, and subject to the same limitations stated above, (i) Developer expressly assumes the risk that the Property may not now or in the future comply with any applicable laws now or hereafter in effect; (ii) Developer acknowledges that neither Town nor anyone acting on Town’s behalf has made, and Town is unwilling to make, any representation or warranty whatsoever with respect to the physical nature or construction of the Improvements (if any) or any other part of the Property and no warranty or representation whatsoever is made with respect to the materials or products used in connection with the Property or incorporated into any existing improvements; and (iii) Developer acknowledges that there may be deferred maintenance with respect to the Property which is not readily visible (all of the matters mentioned in this sentence being hereinafter referred to as “*Construction Matters*”). Developer expressly assumes the risk that adverse physical, environmental, financial and legal conditions or Construction Matters may not be revealed by Developer’s inspection and evaluation of the Property or any other material matters. Except as specifically provided herein, Developer hereby fully and forever waives, and the Town hereby fully and forever disclaims, all warranties and representations not expressly set forth herein, of whatever type or kind with respect to the Property, whether express, implied or otherwise including, without limitation, those relating to Construction Matters or of fitness for a particular purpose, tenantability, habitability or use. The provisions of this Section 5.7 shall survive Closing. Developer hereby acknowledges and agrees that the provisions of this Section 5.7 are material and included as a material portion of the consideration given to the Town by Developer in exchange for the Town’s performance under this Agreement and that the Town has given Developer material concessions regarding this transaction in exchange for Developer agreeing to the provisions of this Section 5.7.

Section 5.8: Promise Not to Further Encumber. From and after the Effective Date until the Closing Date, the Town shall not do any of the following without providing prior written notice to the Developer: (a) make or allow to be made, extend or allow to be extended any leases, contracts, options or agreements whatsoever affecting the Property; (b) cause or permit any lien, encumbrance, mortgage, security deed, deed of trust, right, restriction or easement to be placed upon the Property; (c) permit any mortgage, security deed, deed of trust or other lien or encumbrance to be foreclosed upon due to such Party’s actions or omissions, including failure to make any required payment(s); or (d) convey any interest in the Property, including but not limited to conveyances of title and transfers of development rights. Notwithstanding the foregoing, the Parties recognize and acknowledge the right of the Town to record the Affordability Covenants against the Property at any point after the Effective Date but prior to the Closing Date.

Section 5.9: Prorations and Fees. Each Party agrees to be responsible for its own attorneys’ fees. All income and expenses with respect to the Property, and applicable to the period of time before and after Closing, determined in accordance with generally accepted accounting principles consistently applied, shall be allocated between the Parties. Notwithstanding the foregoing, as the Town is a municipal corporation exempt from ad valorem real property taxes pursuant to S.C. Code Ann. § 12-37-220(A)(1), the Parties hereby acknowledge and agree that all real property ad valorem

taxes applicable to the Property for the calendar year in which Closing occurs shall be the responsibility of Developer. Developer agrees to be responsible for any taxes assessed by Beaufort County which result from subsequent assessments for prior years due to a change in land usage or ownership of the Property ("*Roll Back Taxes*"). Developer shall be required to pay all sales, use and excise taxes, if any, taxes and like impositions arising from the ownership and operation of the Property through the Closing Date.

Section 5.10: No Brokers or Agents. Each Party hereto represents to the other that it has not discussed the transactions contemplated in this Agreement with any real estate broker, agent or salesman so as to create any legal right or entitlement to claim a real estate commission or similar fee with respect to the conveyance of the Property to/from the Town.

Section 5.11. Subdivision Approval. The Properties will be conveyed pursuant to a subdivision survey in recordable form as approved by the appropriate governing bodies and prepared by a licensed South Carolina surveyor with the Developer being responsible for the cost of such survey. The Developer shall be responsible for the preparation and finalization of the subdivision survey of the Property and for obtaining the necessary governmental approvals for the same. The Developer shall also be responsible for recording the approved boundary survey in accordance with South Carolina law. The Parties acknowledge and agree that this Agreement is contingent upon the Developer obtaining subdivision approval from all local governing bodies, with no additional development obligations or restrictions being imposed against the Property as a result of such subdivision approval, and a final plat of the Property being recorded with the Office of the Register of Deeds for Beaufort County, South Carolina.

ARTICLE VI:

POST-CLOSING RESPONSIBILITIES; CONSTRUCTION; MANAGEMENT

Section 6.1: Site Preparation. During the Site Preparation Period, Developer 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 by the Developer Site Preparation Period (the "*Site Preparation Services*"). Subject to the provisions of this Agreement, Developer 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 applicable Constructing Party Cost Overruns. The provisions of this Section 6.1 are intended to set forth the general obligations of the Parties 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. The Developer agrees to cooperate to ensure that the provisions of Section 6.1 are promptly and fully carried out and shall execute and deliver any and all such agreements, documents, or instruments, as may be commercially reasonable or desirable to effectuate the terms hereof.

Section 6.2: Construction of the Project. During the Construction Period, Developer shall be responsible for Final Completion of the development, construction, and installation of the Units

and all other New Improvements, in each case strictly in accordance with the Plans and Specifications, subject to such modifications and change orders that will require the prior written approval of the Town (as set forth herein), and such other services as may be mutually agreed by the Parties to be performed by the Developer Construction Period (the "*Construction Services*"). Subject to the provisions of this Agreement, Developer shall be solely 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 the New Improvements pursuant to the Construction Contract, including any applicable Constructing Party Cost Overruns. The provisions of this Section 6.2 are intended to set forth the general obligations of the Parties during the Construction Period and the Parties agree to use all commercially reasonable efforts to make effective and complete the activities set forth herein. The Developer agrees to cooperate to ensure that the provisions of Section 6.2 are promptly and fully carried out and shall execute and deliver any and all such agreements, documents, or instruments, as may be commercially reasonable or desirable to effectuate the terms hereof.

Section 6.3: Post-Construction Management and Marketing of Units. The Developer or Affiliates shall be responsible for maintenance of the Property and management of the community, including the enforcement of use restrictions and any applicable covenants, including the Affordability Covenants (the "*Management Services*"). The provisions of this Section 6.3 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. Upon the last sale of a Unit by the Developer per the terms of this Agreement, the Developer shall transfer all common areas and amenities, as well as assign any and all declarant rights to a to-be-incorporated nonprofit homeowners association whose membership shall consist of the Owners of the Units. Notwithstanding the foregoing, in the alternative the Developer may convey or dedicate any portion or all of the common areas or amenities to the Town, subject to the Town's approval, which may be withheld in its sole and absolute discretion. The Developer agrees to cooperate to ensure that the provisions of Section 6.3 are promptly and fully carried out and shall execute and deliver any and all such agreements, documents, or instruments, and effect all necessary registrations, filings and submissions with any governmental or regulatory authority as may be commercially reasonable or desirable to effectuate the terms hereof.

Section 6.4. Prohibition Against Transfers. During the term of this Agreement and after the Closing Date, Developer shall not, except as permitted by this Agreement, make any total or partial sale, transfer, conveyance or deed of the whole or any part of the Property or the Improvements thereon, without prior written approval of the Town.

Section 6.5. No Additional Encumbrances. After the Closing Date, Developer shall not encumber the Property for any other purpose than securing loans of funds to be used for financing the Property, and other expenditures necessary and appropriate to develop and/or operate the Property under this Agreement, consistent with the amounts to be financed by Developer per the Project Schedule ("*Permitted Financing Purposes*"). During the term of this Agreement, (i) Developer shall not encumber the Property for any purpose other than Permitted Financing Purposes, (ii) Developer shall notify the Town in advance of any proposed financing, and (iii) Developer shall not enter into any agreements for financing requiring a conveyance of security interests in the Property without the prior written approval of the Town. Further, Developer shall promptly notify the Town of any security interest created or attached to the Property whether by voluntary act of Developer or otherwise. For the purposes of this Section 6.5, "security interest" shall include all appropriate modes of financing real estate acquisition, construction and land development.

Section 6.6: Survivability. The provisions of this Article VI, including, without limitation the restrictions against additional encumbrances and transfers, shall survive the Closing (and shall not be merged therein).

ARTICLE VII: DEFAULT; TERMINATION

Section 7.1. 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 7.2. 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 7.3. Event of Default. As used in this Agreement, an Event of Default shall mean one or more of the following events:

(a) *Deadlines*. Failure of the Developer to complete any Work or Developer Service by the applicable Deadline (as extended by any Uncontrollable Event) set forth in this Agreement, 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) *Failure to Manage Project.* Failure of Developer to enforce any material terms, provisions, conditions, covenants or agreements in the Construction Contracts or project financing documents to be observed and/or performed on the part of the Contractor, the Consultants, or other contractors. Failure of Developer to take appropriate efforts or use due diligence to ensure that all parties performing any Work on the Property possess the requisite licenses necessary for the Work contracted to them.

(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 giving rise to a foreclosure or other remedies established by the financing documents.

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

Section 7.4. 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 7.5. 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 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) *Return of the Property.* If the Town terminates this Agreement due to an Event of Default, Developer shall immediately convey all of the Developer's interest in the Property (if any) to the Town via deed in recordable form with such conveyance to occur no later than forty-eight (48) hours of the date that the Notice of Termination is provided to the Developer in accordance with Section 7.5(a).

(d) *Assignment of Permits and Plans.* In the event of a termination of this Agreement due to an Event of Default, Developer, if it has not already done so in accordance with Section 5.2, 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. Notwithstanding the above, Consultants shall retain all rights to its design elements, design intent, design details, material selections, or combinations thereof, and shall be entitled to use same on other projects.

Section 7.6. Liability of Parties. Except for any obligation expressly assumed or agreed to be assumed by a Party under this Agreement, neither Party agrees to assume any obligation of another Party or any liability for claims arising out of any event, action, circumstance or occurrence during the term hereof.

Section 7.7. Dispute Resolution. 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.

Section 7.8. Notice to Lender. If applicable, whenever the Town shall deliver any notice or demand to Developer with respect to any Event of Default, whether a Default Notice or Notice of Termination, the Town shall also cause a copy of the same notice to be delivered to Lender at the address for the Lender listed in the recorded mortgage.

ARTICLE VIII:

REPRESENTATIONS AND WARRANTIES

Section 8.1: 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 South Carolina, 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 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; No Agreements Related to Horizontal Project with Affiliates.* 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 8.2: 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 IX: **AMENDMENTS; ASSIGNMENT**

Section 9.1. 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 unanimous written agreement of the Parties. All 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 9.2: 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, except for a Permitted Transfer. 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 (unless this Agreement expressly states otherwise). In the event of a Permitted Transfer, Developer shall provide prompt written notice to the Town of the completion of any Permitted Transfer.

ARTICLE X: **INSURANCE REQUIREMENTS**

Section 10.1: 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 vertical 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 horizontal construction 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 horizontal 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 and the Contractor in the conduct of their operations at the Project.

(d) *Umbrella Policy.* Once horizontal construction commences, an umbrella policy of commercial general liability insurance having a limit of not less than \$1,000,000.00 per occurrence and \$1,000,000 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.

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 10.2: 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 Bluffton, 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 XI:
MISCELLANEOUS

Section 11.1. Normal Review Procedure. The parties agree that the development will be subject to all normal development review application and processes that are required by the Town. 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 11.2. Local Vendor Preference. The Parties will endeavor in good faith to utilize local vendors, to the extent possible and practical, for the construction of infrastructure, horizontal, and vertical improvements.

Section 11.3. 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 11.4. 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 11.5. 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 11.6. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of South Carolina.

Section 11.7. Notices. Any notice required to be sent to any Owner 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 Owner's address as reflected in the deed into said Owner (or as shown below). Notwithstanding the foregoing, any Owner 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 OF BLUFFTON
PO Box 386
20 Bridge Street
Bluffton, SC 29910

With copy to:

Terry A. Finger, Esq.
FINGER, MELNICK, BROOKS & LABRUCE, P.A.
P. O. Box 24005

Hilton Head Island, SC 29925-4005

In the case of notice or communication to Developer, it is addressed as follows:

WORKFORCE STATE OF MIND, LLC
Attn: Mr. Bill Herbkersman, Manager
1 Promenade Street
Bluffton, South Carolina 29910

With copy to:

Wm. Weston J. Newton, Esq.
JONES, SIMPSON & NEWTON, P.A.
7 Plantation Park Drive, Suite 3
Bluffton, South Carolina 29910

Section 11.8. No Implied Liabilities or Duties. THIS AGREEMENT SHALL NOT EXPRESSLY OR IMPLIEDLY CREATE ANY DUTY OF CARE TO ANY OWNER, PERMITTEE OR INVITEE.

Section 11.9. 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 11.10. Time of the Essence. TIME IS OF THE ESSENCE AS TO ALL MATTERS UNDER THIS AGREEMENT.

Section 11.11. 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 11.12. 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 11.13. 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 11.14. Appropriations. The Parties agree that any financial obligations imposed upon the Town under this Agreement shall be binding only to the extent of appropriations by the Town Council of the Town of Bluffton, South Carolina.

Section 11.15. DISCLAIMER DUE TO TRANSFER OF REAL PROPERTY INTEREST BY MUNICIPALITY. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, PURSUANT TO SECTION 5-7-260 OF THE SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED, AND SECTIONS 2-13 AND 2-19 OF THE CODE OF ORDINANCES FOR THE TOWN OF BLUFFTON, SOUTH CAROLINA, DEVELOPER ACKNOWLEDGES AND AGREES THAT THE TOWN, AS A SOUTH CAROLINA MUNICIPAL CORPORATION, MAY ONLY TRANSFER A REAL PROPERTY INTEREST BY THE ADOPTION OF AN ORDINANCE OF THE BLUFFTON TOWN COUNCIL.

Section 11.16. 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 11.17. No Merger. **THE OBLIGATIONS CONTAINED IN THIS AGREEMENT, EXCEPT FOR THOSE SPECIFICALLY DISCHARGED AT CLOSING, SHALL SURVIVE THE CLOSING.**

Section 11.18. 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 license to do business in the Town of Bluffton, South Carolina, as required by Chapter 6, Article II of the Code of Ordinances for the Town of Bluffton, South Carolina.

Section 11.19. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which counterparts together shall constitute but one and the same instrument.

Section 11.20. 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 11.21. Effective Date. The effective date of this Agreement shall be the latter date of the execution dates below.

Section 11.22. 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 11.23. 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	Form of Affordability Covenants
EXHIBIT E	Schedule of Performance

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

Executed and entered into on this 4th day of August, 2022.

DEVELOPER

WORKFORCE STATE OF MIND, LLC, a
South Carolina limited liability company

By: 
William G. Herbkersman, Member

TOWN

THE TOWN OF BLUFFTON, a South
Carolina municipal corporation

By: 
Stephen Steese, Town Manager

EXHIBIT A
PROPERTY DESCRIPTION

All that certain piece, parcel or lot of land situate, lying and being in Bluffton Township, County of Beaufort, State of South Carolina, containing 1.78 acres, more or less, and identified as **Tract 4** on a plat entitled, "*Survey for: Lewis Brown,*" prepared by Harold R. Johnson, RLS #2077, Johnson Land Surveying Co., dated December 9, 1995, last revised November 22, 1996, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 73 at Page 26. For a more detailed description as to location, metes, bounds, distances, direction, etc., reference may be had to said plat of record.

This being the same property conveyed to the Town of Bluffton by deed of KGB 1934 LTD Co., dated July 13, 2018, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, on July 25, 2018, in Record Book 3686 at Page 2292.

Tax Map No. R610-039-000-0498-0000

EXHIBIT B
THE PROJECT DESCRIPTION
(1095 MAY RIVER ROAD)

- Summary:** The Project shall consist of no less than twelve (12) single family residential dwelling units (collectively, the “*Units*”) and associated infrastructure and common areas, with such Units to be made available for purchase and to be occupied on a mixed-income basis 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 will be designed in a manner which is historically and architecturally sensitive to the Town and consistent generally understood urban design criteria, which may include designs suitable for high-density and mixed-income development. The Project’s design shall incorporate green space and common area.
- Ownership:** All Units to be constructed on the Property will be sold to Qualifying Individuals and shall be restricted by the Affordability Covenants.
- Design:** The Units shall consist of single-family detached dwelling units, duplexes, and/or attached townhomes and shall be constructed in accordance with the Plans and Specifications as approved by the Town. No less than six (6) of the Units shall be two-bedroom dwellings and no less than six (6) of the Units shall be three-bedroom dwellings.
- Income Mix:** The Project is anticipated to be a mixed-income development that will combine no less than four (4) Moderately Low Income Units, four (4) Low Income Units, and four (4) Median Income Units, as such terms are defined by the United States Department of Housing and Urban Development annual report of area median income for Beaufort County.
- Affordability:** The Affordability Covenants shall attach to the Property and shall commence on the Effective Date and terminate thirty (30) years after the date of issuance of the Certificate of Occupancy for the last Units constructed on the Property as part of the Project.

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 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.

Affordability Covenants shall mean those certain covenants recorded against the Property in form substantially similar to those attached to the Agreement as **EXHIBIT D**.

Affordable Housing shall mean with respect to dwelling units for sale, the mortgage amortization, taxes, insurance and condominium or association fees, if any, or, with respect to dwelling units for rent, the rent and utilities that constitute no more than thirty percent of the annual household income for low or moderate income households, adjusted by household size, for the metropolitan statistical area in which the rental dwelling unit is located, as published from time to time by the United States Department of Housing and Urban Development (HUD)

Affordable Rent shall mean monthly Rent, inclusive of a reasonable Utility Allowance as provided in HUD guidelines that does not exceed the following respective amounts, as adjusted for family size appropriate for the Unit:

- (a) For any Units designated as Low Income, the lesser of one-twelfth of thirty (30%) percent of sixty (60%) percent of the Area Median Income, or Fair Market Rent;
- (b) For any Units designated as Moderately Low Income, the lesser of one-twelfth of thirty (30%) percent of eighty (80%) percent of the Area Median Income, or Fair Market Rent;
- (c) For any Units designated as Median Income, the lesser of one-twelfth of thirty (30%) percent of one hundred (100%) percent of the Area Median Income, or Fair Market Rent.

Affordable Price(s) shall mean a contract sales price, with normal prorations and allocations of closing costs in Southern Beaufort County, not to exceed the amount necessary to ensure that a Qualified Household that purchases a family-sized appropriate Affordable Unit shall pay no more than thirty-three (33%) percent of its monthly income toward (i) monthly mortgage payments based on a thirty (30) year fixed-rate mortgage amortized at prevailing rates as of the anticipated date of sale and assuming a three (3) percent down payment, and (ii) all applicable property taxes, homeowners

association assessments or dues, homeowners insurance, applicable governmental fees, standard utilities and other utilities.

Affordable Unit shall mean one of the Units on the Property offered by the Developer to be rented or sold to Qualified Households at Affordable Rents or Affordable Prices.

Agreement means the *Master Agreement for the Development of Affordable Housing* between the Developer and the Town for 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 Bluffton, 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 Pearce Scott Architects, Inc., a South Carolina corporation, 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 or 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 specifications of the Project to the extent permitted under the Agreement, subject however to the Town's absolute approval.

Clean and Buildable Condition shall mean that (i) the demolition of all designated structures and infrastructure on the Property shall have been completed in accordance with all applicable laws, including Environmental Laws, including, but not limited to, those governing the removal of asbestos-containing materials and/or lead based paint; (ii) the removal and disposal of all debris from the demolition and all other surface and subsurface physical obstructions shall have been completed in accordance with all applicable laws, including Environmental Laws; (iii) all areas unsuitable to construction of the Improvements (such as but not limited to old foundations, retaining walls, areas of un-compacted fill, or on-site underground utilities which may be encountered), shall have been removed or closed, and all such areas shall have been compacted with suitable fill material, (iv) all areas shall have been graded to permit the construction of building pads for the Units, and (v) all Hazardous Materials have been removed from the environment at the property or otherwise addressed to comply with Protective Concentration Levels (PCLs) or remedy standards applicable to the intended use of the Property.

Closing shall mean the time that each of the deliveries to be made by the Parties (as provided in Article 5 of the Agreement) are made and each of the Closing conditions of the Parties have been satisfied or waived.

Closing Date shall mean the date on which the Closing occurs, as provided in the Agreement.

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 Section 3.2(c) of the Agreement.

Constructing Party Cost Overruns shall mean the total Costs necessary to complete the construction and development of the Project minus the Budgeted Costs.

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 requested by the Town.

Contractor shall mean Lyle Construction, LLC, 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.

Design Development Submissions shall mean such data and illustrations for the interior design as may be appropriate for the Project, including any household appliances, to indicate finished appearance and functional operation, and proposed selections of colors, materials, and finishes.

Developer means Workforce State of Mind, LLC, a South Carolina limited liability company, and/or its successors and assigns.

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

Engineer shall mean Carolina Engineering Consultants, Inc., a South Carolina corporation, and any successor reasonably approved in writing by the Town.

Environment means surface or subsurface soil or strata, surface waters and sediments, navigable waters, wetlands, groundwater, sediments, drinking water supply, ambient air, species, plants, wildlife, animals and natural resources. The term also includes indoor air, surfaces and building materials, to the extent regulated under Environmental Laws.

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.

Final 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 Specification; 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.

Final Completion Date shall mean that date upon which Final Completion of the Project has occurred.

Geotechnical Report shall mean that certain Geotechnical Engineering Report for Proposed Townhome Development dated June 12, 2018, prepared for the Town of Bluffton by Whitaker Laboratory, Inc.

Governmental Authorities 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*”).

Grading Plan shall mean a plan outlining the excavation or fill proposed for the Project or development, including a description of the conditions resulting from such excavation or fill, as well as showing the proposed grades for the Project in a manner that reflects the scope of earthwork required and the finished site grades.

Hazardous Materials means any solid, liquid, or gaseous material, 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 or eleemosynary loans, grants or subsidies, and contributions made by family or others for medical, financial, personal or educational needs.

Including shall mean “including, but not limited to” and “include” or “includes” means “include, without limitation” or “includes, without limitation.”

Infrastructure Improvements shall mean, collectively, all and each street, road, sidewalk, parking facility, pedestrian mall, alley, bridge, sewer, property designed to reduce, eliminate, or prevent the spread of identified soil or groundwater contamination, drainage system, waterway, waterline, water storage facility, utility line or pipeline, or other similar or related structure or improvement, together with necessary easements for the structure or improvement, for the benefit of or for the protection of the health, welfare, or safety of the public generally, as shown on the Plans and Specifications.

Land Planner shall mean Witmer-Jones-Keefer, Ltd., a South Carolina corporation, and any successor reasonably approved in writing by the Town.

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 shall mean Palmetto State Bank financing 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.

New Improvements means the Units and other improvements (including building fixtures) to be constructed by Developer on the Property, including ancillary buildings and site improvements, and any interior finishings and appliances. New Improvements expressly does not include Infrastructure Improvements.

Or shall the inclusive meaning represented by the phrase “and/or” unless the context clearly indicates otherwise.

Owner shall mean and have reference to, at any particular point in time, the owner in fee simple of an Affordable Unit, and the owner’s heirs, successors and assigns. Once constructed, the Owner shall initially be the Developer, and shall subsequently be the Qualified Household who purchases the Affordable Unit from the Developer. Owner shall include any party that acquires fee simple ownership of the Affordable Unit by virtue of foreclosure of mortgage or deed of trust conveying the Affordable Unit as security for an obligation or any transfer in lieu of such foreclosure.

Permitted Transfer shall mean any of the following: (i) a conveyance of a security interest in the Property in connection with any financing from the Lender and any transfer of title by foreclosure, deed or other conveyance in lieu of foreclosure in connection therewith; (ii) a conveyance of the Property to any Affiliate or a sale back from such Affiliate to Developer; (iii) leases for occupancy of Affordable Units that are made available at an Affordable Rent and occupied by Qualified Households; (iv) the sale of an Affordable Unit to a Qualified Household at an Affordable Price; (v) the granting of easements, licenses, permits or other similar rights to facilitate the development of the Property in accordance with this Agreement, including but not limited to the transfer of any improved common areas to a third party nonprofit homeowners’ association the membership of which consists of the owners of the Units on the Property.

Person or *Persons* means any corporation, partnership, limited liability company, joint venture, individual, trust, real estate investment trust, statutory trust, banking association, federal or state savings and loan institution and any other legal entity, whether or not a party to the Agreement.

Phase I Environmental Site Assessment shall mean that certain Environmental Site Assessment, Phase I, dated June 11, 2018, prepared by Whitaker Laboratory, Inc., for the Property.

Plans and Specifications shall mean the plans (including mechanical, electrical and structural plans), 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.

Qualified Household(s) shall mean a person or group of persons (i) whose income does not exceed One Hundred Percent (100%) of the AMI as calculated and adjusted for household size as of the anticipated date of purchase of the Unit, (ii) whose household size is appropriate for the Unit, and (iii) whose eligibility hereunder is certified by the Town or its designee as having the requisite income levels. When any Affordable Unit has been designated for Qualified Households that qualify as "Low Income" or "Moderately Low Income," then the foregoing definition shall be revised so that income does not exceed the appropriate percent of the AMI.

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.

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.

**RESERVED FOR RECORDING
PURPOSES:**

PREPARED WITHOUT BENEFIT OF TITLE EXAMINATION BY:
FINGER, MELNICK, BROOKS & LABRUCE, P.A.
Attn: E. Richardson LaBruce
Post Office Box 24005
Hilton Head Island, South Carolina 29925

UPON RECORDING, PLEASE RETURN TO:
FINGER, MELNICK, BROOKS & LABRUCE, P.A.
Attn: E. Richardson LaBruce
Post Office Box 24005
Hilton Head Island, South Carolina 29925

STATE OF SOUTH CAROLINA)	
)	
)	AGREEMENT TO PROVIDE
)	AFFORDABLE HOUSING AND
)	DECLARATION OF RESTRICTIVE
)	COVENANTS
COUNTY OF BEAUFORT)	(Single Family Ownership)

This AGREEMENT TO PROVIDE AFFORDABLE HOUSING AND DECLARATION OF RESTRICTIVE COVENANTS ("*Agreement*") is entered into and effective as of the ____ of August, 2022 (the "*Effective Date*") by and between WORKFORCE STATE OF MIND, LLC, a South Carolina limited liability company, together with its successors and assigns, including its successors in title from time to time as to all or any portion of the Property subject to this Agreement (the "*Owner*"), and THE TOWN OF BLUFFTON, a South Carolina municipal corporation (the "*Town*").

RECITALS

WHEREAS, the Owner owns fee simple title to the real property, together with improvements thereon, consisting of approximately 1.78 acres and located within the Town, and identified more fully on EXHIBIT "A" attached hereto and made an integral part hereof (the "*Property*"); and

WHEREAS, the Owner has represented to the Town its intentions to construct a mixed-income development consisting of not less than 12 residential dwelling units on the Property (the "*Project*"); and

WHEREAS, in consideration of the Town's payment of certain fees, the Town's financial contribution to the design and construction of the Project, and those other terms and provisions of that certain *Master Agreement for the Development of Affordable Housing (1095 May*

River Road; Bluffton, South Carolina), dated August __, 2022, which is fully incorporated herein by reference, and as further set forth herein, the Owner has agreed to designate all units developed on the Property as Affordable Units (as defined herein) available to Qualified Households (as defined herein) for an Affordable Price (as defined herein); and,

WHEREAS, the purpose of this Agreement is to memorialize the Affordable Housing requirements that Owner and Town have agreed to.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing premises, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner and the County hereby agree, and the Owner hereby declares that, during the Term hereof (as defined herein), the Property shall be held, transferred, conveyed, leased, occupied and otherwise disposed of and used subject to the following terms of this Agreement, which shall constitute covenants running with the land and be binding on all successors and assigns:

Section 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 2: Purpose. The purpose of this Agreement is to ensure that all Units on the Property, whether constructed by Owner, a successor developer, a third party, or others, meet the occupancy objectives and proper income criteria of this Agreement for the life of the Agreement. The Property shall be conveyed subject to the conditions, covenants, restrictions and limitations set forth below (collectively, the "*Covenants*"). The Covenants shall be considered as covenants running with the land, and shall be binding on the Developer, its heirs, successors and assigns, together with all successors in title to the Property (the Owner, its heirs, successors and assigns, together with all successors in title to the Property or the Units, being collectively referred to herein as the "*Owner*"). Each Owner covenants and agrees, in the event the Property is sold, conveyed or otherwise disposed of, the Property and the Units shall be sold subject to these Covenants and that the recording information for this Agreement shall be inserted in the deed of conveyance or other instrument disposing of the Property.

Section 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 below:

Actual Household Size means the actual number of persons in the applicable household at the time of application.

Affordable Price(s) shall mean a contract sales price, with normal prorations and allocations of closing costs in Southern Beaufort County, not to exceed the amount necessary to ensure that a Qualified Household that purchases a family-sized appropriate Affordable Unit shall pay no more than thirty-three (33%) percent of its monthly income toward (i) monthly mortgage payments based on a thirty (30) year

fixed-rate mortgage amortized at prevailing rates as of the anticipated date of sale and assuming a three (3) percent down payment, and (ii) all applicable property taxes, homeowners association assessments or dues, homeowners insurance, applicable governmental fees, standard utilities and other utilities.

Affordable Unit shall mean one of the Units on the Property offered by the Developer and/or Owner to be sold to Qualified Households at or below an Affordable Price and/or Resale Price.

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 or the state of South Carolina, or the County of Beaufort, shall be used for the purpose of determining Area Median Income.

AMI Increase shall mean the Area Median Income for a family of four persons at the anticipated date of transfer of the Affordable Unit divided by the AMI for a family of four persons as of the date that the first Qualified Household acquired by the Affordable Unit.

CPI Increase shall mean the most recent published Consumer Price Index ("*CPI*") preceding as of the anticipated date of transfer of the Affordable Unit divided by the CPI as of the date that the first Qualified Household acquired by the Affordable Unit.

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 or eleemosynary loans, grants or subsidies, and contributions made by family or others for medical, financial, personal or educational needs.

Qualified Household(s) shall mean a person or group of persons (i) whose income does not exceed One Hundred Percent (100%) of the AMI as calculated and adjusted for household size as of the anticipated date of purchase of the Unit, (ii) whose household size is appropriate for the Unit, and (iii) whose eligibility hereunder is certified by the Town or its designee as having the requisite income levels. When any Affordable Unit has been designated for Qualified Households that qualify as "Low

Income” or “Moderately Low Income,” then the foregoing definition shall be revised so that income does not exceed the appropriate percent of the AMI.

Resale Price shall mean and have reference to (i) an amount determined as the product of the gross purchase price paid by the first Qualified Household to acquire the Affordable Unit, multiplied by the greater of the AMI Increase or the CPI Increase, or (ii) such higher amount as may be determined in accordance with Section 8(f) herein.

Term shall mean that period of time beginning on the Effective Date hereof and terminating thirty (30) years after the date of issuance of the Certificate of Occupancy for the last units constructed on the Property as part of the Project.

Unit shall mean a residential dwelling unit that is developed on the Property as part of the Project.

Section 4: Rules of Construction. Unless otherwise stated or the context otherwise requires, when used in this Agreement:

(a) *Headings*. Titles and headings are for convenience only and will not be deemed part of such document for purposes of interpretation.

(b) *References*. References in a document to “Sections,” “Schedules,” “Exhibits,” and “Appendices” refer, respectively, to Sections of, and Schedules, Exhibits and Appendices to, this Agreement. Each reference to a particular contract, agreement or other document is a reference to such contract, agreement or other document as it may be amended, modified, extended, restated or supplemented from time to time.

(c) *Interpretation*. The Parties agree that this Agreement is the result of negotiation by the Parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed more strictly against the drafter thereof.

(d) *Plurals*. In the case of defined terms, the singular includes the plural and vice versa.

(e) *Gender*. References to any gender include all others if applicable in the context.

(f) *Successors and Assigns*. Any reference to a Person includes such Person’s successors and permitted assigns.

(g) *Parts of Speech*. Any definition in one part of speech of a word, such as definition of the noun form of that word, shall have a comparable meaning when used in a different part of speech, such as the verb form of that word.

(h) *Legal References.* References to any law, rule or regulation include any amendment or modification (in either case, prior to the date hereof) to such law, rule or regulation, and all regulations and rules promulgated thereunder and decisions of any governmental authority issued in interpretation thereof.

(i) *Interpretation.* The Parties agree that this Agreement is the result of negotiation by the Parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed more strictly against the drafter thereof.

Section 5: Property Description. The real property subject to this Agreement is described in EXHIBIT "A" to this Agreement, as amended from time to time, and the appurtenant easements, covenants, conditions and restrictions contained within this Agreement shall run with the Property for the term hereof, and are intended to be commercial in nature, and are expressly assignable to successors-in-title or interest to the Affordable Units and the Property. Any person accepting any conveyance of title or interest to any portion of the Property shall be deemed to have accepted such title or interest subject to the terms and provisions of this Agreement. Each contract, deed, or other instrument affecting or conveying a portion of the Property or that portion of the Project or any part related to that residential building, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, or other instrument. All provisions of this Agreement, including without limitations the use restrictions contained herein, shall apply to any and all occupants of an Affordable Unit, even if such occupants are not specifically mentioned or included on a deed thereof.

Section 6: Affordability Restriction. During the Term hereof, Owner, and its respective successors and assignees, agrees to construct, or cause to be constructed, the Project and agrees that it shall use the Property for the development and operation of not less than 12 Affordable Units that are made available at an Affordable Price (or the Resale Price) for purchase by and occupied by Qualified Households, along with associated community space and related parking, in accordance with Town-approved development plans. The Project is anticipated to be a mixed-income development that will combine no less than four (4) Moderately Low Income Units, four (4) Low Income Units, and four (4) Median Income Units, as such terms are defined by the United States Department of Housing and Urban Development annual report of AMI; notwithstanding the foregoing, the Town may permit a Low Income Unit and/or Moderately Low Income Unit to be utilized Median Income Unit upon resale.

Section 7: Single-Family Use and Leases. The Owner covenants and agrees that each Unit shall be used and occupied solely as an owner-occupied, single-family residential dwelling. No Affordable Units shall be subleased or assigned at any time, nor shall any Affordable Unit be rented in whole or part via short term rental platforms. If an Owner ceases to occupy a Unit, the Owner agrees to give prompt written notice to the Town that the Unit is no longer Owner-occupied and the Owner agrees to sell the Property to a Qualified Household for the Resale Price.

Section 8: Resale Only to Qualified Households. During the term hereof, neither the Property nor any Unit shall be sold, transferred, or conveyed to any Person other than as set forth within this Section.

(a) *Qualified Households*. Except as provided in subsection (b) and (c) of this Section, Units shall be conveyed only to Qualified Households who are certified by the Town or by an agency approved in writing by the Town to verify income eligibility.

(b) *Inheritance*. A transfer that occurs by virtue of the death of the Owner and following a testate or intestate administration of the estate of the Owner shall be deemed a transfer to a Qualified Household.

(c) *Foreclosure*. A transfer that occurs by virtue of foreclosure of a mortgage encumbering the Unit or a transfer that occurs by reason of a deed in lieu of foreclosure shall be deemed to be a transfer to a Qualified Household provided that the transferee is an institutional mortgagee that acquires the Unit in foreclosure or by a deed in lieu of foreclosure.

(d) *Certification*. An Owner shall submit, or cause to be submitted, to the Town for certification as a Qualified Purchaser, any proposed purchaser of the Unit. An Owner shall transfer the Property only to a purchaser who has been certified by the Town as a Qualified Household. The Town shall not decline, refuse or fail to certify as a Qualified Household any potential purchaser of the Unit except on the sole ground that the Town is unable to verify that the income of such proposed purchaser is within the income limits required of a Qualified Household for the Unit.

(e) *Resale Price*. No Owner shall transfer the Property or any Unit for an amount in excess of the Resale Price.

(f) *Adjustments to Resale Price*. The Resale Price may be adjusted upward by the Town to a higher amount if the Town determines in its sole discretion that the nature and circumstances of the Owner, and the nature and condition of the Unit, warrant such a higher amount and that such higher amount will not preclude the ability to certify a potential purchaser as a Qualified Household. The determination of any such upward adjustment in the Resale Price shall be in the sole discretion of the Town which may elect to refuse to increase the Resale Price for any reason. Such an increase to the Resale Price shall apply only for a period of 12 months from the date of the Town's written acknowledgement of the Adjustment and shall not apply to subsequent transfers.

Section 9: Notice of Affordability Restrictions. The date that the affordability restrictions contained herein will terminate shall be clearly stated in all deeds to Qualified Households. For the term of this Agreement, all deeds, mortgages, plats, or any other legal instruments used to convey any interest in the Property shall include the following (failure to comply with this paragraph does not impair the validity or enforceability of the terms of this Agreement):

NOTICE: This Property is conveyed subject to Agreement to Provide Affordable Housing and Declaration of Restrictive Covenants recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book _____ at Page _____.

Section 10: Maintenance and Management of Project. The Town places prime importance on quality maintenance to ensure that all developments within the Town, which include affordable housing units, are not allowed to deteriorate due to below-average maintenance. Owner, its successors and assigns, shall maintain the Property and the Units in an attractive and orderly condition, including performance of repairs and periodic replacement of fixtures equivalent to at least the original quality and type. The Owner agrees to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition, subject to state and local drought restrictions) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials. The Property and the Units shall be kept free from trash, salvage, junk cars, rubbish, garbage, and other unsightly or offensive material. The buildings now or hereafter located on the said premises shall be maintained in an attractive and sound condition and repairs as necessary to prevent damage to the building(s) or any part thereof shall be made promptly. The Owner shall maintain flood insurance and "All Risk" insurance on the Property for the lesser of the replacement value and its insurable value. In the event that the Owner shall breach the obligations contained in this Section, the Town shall have the right (but not the obligation) to enter the property to make repairs, to remove material and to otherwise correct the Owner's breaches. The Owner shall promptly reimburse the Town upon written demand for the costs incurred by the Town to correct the Owner's breaches under this Section and the Town shall have a continuing lien against the Unit or the Property (as applicable) in the amount of such costs until paid in full. Owner, its successors and assigns, shall be responsible for all management functions with respect to the Property and the Project. The Town shall have the right to inspect the Property and the Units from time to time to insure compliance with these Covenants.

Section 11: Recording of Agreement. This Agreement shall be recorded in the Office of the Register of Deeds for Beaufort County, South Carolina. Owner hereby represents, warrants and covenants that absent the written consent of Town, this Agreement shall not be subordinated in priority to any lien (other than those pertaining to taxes or assessments), encumbrance, or other interest in a portion of the Property or the Project. If, at the time this Agreement is recorded, any interest, lien, or encumbrance has been recorded against a portion of the Project in a position superior to this Agreement, upon the request of Town, Developer hereby covenants and agrees to promptly undertake all action necessary to clear such matter from title or to subordinate such interest to this Agreement consistent with the intent of and in accordance with this Agreement; notwithstanding the foregoing, the Town

agrees that it will not withhold reasonable requests for subordination of this Agreement to valid first mortgages as necessary to construct the Project.

Section 12: Non-Discrimination; Fair Housing Laws. Owner shall comply with state and federal fair housing laws in the rental, marketing and/or sale of the Affordable Units in the Project. No service or amenity provided to market rate units in each building (if applicable) shall be denied to, or be charged at higher rates to, occupants of Affordable Units. Owner shall not restrict the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any Affordable Unit, based on race, color, religion, creed, sex, disability, ancestry, or national origin of any person. Owner covenants that during the term hereof that neither Owner nor any person acting under or on behalf of Owner shall establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Qualified Households.

Section 13: Representations and Warranties. Owner hereby makes the following representations and warranties to the Town, each of which is true and correct as of the Effective Date:

(a) *Organization; Good Standing*. Owner is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of South Carolina, 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*. Owner 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 Owner under this Agreement. All terms of this Agreement are binding on Owner 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 Owner, or any other document, instrument, agreement, stipulation, judgment or order to which Owner is a party or by which Owner is bound.

(c) *No Bankruptcy*. Neither Owner nor any of its members 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 Owner 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 Owner's actual knowledge, threatened) against Owner nor any of its members, officers

or directors, nor any Affiliates of Owner, which would materially impair Owner's ability to perform its obligations in accordance with this Agreement.

(e) *No Suspensions/Debarment.* Neither Owner nor any of its members, officers or directors, nor, to the actual knowledge of Owner, any Affiliates of Owner 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 Owner 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) *Ownership.* The Owner represents and warrants to the Town that, as of the Effective Date of this Agreement, it owns fee simple title in and to the Property.

Section 14: Remedies. The Owner acknowledges and otherwise grants to the Town the right to enforce this Agreement in a judicial action against any person or other entity violating or attempting to violate this Agreement. Should the Town prevail in any such enforcement action, it shall be entitled to costs of enforcement, including reasonable attorney's fees. The Town's rights and remedies set forth in this Section 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 Owner'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 15: Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which counterparts together shall constitute but one and the same instrument.

Section 16: 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 18: 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 19: 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 20: Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of South Carolina.

Section 21: No Implied Liabilities or Duties. THIS AGREEMENT SHALL NOT EXPRESSLY OR IMPLIEDLY CREATE ANY DUTY OF CARE TO ANY OWNER, PERMITTEE OR INVITEE. The Parties intend that the rights, obligations, and covenants in this Agreement shall be exclusively enforced by the Town and Owner and their respective successors and assigns. There are no third party beneficiaries to this Agreement.

Section 22: 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 23: Entire Agreement; Modification. This Agreement constitutes the entire agreement between Owner 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 24: 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.

{Remainder of Page Intentionally Omitted. Signature Page(s) and Exhibit(s) to Follow.}

EXHIBIT E
SCHEDULE OF PERFORMANCE

ITEM	CALCULATION	DATE ¹²
Effective Date ³	Date of execution of Agreement	August 5, 2022
Order Title Commitment	Within 5 days of the Effective Date	August 12, 2022
Due Diligence Period /Phase 1	Expires 120 days from the Effective Date	April 1, 2023
Review Period	Expires 60 days after expiration of Due Diligence Period	May 31, 2023
Response Period	Expires 30 days after expiration of the Review Period	July 30, 2023
Closing Date	30 days after expiration of the Response Period	August 29, 2023
Site Preparation Period	Expires 150 days after the Closing Date	February 25, 2024
Construction Period	Expires 360 days after expiration of Site Preparation Period	February 22, 2025

¹ *Agreement*, §§ 2.2 & 2.3. The dates set forth herein are subject to one or more thirty (30) day extensions as set forth in the Agreement.

² *Agreement*, § 11.22. 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.

³ *Agreement*, § 11.21.

FIRST ADDENDUM TO THE
MASTER AGREEMENT FOR THE DEVELOPMENT OF AFFORDABLE HOUSING
(1095 MAY RIVER ROAD; BLUFFTON, SOUTH CAROLINA)

THIS FIRST ADDENDUM TO THE MASTER AGREEMENT FOR THE DEVELOPMENT OF AFFORDABLE HOUSING ("Addendum") is entered into as of this 8th day of August, 2023, by and between WORKFORCE STATE OF MIND, LLC, a South Carolina limited liability company (the "Developer") and THE TOWN OF BLUFFTON, 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, on August 5, 2022, the Parties entered into that certain "*Master Agreement for the Development of Affordable Housing*" (the "*Agreement*") regarding the development and use of certain real property owned by the Town and located at 1095 May River Road in Bluffton, South Carolina, with such real property more particularly described in the Agreement; and,

WHEREAS, Section 4.5(d) of the Agreement states that the Developer shall include within the Project Budget an appropriate amount of Common Area Reserve Funding for the future maintenance of all common areas, amenities and road rights-of-way to be constructed as part of the Project, or, in the alternative, that the Parties may agree for the Developer to dedicate and convey all of the Project's Common Areas to the Town; and,

WHEREAS, the Town recognizes that accepting title to the Common Areas will help facilitate the development and construction of Affordable Housing within Beaufort County; and,

WHEREAS, the Town has agreed to accept a donation of the Common Areas once completed upon the Developer satisfying all terms and conditions set forth within this Addendum.

NOW, THEREFORE, in consideration of the mutual covenants and promises made by and between the parties hereto made, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. **Incorporation of Recitals.** The above recitals are hereby incorporated herein as if restated fully and are hereby made an integral part hereof so that their contents are a substantive part of this Addendum.

Section 2. **Capitalized Terms.** Any and all capitalized terms used but not otherwise defined in this Addendum shall have the meanings ascribed to such terms in the Agreement.

Section 3. **Acceptance of Common Areas.** Upon the Completion of the Common Areas, the Developer shall convey the Common Areas to the Town by warranty deed in recordable form and subject only to those exceptions identified in Section 5.3 of the Agreement. Upon acceptance of title to the Common Areas, the Town agrees to maintain the same in a similar condition to analogous Town-owned property. As a prerequisite to the Town's acceptance of the Common Area, the Town may require that the Developer provide the Town with a bond in an amount equal to the construction costs of the Common Areas, with surety and conditions satisfactory to the Town, as a warranty for a period of two (2) years. The warranty shall pertain to the design and construction of the rights-of-way,

stormwater systems, and any other Improvements located within the Common Areas, in accordance with the Town's standards and to insure their satisfactory performance during this warranty period. The warranty period shall commence once the Town accepts delivery of title to the Common Areas. The Developer shall not be responsible for repairing damage done to the Common Areas subsequent to the Town's acceptance thereof, unless such damage is the result of design or construction failure or is caused by the actions of the Developer or the Consultants. Nothing within the foregoing section is intended to nor shall be deemed to obligate the Town to maintain, improve, or otherwise perform public services on privately-owned property, whether such property is part of the Project or not.

Section 4. **Affordability Covenants.** The Affordability Covenants originally attached to the Agreement as Exhibit D shall be replaced, in full, with the Affordability Covenants attached hereto as **REVISED EXHIBIT "D"** (the "*Revised Affordability Covenants*"). All references to the Affordability Covenants in the Agreement and the exhibits thereto shall mean and refer to the Revised Affordability Covenants.

Section 5. **Schedule of Performance.** The Schedule of Performance originally attached to the Agreement as Exhibit E shall be replaced, in full, with the revised Schedule of Performance attached hereto as **REVISED EXHIBIT "E"** (the "*Revised Schedule of Performance*"). All references to the Schedule of Performance in the Agreement and the exhibits thereto shall mean and refer to the Revised Schedule of Performance.

Section 6. **Ratification and Confirmation of All Other Terms of the Agreement.** In all others respects, the said Agreement, to the extent not inconsistent with the terms of this Addendum, remains unchanged. For the convenience of the parties hereto, this Addendum may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

{Remainder of Page Intentionally Omitted. Signature Page(s) and Exhibit(s) to Follow.}

IN WITNESS WHEREOF, Developer and Town have hereunder affixed their signatures to this Addendum, all as of the 8th day of August, 2023.

DEVELOPER

WORKFORCE STATE OF MIND, LLC, a South Carolina limited liability company

By: 

Name: WILLIAM HERBKERSMAN

Its: PRESIDENT

TOWN

TOWN OF BLUFFTON, a South Carolina municipal corporation

By: 

Name: STEPHEN STEESE

Its: TOWN MANAGER