

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

THIS FIRST ADDENDUM TO THE MASTER AGREEMENT FOR THE DEVELOPMENT OF AFFORDABLE HOUSING (“*Addendum*”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between WORKFORCE STATE OF MIND, LLC, a South Carolina limited liability company (the “*Developer*”) and THE TOWN OF BLUFFTON, a South Carolina municipal corporation (the “*Town*”). The Developer and the Town may from time to time be referred to individually as a “*Party*” and collectively as the “*Parties*.”

WITNESSETH

WHEREAS, on August 5, 2022, the Parties entered into that certain “*Master Agreement for the Development of Affordable Housing*” (the “*Agreement*”) regarding the development and use of certain real property owned by the Town and located at 1095 May River Road in Bluffton, South Carolina, with such real property more particularly described in the Agreement; and,

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

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

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

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

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

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

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

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

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

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

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

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

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

**DEVELOPER**

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

**TOWN**

TOWN OF BLUFFTON, a South Carolina municipal corporation

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

Name: WILLIAM HERBKERSMAN

Its: PRESIDENT

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

Name: STEPHEN STEESE

Its: TOWN MANAGER

**REVISED EXHIBIT D**  
**(REVISED AFFORDABILITY COVENANTS)**

SPACE ABOVE RESERVED FOR RECORDING PURPOSES

**UPON RECORDING, PLEASE RETURN TO:**

TOWN OF BLUFFTON

**Attn:** Town Clerk

20 Bridge Street

Bluffton, South Carolina 29910

**PREPARED WITHOUT BENEFIT OF TITLE EXAMINATION BY:**

FINGER, MELNICK, BROOKS & LABRUCE, P.A.

**Attn:** E. Richardson LaBruce

Post Office Box 24005

Hilton Head Island, South Carolina 29925

STATE OF SOUTH CAROLINA	)	<b>AGREEMENT TO PROVIDE</b>
	)	<b>AFFORDABLE HOUSING AND</b>
	)	<b>DECLARATION OF RESTRICTIVE</b>
	)	<b>COVENANTS</b>
	)	<b>(Single Family Ownership)</b>
COUNTY OF BEAUFORT	)	(Parent Parcel R610-039-000-0498-0000)

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

**RECITALS**

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

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

WHEREAS, in consideration of the Town's payment of certain fees, the Town's financial contribution to the design and construction of the Project, and those other terms and provisions of that certain *Master Agreement for the Development of Affordable Housing (1095 May River Road; Bluffton, South Carolina)*, dated August 5, 2022, as amended, which is fully incorporated herein by reference, and as further set forth herein (collectively, the "*Master Agreement*"), the Owner has agreed to

designate all units developed on the Property as Affordable Units (as defined herein) available to Qualified Households (as defined herein) for an Affordable Price (as defined herein); and,

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

## **AGREEMENT**

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

Section 1: Recitals and Exhibits. The Recitals set forth above and the Exhibits attached to this Agreement are incorporated herein by reference as if set forth in their entirety herein.

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

Section 3: Definitions. The capitalized terms used in this Agreement shall, unless the context clearly requires otherwise or such terms are defined elsewhere herein, shall have the meanings set forth below:

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

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

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

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

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

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

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

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

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

*Term* shall mean that period of time beginning on the Effective Date hereof and terminating ninety-nine (99) years after the date of issuance of the Certificate of Occupancy for the last units constructed on the Property as part of the Project.

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

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

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

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

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

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

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

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

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

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

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

Section 5: Property Description. The real property subject to this Agreement is described in **EXHIBIT “A”** to this Agreement, as amended from time to time, and the appurtenant easements, covenants, conditions and restrictions contained within this Agreement shall run with the Property for the term hereof, and are intended to be commercial in nature, and are expressly assignable to successors-in-title or interest to the Affordable Units and the Property. Any person accepting any conveyance of title or interest to any portion of the Property shall be deemed to have accepted such title or interest subject to the terms and provisions of this Agreement. Each contract, deed, or other instrument affecting or conveying a portion of the Property or that portion of the Project or any part related to that residential building, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, or other instrument. All provisions of this Agreement, including without

limitations the use restrictions contained herein, shall apply to any and all occupants of an Affordable Unit, even if such occupants are not specifically mentioned or included on a deed thereof.

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

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

Section 8: Resale Only to Qualified Households. During the term hereof, neither the Property nor any Unit shall be sold, transferred, or conveyed to any Person other than in strict compliance with this Section.

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

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

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

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

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



in excess of the Resale Price.

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

(g) *Owner Required to Make Necessary Repairs at Transfer.* Owner shall be responsible for making all repairs to the Unit reasonably necessary to bring the Unit into compliance with this Agreement prior to the transfer of title to any Qualified Purchaser. The costs of said repairs shall be the sole responsibility of Owner prior to sale. Upon sale or transfer, Owner shall either (1) transfer the Unit with all originally purchased appliances or replacements in good working order or (2) provide prospective purchaser with cash at closing sufficient to purchase a comparable new appliance.

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

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

Section 10: Maintenance and Management of Project. The Town places prime importance on quality maintenance to ensure that all developments within the Town, which include affordable housing units, are not allowed to deteriorate due to below-average maintenance.

(a) Owner, its successors and assigns, shall maintain the Property and the Units in an attractive and orderly condition, including performance of repairs and periodic replacement of fixtures equivalent to at least the original quality and type.

(b) The Owner agrees to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition, subject to state and local drought restrictions) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials. The buildings now or hereafter located on the said premises shall be maintained in an attractive and sound condition and repairs as necessary to prevent damage to the building(s) or any part thereof shall be made promptly.

(c) The Property and the Units shall be kept free from trash, salvage, junk cars, rubbish, garbage, and other unsightly or offensive material.

(d) The Owner shall maintain flood insurance and “All Risk” insurance on the Property for the lesser of the replacement value and its insurable value.

(e) The Owner shall not demolish any part of the Project, whether in whole or in part, or substantially subtract from any real or personal property of the Project, without prior written approval from the Town or unless required by law.

(f) If a Unit or any portion of the Project shall be damaged, demolished, or destroyed, the Owner will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage, demolition, or destruction.

(g) The Town shall have the right to inspect the Property and the exterior portion of any Units on an annual basis at any reasonable time to insure compliance with these Covenants; provided, however, unless the Town reasonably believes an emergency situation exists, the Town shall provide the Owner with at least five (5) days prior written notice before the planned inspection. In addition thereto, when the Town receives a notice of intent to sell a Unit from Owner, the Town shall have the right to inspect the interior and exterior of the Unit to examine its condition prior to sale. If any negative conditions are discovered as part of an inspection of a Unit, the Town has the right to re-inspect the Unit until the negative conditions are resolved.

(h) The Owner shall not make any improvements to a Unit that would (i) affect is bedroom configuration, (ii) increase or decrease the number of structures on the Property, (iii) increase or decrease the square footage, footprint, or height of the Unit, or (iv) substantively change or alter the exterior façade of the Unit, unless such modifications or improvements are approved in advance and in writing by the Town.

In the event that the Owner shall breach any of the obligations contained in this Section, the Town shall have the right (but not the obligation) to enter the property to make repairs, to remove material and to otherwise correct the Owner’s breaches. The Owner shall promptly reimburse the Town upon written demand for the costs incurred by the Town to correct the Owner’s breaches under this Section and the Town shall have a continuing lien against the Unit or the Property (as applicable) in the amount of such costs until paid in full. Owner, its successors and assigns, shall be responsible for all management functions with respect to the Property and the Project.

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

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

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

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

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

(b) *Authorization; Enforceability.* Owner has taken all requisite action to enter into and deliver this Agreement and all requisite action to execute and deliver each and every document required to be executed and delivered by Owner under this Agreement. All terms of this Agreement are binding on Owner and are enforceable in accordance with their terms (except as such terms may be limited by (a) any applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar law affecting creditors' rights generally; (b) general principles of equity, whether considered in a proceeding in equity or at law; or (c) other provisions of this Agreement; and do not and will not result in a breach of the terms and conditions of, or constitute a default under or violate the organizational documents of Owner, or any other document, instrument, agreement, stipulation, judgment or order to which Owner is a party or by which Owner is bound.

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

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

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

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

(g) *Ownership.* The Owner represents and warrants to the Town that, as of the Effective Date of this Agreement, it owns fee simple title in and to the Property.

Section 14: Remedies. The Owner acknowledges and otherwise grants to the Town the right to enforce this Agreement in a judicial action against any person or other entity violating or attempting to violate this Agreement. Should the Town prevail in any such enforcement action, it shall be entitled to costs of enforcement, including reasonable attorney's fees. The Town's rights and remedies set forth in this Section are cumulative and in addition to its other rights and remedies in this Agreement and available at law or in equity, including but not limited to the right to seek specific performance of any of the Owner's obligations hereunder. The Town's exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. The Town's delay or failure to exercise or enforce any of its rights or remedies shall not constitute a waiver of any such rights or remedies. The Town will not be deemed to have waived any cause or right or remedy hereunder unless such waiver expressly is set forth in an instrument signed by the Town. If the Town waives in writing any cause, then such waiver shall not be construed as a waiver of any covenant or condition set forth in this Agreement except as to the specific circumstances described in such written waiver.

Section 15: Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which counterparts together shall constitute but one and the same instrument.

Section 16: No Waiver. Neither the failure of either Party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. Any party may waive the benefit of any provisions, contingency or condition for its benefit contained in this Agreement, but such waiver shall not be of any force or effect unless in writing and no such waiver shall be construed to be a continuing waiver.

Section 18: Americans With Disabilities Act. Any party undertaking construction of the Improvements pursuant to the terms of this Agreement or providing any Developer Service shall comply with applicable laws, including, but not limited to, the Americans With Disabilities Act.

Section 19: Paragraph Headings. Paragraph headings, where used herein, are inserted for convenience only and are not intended to be part of this Agreement or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer.

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

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

assigns. There are no third party beneficiaries to this Agreement. FURTHER, Owner understands and agrees that the relationship between Owner and Town is solely that of a property owner and affordable housing program administrator, and that the Town has no responsibility or duty to the Owner to select, review, inspect, supervise, pass judgment on, or inform the Owner of the quality, adequacy, or suitability of the Unit or any other matter. The Town does not owe a duty of care to protect the Owner against negligent, faulty, inadequate, or defective building or construction or any condition of the Unit; instead, all Owners and any prospective purchasers shall make their own investigations into these matters and hire appropriate professionals to assist in such investigations, to the extent deemed necessary by Owner or prospective purchasers. Owner acknowledges and agrees that neither Owner nor Owner's successors, heirs, or assigns shall ever claim, have, or assert any right or action against the Town for any loss, damage, or other matter arising out of or resulting from the condition of the Unit and will hold the Town harmless from any liability, loss or damage for these things.

Section 22: Binding on Successors. This Agreement shall be binding not only upon the Parties hereto but also upon their personal representatives, assigns, and other successors in interest.

Section 23: Entire Agreement; Modification. This Agreement constitutes the entire agreement between Owner and Town pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the Parties. This Agreement, including the exhibits hereto, may only be amended by a written document signed by each Party hereto. This Agreement, including the exhibits hereto, is the entire agreement between the parties relating to the subject matter. All prior or contemporaneous representations and negotiations are merged herein.

Section 24: Severability. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

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

**REVISED EXHIBIT E**  
**REVISED SCHEDULE OF PERFORMANCE**

ITEM	CALCULATION	DATE <sup>12</sup>
Effective Date <sup>3</sup>	Date of execution of Agreement	August 5, 2022
Order Title Commitment	Within 5 days of the Effective Date	August 12, 2022
Due Diligence Period /Phase 1	Expires 12 months from the Effective Date	August 5, 2023
Review Period	Expires 60 days after expiration of Due Diligence Period	October 5, 2023
Response Period	Expires 60 days after expiration of the Review Period	December 5, 2023
Closing Date	30 days after expiration of the Response Period	January 5, 2024
Site Preparation Period	Expires 150 days after the Closing Date	June 3, 2024
Construction Period	Expires 360 days after expiration of Site Preparation Period	May 28, 2025

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

<sup>2</sup> *Agreement*, § 11.22. In the event that any of the deadlines set forth herein end on a Saturday, Sunday or legal holiday, such deadline shall automatically be extended to the next business day which is not a Saturday, Sunday or legal holiday. The term “business days” as may be used herein shall mean all days which are not a Saturday, Sunday or legal holiday.

<sup>3</sup> *Agreement*, § 11.21.