

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made this \_\_\_\_ day of August 2024, (the "Effective Date"), by and between JACKSONVILLE ONSLOW ECONOMIC DEVELOPMENT PARTNERSHIP, INC. a North Carolina Non-Profit Corporation, (the "Developer") and the TOWN OF SWANSBORO, a municipal corporation existing under the Laws of the State of North Carolina (the "Town.")

### WITNESSETH:

WHEREAS, Developer currently owns, or is under contract or option to purchase, or plans to acquire that certain tract of land identified as Parcel No. 011942, located at 1476 W. Corbett Avenue, Swansboro, Onslow County, North Carolina, consisting of approximately 30 acres within the extraterritorial jurisdiction of the Town, and as is more particularly described on **EXHIBIT A** attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Developer intends to develop a light industrial park consisting of up to seven (7) separate parcels, including approximately five (5) acres of commercial area on the Property, together with supporting public and private infrastructure, such as streets, water/sewer lines, storm drainage improvements, and/or other facilities (the "Project"); and

WHEREAS, the Project will offer numerous benefits to the Town, including, but not limited to: (i) facilitation of new above-average paying primary jobs; (ii) expansion of the Town's tax-base; (iii) provision of public and private services to the Property; (iv) improvement of the Town's overall business and job diversity; (v) general quality of life in the Town; and (vi) the Town supports the proposed Project and desires that Developer proceed with the same; and

WHEREAS, Developer has requested or will request municipal and other public services from the Town to permit orderly Project development, and subject to compliance by Developer with all prerequisites to receipt of municipal services and approvals, the Town intends to provide such services as the Project progresses.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements contained herein, the benefits that will accrue to both parties from development of the Project within the corporate limits of the Town, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

### ARTICLE 1 GENERAL

SECTION 1.1 – DEFINITIONS. Whenever used in this Agreement, the following terms shall have the definitions indicated as set forth in this Section:

- A. "Developer" shall mean, JACKSONVILLE ONSLOW ECONOMIC DEVELOPMENT PARTNERSHIP, INC., a North Carolina Non-Profit Corporation, and its officers, employees, successors, assigns, and successors in title.

- B. "Infrastructure" shall mean all Public Infrastructure (as defined below) and/or Private Infrastructure (as defined below) necessary to serve the Property and installed in accordance with the Standard Specifications, including water mains, valves, fittings, fire hydrants, service connections, service lines, shutoffs, meter boxes, sewage pumping stations, force-mains, gravity sewer mains, manholes, laterals, streets, curbs, gutters, sidewalks, storm drainage facilities, and storm water retention facilities.
- C. "Laws" shall mean all laws, ordinances, resolutions, regulations, comprehensive plans, land development regulations, policies, and rules adopted by the Town, the State of North Carolina, the United States of America and any other governmental authority or body with jurisdiction over the Property or the development of the Project, including all laws and regulations governing permitted uses of the Property, density, design, and improvements.
- D. "Offsite" shall mean any area that is not Onsite (as defined below). Offsite includes any area that a governmental authority having jurisdiction over the Development and may be materially impacted by the same.
- E. "Onsite" shall mean any area that is within the boundaries of the Property or within any public right of way adjacent to or adjoining the Property.
- F. "Private Infrastructure" shall mean any infrastructure not owned by or conveyed or dedicated to a governmental or public entity or authority.
- G. "Project" shall mean that light industrial park development consisting of up to seven (7) separate parcels, including approximately five (5) acres of commercial area on the Property, together with supporting public and private infrastructure, such as streets, water/sewer lines, storm drainage improvements, and/or other facilities to be developed by Developer.
- H. "Standard Specifications" shall mean the standards and specifications applicable to the development of the Project and the Infrastructure and all development documents necessary for approval of the Project, including all standards and conditions set forth in any zoning approvals, special use permits, subdivision plats, site plans, subdivision plat(s), and construction drawings required by the State of North Carolina, Onslow County, ONWASA, and/or the Town.
- I. "Town" shall mean the Town of Swansboro, a municipal corporation existing under the laws of the State of North Carolina and its officers, employees, successors, assigns, and successors in title.

SECTION 1.2 – TERM. The term of this Agreement shall be for five (5) years after the Effective Date (the "Term"), unless otherwise amended by the parties in accordance with the terms contained herein.

ARTICLE 2  
DEVELOPMENT TIMING AND STANDARDS

SECTION 2.1 – PHASING SCHEDULE. Developer shall develop the Project and infrastructure substantially in accordance with the phasing schedule set forth in the attached **EXHIBIT B** (the "Phasing Schedule") and pursuant to permitted uses as identified on **EXHIBIT C** attached hereto and incorporated herein by reference.

SECTION 2.2 – PERMITS AND APPROVALS. Developer shall obtain (without limitation) the following permits, as applicable, to develop the Project; provided that this Agreement's failure to address a particular permit, condition, term, or restriction does not relieve Developer of the necessity of complying with the law governing their permitting requirements, conditions, terms, or restrictions:

- A. Annexation into the Town's corporate limits;
- B. Rezoning; and Industrial Park Zoning Overlay;
- C. Special Use Permits;
- D. Subdivision Plat Approvals;
- E. Site Plan Approvals (including approvals for signs and other site- specific design elements);
- F. Right of way encroachments and driveway permits;
- G. Permits for water and sewer lines and extensions;
- H. Wetlands permits;
- I. Building permits; and
- J. Certificates of Occupancy.

SECTION 2.3 – TOWN COOPERATION. The Town agrees to cooperate with and reasonably assist Developer in its efforts to obtain necessary permits, approvals, or licenses from other governmental entities necessary or beneficial for the development of the Project as approved by the Town, including the Department of Transportation, the MPO, and ONWASA.

Furthermore, the Town shall, as soon as is practicable following the execution of this Agreement, request that a Traffic Impact Analysis (TIA) for this project be completed by the Jacksonville Urban Area Metropolitan Planning Organization (JUMPO.) The Town will provide the TIA to Developer upon completion.

SECTION 2.4 – RIGHT TO RESCIND. The obligations of the parties under this Agreement are contingent upon the Developer's obtaining all necessary development plan approvals and ancillary permits, licenses, and consents (collectively, "Approvals") from the Town as required for the performance of this Agreement.

The Developer agrees to use its best efforts to diligently pursue and obtain the required Approvals from the Town in a timely manner. The Town agrees to promptly and diligently review, process, and take appropriate action upon applications for development approval. Each party shall cooperate fully with the other and shall promptly provide any information, documentation, or assistance reasonably required for review, processing, and issuance of the Approvals.

If any required Approval is denied, the Town shall specify in writing the reasons for the non-approval, and provide a reasonable opportunity for resolution of the non-approval. If the Town imposes conditions on the Approvals that are unacceptable to the Developer, the Developer shall promptly notify the Town in writing, specifying the conditions considered unacceptable and the Developer's objections to the conditions.

Upon the Town's non-approval of any application for permits or development approvals; the Town's imposition of approval conditions determined by the Developer to be unacceptable; and the failure of the parties to resolve the disputed matters, either party shall have the right to rescind this Agreement.

In the event of rescission under this Section, this Agreement shall be deemed null and void, and neither party shall have any further rights or obligations under this Agreement, except that:

- A. Expressly subject to applicable provisions of the N.C. General Statutes pertaining to public records, each party shall promptly return to the other any confidential information, documents, or materials received from the other party in connection with this Agreement.
- B. Each party shall bear its own costs and expenses incurred in connection with the negotiation, execution, and performance of this Agreement, including but not limited to efforts to obtain the Approvals.
- C. Notwithstanding the rescission of this Agreement, provisions herein pertaining to confidentiality, governing law, and dispute resolution shall survive and continue in full force and effect in accordance with their terms.

By including this Right to Rescind clause, the parties acknowledge the critical nature of obtaining the necessary Approvals from the Town and provide a mechanism for rescinding the Agreement if such Approvals are not obtained or are obtained with unacceptable conditions.

SECTION 2.5 – DEVELOPMENT STANDARDS.

- A. The effectiveness of this Agreement shall be contingent upon the approval of the Master Plan submitted to the Town by Developer for the Project. Nothing in this Agreement shall abridge or terminate Developer's rights and obligations under the Unified Development Ordinance,

or any adopted ordinances, policies, and schedules of the Town, all of which are ratified, adopted, and incorporated herein by reference as if fully set forth in this Agreement.

- B. The parties acknowledge and agree that, if a state or federal law is changed after the effective date of this Agreement and the change prevents or precludes compliance with one or more provisions of this Agreement, the parties will negotiate in good faith to amend this Agreement in a manner which permits conformance with state or federal law changes.

SECTION 2.6 – DEVELOPMENT COVENANTS. Developer shall, at its own cost, prepare and submit to the Town for prior approval a declaration(s) of restrictive covenants-and easements with respect to the Project that provides for the operation, maintenance, repair, and replacement (and the funding thereof) of all common elements and Private infrastructure in the Project. The Town's review and approval of such document(s) shall not be unreasonably delayed or withheld. Developer shall be responsible for the operation. maintenance. repair. and replacement of all common elements and Private Infrastructure in the Project until such obligations are assumed by the Town in writing or are assigned to a funded property owner's association in the above-referenced declaration(s).

### ARTICLE 3 INFRASTRUCTURE

SECTION 3.1 – DESIGN AND APPROVALS FOR INFRASTRUCTURE. Developer shall design, construct, and install all Infrastructure in accordance with the design criteria set forth in the Standard Specifications. Developer shall obtain all required permits and approvals from all governmental agencies with jurisdiction over the infrastructure prior to commencing construction of the infrastructure. In cooperation with the Developer, The Town shall make application for, receive, manage and deploy those grant resources available only to the Town, specifically those from the North Carolina Department of Commerce's Industrial Development Fund. The Developer shall provide the local match required for state-level grants. Utilizing the aforementioned state-level grant funds awarded to the Town, the Town shall reimburse Developer for the costs of designing and constructing the extension of public infrastructure; to include roads, water and sewer improvements on public property within the project.

#### SECTION 3.2 – DESIGN AND DEDICATION OF PUBLIC INFRASTRUCTURE.

- A. All plans for Public Infrastructure shall be prepared by an engineer(s) properly licensed in the State of North Carolina and acceptable to the Town and ONWASA in their reasonable discretion. Developer shall furnish all engineering and/or design plans and specifications and all revisions for Public Infrastructure of the Town prior to commencing construction on the Public Infrastructure. The Town may disapprove, in writing, such plans or specifications or revisions, and shall provide written explanation of the reasonable grounds for disapproval. All reviews and decisions by the Town with respect to Public Infrastructure under this Agreement shall performed and given in a timely manner. Developer shall obtain, at its expense, all required permits and approvals from all applicable governmental agencies prior to commencing construction of any public infrastructure.

- B. Developer shall construct and dedicate for public use all Public Infrastructure designated for dedication on the applicable subdivision plat, free and clear of all liens and encumbrances, by dedication plat, warranty deed, deed of easement or bill of sale, in form and substance reasonably satisfactory to the Town. Developer also shall convey to the Town and its successors and assigns, perpetual easements over the Property where specifically necessary for repair and maintenance of the Public Infrastructure when such Public infrastructure is not otherwise accessible by a dedicated easement. Easement areas must be accepted and approved by the Town in writing prior to dedication.
- C. Upon dedication or conveyance of any Public infrastructure to the Town, Developer shall deliver to the Town an Owner's Affidavit Regarding Liens with respect to the applicable Public Infrastructure and shall defend and hold harmless the Town with respect to all costs, expenses, fees (including attorney's fees) associated with any action resulting from or related to any statement in the Owner's Affidavit.
- D. Upon final inspection of the Public Infrastructure and acceptance by the Town or other governmental authority, Developer shall assign all contractor and other warranties for the Public infrastructure to the Town.
- E. Developer shall deliver to the Town all original manufacturers' warranties and/or operation manuals, if any, for dedicated Public Infrastructure and one (1) complete set of as-built drawings showing the Public Infrastructure and dedicated easements and rights-of-way as located by a North Carolina licensed surveyor and certified by Developer's engineer of record. The as-built drawings shall be submitted in a digital format compatible with the Town's GIS system. The Town shall notify Developer and its surveyor and engineer of acceptable digital formats in which the as-built drawings may be submitted.

SECTION 3.3 – PLANS FOR PRIVATE INFRASTRUCTURE. Developer shall deliver to the Town one (1) complete set of as-built drawings showing any Private Infrastructure constructed on the Property and applicable easements and rights-of-way as located by a North Carolina licensed surveyor and certified by Developer's engineer of record. The as-built drawings shall be submitted in a digital format compatible with the Town's GIS system. The Town shall notify Developer and its surveyor and engineer of acceptable digital formats in which the as-built drawings may be submitted.

SECTION 3.4 – PUBLIC INFRASTRUCTURE IMPROVEMENTS.

- A. WATER TRANSMISSION LINE. Developer shall be responsible for the right of way acquisition, design, engineering, construction, permitting, and inspections related to all Onsite water lines necessary to serve the Project and the Offsite water transmission line to be constructed between ONWASA'S existing water transmission main line on Corbett Avenue and the boundary of the Property at a location to be approved in the construction drawings to be prepared and submitted by the Developer to ONWASA. All water line improvements are to be constructed in accordance with the Standard Specifications and shall be accepted and maintained by ONWASA. In cooperation with Developer, The Town shall make application for, receive, manage, and distribute grant funds provided by the state of North Carolina and

its various agencies and departments for all construction of water transmission and distribution lines.

- B. WASTEWATER AND SEWER IMPROVEMENTS. Developer shall be responsible for the right of way acquisition, design, engineering-, construction, permitting, and inspections related to all Onsite wastewater and sewer lines necessary to serve the Project and those certain Offsite wastewater transmission and sewer lines and improvements to be constructed between ONWASA'S existing wastewater transmission system and the Property All wastewater transmission and sewer facilities constructed in accordance with the Standard Specifications shall be accepted and maintained by ONWASA. In cooperation with Developer, The Town shall make application for, receive, manage, and distribute grant funds provided by the state of North Carolina and its various agencies and departments for all construction of wastewater lines and improvements.
- C. ROAD IMPROVEMENTS. Developer shall be responsible for the right of way acquisition, design, engineering, construction, permitting, and inspections related to Onsite road improvements necessary to serve the Project and certain Offsite road improvements required by the Town in the approved Master Plan and the North Carolina Department of Transportation (the "NCDOT") to mitigate the traffic impacts of the Project, including turn-lanes, cross-sectional improvements, and signalization. All Road Improvements constructed in accordance with applicable Standard Specifications shall be accepted and maintained by the Town or the NCDOT, as applicable. All driveway connections to existing public roads shall be made in a manner and at locations to be approved by the NCDOT. The timing and phasing of all Offsite road improvements shall be in accordance with a separate agreement to be entered into by and among the Town, Developer, and the NCDOT; provided, the Town acknowledges and agrees that it shall not require-any Offsite road improvements in addition to those that are required in the Master Plan or by the NCDOT. In cooperation with Developer, the Town shall make application for, receive, manage, and distribute grant funds provided by the state of North Carolina and its various agencies and departments for the construction of all road improvements.

SECTION 3.5 – CONTRACTORS AND CONSULTANTS. All architects, engineers, and contractors engaged by Developer to design, build, or install Onsite or Offsite Infrastructure shall be licensed in North Carolina and insured in amounts and with coverages reasonably acceptable to the Town. All contractors and subcontractors engaged by Developer to perform work on Public infrastructure shall provide performance and payment bonds from nationally recognized sureties in such amounts as are reasonably required by the Town. Notwithstanding anything to the contrary in this Agreement, Developer and all architects, engineers, contractors, and other consultants at all times shall comply with applicable Laws when performing Developer's obligations under this Agreement and shall be subject to all bonding and other security requirements related to the design, engineering, and construction of Infrastructure in connection with the Project as required by the Town's Unified Development Ordinance or any other adopted ordinances, policies, or schedules of the Town of Swansboro.

SECTION 3.6 – REQUIRED PROTECTIONS FOR TOWN IN DEVELOPER'S CONTRACTS. Developer will ensure that all contracts for engineering, design, construction, and/or construction management for Public Infrastructure include specific language that provides: (1) that the contract does not limit any warranties provided under operation of statute or common law concerning the engineering, design, construction, adequacy, or performance of the improvements; (2) the contract does not limit or shorten any statute of limitations provided by law regarding claims concerning the engineering, design, construction, adequacy, or performance of the improvements; (3) the Town is named a third-party beneficiary of the contract for the purpose of making any claims regarding the engineering, design, construction, adequacy, or performance of the improvements; and (4) all warranties available to Developer under the contract are, in addition to Developer, made to, available, and assignable to the Town.

SECTION 3.7 – FEE CREDITS. All reimbursements due to Developer under this Agreement. The Town shall maintain an ongoing accounting of all credits and reimbursements eligible, due, collected, and paid under this Agreement.

SECTION 3.8 – TIMING OF INFRASTRUCTURE IMPROVEMENTS. Infrastructure improvements shall be completed in a timely fashion to enable the development of the Property in accordance with the Phasing Schedule attached as **EXHIBIT B**. Time is of the essence with respect to Developer's compliance with the Phasing Schedule. The Town reserves the right to alter the timing of the Offsite Infrastructure improvements for which it is responsible hereunder due to lack of available funds or other public policy concern directly affecting public health or safety; provided any obligations of Developer to perform under this Agreement that are affected by the Town's delay shall be deemed likewise delayed or amended.

#### ARTICLE 4 DEFAULT AND INDEMNIFICATION

SECTION 4.1 – DEFAULT. The terms and conditions of this Agreement shall be enforceable by actions for specific performance or injunction in addition to any other remedies available at law or in equity, provided that the non-defaulting party provides due notice and an opportunity to cure to the defaulting party and the defaulting party fails to cure the breach within a reasonable time. Any failure or omission of the non-defaulting party to exercise any right or remedy provided herein shall not be deemed a waiver of such party's right to enforce strictly the defaulting party's obligations in any other instance. At least every twelve (12) months after the Effective Date of this Agreement, the Town shall review Developer's progress with the Project. If, as a result of such review, the Town determines that Developer has committed a material breach of this Agreement, the Town shall serve a written notice thereof upon Developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination and providing Developer a reasonable time in which to cure the material breach. If Developer fails to cure the material breach within the time given, then, notwithstanding any provision hereof to the contrary, the Town unilaterally may terminate or reasonably modify this Agreement to accommodate Developer's failure to perform hereunder. Notwithstanding the foregoing, the Town's authority or discretion to enforce the terms of the Master Plan, the rezoning of the Property, or any other regulatory approval given with respect to the Project pursuant to the Town's Unified Development Ordinance or any adopted ordinances, policies, or schedules of the Town of Swansboro shall not be limited or affected by this Article 4.



SECTION 4.2 – WAIVER. No action or failure to act by either party shall be deemed to constitute a waiver of any of its rights or remedies that arise out of this Agreement; nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

SECTION 4.3 – FORCE MAJEURE. Notwithstanding anything to the contrary herein, neither party shall be liable to the other for any failure to perform under this Agreement as a result of a force majeure, including acts of governmental authorities, embargoes, fire, flood, hurricanes, tornadoes, explosions, acts of God or a public enemy, strikes, labor disputes, vandalism, civil riots, or acts of terrorism; provided. such party: (i) shall notify the other party promptly if the performance of any duty or obligation required under this Agreement will be delayed or prevented by a force majeure; and (ii) shall diligently and in good faith act to the extent within its power to remedy the circumstances affecting its performance.

SECTION 4.4 – INDEMNIFICATION OF TOWN.

- A. As used in this Section 4.4, "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses. Included within "Charges" are (1) interest and reasonable attorney's fees and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental Laws, including any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this Agreement.
- B. To the maximum extent allowed by law, Developer shall defend, indemnify, and save harmless the Town from and against all Charges that arise in any manner from, in connection with, or out of this Agreement as a result of acts or omissions of Developer or Developer's contractors or subcontractors or anyone directly or indirectly employed by or contracting with any of them or anyone for whose acts any of them may be liable, except as otherwise limited in this Section 4.4. In performing its duties under this Section, Developer shall, at its sole expense, defend all Charges at Developer's own expense. Notwithstanding the foregoing, Developer shall not be required to indemnify or hold harmless the Town against liability for any Charges or damages arising out of bodily injury or death to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, or willful misconduct of the Town.
- C. Nothing in this Section 4.4 shall affect any warranties in favor of the Town that are otherwise provided in or arise out of this Agreement. This Section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Agreement.
- D. This Section 4.4 shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise) for a period of five (5) years after such termination.

ARTICLE 5  
MISCELLANEOUS

SECTION 5.1 – ENTIRE AGREEMENT. Except with respect to prior approvals and Laws applicable to the Project and as provided in Section 2.3, this Agreement constitutes the entire agreement between the parties with respect to the matters covered herein and supersedes any prior negotiations, understandings, or agreements in their entirety with respect to the matters contemplated hereby. In the event of a conflict or inconsistency between this Agreement and the approved Standard Specifications, the approved Standard Specifications shall control.

SECTION 5.2 – WRITTEN CONSENTS FROM THE TOWN. When this Agreement refers to written approvals or consents to be given by the Town and the person or position that may give consent is not identified, the authority to give such approvals shall be deemed to be with the Town Manager or his designee, and Developer may rely on such authority and approvals to no detriment of their own. An approval required by this Agreement shall not be effective unless given in writing.

SECTION 5.3 – NO WAIVER OF GOVERNMENTAL AUTHORITY OR DISCRETION. Nothing in this Agreement shall be construed to bind, estop, direct, limit, or impair the future regulatory, legislative, or governmental discretion of the Swansboro Board of Commissioners in a manner not permitted by law. The Town shall incur no liability to Developer for any losses or damages it may incur as a result of or in connection with the Town's exercise or performance of its regulatory, legislative, or governmental powers or functions, or any judicial determination regarding such exercise or performance, provided the Town shall be contractually bound by the terms of this Agreement.

SECTION 5.4 – AUTHORITY. The Town and Developer each respectively warrants and represents to the other that it has full right and authority to enter into this Agreement, that this Agreement has been presented and approved by each party's governing board after proper notice and hearing, and that the person signing on behalf of each party is authorized to do so.

SECTION 5.5 – NO PARTNERSHIP. Nothing contained in this Agreement shall be construed to make the Town a partner with Developer or render either party liable for the debts or obligations of the other.

SECTION 5.6 – CHOICE OF LAW AND FORUM. This Agreement shall be deemed made in Onslow County, North Carolina. This Agreement shall be governed by and construed in accordance with the laws of North Carolina. Except for any cause of action for which a federal court has exclusive jurisdiction, the exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice in Onslow County. Such actions shall neither be commenced in nor removed to federal court. This Section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this Section.

SECTION 5.7 – NO THIRD-PARTY RIGHTS CREATED. This Agreement is intended for the benefit of the Town and Developer and their successors and assigns and not for any other person, and no such persons shall enjoy any right, benefit, or entitlement under this Agreement.

SECTION 5.8 – AMENDMENT. Except as otherwise provided in this Agreement, this Agreement may not be amended or terminated except by written instrument signed by both parties.

SECTION 5.9 – REAL COVENANT: DELEGATION OF DUTIES. This Agreement and the obligations contained herein shall be a real covenant running with the Property, and any portion thereof, as it may be subdivided or recombined, and shall apply to the development of all or any portion of the Property. Developer shall be released from its obligations under this Agreement only upon the assumption of all of Developer's obligations hereunder by a successor in title to the Property and only with the prior written consent of the Town. The Town's consent shall not be unreasonably withheld, conditioned, or delayed if, as reasonably determine by the Town, the party assuming Developer's obligations possesses adequate financial resources, ownership interests and development expertise needed to complete the requirements of this Agreement, and provided Developer delegates, and the proposed assignee assumes and agrees to fulfill, in writing, all of Developer's duties set forth in this Agreement.

SECTION 5.10 – PREAMBLES. The preamble and recitals to this Agreement are part of the agreement between the parties and shall be binding upon the parties in accordance with their terms.

SECTION 5.11 – ENFORCEABILITY. The enforceability and validity of this Agreement, in whole or in part shall not be affected by the unenforceability or invalidity of any particular provision of this Agreement.

SECTION 5.12 – TIME IS OF THE ESSENCE. Time is of the essence in the performance of the obligations set forth in this Agreement.

SECTION 5.13 – PRINCIPLES OF INTERPRETATION AND DEFINITIONS. In this Agreement, unless the context requires otherwise: (1) the singular includes the plural, and the plural includes the singular; the pronouns "it" and "its" include the masculine and feminine; references to statutes or regulations include all statutory and regulatory provisions consolidating, amending, or replacing the statute or regulation; references to contracts and agreements shall be deemed to include all amendments thereto; and the words "include," "includes," and "including" are to be interpreted as if they were followed by either the phrase "without limitation" or "but not limited to;" (2) references to a "Section" or "section" shall mean a section of this Agreement; (3) "Agreement," whether or not capitalized, refers to this instrument; (4) titles of sections, paragraphs, and articles are for convenience only and shall not be construed to affect the meaning of this Agreement; (5) "Duties" includes obligations; (6) the word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities; (7) the word "shall" is mandatory; (8) the word "day" means calendar day; (9) attorneys for all parties have participated in the drafting of this document, and no future interpretation shall favor or disfavor one party over another on account of authorship; and (10) all exhibits, attachments, or documents attached to this Agreement or referred to in this Agreement are incorporated by reference into this Agreement as if fully set forth herein.

SECTION 5.14 – SUCCESSORS AND ASSIGNS. All of the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective permitted successors and assigns. Developer may not assign his rights or obligations under this Agreement without the express written approval of the Town, which approval shall not be unreasonably withheld

so long as the assignee has the same resource availability and qualifications as Developer and the assignee assumes and reaffirms all of Developer's obligations and indemnities under this Agreement by a separate written instrument between the Town, Developer and the assignee (in which case, Developer shall be released from such obligations and indemnities). Notwithstanding the foregoing, the Town acknowledges and agrees that Developer shall have the right to engage and utilize other parties not affiliated with Developer to develop all or certain phases of the Project, and the rights and obligations of Developer under this Agreement shall inure to the benefit of such parties (and Developer shall have the right to assign the rights granted under this Agreement), so long as such parties are acting on behalf of and with the consent of Developer and provided that Developer remains liable to the Town for its obligations under this Agreement.

SECTION 5.15 – SEVERABILITY. If any provision of this Agreement, or the application thereof to any person or circumstance, is found to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the same shall be stricken from this Agreement, and the remaining terms and provisions of this Agreement shall be valid, legal, enforceable, and shall continue in full force and effect, and the parties respective rights and obligations shall be construed and enforced accordingly.

SECTION 5.16 – DISPUTE RESOLUTION. In the event of dispute, claim, or controversy arising out of or relating to this Agreement, or the breach, termination, enforcement, interpretation, or validity thereof (collectively, "Dispute"), the parties agree to first attempt to resolve the Dispute through good faith negotiations. Either party may initiate such negotiations by providing written notice to the other party, outlining the nature of the Dispute. If the Dispute is not resolved within thirty (30) days after the commencement of good faith negotiations, the parties agree to submit the Dispute to mediation, to take place in Onslow County, and the parties shall equally share the costs of the mediation. The mediation shall be conducted by a mediator mutually agreed upon by the parties. If the parties cannot agree on a mediator within ten (10) days of the mediation notice, a neutral party shall appoint a mediator.

If the Dispute is not resolved through mediation within sixty (60) days after the commencement of the mediation process, the Dispute shall be resolved by final and binding arbitration administered by the American Arbitration Association in accordance with its rules. The arbitration shall take place in Onslow County, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrator(s) shall have the authority to award any remedy or relief that a court of competent jurisdiction could order or grant, including, without limitation, specific performance, the awarding of damages, and injunctive relief. The parties shall bear their own costs and expenses, including attorneys' fees, and shall share equally the arbitrators' fees and administrative costs of arbitration, unless the arbitrator(s) determine otherwise.

Expressly subject to applicable provisions of the N.C. Open Meetings Statutes, all negotiations, mediation, and arbitration proceedings pursuant to this Section, including all related documents and communications, shall be confidential and shall not be disclosed by the parties, their representatives, or the mediator/arbitrator(s), except as necessary to enforce any settlement agreement or arbitration award, or as required by law.

The parties hereby waive their right to a trial by jury in any Dispute arising out of or related to this Agreement.

By incorporating this ADR clause into the Agreement, the parties intend to facilitate the resolution of disputes in a manner that is efficient, cost-effective, and respectful of the confidentiality of the proceedings.

This clause ensures that disputes are first attempted to be resolved through negotiation and mediation before moving to binding arbitration, while maintaining confidentiality and allowing for interim relief when necessary.

IN WITNESS WHEREOF, the Town and Developer have caused this Agreement to be duly executed and sealed pursuant to proper authority as of the day and year first above written.

**DEVELOPER:**

JACKSONVILLE ONSLOW ECONOMIC  
DEVELOPMENT PARTNERSHIP INC., A  
North Carolina Non-Profit Corporation.

---

Mark Sutherland, CEcD Executive Director

**TOWN OF SWANSBORO:**

---

John Davis, Mayor

**EXHIBIT A**

PROPERTY DESCRIPTION

**EXHIBIT B**

PHASING SCHEDULE

<u>Description</u>	<u>Start</u>	<u>Time Required</u>	<u>Complete</u>
<u>Executed Development Agreement</u>	<u>TBD</u>	<u>N/A</u>	<u>TBD</u>
<u>Due Diligence</u>	<u>TBD</u>	<u>12 months</u>	<u>TBD</u>
<u>Design</u>	<u>TBD</u>	<u>2 months</u>	<u>TBD</u>
<u>Grant Applications / Awards</u>	<u>TBD</u>	<u>3 months</u>	<u>TBD</u>
<u>Contract Bids / Awards</u>	<u>TBD</u>	<u>2 months</u>	<u>TBD</u>
<u>Annexation / Zoning / Permits</u>	<u>TBD</u>	<u>2 months</u>	<u>TBD</u>
<u>Construction</u>	<u>TBD</u>	<u>5 months</u>	<u>TBD</u>
<u>Inspections / Approvals / As-Builts</u>	<u>TBD</u>	<u>2 months</u>	<u>TBD</u>
<u>Lot Sales &amp; Building Construction</u>	<u>TBD</u>	<u>N/A</u>	<u>N/A</u>
<u>Total Time to Market</u>		<u>28 months</u>	

**EXHIBIT C**

PERMITTED USES