TOWN COUNCIL

STAFF REPORT
Executive Department

MEETING DATE:	August 13, 2024
PROJECT:	Consideration of an Approval to Authorize a Contract Amendment to the Master Agreement for the Development of Commercial Property Within the Buckwalter Multi County Industrial Park (Fiscal Impact $625,000.00)
PROJECT MANAGER:	Chris Forster, MPA, CPFO, CGFM, Assistant Town Manager

RECOMMENDATION:

Request for the Town Council to approve an amendment to the Master Agreement with Parkway Commons I, LLC regarding the development and transfer in ownership of parcels within the Buckwalter Multi County Industrial Park to increase the not to exceed amount from $3.5 million to $4.125 million to cover actual quoted costs for the sitework and infrastructure improvements required.

BACKGROUND:

Buckwalter Place Multi County Industrial Park

Since 2005, the Town of Bluffton has acquired 34.53 acres within the Buckwalter Place Multi-County Industrial Park through a property exchange and land purchases primarily funded with Utility Tax Credit dollars. The total spent for this area amounts to $34,318 per acre.

On May 11, 2016, the Town of Bluffton sold 3.13 acres of Town owned property within Buckwalter Place to eviCore healthcare for $275,000 or $87,859 per acre. The property conveyed consists of two point three five (2.35) acres of undeveloped property as well as point seven eight (0.78) acres of adjacent right-of-way (CareCore Drive)

Past Prospects

In December of 2020 Project Mercury proposed to relocate a technology and communications headquarters to Buckwalter. It planned to create and relocate 125 jobs at an average salary of $80,500. The company was bought out and they abandoned this project.

In 2022 Project Comida looked to locate a food manufacturing facility in Buckwalter. It planned to create 40 jobs at an average salary of $66,262. The company determined the site did not have enough acreage to accommodate future growth and began looking for land elsewhere.

Project TD (Parkway Commons I,LLC)

The Town of Bluffton released RFP 2023-62, Development of Buckwalter Commerce Park. The successful bidder entered into a Master Agreement with the Town on October 30, 2023. The developer will develop 50,100 square feet of class A office and light industrial warehouse space. The development will consist of three buildings. Two buildings will consist of class A office and light industrial warehouse space to meet demand for a growing service-based industry. The third building will serve as landing pad space for economic development and space for a new childcare facility.

The developer will develop the entirety of the undeveloped portion of the Town owned Buckwalter parcel(s). The Town agreed to spend $3.5 million in buildout of the infrastructure, utilities and parking as had already been approved in the budget. The developer will invest over $7 million. In return for the Town's investment, ownership of approximately 14,400 square feet of landing pad and daycare space would transfer to the DRCI.

DISCUSSION:

The developer received three separate quotes from civil and construction contractors. Expected costs came in over$1.2 million than what was originally projected for site work and building 100 construction and upfit. The developer has agreed to split the difference. It is recommended the town increase the agreed not to exceed amount from $3.5 million to $4.125 million. The town recently received a $130,000 grant from BCEDC and another $1,000,000 grant from the SC Power Team. Additional grant opportunities are being explored.

NEXT STEPS:

If Council approves, the Town Manager will execute the amendment to the Master Agreement.

ATTACHMENTS:

1. Master Agreement
2. Motion

MASTER AGREEMENT FOR THE DEVELOPMENT OF COMMERCIAL PROPERTY
(BUCKWALTER PLACE; BLUFFTON, SOUTH CAROLINA)

THIS MASTER AGREEMENT FOR THE DEVELOPMENT OF COMMERCIAL PROPERTY ("*Agreement*") is entered into as of this 30th day of October, 2023, by and between PARKWAY COMMONS I 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 Town is the record owner of those certain parcels of real property located within the Town of Bluffton, Beaufort County, South Carolina, 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 a commercial condominium regime on the Properties, consisting of three buildings and associated infrastructure, as more fully set forth on the Conceptual Plan attached as **EXHIBIT "B"** hereto and which is fully incorporated herein by reference (collectively, the "*Project*"); 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, 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 Costs 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;

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 Town, as owner of the Properties, desires to have constructed on the Properties a commercial condominium development, consisting of three (3) buildings and at least three (3) Units, along with corresponding infrastructure, as generally depicted on **EXHIBIT B** hereto (the "*Conceptual Plan*"), with one (1) building to be conveyed to the DRCI, as defined below, upon the

terms and conditions set forth herein, and the remaining two (2) buildings to be privately owned and operated as commercial enterprises (the "*Project*"). The Project is intended to significantly contribute to the stimulation and encouragement of business growth and commercial activity within the Town, to establish more opportunities for gainful and meaningful employment for Town and Beaufort County residents, and to create an asset through which the Don Ryan Center for Innovation, Inc., a South Carolina nonprofit corporation and the Town's business incubator (the "*DRCI*"), may become financially self-sufficient. To efficiently use limited public resources while minimizing risk of loss, the Parties intend for the Project to be developed in phases with the satisfactory completion of each phase triggering certain obligations.

(a) *Due Diligence Phase.* The Developer shall be responsible for conducting all due diligence on the Properties pursuant to **Section 3.1**, including, but not limited to title examination, surveys, geotechnical evaluations, environmental assessments, site design, preparation of site engineering plans and specifications, preparation of architectural plans and specifications, preparation of budget and construction schedule, securing project financing, obtaining acting as agent for the Town all permits and approvals necessary for construction of infrastructure and buildings, preparation of the condominium plat and Master Deed and obtaining the approval of all of said items by the Town (the "*Due Diligence Items*"). Upon approval of the Due Diligence Items, the Developer and the Town shall amend this Agreement to incorporate the Due Diligence Items by reference, in which case no material changes or adjustments to the Due Diligence Items shall be made without the prior written consent of the parties, said consent not to be unreasonably withheld or delayed.

(b) *Phase One.* The Developer shall be responsible for preparing the Properties for construction by installing the Infrastructure Improvements, which shall include grading and relocation/abandonment of existing utilities, and the construction of all new or improved Infrastructure Improvements necessary for the eventual construction of the Buildings 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 Plans and Specifications. During Phase One, the Town shall reimburse the Developer for no more than $3,500,000.00 of Eligible Costs actually incurred and paid by the Developer in completing the Phase One Developer Services set forth herein. Upon the satisfactory completion of the Phase One Developer Services, as to be determined in the sole and absolute discretion of the Town, and the Town's decision to move forward under this Agreement with the Developer, the Town shall transfer title for the Properties (as subdivided) to the Developer for nominal consideration, subject to certain conditions and exceptions. The "*Phase One Period*" shall be defined as commencing on the Effective Date and terminating on the Closing Date.

(c) *Phase Two.* Developer shall have one (1) year from the Closing Date to commence construction of the Project in strict accordance with the Plans and Specifications, two (2) years from the Closing Date to obtain a Certificate of Compliance for Unit 1, and four (4) years from the Closing Date to achieve Final Completion for the Project. No more than thirty (30) days after the Final Completion Date, the Developer shall provide a full itemized accounting of all Costs incurred and actually paid by Developer for the development and construction of the Project, exclusive of those Eligible Costs for which the Developer has been or will be reimbursed by the Town, and should such amounts be less than $7,000,000.00, the Developer shall reimburse the Town for the difference. No more than sixty (60) days after receiving the Certificate of Compliance for Unit 1, the Developer shall convey title for Unit 1 (as defined within the Master Deed) with corresponding rights in the common elements of the

Regime to the DRCI. The "*Phase Two Period*" shall be defined as commencing on the day after the Closing Date and terminating on the DRCI Closing Date.

(c) *Phase Three*. The Developer shall thereafter be responsible for finding suitable tenants or purchasers of the remaining Units in the Regime and shall use good faith efforts in finding tenants or purchasers that will collectively employ at least one hundred (100) full-time employees.

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 following meanings.

(a) *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. 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.

(b) *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.

(c) *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 to the scope or specifications of the Project to the extent permitted under the Agreement, subject however to the Town's absolute approval.

(d) *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.

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

(f) *Closing Date* shall mean the date on which the Closing occurs, as provided in the Agreement.

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

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

(i) *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.

(j) *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.

(k) *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.

(l) *Eligible Costs* shall mean third-party Costs actually incurred by the Developer after the Effective Date for (i) Due Diligence Items, (ii) Phase One Developer Services, and (iii) upfits and Town-required improvements to Unit 1; provided, however, any Eligible Costs incurred utilizing any Affiliate of Developer are subject to the approval of the Town in its sole and absolute discretion.

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

(n) *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.

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

(p) *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*").

(q) *Final Completion* shall mean the point in time when all of the following shall have occurred: (i) issuance of a permanent certificate of compliance 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.

(r) *Final Completion Date* shall mean that date upon which Final Completion of the Project has occurred.

(s) *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*").

(t) *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.

(u) *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.

(v) *Including* shall mean "including, but not limited to" and "include" or "includes" means "include, without limitation" or "includes, without limitation."

(w) *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.

(x) *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, grass, and any man-made elements, as well as irrigation and lighting.

(y) *Month* shall mean calendar month.

(z) *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.

(aa) *Or* shall the inclusive meaning represented by the phrase "and/or" unless the context clearly indicates otherwise.

(bb) *Owner* shall mean and have reference to, at any particular point in time, the owner in fee simple of a Unit, and the owner's heirs, successors and assigns.

(cc) *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.

(dd) *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.

(ee) *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.

(ff) *Uncontrollable Event* shall mean acts of God, labor disputes, casualty (whether or not insured), materials shortages, unpredictable supply chain delays, strikes, civil commotion, war, war-like operations, terrorist activities, sabotage, governmental or judicial regulations, delays caused by utility companies, moratoriums, 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.

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*. 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: Master Deed. The Parties recognize that on or about the Closing Date, the Town shall record against the Property that certain *Master Deed*, 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 Master Deed. The proposed *Master Deed* is attached hereto as **EXHIBIT "C"**. A summary of the essential terms of the Master Deed are as follows:

(a) *The Regime.* The Regime shall consist of the three buildings and associated infrastructure as generally set forth in the Conceptual Plan and as will be more thoroughly documented in the Master Deed, Site Plan, and Plans and Specifications (the "*Regime*"). Each Building shall consist of no less than one (1) Unit; provided, however, the Master Deed shall retain maximum flexibility for the owners of each Unit to repartition, subdivide or consolidate the interior portions of the Building so long as such efforts do not impair the structural integrity of the Buildings.

(b) *Unit 1.* Upon the Final Completion of the Regime, Unit 1 is intended to be transferred to the DRCI upon the terms and conditions set forth in this Agreement. Unit 1 shall consist of a 14,400 square foot, two-story Class A office/light industrial space in Building A (as shown on the Conceptual Plan) along with a regulatory compliant daycare space with the entirety of the Unit being defined as Building A. In addition, Building A shall include no less than the closest twenty-five (25) parking spaces as limited common elements intended for the exclusive use of Unit 1.

(c) *Common Elements.* The Common Elements of the Regime shall include the paved parking and drive areas on the Properties, all landscaped areas, sidewalks, and medians, and such infrastructure and utilities not designed or intended for the exclusive use of one of the Units.

(d) *Use Restrictions and Covenants.* Under the Master Deed, no provision therein shall be amended, modified, extended or terminated without the express written consent of the Town. Further, the Master Deed shall restrict the Properties so that the following uses are absolutely prohibited: restaurants, personal self-storage, adult-oriented businesses, religious organizations, smoke and/or vape shops, retail alcoholic beverage stores, and/or residential or lodging uses.

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.

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.

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 "D"** (the "*Schedule of Performance*") attached hereto and made an integral part hereof. Prior to the end of the Due Diligence Period, Exhibit "D" will be amended to include the Construction Schedule.

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 Phase One Period, the Closing Date, and/or the Final Completion Date) may be extended by one or more additional ninety (90) 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 (and/or the Town Manager's designee) 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. 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. In addition to regular reports, Developer shall 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.

(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. 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.

(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. 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: 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 2.7: Indemnification.

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

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

The provisions of this Section shall survive the Closing Date and the DRCI Closing Date.

Section 2.8: No Partnership or Joint Venture. The Parties recognize that the Agreement requires substantial contributions of services and resources by both Parties, and requires close coordination and consensus at all stages and on all elements, as well as the fact that the financial benefit for the Developer is significantly dependent upon successful implementation of the terms hereof. Notwithstanding the foregoing, nothing contained in this Agreement shall be deemed or construed to create a relationship of partners, co-venturers, or principal and agent between the Town and the Developer. The Developer shall have no power or authority to create any obligation on the part of the Town, as obligor, guarantor, or surety, with respect to any obligation to third parties incurred by the Developer.

ARTICLE III:
DUE DILIGENCE; TITLE REVIEW; SUBDIVISION

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*"). For the purposes of this Agreement, the "*Due Diligence Period*" shall commence on the Effective Date and terminate Two Hundred Seventy (270) calendar days thereafter.

Section 3.2: Property Assessments. Developer acknowledges that prior to the Effective Date, the Town delivered to Developer or Consultants any and all property assessments within the possession of the Town to the Developer.

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. During the Due Diligence Period, 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 Phase One 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 Phase One 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.

Section 3.7. Subdivision and Identification of Properties. During the Due Diligence Period, the Properties will be identified 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 "*Subdivision Survey*"). The Developer shall be responsible for the preparation and finalization of the Subdivision Survey of the Properties 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 Subdivision Survey being recorded with the Office of the Register of Deeds for Beaufort County, South Carolina. Notwithstanding the foregoing, the Parties acknowledge and agree that the Town shall retain the absolute and sole discretion to approve or disapprove the Subdivision Survey. Unless the context clearly indicates otherwise, for the purposes of this Agreement, the term "*Properties*" shall refer to and mean the Properties as depicted on the Subdivision Survey and which removes the Bluffton Police Department's Law Enforcement Center from the tract identified as Tax Map No. R610-030-000-1848-0000. Prior to the expiration of the Due Diligence Period, the Parties shall finalize the Subdivision Survey and cause the same to be recorded with the Office of the Register of Deeds for Beaufort County, South Carolina. The Parties recognize and acknowledge that the requirements of this Section are a material condition precedent to the Town's obligations under **Section 4.10** hereof and **Section 5.3** hereof.

Section 3.8: Design 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, and interior design of and material choices for the interior of Unit 1.

Section 3.9: 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 3.9 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 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 3.10: 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. 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.

Section 3.11: 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 commercial development or other development in size, scale, and prospective use of the Project based on the Plans and Specifications and shall identify with specificity the Developer Investment (as defined herein). 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 under the Master Deed (the "*Common Area Reserve Funding*"). 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.

Section 3.12: 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. 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. Prior to the expiration of the Due Diligence 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 Parties acknowledge and agree that this Agreement or a memorandum thereof may be recorded with the Office of the Register of Deeds for Beaufort County, South Carolina, on or before the expiration of the Closing Date and that this Agreement shall not be subordinated in priority to any lien (other than those pertaining to taxes and assessments), encumbrance, or other interests; provided, however, that the Town shall not unreasonably withhold its consent to subordinate the Town's lien rights hereunder to a mortgage and other security instruments required by Developer's intended Lender(s) so long as the subordination agreement(s) provide the Town with (*i*) adequate notice and rights to cure Developer defaults and (*ii*) rights to purchase from the Lender the Loan on a non-recourse, as-is basis for an amount equal to the total outstanding principal balance, all accrued interest and late charges, unpaid commitment fees, and un-reimbursed actual attorney's fees and costs incurred by Lender in connection with the Loan, attempts to collect the same, and its purchase by Town..

Section 3.13: 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 3.14: Town Contribution. During the Due Diligence Phase, the Town shall reimburse the Developer and/or pay such Eligible Costs directly incurred by Developer for Due Diligence Items actually rendered and satisfactorily completed on the Properties (the "*Town Due Diligence Contribution*") with the total amount of the Town Due Diligence Contribution not to exceed FIVE HUNDRED THOUSAND AND NO/100 ($500,000.00) DOLLARS. The allocation of the Town Due Diligence Contribution shall be determined in the sole and absolute discretion of the Town and may be paid through any combination of funding sources, including but not limited to Utility Tax Credits ("*UTCs*"). The Town shall reimburse Developer for Eligible Costs within thirty (30) calendar days after Developer provides satisfactory evidence of the Developer's payment of all Costs related thereto; provided, however, the total amount of Eligible Costs incurred during the Due Diligence Phase for which the Developer may receive reimbursement shall not exceed the Town Due Diligence Contribution. To receive reimbursement of any Eligible Costs, the Developer must request such reimbursement in writing from the Town and provide copies of project invoices that support the requested amount and evidence that such invoices have been paid-in-full. All requests for reimbursement of Eligible Costs incurred during the Due Diligence Phase shall be submitted to the Town no later than thirty (30) calendar days after the expiration of the Due Diligence Phase. The Developer agrees that neither the Town nor its agents, contractors, employees, and/or consultants shall be prohibited from accessing any portion of the Properties to verify that any Due Diligence Items for which the Developer seeks reimbursement from the Town has been completed to the Town's satisfaction.

Section 3.15: Termination for Convenience During Due Diligence Phase.

(a) *By the Town.* In addition to the ability to terminate this Agreement due to a Developer default as set forth in Article VII hereof, at any point during the Due Diligence Phase, the Town shall be entitled to terminate this Agreement without cause or reason by providing written notice of such termination to the Developer specifying that the termination is for convenience and the effective date of the termination. In such an event, (*i*) the Town shall reimburse the Developer for all Eligible Costs incurred during the Due Diligence Phase and through the date of termination with such amounts not to exceed the Town Due Diligence Contribution; (*ii*) the Town shall pay to the Developer an early termination fee of five (5%) of the Eligible Costs reimbursed to Developer, with such early termination fee having a maximum potential value of TWENTY-FIVE THOUSAND AND NO/100 ($25,000.00) DOLLARS (the "*Due Diligence Termination Fee*"), with both such aforementioned payments conditioned upon receipt of lien waivers from the Contractor, Consultants, Developer, and any subcontractors; and, (*iii*) the Developer shall strictly comply with all provisions of **Section 7.5** of this Agreement, including the delivery of all documents and records to the Town and the Assignment of all Permits and Plans and Specifications to the Town.

(b) *By the Developer.* During the Due Diligence Phase, the Developer shall have the right to terminate this Agreement for any reason or no reason, in which case (*i*) the Town shall reimburse Developer for all Eligible Costs incurred during the Due Diligence Phase and through the date of termination with such amounts not to exceed the Town Due Diligence Contribution and conditioned upon receipt of lien waivers from the Contractor, Consultants, Developer, and any subcontractors; and (*ii*) the Developer shall strictly comply with all provisions of **Section 7.5** of this Agreement, including the delivery of all documents and records to the Town and the Assignment of all Permits and Plans and Specifications to the Town. After the expiration of the Due Diligence Period, the Developer may only terminate this Agreement in accordance with **Section 7.2** hereof.

(c) *Effect of Termination for Convenience.* Upon termination for convenience during the Due Diligence Phase, this Agreement shall terminate, and the Parties shall have no further rights or obligations hereunder, except for certain indemnification obligations or other provisions that specifically survive termination of this Agreement.

Section 3.16: Intentionally Omitted.

Section 3.17: Contact Person. The Town shall appoint from time to time an employee of the Town to act as the primary contact person between the Developer and the Town for purposes of facilitating this Agreement.

ARTICLE IV:
PHASE ONE

Section 4.1: Phase One Developer Services. 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*" and shall include the Site Preparation Services (as defined herein).

Section 4.2: Site Preparation. During the Phase One Period and after obtaining all required Permits and Approvals, 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 Developer agrees to cooperate to ensure that the provisions of Section 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 4.3: Town Contribution. During the Phase One Period, the Town shall reimburse the Developer and/or pay such Eligible Costs directly incurred by Developer for Due Diligence Items, Site Preparation Services, including all Infrastructure Improvements, and the installation of building pads for all three buildings actually rendered and satisfactorily completed on the Properties and/or other Phase One Developer Services with the total amount of the Town Contribution not to exceed THREE MILLION, FIVE HUNDRED THOUSAND AND NO/100 ($3,500,000.00) DOLLARS less any amounts paid to Developer for Due Diligence Items pursuant to **Section 3.14** above (the "*Town Contribution*"). The allocation of the Town Contribution shall be determined in the sole and absolute discretion of the Town and may be paid through any combination of funding sources, including but not limited to Utility Tax Credits ("*UTCs*"). The Town shall reimburse Developer for the Town Contribution on a monthly basis within thirty (30) days after Developer provides satisfactory evidence of the Developer's payment of all Costs related thereto. To receive reimbursement of any Eligible Costs, the Developer must request such reimbursement in writing from the Town and provide copies of project invoices that support the requested amount and evidence that such invoices have been paid-in-full. All requests for reimbursement of Eligible Costs incurred during the Phase One Period shall be submitted to the Town at least thirty (30) days prior to the Closing Date. The Developer agrees that neither the Town nor its agents, contractors, employees, and/or consultants shall be prohibited from accessing any portion of the Properties to verify that any Phase One Developer Services for which the Developer seeks reimbursement from the Town has been completed in strict compliance with the Plans and Specifications and to the Town's satisfaction.

Section 4.4: Termination for Convenience. In addition to the ability to terminate this Agreement for convenience during the Due Diligence Phase and/or due to a Developer default as set forth in **Article VII** hereof, at any point during the Phase One Period but after the expiration of the Due Diligence Phase, the Town shall be entitled to terminate this Agreement upon written notice to the Developer specifying the effective date of the termination for any of the following reasons as determined in the commercially reasonable discretion of the Town: (*i*) the Project not progressing at a rate or performing in accordance with expectations; (*ii*) a lack of available Town funds to support the Project due to material changes in the financial status of the Town; (*iii*) failure of the Parties to reach a consensus on material aspects of the Plans and Specifications; or, (*iv*) failure of the Developer to receive financing terms reasonably acceptable to the Town. In such an event, (*i*) the Town shall reimburse the Developer for all Eligible Costs incurred during the Phase One Period and through the date of termination, exclusive of such Eligible Costs for which the Developer has already been reimbursed, with such amounts not to exceed the Town Contribution; (*ii*) the Town shall pay to the Developer an early termination fee of five (5%) of the total Eligible Costs reimbursed to Developer from the Effective Date through the date of termination, with such early termination fee having a

maximum potential value of ONE HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 ($175,000.00) DOLLARS (the "*Early Termination Fee*"), with both such aforementioned payments conditioned upon receipt of lien waivers from the Contractor, Consultants, Developer, and any subcontractors; and, (*iii*) the Developer shall strictly comply with all provisions of **Section 7.5** of this Agreement, including the delivery of all documents and records to the Town and the Assignment of all Permits and Plans and Specifications to the Town. Upon termination for convenience during the Phase One Period, this Agreement shall terminate, and the Parties shall have no further rights or obligations hereunder, except for certain indemnification obligations or other provisions that specifically survive termination of this Agreement.

ARTICLE V:
ASSIGNMENT & LAND TRANSFER

Section 5.1: Payment of All Costs. Prior to the expiration of the Phase One 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.

Section 5.2 Assignment of Plans and Permits. As a material inducement for the Town to pay the Town Contribution, on or before the expiration of the Phase One Period, the Developer shall collaterally 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, with such assignment to be triggered upon the termination of this Agreement in accordance with **Section 7.5** hereof (the "*Collateral 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 Properties or any portion thereof if applicable; and, the Master Deed. The Closing Date shall be the last day of the Phase One Period. The Town shall transfer the Property for recited nominal consideration of ten and no/100ths dollars, and for consideration of Developer's obligations hereunder, including, but not limited to the obligation to construct Unit 1 and convey it to DRCI for nominal consideration within sixty (60) calendar days of receipt of the Certificate of Compliance for Unit 1.

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 3.14, Section 4.3** and/or **Section 5.2** 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 Due Diligence Items, or 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 5.2** hereof if (i) the Town and the Developer (or any Lender) are unable to agree on superiority of the Master Deed 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*") and specific and general assignments as required of all entitlements issued to the Town for the Property. 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 shall survive Closing. Developer hereby acknowledges and agrees that the provisions of this Section 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's agreement to this Section. Notwithstanding the foregoing, the Town covenants and agrees not to take any action after the Due Diligence Period that would void or materially change the Due Diligence Items that have been incorporated into this Agreement by amendment, without Developer's prior written consent.

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 Master Deed against the Property at any point after the Due Diligence Period 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.

ARTICLE VI:
CONSTRUCTION; CONVEYANCE OF UNIT TO DRCI

Section 6.1. Construction of the Project. During the Phase Two 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 during the Phase Two 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 6.1** are intended to set forth the general obligations of the Parties during the Phase Two 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.

(a) *Minimum Additional Investment in Project.* The Parties recognize that the goal of the Project is to create new commercial units suitable for multi-function business operations for the potential future employment of no less than one hundred (100) full-time employees. In order to construct the Project in a manner reasonably sufficient to attract qualified businesses and employers, the Developer is committed to investing no less than SEVEN MILLION AND NO/100 ($7,000,000.00) DOLLARS (including the Developer's equity contribution and any financing obtained by Developer) (the "*Minimum Developer Investment*") into the construction and development of the Project, with such Minimum Developer Investment being exclusive of (i) the entirety of the maximum potential Town Contribution, and (ii) any Costs paid or made payable directly to Developer or its Affiliates.

(b) *Clawback.* Within thirty (30) days of Final Completion for the Project, the Developer shall provide the Town with copies of project invoices that show that the Developer has contributed the entirety of the Minimum Developer Investment into the Project and evidence that such invoices have been paid-in-full. If the Developer fails to provide such documentation to the Town or if the documentation reveals that less than all of the Minimum Developer Investment has been contributed by the Developer in the Project, the Developer hereby agrees to immediately pay to the Town the difference between the Minimum Developer Investment and the amount actually invested into the Project by the Developer exclusive of (i) the entirety of the maximum potential Town Contribution, and (ii) any Costs paid or made payable directly to Developer or its Affiliates.

(c) *Additional Eligible Costs.* At the same time as the delivery of the project invoices set forth in **Section 6.1(b)**, the Developer shall also submit to the Town all requests for reimbursement from the Town for any Eligible Costs for which reimbursement has not been provided under **Section 3.14 or 4.3**. Nothing in this Section shall be deemed or construed to raise the amount of the total Town Contribution as set forth in this Agreement. The payment of any Eligible Costs shall be determined in the sole and absolute discretion of the Town and may be paid through any combination of funding sources. The Town shall retain the right to reserve payment of any portion of the Town Contribution until such time as the Developer provides satisfactory evidence of the Developer's payment of all Costs related thereto, as shall be determined in the commercially reasonable discretion of the Town. To receive reimbursement of any Eligible Costs, the Developer must request such reimbursement in writing from the Town and provide copies of project invoices that support the requested amount and evidence that such invoices have been paid-in-full. Developer agrees that neither the Town nor its agents, contractors, employees, and/or consultants shall be prohibited from accessing any portion of the Properties to verify that any Work for which the Developer seeks reimbursement from the Town has been completed in strict compliance with the Plans and Specifications and to the Town's satisfaction.

(d) *Priority of DRCI Building.* The Developer acknowledges and agrees that the construction and completion of Unit 1 and the Common Elements is an essential and material

inducement to the Town's entry into this Agreement. As such, the Developer acknowledges, agrees, and hereby authorizes the Town to withhold and/or delay the issuance of any Certificates of Compliance for any portion of the Project until such time as a final Certificate of Compliance for Unit 1 has been issued.

Section 6.2: Conveyance of Unit 1 to DRCI. Within sixty (60) days of the issuance of the final Certificate of Compliance for Unit 1, the Developer shall convey, transfer, and deed over to the DRCI all of the Developer's title and interests in Unit 1 and the appropriate percentage interests in the common elements of the Regime for the sum total of $10.00 (the "*DRCI Closing Date*"). Title to Unit 1 shall be subject only to the Permitted Encumbrances, including the Master Deed. Prior to the transfer of title, the Town, acting on its own behalf or on behalf of DRCI, shall confirm that Unit 1 was built in accordance with all applicable Plans and Specifications approved by the Town. The provisions of **Sections 5.3, 5.5, 5.6, 5.8, 5.9**, and **5.10** shall apply to the DRCI Closing.

Section 6.3: Post-Construction Management and Marketing of Units. After Final Completion of the Project and the conveyance of Unit 1 to DRCI, the Developer shall be responsible for finding suitable tenants and/or purchasers of the remaining Units in the Regime. In doing so, the Developer shall use best faith efforts to find and select tenants/purchasers that intend to employ multiple full-time employees with an expected cumulative goal of one hundred (100) Persons being employed full-time by businesses located on the Properties. Further, the Developer shall ensure that no prospective purchaser or tenant's proposed use of a Unit is in conflict with the use provisions of the Master Deed or the Town of Bluffton's applicable zoning ordinances. 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, 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. Notwithstanding the foregoing, so long as Unit 1 has been conveyed to the DRCI, the Town approves the sale and/or transfer of any and all other condominium units in the Project to third parties.

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), to receive reimbursement from the Town for all Eligible Costs incurred by Developer, in which case and upon payment of said amounts, this Agreement shall automatically terminate and neither party hereto shall have any further rights, obligations, claims, or liabilities hereunder, except for such provisions, if any, which are made to survive the termination of this Agreement 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.

(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 provided below.

(a) *Notice of Event of Default.* If an Event of Default occurs under **Section 7.3(g)** through **Section 7.3(i)** (and a cure period is required thereunder), 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) *Right of Town to Cure Defaults.* In the event of a default or breach by Developer of an obligation to Lender prior to Final Completion, the Town may cure the default. In such an event, the Town shall be entitled to reimbursement from the Developer for all Costs and expenses incurred by the Town in curing said default and shall be entitled to record a lien against the Property to the extent of such Costs and expenses, which lien shall automatically be subordinate to and subject to the Lender's loan.

(c) *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, 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. Further, Developer agrees and acknowledges that the Town shall have the right to notify the Lender, if any, of any Event of Default and the Developer hereby agrees and covenants that it shall not draw nor request from Lender any additional draws or funds pursuant to any loan agreement or financing arrangement secured by a mortgage on the Property once Developer is notified of said Event of Default.

(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 except to the extent caused by the actions of the Town or the failure to act by the Town. 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 the 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.

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, or except to an affiliate owned or controlled by Developer, Timothy J. Dolnik, or Dolnik Management, LLC. 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 compliance 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. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of South Carolina.

Section 11.6. 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 as shown below) or if sent on a business day during the business hours of 9:00 a.m. until 7:00 p.m., eastern time, via email, if acknowledged by e-mail from at least one addressee, or, if a copy is sent by reputable overnight courier guaranteeing next business day delivery. 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:

Parkway Commons I, LLC
P.O. Box 314
Bluffton, SC 29910

Attn: Timothy J. Dolnik
E-mail: tjdolnik@dolnikmgmt.com

With copy to:

Robert B. Brannen, Jr., Esq.
BOUHAN FALLIGANT LLP
One West Park Avenue
Savannah, Georgia 31401
E-mail: Rbrannen@bouhan.com

Section 11.7. No Implied Liabilities or Duties. THIS AGREEMENT SHALL NOT EXPRESSLY OR IMPLIEDLY CREATE ANY DUTY OF CARE TO ANY OWNER, PERMITTEE OR INVITEE.

Section 11.8. 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 11.9. Time of the Essence. TIME IS OF THE ESSENCE AS TO ALL MATTERS UNDER THIS AGREEMENT.

Section 11.10. 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 11.11. 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. 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 11.12. 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 11.13. 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 11.14. 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 11.15. Severability. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

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

Section 11.17. 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 11.18. 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 11.19. 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 11.20. Effective Date. The effective date of this Agreement shall be the latter date of the execution dates below.

Section 11.21. 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.

[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 Agreement, all as of the 30th day of October, 2023.

DEVELOPER
PARKWAY COMMONS I LLC, a South Carolina limited liability company

By: Timothy J Dolnik
Name: TIMOTHY J DOLNIK
Its: MANAGER

TOWN
TOWN OF BLUFFTON, a South Carolina municipal corporation

By: _____
Name: STEPHEN STEESE
Its: TOWN MANAGER

EXHIBIT "D"

Schedule of Performance

ITEM	CALCULATION[1]	DATE [2]
Effective Date	Date of execution of Agreement	
Due Diligence Period	Expires 270 days from the Effective Date	
Phase One Period	Expires on Closing Date, 364 Days from Effective Date	
Closing Date	Last Day of the Phase One Period	
Phase Two Period	From Closing Date until Final Completion Date	
DRCI Closing Date	On or Before Two Years from Effective Date	
Final Completion	On or Before Four Years from Closing Date	

[1] The dates set forth herein are subject to one or more thirty (30) day extensions as set forth in the Agreement.

[2] 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.

Attachment 3

Recommended Motion

Consideration of a Contract Amendment to The Master Agreement For the Development of Town Owned Paracels Within the Buckwalter Multi County Industrial Park – Chris Forster, Assistant Town Manager

"I move to approve authorizing the Town Manager to enter into a contract amendment to the Master Agreement for the Development of Town Owned Commercial Property Within The Buckwalter Place Multi-County Commerce Park to increase the not-to-exceed amount with a fiscal impact of $625,000.00."