

DEVELOPMENT AGREEMENT
BY AND BETWEEN
BEACH CATES CREEK, LLC
AND
TOWN OF HILLSBOROUGH, NORTH CAROLINA

_____, 2022

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AND
TOWN OF HILLSBOROUGH, NORTH CAROLINA**

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**DEVELOPMENT AGREEMENT
BY AND BETWEEN
BEACH CATES CREEK, LLC AND
TOWN OF HILLSBOROUGH, NORTH CAROLINA**

THIS DEVELOPMENT AGREEMENT (together with the Exhibits attached hereto, the "Agreement") is entered into effective as of the ____ day of _____, 2022 and effective as of ____ day of _____, 202_ (the "Effective Date"), by and between **Beach Cates Creek, LLC**, a South Carolina limited liability company (the "Owner") and the **TOWN OF HILLSBOROUGH**, a political subdivision of the State of North Carolina (the "Town"). The Owner and Town are sometimes separately referred to in this Agreement as a "party" or jointly referred to as the "parties."

RECITALS

WHEREAS, the North Carolina General Statutes Sections 160D-1001 through 160D-1012, as they exist on the Effective Date of this Agreement (collectively the "Act"), enables local governments of the State of North Carolina to enter into binding development agreements with entities intending to develop real property under certain conditions as set forth in the Act; and

WHEREAS, Owner is the Owner of that certain real property located in the Town of Hillsborough, Orange County, North Carolina known as Orange County PIN 9873153366 including approximately 60.146 +/- acres of Real Property; and

WHEREAS, the Town, acting by and through its Board of Commissioners, annexed the Real Property into the corporate limits of the Town of Hillsborough, North Carolina pursuant to Ordinance Number [_____] adopted on [_____] 2022, attached hereto and incorporated herein by reference as **Exhibit F**, and designated the Real Property for zoning purposes as partially Multi-Family District and partially Economic Development District, pursuant to Ordinance Number [_____] a copy of which is attached hereto as **Exhibit E** and incorporated herein by reference;

WHEREAS, this Agreement is being made and entered into between the Owner and the Town, under the terms of the Act, for the purpose of providing assurances to the Town that Owner will include affordable housing as part of the intended development upon the Real Property's annexation into the Town and for the purpose of providing assurances to the Owner that it may proceed with the development of the Real Property pursuant to the terms hereof, without encountering subsequent changes in the law which would affect the ability to develop the Real Property in accordance with the Current Regulations (hereinafter defined);

WHEREAS, pursuant to the Act, the Town conducted a public hearing regarding its consideration of this Agreement on [_____] 2022, after publishing and announcing notice, in accordance with the Act; and

WHEREAS, Board of Commissioners adopted Ordinance Number [_____] on [_____] 2022, (a) determining that this Agreement is consistent with the Act, the

Current Regulations, and the Town's Comprehensive Plan (hereinafter defined), and (b) approving this Agreement. A copy of the Ordinance is attached hereto as **Exhibit C**.

NOW THEREFORE, in consideration of the premises of this Agreement and the mutual benefits to the parties, the parties agree as follows:

1. **The Real Property**. The Real Property subject to this Agreement currently consists of approximately 60.146 +/- acres of Real Property. A legal description of the Real Property is set forth in **Exhibit A**, and the boundary lines of the Real Property are shown on the survey contained in **Exhibit A-1**.

2. **Definitions**. In this Agreement, unless the word or phrase is non-capitalized:

(a) **"Affordable Housing Deed"** means the Special Warranty Deed to the Affordable Housing Developer to be executed and recorded no later than _____.

(b) **"Affordable Housing Developer"** shall mean Beacon Management Corporation and/or its affiliates and subsidiaries.

(c) **"Affordable Housing Dwelling Units"** shall mean Dwelling Units that are made available only to income-qualified individuals whose income is no more than 60% of Area Median Income (AMI) as AMI is determined by the U.S. Department of Housing and Urban Development.

(d) **"Affordable Housing Tract"** means the part of the Real Property described on **Exhibit A-2**.

(e) **"Agreement"** means this Development Agreement, including the recitals and exhibits attached hereto.

(f) **"Comprehensive Plan"** means collectively the Town of Hillsborough Future Land Use Plan, Vision 2030, Strategic Growth Plan, Parks and Recreation Master Plan, Community Connectivity Plan, Churton Street Corridor Strategic Plan, U.S. 70/Cornelius Street Corridor Plan, and Comprehensive Sustainability Plan..

(g) **"Current Regulations"** means the Town of Hillsborough Unified Development Ordinance as last amended on _____.

(h) **"Density"** means the number of Dwelling Units per acre.

(i) **"Development"** means the planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into three or more parcels, and is intended by the Parties to include all uses of, activities upon or changes to the Real Property as are authorized by the Agreement.

"Development," as designated in a land or development permit, includes the planning for and all other activity customarily associated with it unless otherwise specified. When appropriate to the context, "Development" refers to the planning for or the act of developing or to

the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.

(j) **“Development Parcel”** means any tract of land on which Development may occur, including platted Lots and unplatted parcels, but excluding street rights-of-way.

(k) **“Development Permit”** includes a building permit, zoning permit, subdivision approval, rezoning certification, special exception, variance, certificate of occupancy and any other official action of Local Government having the effect of permitting the Project or use of property.

(l) **“Development Plan”** means the Property Development Plan attached hereto as **Exhibit D** and incorporated herein by reference.

(m) **“Dwelling Unit”** means one or more rooms, designed, occupied or intended for occupancy as separate living quarters, with cooking, sleeping and sanitary facilities provided within the dwelling unit. Dwelling Unit shall not include, however, hotel rooms or other facilities for transient short term stays, assisted living facilities, or other commercial properties.

(n) **“Facilities”** means major capital or community improvements including, but not limited to, transportation, sanitary sewer, solid waste, drainage, and potable water. The definition of Facilities shall not include, and the Owner is specifically exempted from, any Town requirement for the provision of facilities relating to public education, public health systems and facilities, libraries, parks, public housing, jails and other detention sites, courts, and police sites. Such exemptions shall not, however, exempt Owner from payment of applicable user fees for any such facilities. Said user fees shall be no greater than those charged to other property owners in the Town.

(o) **“Land Development Regulations”** mean ordinances and regulations enacted by the Town or the State of North Carolina for the regulation of any aspect of Development and includes the Town’s Unified Development Ordinance, subdivision, building construction, occupancy or sign regulations or any other regulations controlling the Development or use of property.

(p) **“Law”** means all ordinances, resolutions, regulations, comprehensive plans, Land Development Regulations, policies and rules, custom and usage (formal and informal) adopted by the Town affecting the Development of property and includes laws governing permitted uses of the property, governing density, and governing design, improvement, and construction standards and specifications.

(q) **“Local Government”** means any Town, municipality, special district, or governmental entity of the State, Town, municipality, or region established pursuant to law which exercises regulatory authority over, and grants Development Permits for land Development or which provides public Facilities.

(r) **“Lot”** means any Development Parcel identified on the Subdivision Plat recorded in the Orange County Register of Deeds Office.

(s) “**Owner**” means Beach Cates Creek, LLC and any successors in interest or successors in title and/or assignees by virtue of assignment or other instrument pursuant to Section 27 of this Agreement.

(t) “**Parties**” means the Owner and Town.

(u) “**Parcel**” means any of those tracts of Real Property that are identified on the Survey, attached hereto as **Exhibit A-1**, as same may be specifically identified by the filing of a subdivision application.

(v) “**Project**” is the Development that will occur within and upon the Real Property described in **Exhibit A**.

(w) “**Real Property**” is the real property referred to in Section 5 and includes any improvements or structures customarily regarded as part of real property.

(x) “**Subdivision Plat**” means that certain Subdivision Plat recorded in Book ___, Page ___ of the Orange County Registry and any future recorded graphic description of the Real Property, or part of the Real Property, prepared and approved in compliance with the Current Regulations, as modified in this Agreement.

(y) “**Term**” shall have the meaning set forth in Section 15 of this Agreement.

(z) “**Town**” means the Town of Hillsborough, North Carolina.

3. **Parties.** Parties to this Agreement are the Owner and the Town.

4. **Relationship of the Parties.** This Agreement creates a contractual relationship between the Parties. This Agreement is not intended to create, and does not create, the relationship of master/servant, principal/agent, independent contractor/employer, partnership, joint venture, or any other relationship where one party may be held responsible for acts of the other party. Further, this Agreement is not intended to create, nor does it create, a relationship whereby the conduct of the Owner constitutes “state action” for any purposes.

5. **Legal Description of the Real Property.** The Real Property which is the subject of this Agreement is described as follows:

(a) A legal description of the Real Property is set forth in **Exhibit A**.

(b) A survey of the Real Property is set forth in **Exhibit A-1**.

The Real Property currently consists of approximately 60.416 +/- acres, as more fully depicted on **Exhibit A-1**.

The Owner may notify the Town from time to time of property proposed to be added to the legal description of the Real Property by the filing of a legal description of such properties owned by Owner with the Town Clerk and the Planning Director; provided, however, that no other property shall be added to the Agreement unless: (1) the Development Plan is duly amended; and

(2) this Agreement is duly amended to add the legal description of the properties desired to be added to the legal description of the Real Property, pursuant to N.C. Gen. Stat. Section 160D-1001, et seq.

6. Intent of the Parties. The Town and the Owner agree that the burdens of this Agreement bind, and the benefits of this Agreement shall inure, to each of them and to their successors in interest and, in the case of the Owner, its successors in title and/or assigns. The Town and the Owner are entering into this Agreement in order to secure benefits and burdens referenced herein and as permitted by N.C. Gen. Stat. Section 160D-1001 et. seq. To that end, the Parties agree to cooperate fully with each other to accomplish the purpose of this Agreement during the Term of this Agreement.

7. Consistency with the Town's Comprehensive Plan and Land Development Regulations. This Agreement is consistent with the Town's Comprehensive Plan and the Current Regulations. Whenever expressed or implied substantive provisions of this Agreement are inconsistent with the applicable standards set forth in the Current Regulations, the standards set forth in the Current Regulations and the standards set forth in this Agreement shall, to the extent possible, be considered in *pari material* to give effect to both the Current Regulations and this Agreement; provided, however, that in the event of a conflict, the standards set forth in this Agreement shall govern. In the event of a dispute between the parties to this Agreement as to whether a provision of the Comprehensive Plan or Current Regulations is inconsistent with any expressed or implied substantive provisions of this Agreement, the parties must first submit such disputed interpretation to Board of Commissioners and must wait fourteen (14) days after such submittal before invoking the remedies afforded them under this Agreement.

8. Legislative Act. Any change in the standards established by this Agreement or to Laws pertaining to the same shall require the approval of the Board of Commissioners, subject to compliance with applicable statutory procedures and consistent with Section 9(a). This Agreement constitutes a legislative act of the Board of Commissioners. The Board of Commissioners adopted this Agreement only after following procedures required by N.C. Gen. Stat. Section 160D-1001, et seq. This Agreement shall not be construed to create a debt of the Town as referenced in N.C. Gen. Stat. Section 160D-1012.

9. Applicable Land Use Regulations.

(a) Applicable Laws and Land Development Regulations. Except as otherwise provided by this Agreement or by N.C. Gen. Stat. Section 160D-1001, et seq., the Laws applicable to Development of the Real Property, subject to this Agreement, are those in force at the time of execution of this Agreement, defined as the Current Regulations, attached hereto as **Exhibit B.** The Town shall not apply subsequently adopted Laws and Land Development Regulations to the Real Property or the Project for the Term of the Agreement except as provided by N.C. Gen. Stat. Sections 160D-1007(b) and 160D-1007(c). Nothing herein shall preclude Owner from agreeing to abide by such new Laws, regulations, or ordinances subsequently passed by the Town which it, in its sole discretion, deems appropriate; and in such case the Laws, regulations, or ordinances, so agreed to by Owner shall become part of the Current Regulations.

(b) Vested Rights. Subject to the provisions of subparagraph (a) above, all rights and prerogatives accorded the Owner by this Agreement shall immediately constitute vested rights for the Development of the Real Property consistent with the terms of this Agreement.

Subparagraph 9(a) of this Agreement does not abrogate any rights either preserved by N.C. Gen. Stat. Section 160D-1007 or that may have been vested pursuant to common law and otherwise in the absence of a development agreement.

10. Building Codes and Laws Other Than Land Use Regulations. The Owner, notwithstanding any provision which may be construed to the contrary in this Agreement, must comply with any building, housing, electrical, mechanical, plumbing, and gas and energy codes subsequently adopted by the Town or other governmental entity, as authorized by Applicable Law. This Agreement shall not be construed to supersede or contravene the requirements of any building, housing, electrical, mechanical, plumbing, and gas and energy codes subsequently adopted by the Town or other governmental entity, as authorized by Applicable Law. The provisions of this Agreement are not intended, nor should they be construed in any way, to alter or amend in any way the rights, duties and privileges of the Town to exercise governmental powers and pass laws not applicable to Development of the Real Property including, but not limited to, the power of eminent domain and the power to levy and collect taxes; provided, however, that Laws applicable to the Development of the Real Property shall be subject to Section 9(a).

11. Local Development Permits and Other Permits Needed. The Parties anticipate that the following local Development Permits and other regulatory permits will be needed to complete the Development of the Project: Site plan approvals, Zoning permits, plat approvals (preliminary, conditional and/or final), stormwater management permits, soil and erosion control permits, roads and drainage construction plan approvals, building permits, certificates of occupancy, and utility plan and construction drawing approval, water and sewer extension agreement, and operating permits.

The failure of this Agreement to address a particular permit, condition, term, or restriction does not relieve the Owner of the necessity of complying with the laws governing permit requirements, conditions, terms, or restrictions.

12. Affordable Housing. It is the intent of Owner, and Owner hereby agrees, that Owner will convey the Affordable Housing Tract to the Affordable Housing Developer by the recordation of the Affordable Housing Deed with the Orange County Register of Deeds no later than that date that is thirty (30) days after the Effective Date hereof. The Affordable Housing Deed shall include a deed restriction for a period of ninety-nine (99) years limiting the use of the Affordable Housing Tract to a use as Affordable Housing Dwelling Units. The Affordable Housing Deed shall also include a provision that should the Affordable Housing Developer fail to commence construction of the Affordable Housing Dwelling Units on the Affordable Housing Tract on that date that is five (5) years from the date the Affordable Housing Deed is recorded, the Affordable Housing Tract shall vest in the Town and the Town shall be permitted to use the Affordable Housing Tract for the use permitted by the deed restriction or for use as an expansion of Cates Creek Park.

13. Public Facilities. The Town and the Owner recognize and acknowledge that the following Facilities will be provided by the Town and/or the Owner:

(a) Private Roads. All private roads, if any, within the Real Property shall be constructed by the Owner or other parties and maintained by such party(ies), or dedicated for maintenance to other appropriate entities as shall be determined as site plans for the Project are approved by the Town. Unless set forth in this Agreement or the Town otherwise agrees, the Town will not be responsible for the construction or maintenance of any private roads within the Real Property.

(b) Potable Water. Potable water will be supplied to the Real Property by the Town, or some other legally constituted public or private provider allowed to operate in the Town. The Owner shall be responsible for all costs associated with extending water service to the Real Property. Upon satisfaction of all terms of the water and sewer extension agreement for the Project, formal acceptance of such improvements by the Town, and after expiration of any applicable warranty period for such improvements, the Town shall assume ownership of such improvements and shall be responsible for any maintenance or costs associated with water service within the Real Property.

(c) Sewage Treatment and Disposal. Sewage treatment and disposal will be provided by the Town or some other legally constituted public or private provider allowed to operate in the Town. The Owner shall be responsible for all costs associated with extending sewage improvements to the Real Property. Upon satisfaction of all terms of the water and sewer extension agreement for the Project, formal acceptance of such improvements by the Town, and after the expiration of any applicable warranty period for such improvements, the Town shall assume ownership of such improvements and shall be responsible for any treatment, maintenance or costs associated with sewage treatment within the Real Property.

(d) Recreation Services. The Town shall provide recreation services to the Property on the same basis as it provided to other similarly situated residents and businesses in the Town.

14. Schedule for Project Development.

(a) Commencement Date. The Project will be deemed to commence Development upon the Effective Date of this Agreement.

(b) Completion Date. The Owner projects that by the year 2030 the Project should be substantially completed (i.e., essentially all structures erected and/or all necessary infrastructure in place to serve the intended uses).

15. Term of the Agreement. The term of this Agreement shall be eight (8) years, commencing on the Effective Date (the "Term"); provided, however, that the Term of this Agreement may also be renewed upon approval of the Board of Commissioners.

16. Amending or Canceling the Agreement. Subject to the provisions of N.C. Gen. Stat. Sections 160D-1006(e) and 160D-1009, this Agreement may be amended or canceled in whole or in part only by written mutual consent of the Parties or by their successors in interest.

Any amendment to this Agreement shall comply with the provisions of N.C. Gen. Stat. Section 160D-1001, et seq. Any requirement of this Agreement requiring consent or approval of

one of the Parties shall not require amendment of this Agreement unless the text expressly requires amendment. Wherever said consent or approval is required, the same shall not be unreasonably withheld. A major modification of this Agreement shall occur only after public notice and a public hearing by the Town.

17. Modifying or Suspending the Agreement. In the event state or federal laws or regulations prevent or preclude compliance with one or more provisions of this Agreement, the pertinent provisions of this Agreement shall be modified or suspended as may be necessary to comply with the state or federal laws or regulations.

18. Periodic Review. The appropriate Town Administrator or their designee of the Town shall review the Project and this Agreement at least once every twenty-four (24) months, at which time the Owner shall demonstrate good-faith compliance with the terms of this Agreement.

If, as a result of its periodic review or at any other time, the Town finds and determines that the Owner has committed a material breach of the terms or conditions of this Agreement, the Town shall serve notice in writing upon the Owner setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the Owner a reasonable time in which to cure the material breach.

If the Owner fails to cure any material breach within the time given, then the Town unilaterally may terminate or modify this Agreement; provided that the Town has first given the Owner the opportunity: (1) to rebut the Town's finding and determination; or (2) to consent to amend this Agreement to meet the concerns of the Town with respect to the findings and determinations.

19. Severability. Subject to the provisions of N.C. Gen. Stat. Section 160D-1001 et. seq., if any word, phrase, sentence, paragraph or provision of this Agreement shall be finally adjudicated to be invalid, void, or illegal, it shall be deleted and in no way affect, impair, or invalidate any other provision hereof.

20. Merger. This Agreement, coupled with its Exhibits, which are incorporated herein by reference, shall state the final and complete expression of the Parties' intentions. In return for the respective rights, benefits, and burdens undertaken by the Parties, the Owner shall be, and is hereby, relieved of obligations imposed by future land development laws, ordinances and regulations, except those which may be specifically provided for herein.

The parties hereto agree to cooperate with each other to effectuate the provisions of this Agreement and to act reasonably and expeditiously in all performances required under the Agreement.

In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties hereby agree to cooperate in defending such action.

21. Conflicts of Law. This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina.

22. Remedies. Each Party recognizes that the other Party would suffer irreparable harm from a material breach of this Agreement and that no adequate remedy at law exists to enforce this Agreement. Consequently, the Parties agree that any nonbreaching Party who seeks enforcement of the Agreement is entitled to the remedies of injunction and specific performance but not to any other legal or equitable remedies including, but not limited to, damages; provided, however, the Owner shall not forfeit its right to just compensation for any violation by the Town of Owner's Fifth Amendment rights. The Town will look solely to the Owner as to any rights it may have against the Owner under this Agreement, and hereby waives any right to assert claims against limited partners or members of the Owner, and further agrees that no limited partner, member or agent of the Owner has any personal liability under this Agreement. Likewise, each Party agrees to look solely to the other Party's assets as to any rights it may have against the other Party under this Agreement, and hereby waives any right to assert claims for personal liability against individuals acting on behalf of each Party, including its members, managers, its Board of Commissioners members, agencies, boards, or commissions.

23. Recording. Within five (5) days after the Effective Date of this Agreement, the Owner shall record the agreement with Orange County Register of Deeds. The burdens of this Agreement are binding upon, and the benefits of this Agreement shall inure to, all successors in interest and assigns of the Parties to this Agreement.

24. Third Parties. Notwithstanding any provision herein to the contrary, this Agreement shall not be binding and shall have no force or effect as to persons or entities who are not Parties or successors and assigns to this Agreement.

25. Town Approval of Agreement. The Board of Commissioners has approved the Project and this Agreement under the process set forth in N.C. Gen. Stat. Sections 160D-1003 and 160D-1005 on the terms and conditions set forth in this Agreement.

26. Successors and Assigns.

(a) Binding Effect. This Agreement shall be binding on the successors and assigns of the Owner in the ownership or Development of any portion of the Real Property or the Project. A purchaser, lessee or other successor in interest of any portion of the Real Property shall be solely responsible for performance of Owner's obligations hereunder as to the portion or portions of the Real Property so transferred. Assignees of development tracts shall be required to execute a written acknowledgment accepting and agreeing to the Owner's obligations in this Agreement, said document to be in recordable form and provided to the Town at the time of the recording of any deed transferring a development tract. Following delivery of such documents Owner shall be released of any further liability or obligation with respect to said tract.

This paragraph shall not be construed to prevent Owner from obtaining indemnification of liability to the Town from third parties. Further, Owner shall not be required to notify the Town or obtain the Town's consent with regard to the sale of Lots in residential subdivisions or Lots in commercial areas which have been platted and approved in accordance with the terms of this Agreement.

This Agreement shall also be binding on the Town and all future Board of Commissioners for the duration of this Agreement, even if the Board of Commissioners members change.

(b) Transfer of Project. Owner shall be entitled to transfer any portion or all of the Real Property to a purchaser(s), subject to the following exceptions:

(i) Notice of Property Transfer. If the Owner transfers all or a portion of the Real Property to a purchaser who, by virtue of assignment or other instrument, becomes the “Owner” under and within the meaning of this Agreement, Owner shall notify the Town within thirty (30) days of said transfer by written notice and provide it a copy of the assignment of such status as the “Owner.”

(ii) Mortgage Lenders. Notwithstanding anything to the contrary contained herein, the exceptions to transfer contained in this Section shall not apply: (i) to any mortgage lender either as the result of foreclosure of any mortgage secured by any portion of the Real Property or any other transfer in lieu of foreclosure; (ii) to any third party purchaser at such a foreclosure; or (iii) to any third party purchaser of such mortgage lender’s interest subsequent to the mortgage lender’s acquiring ownership of any portion of the Real Property as set forth above. Furthermore, nothing contained herein shall prevent, hinder or delay any transfer or any portion of the Real Property to any such mortgage lender or subsequent purchaser. Except as set forth herein, any such mortgage lender or subsequent purchaser shall be bound by and shall receive the benefits from this Agreement as the successor in title to the Owner.

(c) Release of Owner. In the event of conveyance of all or a portion of the Real Property and compliance with the conditions set forth therein, the Owner shall be released from any further obligations with respect to this Agreement as to the portion of Real Property so transferred provided that the transferee has acknowledged in writing its agreement to be bound by the terms of this Agreement, and the transferee shall be substituted as the Owner under the Agreement as to the portion of the Real Property so transferred.

(d) Estoppel Certificate. Upon request in writing from an assignee or the Owner to the Town sent by certified or registered mail or publicly licensed message carrier, return receipt requested, the Town will provide a certificate (the “Certificate”) in recordable form that solely with regard to the portion of the Real Property described in the request, there are no violations or breaches of this Agreement, except as otherwise described in the Certificate. The Town will respond to such a request within ten (10) business days of the receipt of the request, and may employ such professional consultants, municipal, county and state agencies and staff as may be necessary to assure the truth and completeness of the statements in the Certificate. The reasonable costs and disbursements of private consultants will be paid by the person making the request.

The Certificate issued by the Town will be binding on the Town in accordance with the facts and statements contained therein as of its date and may be relied upon by all persons having notice thereof. No claim or action to enforce compliance with this Agreement may be brought against the Owner or its assignees properly holding rights hereunder, alleging any violation of the terms and covenants affecting such portion of the Real Property except as otherwise described in the Certificate.

If the Town does not respond to such request within ten (10) business days receipt thereof, the portion of the Real Property described in the request will be deemed in compliance with all of the covenants and terms of this Agreement. A certificate of such conclusion may be recorded by the Owner, including a copy of the request and the notice of receipt and it shall be binding on the Town as of its date. Such notice shall have the same effect as a Certificate issued by the Town under this Section.

27. General Terms and Conditions.

(a) Agreements to Run with the Land. This Agreement shall be recorded against the Real Property as described in Exhibit A hereto and shown on Exhibits A-1 attached hereto. The agreements contained herein shall be deemed to run with the land. The burdens of this Agreement are binding upon, and the benefits of the Agreement shall inure to, all successors in interest to the Parties to the Agreement.

(b) Construction of Agreement. This Agreement should be construed so as to effectuate the public purpose of settlement of disputes, while protecting the public health, safety and welfare.

(c) Mutual Releases. At the time of, and subject to (i) the expiration of any applicable appeal period with respect to the approval of this Agreement without any appeal having been filed or (ii) in the event an appeal is filed with respect to an approval, the final determination of any court upholding this Agreement, whichever occurs later, and excepting the parties' respective rights and obligations under this Agreement, Owner, on behalf of itself and Owner's members, officers, directors, employees, agents, attorneys, and consultants, hereby releases the Town and the Town's board of commissioners, officials, employees, agents, attorneys and consultants, and the Town, on behalf of itself and the Town's board of commissioners, officials, employees, agents, attorneys and consultants, hereby releases Owner and Owner's members, officers, directors, employees, agents, attorneys and consultants, from and against any and all claims, demands, liabilities, costs, expenses of whatever nature, whether known or unknown, and whether liquidated or contingent, arising on or before the date of this Agreement in connection with the Real Property or the application, processing or approval of the Project; provided, however, that each party shall not be released from its continuing obligation to comply with the law, including the Current Regulations.

(d) State and Federal Law. The Parties agree, intend, and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. In the event state or federal laws or regulations prevent or preclude compliance with one or more provisions of this Agreement, the provisions of this Agreement shall be modified or suspended as may be necessary to comply with state or federal laws or regulations. The Parties further agree that if any provision of this Agreement is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect.

(e) No Waiver. Failure of a Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future time said right or any other right it may have hereunder. Unless this Agreement is

amended by vote of the Board of Commissioners taken with the same formality as the vote approving this Agreement, no officer, official or agent of the Town has the power to amend, modify or alter this Agreement or waive any of its conditions as to bind the Town by making any promise or representation contained herein. Any amendments are subject to Section 16 and 17 herein.

(f) Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both Parties to this Agreement.

(g) Attorney's Fees. Should any Party hereto employ an attorney for the purpose of enforcing this Agreement, or any judgment based on this Agreement, for any reason or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeal or rehearings, the prevailing Party shall be entitled to receive from the other party thereto reimbursement for all reasonable attorneys' fees and all costs and expenses. Should any judgment or final order be issued in that proceeding, said reimbursement shall be specified therein.

(h) Notices. All notices hereunder shall be given in writing by certified mail, postage prepaid, at the following addresses:

To the Town: Mayor of the Town of Hillsborough

With copy to: The Brough Law Firm, PLLC
PO Box 2388
Chapel Hill, NC 27514
Attention: Robert Hornik

To the Owner: Beach Cates Creek, LLC
320 Broad Street, Suite 600
Charleston, South Carolina 29401
Attention: John Reyna

With copy to: Nexsen Pruet, PLLC
800 Green Valley Road, Suite 500
Greensboro, NC 27408
Attn: Brian T. Pearce, Esq.

(i) Execution of Agreement. This Agreement may be executed in multiple parts as originals or by facsimile copies of executed originals; provided, however, if executed and evidence of execution is made by facsimile copy, then an original shall be provided to the other party within seven (7) days of receipt of said facsimile copy.

[SEPARATE SIGNATURE PAGES ATTACHED]

DRAFT

IN WITNESS WHEREOF, this Agreement has been executed by the Parties on the day and year first above written.

Witness:

TOWN OF HILLSBOROUGH

By: _____
_____, Mayor

Attest: _____
_____, Clerk of Council

STATE OF NORTH CAROLINA)
COUNTY OF ORANGE)

ACKNOWLEDGMENT

I, _____, Notary of the Public of the State of North Carolina, do hereby certify that the Town of Hillsborough, by _____, its Mayor and _____ its Clerk of Council personally appeared this ____ day of _____, 2022, and acknowledged the execution of the foregoing instrument.

Notary Public for North Carolina

Print Name: _____

My Commission Expires: _____

IN WITNESS WHEREOF, this Agreement has been executed by the Parties on the day and year first above written.

BEACH CATES CREEK, LLC, a South
Caroline limited liability company

By: _____
Name: _____
Title: _____

STATE OF SOUTH CAROLINA)
County of _____)

ACKNOWLEDGMENT

I, the undersigned Notary Public for the state of South Carolina, do hereby certify that _____ as _____ of Beach Cates Creek, LLC, a South Carolina limited liability company, who is personally known to me, or was proved to me on the basis of satisfactory evidence to be the person who executed the foregoing instrument appeared before this day, and acknowledged the due execution of the foregoing instrument.

Subscribed to and sworn before me this _____ day of _____, 2022.

Notary Public for South Carolina

Print Name: _____

My Commission Expires: _____

EXHIBITS

Exhibit A: Legal Description

Exhibit A-1: Boundary Plat

Exhibit A-2: Legal Description of the Affordable Housing Parcel

Exhibit B: Town of Hillsborough Zoning Ordinance (Current Regulations)

Exhibit C: Development Agreement Ordinance

Exhibit D: Property Development Plan

Exhibit E: Town of Hillsborough Rezoning Ordinance

Exhibit F: Town of Hillsborough Annexation Ordinance

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT A-1
BOUNDARY PLAT

EXHIBIT A-2

Legal Description of Affordable Housing Parcel

DRAFT

EXHIBIT B

**TOWN OF HILLSBOROUGH UNIFIED DEVELOPMENT ORDINANCE
(CURRENT REGULATIONS)**

EXHIBIT C

DEVELOPMENT AGREEMENT ORDINANCE

EXHIBIT D

PROPERTY DEVELOPMENT PLAN

The Real Property shall be permitted to be used for all uses permitted for the zoning designations provided to the Real Property in the Rezoning Ordinance by the Current Regulations with such Density, and building types, intensities, placement on the site, and design as permitted by the Current Regulations.

EXHIBIT E

TOWN OF HILLSBOROUGH REZONING ORDINANCE

EXHIBIT F

TOWN OF HILLSBOROUGH ANNEXATION ORDINANCE