



JOHN J. TECKLENBURG  
MAYOR

*City of Charleston*  
*South Carolina*  
*Clerk of Council Department*

VANESSA TURNER MAYBANK  
CLERK OF COUNCIL

**NOTICE OF MEETING**

A meeting of the Committee on Real Estate will be held beginning at 4:00 p.m., June 20, 2016, at City Hall, 80 Broad Street. The agenda will be as follows:

**AGENDA**

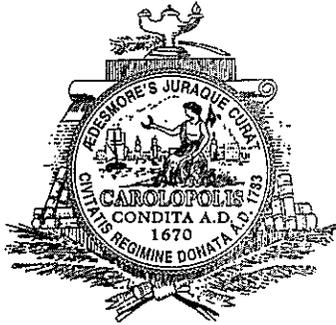
Invocation – Chairman White

Approval of Minutes: May 23, 2016

- a.) An ordinance authorizing the Mayor to execute on behalf of the City an Amendment of Restrictive Covenants with the American College of the Building Arts to amend the Restrictive Covenants pertaining to property located at 649 Meeting Street, commonly known as the Trolley Barn, to include all documents as contemplated by the Amendment to effectuate its terms. (***Additional documents to be placed on Committee Members' and Councilmembers' desks***)
- b.)
  - i. Request approval of the Mayor to execute the attached Ground Lease between Bon Secours-St. Francis Xavier Hospital, Inc. and the City, where the City will lease 7.5 acres of land for the purpose of constructing a Senior Center to include a 16,000 sq. ft. building, parking lot, and related improvements.
  - ii. Request approval of the Mayor to execute the attached Lease and Management Agreement for the Louis Waring, Jr. West Ashley Senior Center whereby upon completion of construction, Roper St. Francis Healthcare will sublease and manage the Louis Waring, Jr. West Ashley Senior Center (2095 Henry Tecklenburg Drive; TMS: 351-01-00-035, 351-01-00-021, 351-01-00-022, 351-01-00-023, 351-01-00-040)

- c.) Request after-the-fact approval for the Facilities Use Agreement with the Mother Emanuel AME Church whereby the City provides the Church access to the Civic Design Center for an artwork exhibit as part of the anniversary commemoration (85 Calhoun Street; TMS: 458-01-01-085)
- d.) Request approval of the Mayor to execute the attached Special Use Permit whereby the National Park service agrees to permit the City of Charleston's use of Liberty Square for the annual First Day Festival occurring on August 14, 2016 (Liberty Square Park, Concord Street)
- e.) Authorize the Mayor and City Council to execute the documents necessary to transfer 13 Boyers Court and 342 North Nassau Street to JJR Development, LLC for the sum of \$70,000 [13 Boyers Court \$40,000 and 342 North Nassau Street \$30,000] for the development of 5 affordable houses for persons earning up to 80 percent of the area median income (342 North Nassau Street; 13 Boyers Court; TMS: 463-12-02-070; 459-01-01-046/047/048) [Ordinance]
- f.) Request authorization of the Mayor to execute the attached Lease Agreement between the City of Charleston and Atlantic Housing Management. (1900 Hazelwood Drive; TMS: 351-06-00-122)
- g.) Consider the following annexations:
  - (i) 5 Tovey Road (TMS# 418-10-00-012) 0.17 acre, West Ashley (District 9)

a.)



Ratification  
Number \_\_\_\_\_

# AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY AN AMENDMENT OF RESTRICTIVE COVENANTS WITH THE AMERICAN COLLEGE OF THE BUILDING ARTS TO AMEND THE RESTRICTIVE COVENANTS PERTAINING TO PROPERTY LOCATED AT 649 MEETING STREET, COMMONLY KNOWN AS THE TROLLEY BARN, TO INCLUDE ALL DOCUMENTS AS CONTEMPLATED BY THE AMENDMENT TO EFFECTUATE ITS TERMS.

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. The Mayor is hereby authorized to execute on behalf of the City an Amendment of Restrictive Covenants with the American College of the Building Arts to amend the restrictive covenants pertaining to property located at 649 Meeting Street, commonly known as the Trolley Barn, said Agreement being attached hereto as Exhibit A and made a part hereof. The authorization herein granted includes the execution of such other documents as contemplated by the Amendment required to effectuate its terms.

Section 2. This Ordinance shall become effective upon ratification.

Ratified in City Council this \_\_\_\_\_ day of  
\_\_\_\_\_ in the Year of Our Lord, 2016,  
and in the \_\_\_\_\_<sup>th</sup> Year of the Independence of  
the United States of America

\_\_\_\_\_  
John J. Tecklenburg, Mayor

ATTEST:

\_\_\_\_\_  
Vanessa Turner Maybank  
Clerk of Council

b.)

**REAL ESTATE COMMITTEE**  
**GENERAL FORM**

**TO:** Real Estate Committee      **DATE:** June 21, 2016

**FROM:** Colleen Carducci      **DEPT:** BFRC

**ADDRESS:** 2095 Henry Tecklenburg Drive

**TMS:** 351-01-00-035, 351-01-00-021, 351-01-00-022, 351-01-00-023, 351-01-00-040

1. Request approval of the Mayor to execute the attached Ground Lease between Bon Secours-St. Francis Xavier Hospital, Inc. and the City, where the City will lease 7.5 acres of land for the purpose of constructing a Senior Center to include a 16,000 sq. ft. building, parking lot, and related improvements.
  
2. Request approval of the Mayor to execute the attached Lease and Management Agreement for Louis Waring, Jr. West Ashley Senior Center whereby upon completion of construction, Roper St. Francis Healthcare will sublease and manage the Louis Waring, Jr. West Ashley Senior Center

**Action Request:** \_\_\_\_\_

**ORDINANCE:** Is an ordinance required? Yes  No

**COORDINATION:** The request has been coordinated with:  
*All supporting documentation must be included*

	<u>Signature</u>	<u>Attachments</u>
Department Head	_____	<input type="checkbox"/>
Legal Department	<u>Susan Hendina (cec)</u>	<input checked="" type="checkbox"/>
Chief Financial Officer	<u>Amy Wharton</u>	<input type="checkbox"/>
Director Real Estate Management	<u>Colleen Carducci</u>	<input checked="" type="checkbox"/>
_____	_____	<input type="checkbox"/>

**FUNDING:** Was funding needed?    Yes  No

If yes, was funding previously approved?\*    Yes  No

If approved, provide the following:    Dept/Div. \_\_\_\_\_ Acct: \_\_\_\_\_

Balance in Account \_\_\_\_\_ Amount needed for this item \_\_\_\_\_

**NEED:** Identify any critical time constraint(s)

\*Commercial Property and Community & Housing Development have an additional form.

**COMMERCIAL REAL ESTATE FORM**

**TO:** Real Estate Committee      **DATE:** June 21, 2016

**FROM:** Colleen Carducci      **DEPT:** BFRC

**ADDRESS:** 2095 Henry Tecklenburg Drive

**TMS:** 351-01-00-035, 351-01-00-021, 351-01-00-022, 351-01-00-023, 351-01-00-040

1. Request approval of the Mayor to execute the attached Ground Lease between Bon Secours-St. Francis Xavier Hospital, Inc. and the City, where the City will lease 7.5 acres of land for the purpose of constructing a Senior Center to include a 16,000 sq. ft. building, parking lot, and related improvements.
  
2. Request approval of the Mayor to execute the attached Lease and Management Agreement for Louis Waring, Jr. West Ashley Senior Center whereby upon completion of construction, Roper St. Francis Healthcare will sublease and manage the Louis Waring, Jr. West Ashley Senior Center

**ACTION REQUEST:** \_\_\_\_\_

**ORDINANCE:** Is an ordinance required? Yes  No

**ACTION: What action is being taken on the Property mentioned?**

**ACQUISITION**      Seller (Property Owner) \_\_\_\_\_ Purchaser \_\_\_\_\_

**DONATION/TRANSFER**  
Donated By: \_\_\_\_\_

**FORECLOSURE**  
Terms: \_\_\_\_\_

**PURCHASE**  
Terms: \_\_\_\_\_

**CONDEMNATION**  
Terms: \_\_\_\_\_

**OTHER**  
Terms: \_\_\_\_\_  
\_\_\_\_\_

**EASEMENT**      Grantor (Property Owner) \_\_\_\_\_ Grantee \_\_\_\_\_

**PERMANENT**  
\_\_\_\_\_

**COMMERCIAL REAL ESTATE FORM**

Terms: \_\_\_\_\_

**TEMPORARY**

Terms: \_\_\_\_\_

**LEASE**

Lessor: Bon Secours-St. Francis  
Xavier Hospital, Inc. Lessee: City of Charleston

**INITIAL**

- 1. The term of the Lease shall be for 30 years with three options to extend the term for 20 years each. Rent shall be \$100 per year commencing on the date a certificate of occupancy is issued for the building. No rent will be due during the construction period.

Sub-Lessor: City of Charleston Sub-Lessee: Roper St. Francis Healthcare

- 2. The term of the Agreement shall commence on the date a certificate of occupancy is issued for the building and shall expire according to the same terms contained in the Ground Lease. Roper St. Francis Hospital will pay the City an annual rent of \$100 per year during the term of the Lease.

Terms: Ground Lease and Management Agreement are contingent upon the approval of both City Council and Bon Secours Health System, Inc.

**RENEWAL**

Terms: \_\_\_\_\_

**AMENDMENT**

Terms: \_\_\_\_\_

**BACKGROUND CHECK: If Property Action Request is for the sale or lease of city property, has a background check been completed?**

Yes  No  N/A

Results: \_\_\_\_\_

Signature: *Colleen Carducci*  
Director Real Estate Management

**ADDITIONAL: Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.**

**NEED: Identify any critical time constraint(s).**

b(i).

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

GROUND LEASE  
FOR LOUIS WARING, JR.  
WEST ASHLEY SENIOR CENTER

This GROUND LEASE (this "Lease") entered into to be effective as of the \_\_\_\_ day of \_\_\_\_\_, 2016 by and between Bon Secours-St. Francis Xavier Hospital, Inc., a public benefit corporation organized and existing pursuant to the laws of the State of South Carolina ("Landlord"), and the City of Charleston ("City").

**WITNESSETH:**

WHEREAS, Landlord is the fee simple owner of certain parcels of land consisting of approximately 7.5 acres lying and being in Charleston County, South Carolina and being designated as "New Lot 1" as shown on the plat further described on Exhibit A, attached hereto and incorporated herein by this reference (the "Landlord Property");

WHEREAS, the Landlord Property is adjacent to other property owned by Landlord upon which Landlord operates St. Francis Hospital and related facilities (the "Hospital");

WHEREAS, in order to serve the needs of older adults in the Charleston South Carolina area, City desires to open a senior center to be known as the Louis Waring , Jr. Senior Center ("Senior Center" or "Center") on the Landlord Property (the "Demised Premises");

WHEREAS, City desires to develop the Demised Premises to include a building consisting of approximately 16,000 square feet (the "Building"), a parking lot (the "Parking Area"), and related improvements as further defined herein (collectively, the "Improvements") (the Building, Parking Area, and Improvements shall hereinafter be referred to collectively as the "Project") for the purpose of operating the Waring Senior Center; and

WHEREAS, the public will benefit from the Senior Center being located in the West Ashley community of Charleston South Carolina.

WHEREAS, by this Lease, Landlord has agreed to ground lease the Demised Premises to City for the sole purpose of City's constructing and operating the Project pursuant to the terms and conditions of this Lease.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged along with the mutual covenants and agreements contained herein, the parties hereto covenant and agree as follows:

**I.**  
**PREMISES**

Landlord hereby demises and rents unto City and City hereby rents and hires from Landlord the Demised Premises.

TOGETHER WITH the non-exclusive right to utilize, subject to reasonable controls and restrictions imposed by Landlord from time to time walkways, driveways and streets (excluding public rights of way, if any) located on the Hospital and/or Landlord Property from time-to-time which are reasonably necessary in the operation of the Project.

TOGETHER WITH the non-exclusive right to the use and benefit of ingress and egress privileges owned or controlled by Landlord on or with respect to the Demised Premises.

TOGETHER WITH the non-exclusive right of ingress and egress for pedestrian traffic to and from the Hospital and/or Landlord Property over all sidewalks and walkways which may be located between and/or connecting the Hospital and/or Landlord Property to the Project, including without limitation, any above-ground or ground-level walkways.

TOGETHER WITH AND SUBJECT TO non-exclusive easements for adjacent and subjacent support from structural members, footings and foundations, for existing drainage easements, for any existing utility lines located on the Demised Premises, including without limitation all water and sewer, electrical, telephone, gas, communication cables and pipes necessary for the operation of the Project, and the maintenance, repair and replacement thereof.

The above referenced rights and easements (i) shall be appurtenant to the Demised Premises; (ii) are hereby included in the definition of the Demised Premises; (iii) shall run to City, its successors and assigns, and their respective employees, agents, contractors, subys, licensees, invitees and guests; and (iv) shall be deemed to be transferable and assignable with the Demised Premises and City's interest therein.

The following additional stipulations, hereby declared to be conditions of this Lease, shall, unless otherwise expressly stated, be applicable at all times throughout the term of this Lease and are mutually agreed upon by the parties.

**II.**  
**TERM OF LEASE AND RENTAL**

The initial term of this Lease shall be for a period of thirty (30) years commencing as of the date hereof (the "Initial Term"). City shall have three (3) options to extend the term of the Lease for a period of twenty (20) years each which shall automatically become effective unless terminated by written notice to the Landlord by the City no less than three hundred sixty-five (365) days prior to the expiration of the then current term (the Initial Term together with the extended terms shall hereinafter be collectively referred to as the "Term"). Rent shall be at the rate of One Hundred Dollars (\$100.00) per year, commencing on the date a certificate of occupancy is issued for the Building (the "Rent Commencement Date") and no rent will be due during the construction period of the Building. Such annual rent shall be payable in advance beginning on the Rent Commencement Date and shall be paid each anniversary of said date thereafter during the Term of

this Lease. Failure to pay the amount of One Hundred Dollars (\$100.00) is not a basis for termination of this Lease.

**III.**  
**INTENTIONALLY OMITTED**

**IV.**  
**IMPROVEMENTS AND ALTERATIONS**

City shall complete the following improvements at City's sole cost and expense:

(i) clearing, grubbing, rough and fine grading of the Demised Premises as shown on the Site Plan attached hereto as Exhibit B;

(ii) paving all roads, driveways, and the Parking Area, installing all other improvements in connection therewith (including lighting and landscaping), and installing and paving a road necessary to connect the Project to Henry Tecklenburg Drive, as shown on the attached Site Plan dated April 29, 2016;

(iii) bringing all utilities to the Project as needed from Savage Road including, but not limited to fire lines, water, sewer, (sanitary and storm), electric, telecom, and data and any other utilities required by City; and

(iv) installing all curb and gutter, storm water pipes, catch basins, detention ponds and other necessary storm water runoff improvements as necessary to service the Project.

For the avoidance of any doubt, unless otherwise specifically stated in this Lease, Landlord shall not be responsible for completing any improvements necessary for City to develop the Project on the Demised Premises.

City shall also complete at its sole cost and expense the development and construction of the Building upon the Demised Premises which shall contain approximately 16,000 square feet of heated area. The Building shall be used exclusively as a senior center. To the extent necessary, Landlord will join in with the City as co-petitioner in seeking a rezoning or variance as the same is reasonably necessary for the development of the Project and subdividing the Demised Premises from the Landlord Property if necessary, provided, however, that Landlord shall not be responsible for any costs or expenses related thereto. The Project shall be constructed substantially in accordance with the plans and specifications prepared by Liollo Architecture on or about June 13, 2016 and previously delivered to Landlord (the "Plans and Specifications"). All Plans and Specifications, including exterior signage, shall be submitted to Landlord for review and consultation and the parties agree that the Mayor of the City of Charleston (the "Mayor") will have approval of the final architectural design plan for the Project and on-going architectural review for subsequent alterations and renovations to the Project. The Mayor will consult with the Landlord to insure that the design is appropriate for the surrounding area owned by the Landlord. City shall submit any modifications to the Plans and Specifications for the Project in writing to a person designated by Landlord for Landlord's review. Any submitted modifications will not substantially change the scope of the Project, as determined by the City. The review of Landlord of any

modifications will be accomplished without unreasonable delay. It is understood and agreed that Landlord and City will work together in submitting and responding to requests for changes in a reasonable manner and in an expeditious manner and City will use its best efforts to accept any requested changes to the extent that the Landlord's request does not change the scope of the Project Except for delays beyond the control of City, including, but not limited to, delays caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, acts of terrorism, civil commotion, and adverse weather conditions ("Force Majeure Events"), all construction on the Building must be completed within twenty-four (24) months of the date of commencement of construction of the Project, plus any amount of time construction is delayed for reasons beyond the control of City (including but not limited to, delays caused by Force Majeure Events).

Landlord may reasonably request amendments or changes in the plans and specifications provided the requested amendment or change will not unreasonably delay the commencement or progress of construction of the Building and so long as such requested amendment or change will not materially alter the scope of the Project or significantly delay construction, as determined by the City. All such requests shall be in a written "change order" format and any additional costs for such items shall be paid by Landlord. City will ensure that material items will be in accordance with specifications. The cost of any requirements by Landlord for special non-standard or extraordinary items shall be borne by Landlord. City shall not be required to construct or install any such special non-standard items unless Landlord has provided reasonable assurances to City as to the prompt payment by Landlord of the additional costs of such special non-standard items. Landlord shall promptly pay such additional costs, without setoff or reduction, after such costs are incurred by City. Standard quality shall be consistent with the Plans and Specifications.

During construction of the Project, City shall report monthly to Landlord on the construction progress. City may make such interior decorative and functional configurations as are consistent with such uses of the Building as are permitted by this Lease.

Landlord agrees that during the entire term of this Lease, Landlord shall grant City: (i) a non-exclusive easement for access for the employees, visitors, and other guests of the occupants of the Project, over and across other roads owned by Landlord; (ii) such easements as the same are reasonably requested to permit City, at City's sole cost and expense, to install sewer lines or other utilities to serve the Project; (iii) such easements as reasonably requested to permit City, at City's sole cost and expense, relocate and/or tie into, pursuant to permission of Landlord, and utilize sewer lines or other utilities which run through or across the Landlord's properties; provided, however, that to the extent that the Landlord does not have the power or authority to grant any requested easement, the obligations of the Landlord hereunder shall be limited to utilizing its good faith best efforts to obtain necessary consents and authorizations. Such easements shall include the right of reasonable ingress and egress and the right to maintain, repair or tap on to, at City's sole cost and expense, sewer lines and other utilities, provided that City's use of such sewer lines or utilities do not diminish Landlord's use thereof.

Any utility line located in the construction area of the Project may be relocated by the City, subject to approval of Landlord which approval shall not be unreasonably withheld and at the sole cost and expense of City, provided, however, that such relocation shall be undertaken only with

proper consents and approvals from all governmental and non-governmental entities having jurisdiction over such utility lines and easement areas, and further provided that any such relocation does not diminish Landlord's use thereof. If the relocation of any utility lines requires that existing improvements (curbs, pavement, sidewalks, etc.) be disturbed, all such improvements shall be replaced and repaired by City at its sole cost, to at least the same condition as existed prior to commencement of the work. The Building, Parking Area, and all other Improvements constructed on the Demised Premises shall remain upon the Demised Premises at the termination of the Lease (including options) and shall, without compensation to City, become the property of the Landlord at the termination of this Lease. If terminated for any reason prior to the termination of the Lease (including options) as defined in paragraph II, supra, the Landlord agrees to pay to the City the City's depreciated value for the development and construction costs. Nothing herein shall be construed so as to subject the Demised Premises, or permit the Demised Premises to be subjected to liens of any laborer, contractor, mechanic or materialman or to any other liens arising out of or connected with the development, construction or maintenance of any improvements, alterations or additions to existing improvements (except for statutory liens arising in the ordinary cause which are promptly discharged), unless Landlord expressly consents to such liens in writing. City shall indemnify and hold harmless Landlord from and against any mechanic's lien or other liens and any and all costs associated therewith, including reasonable attorneys' fees and costs. If requested by Landlord, City shall be required to "bond off," within thirty (30) business days, any filed mechanic's liens in accordance with South Carolina Code Section 29-5-110, as amended.

City agrees to maintain the Building (both interior and exterior) in first class, type "A" condition at all times. Notwithstanding the foregoing, the City's responsibility for interior maintenance obligations shall not exceed \$20,000.00 in any year. City's maintenance obligations shall include but are not limited to maintaining the Demised Premises (buildings, grounds, landscaping access driveway, the Parking Area, lighting, signs, common areas and utilities necessary for the operation of the Building (such as water and sewer) related to the Project, all in accordance with the Plans and Specifications. Notwithstanding the foregoing, and with the exception of the \$20,000 annual cap, the obligations for maintaining the grounds, landscaping and maintenance of the interior of the Building shall be subject to the Management Agreement between Landlord and City ("Management Agreement").

The City's Specifications and Plans for the Project shall: (i) provide pedestrian and vehicular ingress and egress to the Project from Henry Tecklenburg Drive (at City's sole cost and expense); and (ii) allow for a future road to connect the Hospital to Savage Road. Notwithstanding the foregoing, the City agrees that access to Savage Road to and from the Project shall not be permitted without first obtaining the written consent of Landlord, which consent may be withheld by Landlord in Landlord's sole discretion. In the event that Landlord desires to connect the Hospital to Savage Road, the cost of such connection shall be borne by Landlord.

Landlord shall have the right, but not the obligation, to construct sidewalks or other walkways in order to connect the Hospital to the Project at Landlord's sole cost and expense.

## V.

### **FIXTURES AND PERSONAL PROPERTY FURNISHED BY CITY**

City shall have the right at the termination of the Lease to remove any and all personal property, equipment and trade fixtures which it may have stored or installed in or upon the Demised Premises, provided City repairs any damages to the Building or Demised Premises resulting from removal of such personal property, equipment and trade fixtures.

**VI.**  
**TITLE AND OWNERSHIP**

Landlord represents and warrants that Landlord is authorized to execute this Lease for the term herein granted under the terms and conditions provided herein and that said Lease is enforceable against Landlord in accordance with its terms. City represents and warrants that City is authorized to execute this Lease for the term herein granted under the terms and conditions provided herein and that said Lease is enforceable against City in accordance with its terms. Landlord represents and warrants that Landlord is the fee simple owner of the Demised Premises, free and clear of all liens and encumbrances.

**VII.**  
**QUIET ENJOYMENT**

Landlord covenants that City, on the performance of the terms and conditions of this Lease, shall and may peaceably and quietly have, hold and enjoy the Demised Premises for the full term of this Lease, subject to Article XVIII.

**VIII.**  
**NO PARTNERSHIP OR JOINT VENTURE**

As a result of this Lease, under no circumstances shall Landlord and City be deemed or held to be partners or joint ventures in or concerning the Building to be operated by City under this Lease.

**IX.**  
**UTILITIES**

City shall be responsible to pay for the use and consumption of all utilities, including but not limited to water, gas, electricity, heating, sewer, telephone and other utilities used in association with the Building, including but not limited for any costs associated with lighting for the Building and Parking Area, unless otherwise modified by Management Agreement.

**X.**  
**PAYMENT OF TAXES OR ASSESSMENTS**

At the execution of this Lease, there are no taxes due and owing on the Demised Premises by virtue of the legal status of Landlord. If at any time during the term of this Lease any taxes or other assessments are made against the Demised Premises or the Project, the City shall be liable for payment of any and all such taxes and assessments. If the Landlord receives notice of any taxes or assessments, Landlord agrees to forward the same to City within five (5) business days. City will, at all times during the term of this Lease, hold Landlord harmless from and be responsible for all such taxes, assessments and charges and from all liens and penalties in conjunction therewith.

Notwithstanding the foregoing, to the extent that the Demised Premises is not taxed as a separate tax parcel, but is a portion of a larger parcel of Landlord's real property, City shall be responsible only for City's pro rata share of any taxes, if any, and assessments levied on such larger parcel. Landlord agrees to keep Demised Premises parcel(s) separate so City shall not be responsible for any portion of Landlord's taxes, assessments or charges. City shall be solely responsible for any taxes, if any, and assessments against the Project.

Nothing herein shall be construed as preventing or interfering with the contesting by City, at its own expense, of any tax, assessment, charge, lien or claim of any kind in respect to the Demised Premises and City shall not be considered in default with respect to payment thereof for so long as the matter shall remain undetermined by final judgment. City shall be responsible for paying any contested taxes "under protest" to avoid accrual of penalties and other charges. Landlord agrees to cooperate with City in the contest of any such tax, assessment, charge, lien or claim, and agrees to allow City to prosecute such contest in the name of Landlord, if necessary or helpful.

#### **XI. LEASEHOLD FINANCING**

City acknowledges that the Demised Premises are owned by Landlord; that Landlord's title to the Demised Premises and its interest in this Lease cannot and shall not be subordinated to any other person or entity whomsoever. City shall not have the right to mortgage or grant a deed of trust with respect to the Demised Premises or the Project without the prior written consent of Landlord, which Landlord may withhold in Landlord's sole discretion.

#### **XII. ESTOPPEL CERTIFICATE**

Landlord and City shall each, without charge, at any time and from time to time hereafter within fifteen (15) business days after written request of the other, certify by written instrument duly executed and acknowledged to any leasehold mortgagee or proposed leasehold mortgagee or any other person, firm or corporation specified in such request: (a) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (b) as to the validity and force and effect of this Lease in accordance with its terms; (c) as to the existence of any default hereunder; (d) as to the existence of any offsets, counterclaims or defenses thereto on the part of such other party; (e) as to the commencement and expiration dates of the terms of this Lease; and (f) as to any other matters as may be reasonably requested.

Any such certificate may be relied upon by the party who requested it and any other person, firm or corporation to whom the same may be exhibited or delivered and the contents of such certificate shall be binding on the party executing the same.

#### **XIII. INSURANCE**

Landlord insurance: Landlord shall keep in full force and effect, at Landlord's expense, public liability insurance coverage on the Demised Premises in an amount no less than \$1,000,000.00, per occurrence, during the term of this Lease. City shall not carry any stock of goods or do anything in or about the premises which will in any way restrict or invalidate any

insurance coverage of the premises. Landlord shall cause the City to be named as an additional insured on said public liability insurance policy. Landlord shall keep in full force and effect, at landlord's expense, property and casualty insurance for the full replacement value of the building and improvements, including trade fixtures.

City insurance: City shall keep in full force and effect and maintain a public liability policy under which City shall be insured with minimum coverages of \$300,000.00 per person, per occurrence, and \$600,000.00, in the aggregate per occurrence for bodily injury or damage, and \$100,000 per occurrence for property damage. A certificate of insurance evidencing insurance required by this paragraph shall be deposited with Landlord within thirty (30) days after the execution of the lease. City shall be responsible for insuring its personal property located within the Demised Premises.

If at any time during the term of this Lease, City fails to provide the certificate of insurance evidencing the requirements of the above paragraph, Landlord shall be entitled after thirty (30) days written notice, at its option, to obtain any or all such insurance. In such event, Landlord shall be reimbursed by City for all costs and expenses associated with obtaining such insurance upon written demand from Landlord to City. With thirty (30) days advance written notice, Landlord may place City in default under this Lease for failure to maintain the required insurance coverage.

Neither Landlord nor City shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any buildings, structure or other tangible property, or any resulting loss of income, or losses under worker's compensation laws and benefits even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees if any such loss or damage is covered by insurance benefiting the party suffering such loss or damage or was required to be covered by insurance pursuant to this Lease.

During construction of the Project, City's contractor shall maintain builder's risk and liability insurance, naming Landlord as an additional insured.

#### XIV.

#### **INTENTIONALLY OMITTED**

#### XV.

#### **RECONSTRUCTION**

In the event of damage to or destruction of the Building, Parking Area or other Improvements erected on the Demised Premises, the insurance proceeds shall be applied to restore the Building, Parking Area or other Improvements unless otherwise agreed to by the parties.

#### XVI.

#### **USE OF DEMISED PREMISES**

City agrees not to install, maintain, or operate any commercial or proprietary health care or medical services or facilities, nor any ancillary or auxillary health-care or medical services, (including, but not limited to, central labs, optical dispensaries, surgery suites, X-rays and audiology facilities, pharmacy, physical therapy, commercial biological laboratory, surgical, radiological, or pathological facilities) which are operated in competition with Landlord or its affiliates; nor shall the City sublet any portion of the Demised Premises to any physicians practices without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion.

The City's use of the Demised Premises shall conform with the Ethical and Religious Directives for Catholic Health Services published by the National Conference of Catholic Bishops, as amended from time to time ("Directives") in the event the Devised Premises are converted to a facility providing health care services covered by the Directives and to the extent the Directives are not contrary to federal and state laws that apply to public entities.

City agrees that City's use of the Demised Premises shall conform with the City's Mission and Values, a copy of which is attached hereto as Exhibit C.

#### **XVII. CONDEMNATION**

If the Demised Premises shall be taken in whole or in part by or pursuant to governmental authority, or through exercise of the right of eminent domain or sold under threat thereof, any and all awards or sums granted in consideration or settlement for the land and the improvements taken and/or damaged shall be equitably apportioned between Landlord and City based on the relative values of the leasehold estate and the remainder interest with proper credit being given to the parties for any prior disbursements of such awards or sums.

If the entire Demised Premises should be so taken or sold, this Lease shall terminate on the date that such taking or sale becomes final. If only a portion of the Demised Premises is so taken or sold, and the balance of the Demised Premises is not suitable for the operation of a senior center, or if by deprivation or limitation of parking or any access thereto or therefrom the Demised Premises are rendered unsuitable for the operation of a senior center, City may, either elect to terminate this Lease by giving ninety (90) days advance notice to Landlord or to continue in possession of the remaining portion of the Demised Premises.

Nothing contained herein shall be deemed a waiver of the City's right, to any and all awards for damages to, or taking of, improvements placed on the Demised Premises by City and nothing herein shall be deemed as a waiver of the Landlord's exclusive right to any award for land taken or damaged.

#### **XVIII. DEFAULT BY CITY**

In the event City shall fail to keep or violates any condition or agreement required in this Lease on the part of the City to be performed and if such failure or violation shall have continued

for a period of thirty (30) days after City shall have received written notice of default by certified or registered mail from Landlord specifying the event of default, then, except as hereinafter specified, City shall be deemed to be in default hereunder, and Landlord shall in addition to and not in lieu of all of the rights to which it may be entitled to hereunder and by law, at its option without ejection, be entitled to: (a) cure such default and be reimbursed for all costs and expenses incurred with respect thereto, together with interest at the prime rate as announced by Landlord's primary depository, promptly upon written demand from Landlord to the City; and (b) seek monetary damages from City and/or injunctive or other equitable relief or other remedies available by law; and (c) terminate this Lease and re-enter and repossess all and singular the Demised Premises together with all improvements thereon. Notwithstanding the foregoing, in the event any non-monetary default is not cured within said thirty (30) day period, the default shall nevertheless be deemed cured if within said thirty (30) day period, the City commences curative action and continues the same to completion with reasonable diligence. Neither the exercise by Landlord of any or all of its rights under this Lease or law nor the defaults by City of any of City's obligations to Landlord shall in any way relieve City of City's obligation to any lender or any third party to whom City may be obligated and shall in no event impose on Landlord any obligations, to any lender or other party to whom City may be or may have been obligated.

**XIX.**  
**DEFAULT BY LANDLORD**

If Landlord shall fail to pay, within a reasonable time after the due date, any obligation paramount to this Lease or affecting the Demised Premises or shall fail promptly to remove any other lien or charge which could jeopardize the City's right to possession as hereby granted, City may pay the items in question after first giving Landlord thirty (30) days written notice by certified mail and continuous default by Landlord for more than thirty (30) days. Any such payment shall entitle City to be subrogated to the lien or charge of the item so paid. Landlord shall have an opportunity to contest the validity of any obligation paramount to this Lease or affecting the premises. If any payment is made by City pursuant to this Article, Landlord shall be liable for payment to City in accordance with this Article, but only in such amount as represents the reasonable cost or value of the obligations paid by City.

City shall look solely to the estate and property of Landlord in the land and buildings which comprise the Demised Premises (and any proceeds from the sale thereof), and subject to prior rights of any mortgagees of the real property of which the Demised Premises are a part, for the collection of any judgment (or other judicial process) requiring the payment of monies by Landlord in the event of any default or breach of Landlord with respect to any of the terms, covenants and conditions of this Lease to be observed and/or performed by Landlord, and no other assets of Landlord shall be subject to levy, execution or other procedures for the satisfaction of City's remedies.

**XX.**  
**TERMINATION**

At the expiration of the Term of this Lease either by (i) default of City (after passage of any applicable notice and cure periods) or (ii) expiration of the term (including all applicable extensions), and subject to Article V, XV, XVII, and XVIII, all improvements on the Demised

Premises including the Building and Parking Area will be and become the property of the Landlord, and Landlord shall not be required to pay any additional consideration therefore.

**XXI.**  
**NOTICE**

Any notice to be given by either party to the other pursuant to the provisions of this Lease shall be given by registered or certified mail return receipt requested, addressed to the party for whom it is intended at the address stated below, or such other address as it may have designated in

**City:** Real Estate Management Division  
2 George St., Suite 2600  
Charleston, SC 29401  
Attn: Director

with a copy to:

Legal Department  
50 Broad Street  
Charleston, SC 29401

**Landlord:**

Bon Secours-St. Francis Xavier Hospital, Inc.  
2095 Henry Tecklenburg Drive  
Charleston, SC 29414  
Attn: CEO

With a copy to:

Roper St. Francis Healthcare  
Attn: General Counsel  
125 Doughty Street, Suite 720  
Charleston, SC 29403

**XXII.**  
**SUCCESSORS AND ASSIGNS**

The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the Landlord and City and their respective successors and assigns; provided, however City shall not assign, sublease, or otherwise transfer its interests herein without prior written consent of Landlord, which may be withheld in Landlord's sole discretion. Upon a transfer by Landlord or City (if approved by Landlord) of its respective estate or interest in the Demised Premises or the Building, said transferring party shall notify the other party in writing of such transfer. In the event of a transfer by Landlord, Landlord shall be and is hereby relieved from any breach of covenants or obligations under the Lease arising or occurring after the date of transfer of the Landlord's estate or interest in the Demised Premises or the Building.

**XXIII.**  
**DISPUTES**

Anything to the contrary contained herein notwithstanding, if any bona fide dispute arises concerning the performance by City (or any other party on behalf of the City) of the obligations imposed upon City under the terms of this Lease, the City shall be entitled to have such dispute resolved by the courts of the State of South Carolina. During the pendency of any such court proceeding, the grace periods otherwise specified herein for curing defaults shall be tolled.

In the event any litigation is commenced with respect to any matter set forth in this Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees and all other reasonable direct costs associated with such litigation from the non-prevailing party.

**XXIV.**  
**LANDLORD'S PURCHASE OPTION**

Landlord shall have, during the Term, the exclusive right and option to purchase at any time, the Leasehold Interest including the Project (the "Purchase Option") for the appraised value of the Leasehold Interest including the Project (the "Fair Market Value"), which Purchase Option shall be exercised, if at all, by Landlord delivering written notice (the "Purchase Option") to City not later than sixty (60) days before the expiration of the Term. In the event Landlord timely delivers the Purchase Notice to City, then the closing of the sale and purchase of the Leasehold Interest, including the Project shall occur within sixty (60) days following the date the Fair Market Value is determined, or on such date as the parties may mutually agree (the "Closing") at the offices of Landlord's counsel or at such place as Landlord and City shall mutually agree upon. At closing, City shall transfer the Leasehold Interest, including the Project, to Landlord, free and clear of all liens and other encumbrances.

To establish Fair Market Value, each party shall designate an appraiser who is a member of the Appraisal Institute, or if such entity no longer exists, then a similar certifying body upon which the parties shall agree. These two (2) appraisers shall attempt to agree on the Fair Market Value of the Leasehold Interest, including the Project, subject to the term of the Leasehold Interest described herein (including the Landlord's future ownership interest, contained in Article IV (Improvements and Alterations), and Article XX (Termination) of the Building and other improvements on the Demised Premises, but excluding any use restrictions). If the appraisers cannot agree as to the Fair Market Value within thirty (30) days after appointment, each appraiser shall render a separate appraisal of the Leasehold Interest, including the Project, within thirty (30) days thereafter and provide copies to each party. If the difference between the two appraisals is 10% or less than the amount of the lower appraisal, the two appraisals shall be averaged and the resulting amount shall be the Fair Market Value. If the variance is more than 10%, the two (2) appraisers shall jointly select a third appraiser who shall also be a member of the Appraisal Institute or such other body as agreed to by the parties within this thirty (30) period and provide such appraiser with copies of their respective appraisals. Said third appraiser shall, within thirty (30) days after being provided with copies of the appraisals from the first two appraisers, designate one of the appraisals as the appraisal which will be utilized to establish the Fair Market Value. Each party shall bear the cost of

its appraiser and the parties shall jointly share the costs of the third appraisal, if any. The Purchase Option shall be exercisable by Landlord, even if Landlord is in default of its obligations under this Lease.

**XXV.**  
**RIGHT OF FIRST REFUSAL**

If at any time during the Term, City receives a bona fide offer (an "Offer") to sell its interest in this Lease and the Project to a third-party, and if City desires to sell or make an Offer to sell its Leasehold Interest and the Project to a third-party, then City shall promptly provide Landlord with a copy of such Offer to or from any such third-party who proposed to be the transferee of the Leasehold Interest and the Project (the "Proposed Transferee"). This Offer may be in the form of a detailed letter of intent or other form, but must set forth all of the essential terms and conditions related thereto. Landlord shall have the right, for a period of thirty (30) days following receipt of such Offer from City, to elect to acquire the Leasehold Interest and the Project on substantially the same terms and conditions as are proposed in the Offer (with closing extended to account for the period of time between City's receipt of the Offer and the date Landlord makes its election).; however, if the Offer is for consideration other than cash or of the Landlord determines in its reasonable discretion that the Offer exceeds the Fair Market Value, as calculated in accordance with Article XXIV, closing shall be delayed to the extent necessary to determine the Fair Market Value and the purchase price shall be, at the election of Landlord, (a) the purchase price in the Offer, or (b) Fair Market Value (the "Right of First Refusal"). In the event that Landlord does not elect to exercise its Right of First Refusal, then City shall be free, subject to the other terms of this Lease, to complete the proposed conveyance to the Proposed Transferee on the same terms and conditions as where exhibited to Landlord in the Offer; provided, however, that if the original Proposed Transferee fails to complete closing on the conveyance substantially in accordance with the terms of the Offer, then City shall remain bound by the terms and provisions of this Article XXV, and any subsequent proposed conveyance of any of City's interest in the Project shall again give rise to Landlord's Right of First Refusal. For purposes hereof, a "bona fide offer" shall mean a legitimate, written offer containing terms and conditions acceptable to City to or from a Proposed Transferee that is ready, willing and able to acquire the Leasehold Interest and the Project on such terms and conditions.

The Right of First Refusal shall apply to each transfer of the Leasehold Interest and the Project, even if Landlord does not to elect to exercise the Right of First Refusal on a previous transfer. The Right of First Refusal is exercisable by Landlord even if Landlord is in default of its obligations under the Lease.

**XXVI.**  
**MISCELLANEOUS**

This Lease shall be subject to the following:

- (i) This Lease contains the entire agreement of the parties and supersedes all prior agreements, whether written or oral. This Lease may not be modified in any manner other than by agreement in writing signed by all parties hereto, or their successors in interest or assigns.

(ii) City shall conform to and observe all lawful ordinances, rules and regulations of the United States of America, State of South Carolina, and all public authorities, boards or offices, relating to the Demised Premises or the improvements thereon or the use thereof provided, however, that nothing herein contained shall be construed as preventing or interfering with the contestation by City, at its own expense, of any such ordinance, rule or regulation that it may consider unlawful or oppressive, and City shall not be considered in default with respect to such contested matter so long as the matter shall remain undetermined by final judgment.

(iii) No waiver of any condition or covenant in this Lease, or of any breach thereof, shall be taken to constitute a waiver of any subsequent breach. No payment by Landlord, in case of default on the part of City in that respect, of any taxes, assessments, public charges, or premiums of insurance, or the payment of any amount herein provided to be paid other than rents, or in the procuring of insurance as hereinabove provided, shall constitute or be construed as a waiver or covenant by Landlord of the default of City in that respect.

(iv) Whenever City requests any consent, permission or approval which may be required or desired by City pursuant to the provisions hereof, Landlord shall not unreasonably withhold or postpone the granting of such consent, permission or approval.

(v) Only City shall have the right to take deductions and/or recognize any depreciation on its tax returns with respect to such buildings, structures, improvements, changes, alterations, additions, repairs and installations which are located upon the Demised Premises.

(vi) All covenants, promises, conditions and obligations herein contained or implied by law are covenants running with the land and shall attach and bind and inure to the benefit of the Landlord and City and their respective heirs, legal representatives, successors and assigns, except as otherwise provided herein.

(vii) This Lease shall be governed by and construed in accordance with the laws of the State of South Carolina.

(vii) There are no oral or verbal understandings among Landlord and City concerning the subject matter of this Lease, and any amendment, modification or supplement to this Lease must be in writing and signed by all parties hereto.

(viii) Landlord's failure to exercise any rights or options provided herein under or by law does not constitute a permanent waiver of that right or option.

(ix) Should City, or any of City's successors in interest, hold over on the Demised Premises, or any part thereof, after the expiration of the term of this Lease with the permission of Landlord, unless otherwise agreed in writing, such holding over shall constitute and be construed as a tenancy from month-to-month only and shall be subject to all the terms and provisions of this Lease (to the extent applicable to a month-to-month tenancy) and shall not be considered an extension of the term of this Lease. Rent for such month-to-month tenancy shall be one twelfth (1/12th) of one hundred and ten percent

(110%) of the then annual fair market rental value of the Demised Premises, payable in advance on the first day of each calendar month during the term of such month-to-month tenancy, with all other monetary obligations being due and payable as herein provided. If Landlord and City cannot agree on the annual fair market rental value of the Demised Premises, it shall be determined by appraisal as set out in Article n above. The inclusion of this paragraph shall not be construed as Landlord's consent for City to hold over. Any such month-to-month tenancy may be terminated by either party hereto giving the other thirty (30) days written notice of such termination.

(x) It is the intention of Landlord and City to conform strictly to applicable usury laws. Accordingly, if the transaction contemplated hereby would be usurious in any respect under applicable law, then, in that event, notwithstanding anything contained herein or in any agreement entered into in connection with or as security for this Lease to the contrary, it is agreed that the aggregate of all consideration which constitutes interest under applicable law that is taken, reserved, contracted for, charged, or received by Landlord under this Lease or under any of the aforesaid agreements securing this Lease or otherwise entered into in connection with this Lease shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be credited on this Lease by the Landlord to any rent or other sum which is not interest under applicable law owing by City to Landlord hereunder or, at the option of Landlord, refunded to City, and in no event shall any consideration paid by City to Landlord hereunder that constitutes interest ever include more than the maximum amount allowed by applicable law.

(xi) If any clause or provision of this Lease is illegal, invalid, or unenforceable under any present or future laws effective during the City of this Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added as a part of this Lease a clause or provision as close in meaning to such stricken clause or provision as will be legal, valid and enforceable.

(xii) Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

(xiii) Time is of the essence of all terms of this Lease.

(xiv) Landlord and City represent and warrant that neither party has engaged any broker in connection with this Lease.

(xv) This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

(xvi) In the event either Landlord or City is required to resort to legal process to enforce its rights under this Lease, the prevailing party in such action shall be entitled to the costs of enforcement, including attorney fees incurred at ordinary and customary rates.

(xvii) The Landlord and City agree this is a "triple net lease" and City is responsible for all costs related to the Demised Premises, together with all improvements constructed thereon, including, without limitation, all taxes, insurance and maintenance. Landlord shall have no responsibility for any such expenses unless specifically provided for herein.

## XXVII. HAZARDOUS MATERIALS

Without limiting any other rights of City hereunder, in the event that any solid wastes, hazardous wastes, hazardous substances, toxic chemicals, pollutants, contaminants, or any other environmentally related substances (hereinafter "hazardous substances") or other environmental hazard are discovered on, under, in or about the premises, that are not the result of City's activities, or otherwise caused by the City, the Landlord shall remediate the hazardous substance. The Landlord shall diligently prosecute any such removal or remediation to completion. If Landlord fails fully to remediate such hazardous substance within a reasonable time after commencement of remediation efforts, and if such condition interferes or is likely in City's judgment to interfere with City's operation of the facility, City may terminate this lease on ninety (90) days written notice to Landlord.

Landlord shall indemnify and hold the City, its members, employees, and agents, harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, costs, judgments and expenses (including reasonable attorneys' fees) of every kind and nature suffered by or asserted against the City as a result of any hazardous or toxic materials, substances or wastes ("Hazardous Materials") now or hereunder regulated under federal, state and local environmental laws and regulations, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Public Law No. 96-510, 94 Stat. 2767, 42 USC 7601 *et seq.* and the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law No. 99-499, 100 Stat. 1613 (collectively, the "Environmental Laws") with respect to Hazardous Materials located on, in, above or under the Demised Premises on or prior to the execution date of this Lease.

City hereby covenants and agrees during the term of this Lease not to bring, release, use or store hazardous materials in, on or above the demised premises, except in compliance with the environmental laws and permits required thereby, and shall be responsible for any damages to property or persons arising from the bringing, releasing, using or storing of hazardous materials to the demised premises to the extent provided by the South Carolina Insurance Reserve Fund. Without limiting any other rights of Landlord hereunder in the event that any hazardous substances or other environmental hazard are discovered on, under, in or about the premises, and originated after the execution of this Lease as a result of acts of City, or City's agents, servants or employees, then City shall remove any such hazardous substances, remediate any such environmental hazard and shall compensate Landlord fully for any injury or damages caused thereby. City shall diligently prosecute any such removal or remediation to completion.

**XXVIII.**  
**MEMORANDUM OF LEASE**

This Lease shall not be recorded. At the request of either party, the Landlord and the City shall execute a short form or memorandum of lease that includes the relevant provisions of the Lease (excluding economic terms) for recording in the appropriate recording office respecting land records in Charleston County, South Carolina.

**XXIX.**  
**SIGNAGE**

No signs shall be placed, erected, maintained or painted any place upon the Building without the prior review of Landlord to the size, design, color, location, content, illumination, composition or material and mobility thereof. All signs shall be maintained by City in good condition during the term of this Lease.

**XXX.**  
**MANAGEMENT AGREEMENT**

Simultaneously with the execution of this Lease, Landlord and City are entering into a Management Agreement whereby Landlord will sublease and manage the Senior Center for City, subject to the terms contained therein. Nothing contained in this Lease shall prohibit Landlord and City from entering into such agreement.

**XXXI.**  
**CONTRIBUTION BY LANDLORD**

Within sixty (60) days of the execution of the Lease, Landlord shall contribute the sum of **Two Hundred Fifty Thousand and 00/100ths Dollars (\$250,000.00)** to City to be applied by City to City's construction of the Project. Such amount shall be refundable to Landlord in the event that City fails to complete the Project pursuant to the terms and conditions contained in this Agreement.

**XXXII.**  
**APPROVALS BY LANDLORD AND CITY OF CHARLESTON**

Landlord's obligations under this Lease are subject to Landlord's receipt of the prior written approval of Bon Secours Health System, Inc. ("BSHSI"). The City's obligations under the Lease are subject to the approval of the City Council. In the event that either BSHSI or the City Council fails to provide such consent on or before June 21, 2016, then this Lease shall automatically terminate, and neither Landlord nor City shall have any further obligations under this Lease.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the parties hereto have set their hands the day and year first above written

**WITNESSES:**

\_\_\_\_\_  
\_\_\_\_\_

**LANDLORD:**

BON SECOURS-ST. FRANCIS XAVIER  
HOSPITAL, INC.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY:**

THE CITY OF CHARLESTON

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

Name: John J. Tecklenburg, Mayor

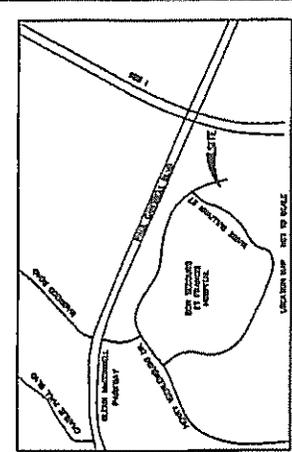
**WITNESSES:**

\_\_\_\_\_  
\_\_\_\_\_

**Exhibit A**

**Landlord Property**

**(Recorded Plat, Book L16, Page 0211)**



APPROVED PLAT

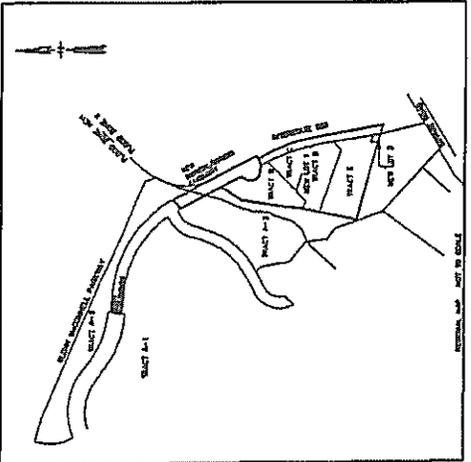
FOR THE CITY OF CHARLESTON AND CHARLESTON COUNTY USE ONLY

RECEIVED

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

PROJECT: \_\_\_\_\_



**NOTES AND REFERENCES:**

1. THE PROPERTY IS SHOWN AS BEING OWNED BY CHARLES SANDERSON, THE SURVEY IS MADE AT THE REQUEST OF THE CITY OF CHARLESTON.

2. THE SURVEY WAS MADE BY THE CITY ENGINEER, JAMES T. WILSON, JR., ON MAY 15, 2018.

3. THE SURVEY WAS MADE BY THE CITY ENGINEER, JAMES T. WILSON, JR., ON MAY 15, 2018.

4. THE SURVEY WAS MADE BY THE CITY ENGINEER, JAMES T. WILSON, JR., ON MAY 15, 2018.

5. THE SURVEY WAS MADE BY THE CITY ENGINEER, JAMES T. WILSON, JR., ON MAY 15, 2018.

6. THE SURVEY WAS MADE BY THE CITY ENGINEER, JAMES T. WILSON, JR., ON MAY 15, 2018.

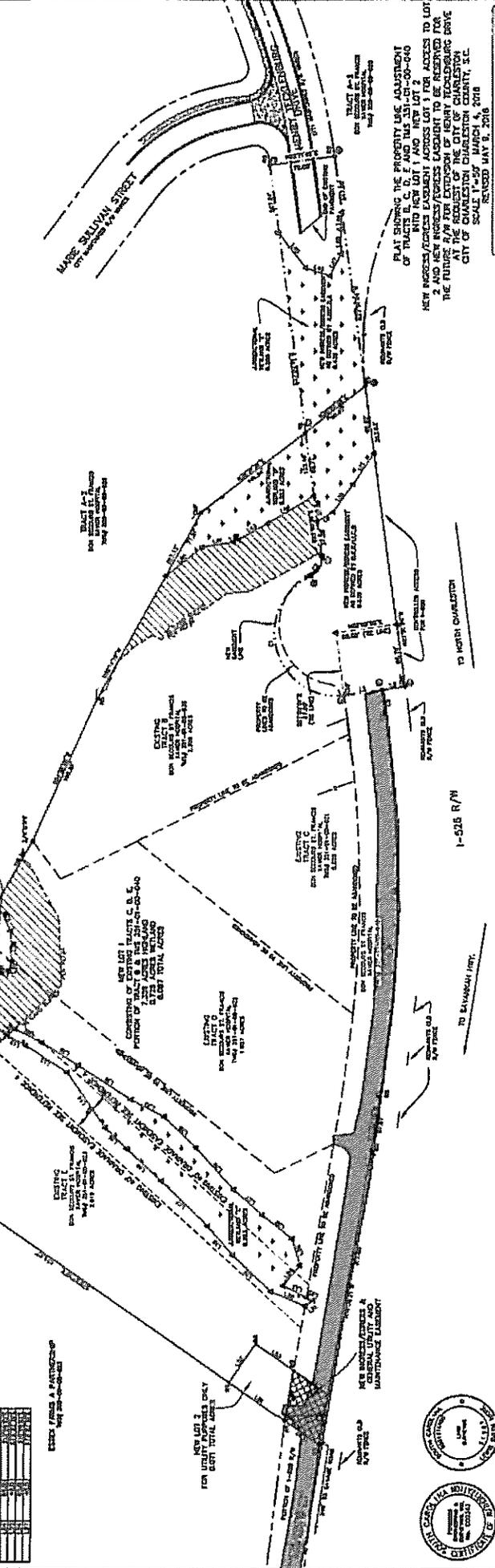
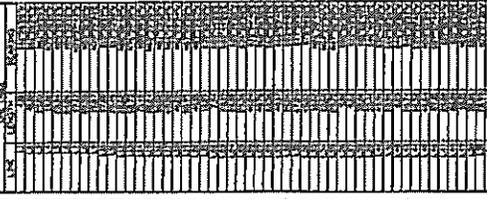
7. THE SURVEY WAS MADE BY THE CITY ENGINEER, JAMES T. WILSON, JR., ON MAY 15, 2018.

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9. THE SURVEY WAS MADE BY THE CITY ENGINEER, JAMES T. WILSON, JR., ON MAY 15, 2018.

10. THE SURVEY WAS MADE BY THE CITY ENGINEER, JAMES T. WILSON, JR., ON MAY 15, 2018.

LINE NUMBER	DESCRIPTION
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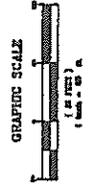
FORSEBERG ENGINEERING AND SURVEYING, INC.

1000 BROADWAY, SUITE 1000, CHARLESTON, SC 29403

PHONE: (803) 799-1111

FAX: (803) 799-1112

WWW.FORSEBERGENGINEERING.COM



DATE: MAY 9, 2018

SCALE: 1" = 20'

PROJECT: PROPERTY USE ADJUSTMENT

LOT: 1, 2, 3

ADDRESS: 1000 BROADWAY, SUITE 1000, CHARLESTON, SC 29403

CLIENT: CITY OF CHARLESTON

ENGINEER: JAMES T. WILSON, JR.

DATE: MAY 9, 2018

FORSEBERG ENGINEERING AND SURVEYING, INC.

1000 BROADWAY, SUITE 1000, CHARLESTON, SC 29403

PHONE: (803) 799-1111

FAX: (803) 799-1112

WWW.FORSEBERGENGINEERING.COM

**Exhibit B**

**Grading, Drainage and Utility Plan  
C400. C401, C401**





1100 Orange Coast Drive  
 Suite 100  
 Newport Beach, CA 92660  
 949.440.2222

**SHEET NOTES**

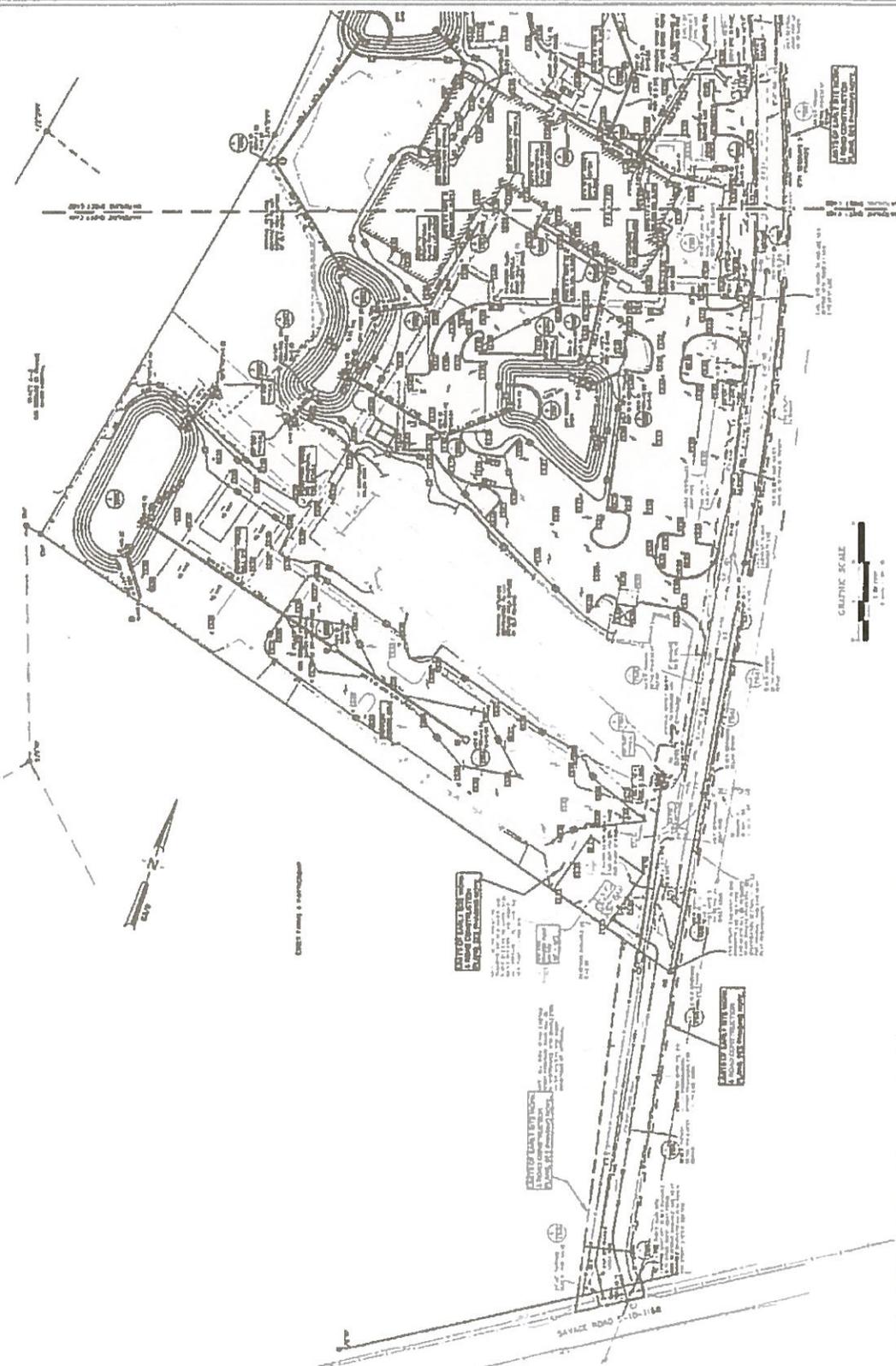
SEE EXHIBIT, GRANTING A UTILITY RIGHTS IN PLACE CASE

**EXISTING UTILITIES**

- 15" WATER MAIN
- 12" WATER MAIN
- 10" WATER MAIN
- 8" WATER MAIN
- 6" WATER MAIN
- 4" WATER MAIN
- 3" WATER MAIN
- 2" WATER MAIN
- 1.5" WATER MAIN
- 1" WATER MAIN
- 0.75" WATER MAIN
- 0.5" WATER MAIN
- 0.25" WATER MAIN
- 15" SANITARY SEWER
- 12" SANITARY SEWER
- 10" SANITARY SEWER
- 8" SANITARY SEWER
- 6" SANITARY SEWER
- 4" SANITARY SEWER
- 3" SANITARY SEWER
- 2" SANITARY SEWER
- 1.5" SANITARY SEWER
- 1" SANITARY SEWER
- 0.75" SANITARY SEWER
- 0.5" SANITARY SEWER
- 0.25" SANITARY SEWER
- 15" GAS
- 12" GAS
- 10" GAS
- 8" GAS
- 6" GAS
- 4" GAS
- 3" GAS
- 2" GAS
- 1.5" GAS
- 1" GAS
- 0.75" GAS
- 0.5" GAS
- 0.25" GAS
- 15" ELECTRIC
- 12" ELECTRIC
- 10" ELECTRIC
- 8" ELECTRIC
- 6" ELECTRIC
- 4" ELECTRIC
- 3" ELECTRIC
- 2" ELECTRIC
- 1.5" ELECTRIC
- 1" ELECTRIC
- 0.75" ELECTRIC
- 0.5" ELECTRIC
- 0.25" ELECTRIC



811 is a national emergency service that provides a central point of contact for utility companies to report and locate underground utilities. It is a free service that is available 24 hours a day, 7 days a week. To use 811, simply call the number and provide your location and the type of work you are planning to do. The service will then contact the appropriate utility companies to locate their lines. This information is then provided to you, allowing you to dig safely and avoid any damage to underground utilities.



City of Charleston - Department of Public Works  
**WEST ASHLEY SENIOR CENTER**  
 1100 Orange Coast Drive  
 Newport Beach, CA 92660  
 949.440.2222

Project No.: 15-011  
 Drawing No.: 15-011-01  
 Date: April 15, 2015  
 Scale: As Shown

City of Charleston  
 Department of Public Works  
 Planning & Development

C401  
 GENERAL  
 UTILITY PLAN



112 Beaufort Court Drive  
 Suite 101  
 Raleigh, NC 27617  
 P 919.732.2222

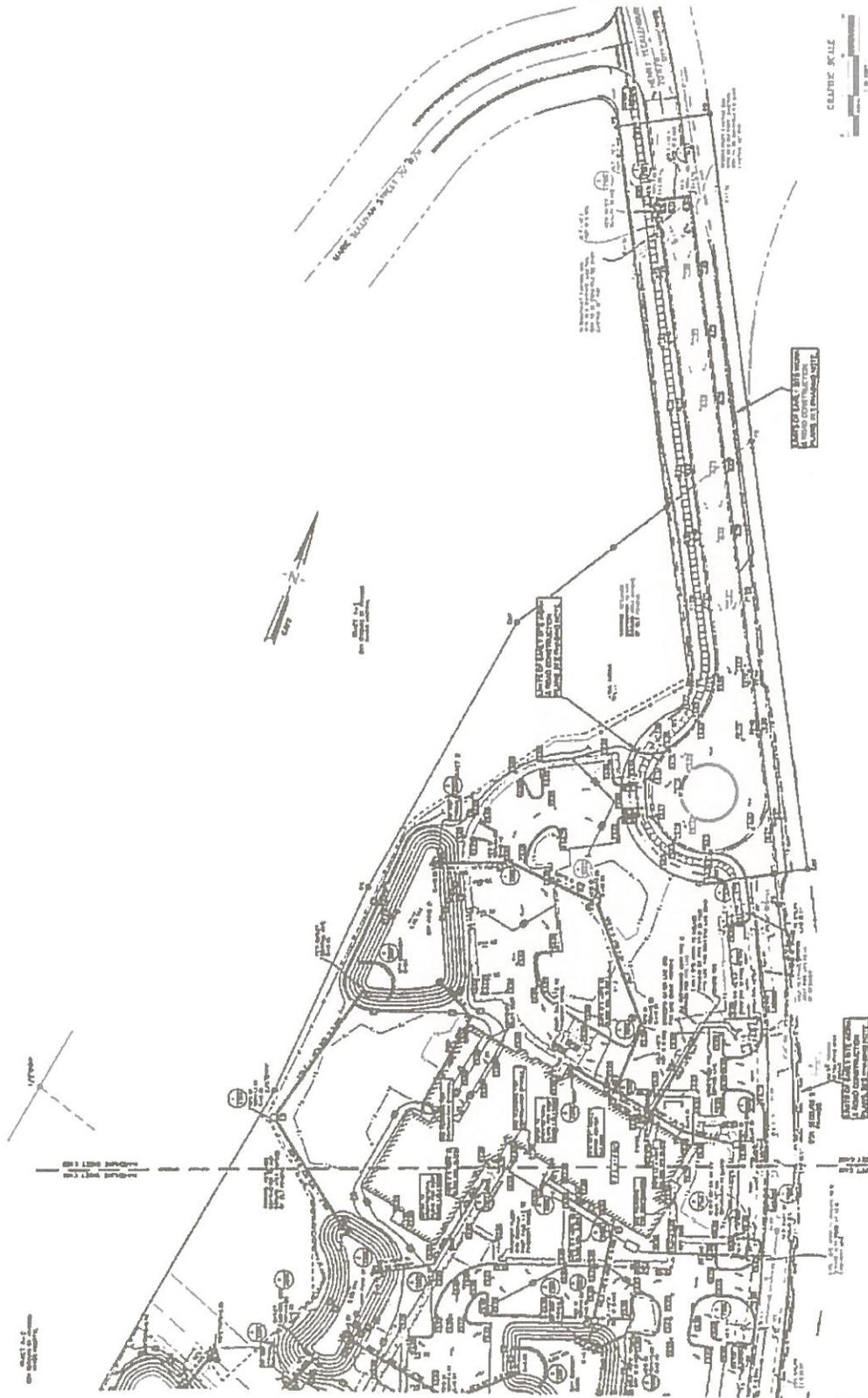
**SET NOTES**

SEE CIVILIC STANDARD, A LAYOUT NOTED BY 9421 E. 402

- EXISTING (11/12)**
- 1" = 10' HORIZONTAL SCALE
  - 1" = 10' VERTICAL SCALE
  - 1" = 10' HORIZONTAL SCALE
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  - 1" = 10' VERTICAL SCALE
  - 1" = 10' HORIZONTAL SCALE
  - 1" = 10' VERTICAL SCALE



811 is a national service that provides a central point of contact for utility companies. When you call 811, you are connected to a central dispatch center that will contact all the utility companies that serve your area. They will then send out trained technicians to locate and mark all underground utilities in your area. This service is free of charge and is available to all property owners and contractors. Call 811 before you dig to ensure the safety of your project and the safety of the workers.



**City of Charleston**  
 City of Charleston - Department of Public Works  
**WEST ASHLEY SENIOR CENTER**  
 112 Beaufort Ct. Drive, Raleigh, NC 27617  
 Charleston, SC 29412

Project Number: C402  
 Date: 11/12/12  
 Drawn By: [Name]  
 Checked By: [Name]  
 Date: 11/12/12  
 Scale: 1" = 10'  
 Title: [Name]

**C402**  
 WEST ASHLEY SENIOR CENTER  
 LANDSCAPE PLAN

**Exhibit C**  
**City of Charleston – Mission and Values**

**Mission**

To preserve and enhance the quality of life of the citizens of the City of Charleston.

**Values**

**Citizens**

We value our diversity and are committed to treating every resident with respect, honesty and courtesy.

**Public Safety**

We value every citizen's safety and understand that safe, public spaces and neighborhoods are essential to our quality of life.

**Quality Services**

We value providing high quality municipal services at the lowest possible cost to our residents.

**Physical Place**

We value our unique natural resources, our man-made environment, public realm and neighborhoods, and we understand how our physical place affects each resident's quality of life. We will work with others to increase the sustainability of our physical place.

**Regional Partnerships**

We value working with other government entities within our region to sustain and improve the quality of life for all citizens.

STATE OF SOUTH CAROLINA    )  
   )  
 COUNTY OF CHARLESTON        )        LEASE AND MANAGEMENT AGREEMENT  
   )        FOR LOUIS WARING, JR.  
   )        WEST ASHLEY SENIOR CENTER

This Lease and Management Agreement (hereinafter "Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2016 ("Effective Date"), by and between the City of Charleston, a South Carolina municipal corporation (the "City"), and CareAlliance Health Services d/b/a Roper St. Francis Healthcare, a public benefit corporation organized and existing pursuant to the laws of the State of South Carolina ("RSFH").

WITNESSETH

WHEREAS, Bon Secours-St. Francis Xavier Hospital, Inc., a public benefit corporation organized and existing pursuant to the laws of the State of South Carolina ("BSSF"), and an affiliate of RSFH, is the owner of approximately 7.5 acres of property located in Charleston County, South Carolina as the same is more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Land");

WHEREAS, on the even date herewith, BSSF, as Landlord, and the City, as Tenant, entered into a long term Ground Lease for the Land (the "Ground Lease");

WHEREAS, pursuant to the Ground Lease, the City intends to construct a 16,000 square foot senior center known at the Louis Waring, Jr. West Ashley Senior Center (the "Building" or "Center"), a parking area (the "Parking Area"), and related improvements on the Land (the "Improvements") (the Center, Parking Area, and Improvements shall hereinafter collectively be referred to as the "Project");

WHEREAS, RSFH is experienced in the provision, development, and management of wellness programs and other services for senior citizens; and

WHEREAS, RSFH and the City now desire to enter into this Agreement whereby RSFH will sublease the Land, including the Project, from the City, and manage the Center for the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

1.     Recitals.        The foregoing recitals are true and correct and incorporated herein.
2.     Premises.     The City hereby leases to RSFH, and RSFH hereby leases from the City, upon the terms and conditions hereinafter set forth, the Land and Project (collectively referred herein as the "Premises") for the operation and management of the Center as set forth more fully in paragraph 16 below and thereafter. Pursuant to the terms of the Ground Lease, the

City intends to complete construction of the Project within 24 months of the effective date of the commencement of construction on the Project, which is set to commence on or about October 1, 2016, plus any amount of time construction is delayed for reasons beyond the control of City (including but not limited to, delays caused by Force Majeure Events). RSFH shall have the right to terminate this Agreement in the event the Premises are not completed according to the terms and conditions contained in the Ground Lease.

To assist in the operation of the Center, the City agrees to contribute up to \$200,000 for RSFH to use for the purchase of fitness equipment and "FF&Es," which is defined as items such as chairs, desks, filing cabinets, tables, and window blinds. FF&Es does not include AV equipment, copiers, telephone equipment, or computers. The City and RSFH will agree on the fitness equipment and FF&E items to be purchased and purchases, if any, that exceed \$200,000 will be paid for by RSFH. In making this contribution, the parties understand that all decisions on construction-add alternatives related to the Project shall be at the sole discretion of the City and in accordance with the Project's construction budget.

3. Term. The term of this Agreement shall commence on the Rent Commencement Date as set forth in the Ground Lease and shall expire according to the same terms contained in the Ground Lease. Provided that RSFH is not in default of this Agreement, RSFH shall have the right to terminate this Agreement upon six (6) months prior written notice to the City in the event that the Operating Funds available to the RSFH are anticipated to be, or have been, insufficient to cover the reasonable costs and expenses of managing and operating the Center for any two consecutive fiscal years or if the City is in breach of this Agreement. Subject to paragraph 16(s) below, the City shall have the right to terminate this Agreement if RSFH has failed to fulfill any of its duties hereunder, and after the City has notified RSFH in writing describing the nature of such failure and specifying the corrective action desired by the City and RSFH has failed to promptly correct the failure within sixty (60) days.

4. Rent. During the term of this Lease, RSFH shall pay to the City the annual rent for the Premises, the sum of One Hundred Dollar (\$100.00) per year.

5. Maintenance Obligations of the City. The City shall be responsible for the major (greater than \$1,000 in cost with three (3) percent annual escalator to commence in year two (2) of this Agreement) maintenance and replacement of equipment and furnishing and major maintenance and repairs of the Project, and for compliance with applicable governmental regulations and insurance industry standards relating to the foregoing.

6. Maintenance Obligations of RSFH. RSFH shall not cause or permit any waste, damage, or injury to the Premises. Except as otherwise stated in this Lease, RSFH shall provide normal and routine maintenance of the Project including landscaping and grounds maintenance to the same standard as the West Ashley RSFH campus; keep the Premises suitable for the comfort and safety of patrons and staff and free from hazardous conditions and deterioration,

other than ordinary wear and tear; maintain the Premises in a clean and neat fashion, free of litter and debris; perform minor (less than \$1,000 in cost with three (3) percent annual escalator to commence in year two (2) of this Agreement) maintenance and replacement of equipment including maintenance of HVAC systems, fitness equipment, and furnishings, and minor maintenance and repairs of the Improvements, and keep a monthly maintenance log of such activities; promptly inform the City of the need for preventative maintenance and repairs and any major repairs; arrange for such maintenance and repairs to be made on behalf of the City and paid out of the Capital Reserve Account [as defined in 16(h) below] if requested by the City; and enter into and maintain in effect maintenance contracts on equipment as necessary or appropriate except for maintenance contracts on the Improvements. On default of RSFH in providing proper maintenance, or in making any repairs or replacements as provided herein, the City may, but shall not be required to, provide maintenance, and make the repairs and replacements for RSFH's account, and the expense thereof shall constitute and be collectible as additional rent.

RSFH shall be responsible for contacting the City's Facility Director to schedule a walk-through of the Center no later than May 15<sup>th</sup> each year to determine the current condition of the facility and necessary maintenance repairs, if any.

7. Utility Services. RSFH shall pay the cost of telephone, electric, gas, water, cable, sewer, trash collection and all other necessary services for the Project

8. Use of Premises. RSFH shall use the Premises for operation of the Center and related activities and programs which are responsive to the needs and desires of the seniors in the community.

9. Assignment and Subletting. RSFH shall not assign this lease or sublet the Premises or any part thereof, without the prior written consent of the City, except that RSFH may assign this Agreement to any affiliated or successor entity of RSFH without the consent of the City but with thirty (30) days advance written notice to the City.

10. Casualty. If through no fault of RSFH, all or any part of the Premises is damaged or destroyed by fire or other casualty, rent, if any, shall abate in such proportion as use of the Premises has been lost to RSFH. The City shall restore the Premises to substantially the same condition as prior to damage as speedily as practicable, whereupon full rental shall commence, unless within one hundred and twenty (120) days of such damage or destruction the City gives RSFH notice that it does not intend to repair or restore the Premises, in which case either the City or RSFH may thereafter terminate this Agreement.

11. Inspection. The City shall have the right to enter the Premises during normal hours of operation as reasonably necessary to examine the same or to make such repairs, additions, or alterations as the City may deem necessary or desirable for the safety, comfort or preservation thereof.

12. Environmental hazards. Without limiting any other rights of City hereunder, in the event that any solid wastes, hazardous wastes, hazardous substances, toxic chemicals, pollutants, contaminants, or any other environmentally related substances (hereinafter "hazardous substances") or other environmental hazard are discovered on, under, in or about the premises, that are not the result of City's activities, RSFH shall remediate the hazardous substance. RSFH shall diligently prosecute any such removal or remediation to completion. If RSFH fails fully to remediate such hazardous substance within a reasonable time after commencement of remediation efforts, and if such condition interferes or is likely in City's judgment to interfere with City's operation of the facility, City may terminate this Agreement on ninety (90) days written notice to Landlord.

RSFH shall indemnify and hold the City, its members, employees, and agents, harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, costs, judgments and expenses (including reasonable attorneys' fees) of every kind and nature suffered by or asserted against the City as a result of any hazardous or toxic materials, substances or wastes ("Hazardous Materials") now or hereunder regulated under federal, state and local environmental laws and regulations, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Public Law No. 96-510, 94 Stat. 2767, 42 USC 7601 et seq. and the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law No. 99-499, 100 Stat. 1613 (collectively, the "Environmental Laws") with respect to Hazardous Materials located on, in, above or under the Demised Premises on or prior to the execution date of this Agreement. The foregoing indemnity in favor of the City shall survive the termination of this Agreement.

City hereby covenants and agrees during the term of this Agreement not to bring, release, use or store Hazardous Materials in, on or above the premises, except in compliance with the environmental laws and permits required thereby, and shall be responsible for any damages to property or persons arising from the bringing, releasing, using or storing of Hazardous Materials to the premises to the extent provided by the South Carolina Insurance Reserve Fund. Without limiting any other rights of RSFH hereunder in the event that any Hazardous Materials or other environmental hazard are discovered on, under, in or about the premises, and originated after the execution of this Lease as a result of acts of City, or City's agents, servants or employees, then City shall remove any such Hazardous Materials, remediate any such environmental hazard and shall compensate RSFH for any injury or damages caused thereby to the extent provided by the South Carolina Insurance Reserve Fund. City shall diligently prosecute any such removal or remediation to completion. If City fails fully to remediate such Hazardous Materials within a reasonable time after commencement of remediation efforts, and if such condition interferes or is likely in RSFH's judgment to interfere with RSFH's operation of the facility, RSFH may terminate this Agreement on ninety (90) days written notice to City.

13. Enjoyment of Premises. RSFH, on paying the rent and any additional obligations set forth in Section 6 above, and keeping and performing the agreements and covenants herein contained, shall have the peaceful and quiet enjoyment of the Premises for the term hereof subject, however, to the provisions of this Agreement.

14. Removal of Personal Property. Any financial, accounting, marketing and other informational systems, computers, software programs and any other items or other equipment provided by and paid for by RSFH for use in the management or operation of the Center or for the provision of any programs or services at the Center shall remain at all times the property of RSFH and RSFH shall have the right to remove the same upon expiration or termination of this Lease. RSFH shall repair any damage to the Premises caused by such removal.

15. Surrender of the Premises. RSFH shall keep the Premises in good order and repair, except the portions thereof to be repaired by the City as provided herein, and upon the expiration or other termination of this Lease, quit and surrender the premises to the City in the same condition as at the commencement of the term, ordinary wear and tear excepted.

16. Management Services. The City hereby retains RSFH, and RSFH hereby agrees, to operate and manage the Center. During the term of this Agreement, RSFH shall have the full authority and responsibility for the day-to-day operation of the Center, and the City shall have no rights or duties in derogation of the rights and duties of RSFH hereunder, except as otherwise provided herein. In carrying out such duties, RSFH shall have authority over the determination (subject to approval by the City) and collection of all membership fees and other charges, administration of grants and contributions for operating expenses, cash flow, planning, budgeting, purchasing, staffing, payroll, services to be provided, marketing and public relations, provided such activities comply with policies, procedures and annual budgets approved by the City. RSFH shall have the following specific authority and responsibilities:

(a) Funding for Capital Expenses. RSFH and the City shall, with other interested parties, use their best efforts to work together in active fundraising activities for capital and operating expenses of the Center. The parties shall meet on a regular basis to discuss such fundraising activities.

(b) Policies and Procedures. RSFH shall monitor and develop written policies and procedures as appropriate from time to time for operation of the Center and for compliance with applicable legal and regulatory requirements. Updated and new policies and procedures related to senior center members and participants shall be submitted to the City for review and approval. Such approval shall not be unreasonably withheld or delayed by the City.

(c) Regulatory Compliance. RSFH shall obtain and maintain all licenses, permits and approvals necessary or desirable for the operation of the Center and provision of the various programs and services to be provided at or through the Center.

(d) Operation of the Center. Upon completion of the Project and issuance of a final certificate of occupancy, RSFH shall use reasonable efforts to operate the Center as a high quality facility for the provision of services to senior citizens in accordance with applicable Senior Center Standards published by the National Council on Aging, as the same may hereafter be amended, and to conduct such operations as efficiently and economically as practicable. RSFH shall make the Center available to the public on a regular basis. RSFH and the City shall set the hours of operations by mutual agreement in order to meet the needs of area seniors. In no event shall it be operated fewer than 55 hours per week, including a reasonable amount of evening, early morning and weekend hours to meet the needs of the seniors but excluding holidays as observed by Roper St. Francis with prior City approval, which approval shall not be unreasonably withheld. RSFH, in consultation with the City and the Center Advisory Council [as defined in 16.(q) below], shall provide quality programs which are responsive to the needs and desires of seniors, make referrals to other programs and opportunities for seniors in the greater Charleston metropolitan area, and cooperate with other programs and facilities for optimal use of outside resources. RSFH shall, however, have the right to prohibit solicitation at the Center.

(e) Marketing. RSFH agrees to develop and implement a marketing plan for the Center as may be necessary in consultation with the City and the Center Advisory Council, to attract membership and fund raisers. RSFH shall be responsible for implementing the marketing plan and shall provide advertising for the Center in existing publications and through various community activities as deemed appropriate and desirable by RSFH.

(f) Budgets. For purposes of this Agreement, the Center's fiscal year shall run from January 1 through December 31. Thereafter, RSFH shall prepare and submit a proposed budget to the City on November 1 of each year setting forth the estimated receipts and expenditures of the Center for the next fiscal year. The City shall provide approval or written comments of proposed changes within three weeks (21 days) of receiving the proposed budget. Each budget shall include a list of the proposed fees for membership and other services to be provided at the Center. When approved by the City's Budget and Finance Division, RSFH shall implement the budget as approved and shall be authorized to make the expenditures and incur the obligations provided for in the approved budget. In the event the City does not approve a budget or provide written comments of proposed changes within three weeks (21 days) following RSFH's submission of the proposed budget to the City for any year (or on or before the opening of the Center with respect to the initial budget), then RSFH shall operate pursuant to the proposed budget. The City and RSFH shall meet on a quarterly basis to review the approved budget. If revenues are not being received as contemplated by the approved budget or operating expenditures are exceeding the amounts as approved in the budget, the parties shall work together cooperatively to reduce expenditures in order to ensure that the budget will remain balanced.

(g) Funding and Payment of Operating Expenses. RSFH shall collect all membership fees and other revenues derived from Center operations and all funds raised for operating expenses (the "Operating Funds"). RSFH shall have the authority to submit applications for grants and other funding for operating expenses. RSFH shall consult with the City on grants and funding and keep the City regularly apprised of the status, but may conduct grant submissions without pre-approval from the City unless the grant directly involves the City. Additionally, with prior written approval of the City, RSFH may submit grant applications in the name of and on behalf of the City. Any funds provided to RSFH on behalf of the City will require City oversight of the collection, receipt and management of any and all government and private grants, sponsorships, endowments and other contributions designated for operating expenses of the Center. RSFH shall pay all operating expenses of the Center, including, but not limited to all utilities, taxes and fees (if any) serving the Project, and RSFH's administrative services fee as provided in Section 16(k) below, from the Operating Funds. RSFH shall not be liable for the payment of expenses incurred in accordance with the terms of this Agreement which exceed the amount of Operating Funds reasonably available for payment of such expenses, provided such expenses were approved in accordance with paragraph (f) above.

The City acknowledges that the Center will require ongoing financial support from the City in order for programs and services to remain affordable. Beginning on January 31, 2018 or within sixty (60) days of the issuance of the certificate of occupancy for the Center, whichever is later, the City agrees to provide funding to support the Center for the first five (5) years of operations and accordingly, the City shall contribute \$100,000 in Year One, \$80,000 in Year Two, \$60,000 in Year Three, \$40,000 in Year Four, and \$20,000 in Year Five. Financial support in subsequent years will be reviewed annually with funding amounts from the City to be determined based on revenue needs of the Center. The City will work in partnership with RSFH to secure funding from Charleston County and other municipalities as needed.

(h) Capital Reserve Account. RSFH shall establish a capital reserve account (herein the "Account") for and on behalf of the City which shall be used by the City for the purpose of funding the major (greater than \$1,000 in cost with three (3) percent annual escalator to commence in year two (2) of this Agreement) maintenance and replacement of equipment and furnishings and major maintenance and repairs of the Improvements. RSFH shall deposit into the Account a minimum sum of \$ 2,500 sufficient to cover expenses per year from the Operating Funds which amount shall be increased annually by a three ( 3) percent adjustment commencing in year two (2) of the term of this Agreement. A full statement of the Account shall be submitted each year to the City at the same time the Budget is submitted.

(i) Management Fee. RSFH shall be entitled to receive payment from the Operating Funds for reimbursement for administrative services not previously funded through the Operating Fund and their management of the Center (collectively the "Management Fee"). Said Management Fee shall be equal to six (6) percent of the annual Operating Funds, excluding funds contributed by the City, and provided the funds are available.

Any remaining funds following payment of the Management Fee shall be carried over to the following year's budget, or transferred to the Capital Reserve Account at the sole discretion of the City. However, if management fees are left unpaid as of the effective date of this Management Agreement, RSFH may recoup such fees in subsequent years, provided that funds are available.

(j) Membership Fees and Other Charges. RSFH shall determine the fees to be charged for memberships, classes, facility rentals and other services and programs provided by the Center, which shall be commensurate with fees charged within the community for similar services at a market accepted rate and not disproportionate to fees charged by other local governmental agencies for such services. Prior to implementing any changes in the membership fees or other charges, RSFH shall first submit proposed changes to the City for approval, which shall not be unreasonably withheld.

(k) Accounting. RSFH shall provide general accounting services, including bookkeeping, payroll and accounts receivable/accounts payable management. RSFH shall prepare and furnish to the City a quarterly Summary of Gross Revenue and Expenses (SRE) for the Center within thirty (30) days following the end of each quarter of operation of the Center and an annual report of gross revenues and expenses of the Center within sixty (60) days following the end of each fiscal year. Such reports shall be in form and content reasonably acceptable to the City. The City's auditor or designee shall have the right during normal business hours and upon three (3) business days' prior written notice, to audit, inspect, examine and copy the fiscal and financial records, books, ledgers, statements, invoices, receipts, reports, tax returns, and documents of the Center pertaining to the operation and management of the Center maintained by or on behalf of the RSFH. RSFH agrees to make any such records available for inspection by the City for a period of three (3) years following expiration or cancellation of this Agreement. The City shall bear all expenses incurred in connection with any examination it makes pursuant hereto. To the extent required by federal law and regulation, if the RSFH procures an independent annual audit of the Center's financial records, RSFH agrees to provide a copy of the audit, Management Letter and Single Audit Report to the City within thirty (30) days following receipt of the same by the RSFH; if RSFH procures a corporate annual audit which includes the Center as a department, the RSFH agrees to provide a copy of the portions of the Management Letter and Report which address the Center operations, to the City within thirty (30) days following receipt of the same by the RSFH. RSFH further agrees to comply with any grant reporting requirements related to grants made for operating expenses of the Center.

(l) Purchasing. RSFH shall be responsible for purchasing equipment and supplies reasonably required in the day-to-day operation of the Center.

(m) Contracting. RSFH shall negotiate and consummate agreements and contracts for and on behalf of the Center in the usual course of business.

(n) Staffing. RSFH shall be responsible for the selection, hiring, training, supervision and discharge of all personnel providing services at the Center and may use its own employees to provide such services. RSFH shall have the sole authority to enter into contracts with independent contractors and to hire employees, including determination of the terms and conditions for any such contract or employment. All personnel shall have credentials and skills appropriate for services to be provided by such personnel. RSFH shall arrange for continued training for staff members and networking with other Senior Centers, as appropriate to adhere to current standards and monitor trends in the operation of similar centers. RSFH agrees to actively recruit, use and train senior volunteers to work at the Center.

(o) Appearance, Maintenance and Repairs. RSFH shall provide normal and routine maintenance and repairs for Center facilities, set forth in paragraph 6 above and shall keep such facilities suitable for the comfort and safety of patrons and staff. RSFH shall have the authority to enter into maintenance contracts as needed at the Center excluding maintenance contracts for the Improvements. Costs incurred pursuant to this subsection shall be paid from the Operating Funds.

(p) City Approvals. The Mayor, or his/her designee, shall be the City's representative for purposes of consulting with RSFH and providing approvals requested by RSFH pursuant to this Agreement. The City shall not unreasonably withhold or delay any such approvals.

(q) Center Advisory Council. RSFH shall assemble a Center Advisory Council, in consultation with the City, to render advice to RSFH respecting programs and services to be offered at the Center and to assist RSFH in evaluating such programs and services. The Center Advisory Council will have eleven (11) members consisting of the Mayor or his designee, one (1) member appointed by RSFH, and at least six (6) members and up to seven (7) members who are representative of the Center's members. Membership shall include at least two (2) and up to three (3) experts in the area of gerontology and/or representatives from the business community. Center Advisory Council appointees may serve with the City's approval. The Center Advisory Council shall meet at least on an annual basis and more often if deemed necessary by RSFH and the City.

(r) Program Evaluation. RSFH shall maintain records of the number of persons participating in Center programs and shall submit quarterly summaries of the programs offered and their attendance to the City. RSFH shall provide program participants with an opportunity to evaluate the programs and services offered at the Center. Written program evaluations received by RSFH shall be made available for periodic inspection by the City.

(s) RSFH Evaluation. The City, in consultation with the Center Advisory Council, shall have the right to perform or obtain annual evaluations of the RSFH's performance pursuant to this Agreement. In the event that the City determines that RSFH has failed to fulfill any of its duties hereunder, the City shall notify RSFH in writing describing the nature of such failure and

specifying the corrective action desired by the City. RSFH shall use reasonable efforts to promptly correct the failure. If RSFH reasonably determines the corrective action desired by the City is not reasonably obtainable, RSFH shall promptly notify the City and shall provide the City with such information as the City reasonably requests.

(t) RSFH Permits and Approvals. RSFH shall be responsible for procuring licenses, permits and other approvals, the payment and collection of accounts and in all other activities necessary or appropriate or useful to the RSFH in the carrying out of its duties pursuant to this Agreement.

17. Insurance. RSFH shall obtain and maintain throughout the term of this Agreement: (a) professional liability insurance covering the acts of the RSFH, its agents and employees with limits for each occurrence of not less than \$1,000,000 with an aggregate limit of \$3,000,000, such limits to be reviewed by the parties every five (5) years, and shall require any independent contractors who provide professional services at the Center to maintain such coverage, in amounts and with insurers reasonably acceptable to the City (professional liability coverage purchased through Joint Underwriters Association and the Patient's Compensation Fund shall be deemed acceptable by the City); (b) all-risks property and casualty insurance written at replacement cost value with replacement cost endorsement, covering RSFH's personal property in the Center including inventory, trade fixtures, floor coverings, furniture and other personal property removable by RSFH under the terms of this Agreement (c) public liability insurance to afford protection with limits for each occurrence of not less than \$1,000,000 with respect to personal injury and death and an aggregate limit of \$3,000,000, and \$1,000,000 with respect to property damage, (d) workmen's compensation or similar insurance affording statutory coverage and containing statutory limits to its employees. Notwithstanding the foregoing, RSFH is hereby authorized to maintain the insurance required by this Section 17 through its self-insured trust, provided that RSFH provides documentation to the City on an annual basis demonstrating the financial viability of the trust. Each policy shall be issued by companies and in form and amounts reasonably acceptable to the City, shall name the City as an additional insured and shall not be subject to cancellation nor be nonrenewable unless the City is provided written notice thereof no less than thirty (30) days prior to such cancellation or the date on which a policy is not renewed. RSFH shall deliver certificates evidencing the renewal of coverage with evidence of payment of the applicable premiums to the City at least thirty (30) days prior to the expiration of each policy period. If RSFH shall fail to provide such coverage, the City shall have the option (but not the obligation), following ten (10) days prior written notice to the RSFH, to cause such insurance to be issued, and in such event the premium for such insurance shall be repaid by the RSFH to the City within ten (10) days after receipt of a statement therefor. Insurance required pursuant to this Agreement may be provided under RSFH's master policy. The City shall provide and keep in full force and effect hazard insurance with extended coverage covering the Improvements. The City shall not be liable for any damage or injury that may be sustained by

any party or persons on the Premises, other than damage or injury caused solely by the negligence of the City, its agents or employees.

18. Indemnification by RSFH. RSFH hereby agrees to indemnify, defend and hold the City harmless from and against any and all claims, actions, liabilities, losses, costs and expenses of any nature whatsoever, including reasonable attorneys' fees and other costs of investigating and defending any such claim or action, asserted against the City but arising out of the negligence, misconduct or default of the RSFH, its agents, contractors or employees and arising out of RSFH's use of the premises, up to the limits of its coverage

19. City Liability. RSFH does not hereby assume any of the obligations, liabilities or debts of the City, except as otherwise expressly provided herein, and shall not, by virtue of its performance hereunder, assume or become liable for any of such obligations, debts or liabilities of the City of any nature whatsoever. City shall keep in force at its expense, as long as this Agreement remains in effect, public liability insurance (provided by the South Carolina Insurance Reserve Fund or other insurance provider chosen by the City) with the amounts listed below for damages as the result of any one occurrence including damages for care and loss of services, because of personal injury sustained by one or more persons, because of all property damage sustained by one or more persons or organizations, or by any combination of personal injury or property damage sustained by one or more persons or organizations:

- a) A limit of Three Hundred Thousand and No/100 (\$300,000.00) Dollars per person arising because of loss from a single occurrence on account of bodily injuries, because of property damage sustained, or by any combination of personal injury or property damage; and
- b) A total sum not to exceed Six Hundred Thousand (\$600,000.00) Dollars as the result of any one occurrence, accident or disaster.

20. Use of Name, Logos, etc. RSFH agrees to design a logo and develop a marketing plan for the Center in consultation with the City and the Center Advisory Council in order to assist the Center in attracting membership and marketing rentals of the Center facilities and other fundraisers. The logo shall be subject to the reasonable approval of the City. RSFH shall be responsible for implementing the marketing plan and shall provide advertising for the Center in existing publications and through various community activities as deemed appropriate and desirable by RSFH. Except as expressly provided herein, neither party shall make any use of the name of the other, or any of their trademarks, logos or symbols, without the prior written consent of the other party, which consent shall not be unreasonably withheld.

21. Proprietary Rights. Any marketing, management and other systems, business ideas, methodologies, programs, computers, computer programs and other information or equipment provided by the RSFH for use in the management or operation of the Center or for the provision of any programs or services at the Center (collectively "Property") shall remain at all

times the property of the RSFH and shall not be disclosed or used in any manner by the City without the prior written consent of the RSFH. RSFH shall have the right to remove all property of RSFH upon expiration or earlier termination of this Agreement provided, however, that the Center financial and accounting books and records, including customer and membership records and the Center policy and procedure manuals shall be the property of the City and shall remain at the Center. In the event that Property is purchased by the City, such Property, including but not limited to computers and equipment, shall remain the property of the City and shall be returned to the City by RSFH upon the expiration or earlier termination of this Agreement. RSFH agrees that in the event this Agreement expires or is terminated, the City may hire any members of the Center staff, including the Center Director, who are engaged by RSFH to work at the Center.

22. Equal Employment Opportunity. RSFH expressly agrees to abide by all applicable Federal or State equal employment opportunity statutes, rules and regulations including, without limitation, Title VII of the Civil Rights Act of 1964, the Equal Employment Opportunity Act of 1972, the Age Discrimination in Employment Act of 1967, the Equal Pay Act of 1963, the National Labor Relations Act, the Fair Labor Standards Act, the Rehabilitation Act of 1973, the Occupational Safety and Health Act of 1970, and the Americans with Disabilities Act of 1990, all as may be amended from time to time in its management of the Center.

23. Competitive Services. Nothing in this Agreement shall prohibit RSFH or any of its affiliates from owning or operating other senior centers or providing other senior services.

24. Authority. Each party represents and warrants to the other that it has the authority to enter into and perform its obligations under this Agreement, and that the execution, delivery and performance of this Agreement by such party has been duly authorized by all requisite corporate or municipal action, as the case may be, and that this Agreement constitutes the legal, valid and binding obligation of such party, enforceable against it in accordance with its terms.

25. Dispute Resolution. The parties agree to meet and confer in good faith to resolve any disputes regarding the terms of this Agreement that may arise between them. It is understood and agreed that any dispute that cannot be amicably resolved by the parties shall be submitted to voluntary mediation. All expenses incurred for the services of a mediator shall be shared equally by the parties. In the event the parties are unable to resolve any problem or dispute through voluntary mediation, either party may pursue any and all remedies available to it in a court of competent jurisdiction.

26. Assignment. Neither party shall have the right to assign this Agreement without the prior written consent of the other party except that RSFH may assign this Agreement to any affiliated entity with sixty (60) days advance written notice to the City.

27. Notices. All notices or other communications required or permitted under this Agreement shall be in writing directed to a party at its address as set forth below. A party may designate a new address by written notice. All notices shall be effective and deemed delivered upon receipt when sent via facsimile or express mail service, and three days after mailing when mailed postage prepaid by United States registered or certified mail, return receipt requested.

To the City:

Mayor John J. Tecklenburg  
City of Charleston  
P.O. Box 304  
Charleston, SC 29402-0304

With a Copy to:

Corporation Counsel  
City of Charleston  
P.O. Box 304  
Charleston, SC 29402-0304

To RSFH:

Elizabeth Bernat  
Director of Senior Services  
Roper St. Francis Healthcare  
Lowcountry Senior Center  
865 Riverland Drive  
Charleston, SC 29412

With a Copy to:

Gregory T. Edwards, Esq.  
Vice President and General Counsel  
Roper St. Francis Healthcare  
125 Doughty Street, Suite 720  
Charleston, SC 29403

28. Attorneys' Fees. In the event that any party hereto shall bring an action to enforce the terms hereof or to declare rights hereunder, the prevailing party in any such action, shall be entitled to court costs and reasonable attorneys' fees to be paid by the non-prevailing party as fixed by the court of appropriate jurisdiction, including, but not limited to, attorney's fees and court costs incurred in courts of original jurisdiction, bankruptcy courts, or appellate courts.

29. No Agency or Partnership. The parties shall not in any way or for any purpose be deemed to be or become partners, joint venturers, agents, employees or employers with respect to each other by virtue of this Agreement or for purposes hereof. Neither party shall be responsible for or otherwise required to police or regulate any activities or conduct of the other or any of their employees, officers, agents or contractors.

30. Entire Agreement. This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements and understandings of the parties in connection herewith. No interpretation, modification, termination or waiver of any provision of, or default pursuant to, this Agreement shall be binding upon a party unless in writing and signed by the party against whom enforcement is sought.

31. Waiver Limitation. No failure or delay in exercising any right, power or remedy hereunder shall constitute a waiver, forfeiture or other impairment of such right, power or remedy.

32. Severability. The invalidity, illegality or unenforceability of any provision hereof shall not render invalid, illegal or unenforceable any other provision hereof.

33. Successor and Assigns. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, and their heirs, successors and permitted assigns.

34. Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the interpretation or meaning of this Agreement.

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

36. Corporate Authority. Each individual executing this Agreement on behalf of a corporation represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of the corporation in accordance with a duly adopted resolution of the board of directors of the corporation or City Council, as the case may be, or in accordance with the Bylaws of the corporation, and that this Agreement is binding upon the corporation in accordance with its terms.

37. Taxes. RSFH shall pay any Federal, State, County and City sales and/or use taxes and fees arising as a result of this Agreement from the Operating Funds.

38. Governing Law. This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of South Carolina, and the parties hereto specifically agree to submit to and be bound by the jurisdiction of the courts, either federal or state, of the State of South Carolina. Venue for any action brought to enforce this Agreement shall lie in Charleston County, South Carolina.

39. Memorandum of Agreement. This Agreement may be recorded by either party. At the request of either party, the City and RSFH shall execute a short form or memorandum of lease for recording, with the cost to be paid by the requesting party.

40. Approvals by the City and RSFH. RSFH's obligations under this Agreement are subject to Bon-Secours-St. Francis Xavier Hospital, Inc. ("BSHFI") prior written approval of the Ground Lease. The City's obligations under this Agreement are subject to the approval of the Ground Lease by City Council. In the event that either BSHSI or the City Council fails to provide such consent on or before June 21, 2016, then this Agreement shall automatically terminate, and neither RSFH nor the City shall have any further obligations under this Agreement.

IN WITNESS WHEREOF, the parties caused their authorized representatives to execute, this Agreement as of the date first above written.

WITNESSES:

The City of Charleston

\_\_\_\_\_

By: \_\_\_\_\_  
John J. Tecklenburg,  
Mayor

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_

Roper St. Francis Healthcare

Dated: \_\_\_\_\_

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

Name: \_\_\_\_\_

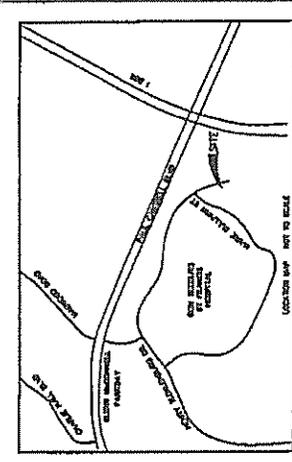
Its: \_\_\_\_\_

Dated: \_\_\_\_\_

**Exhibit A**

Landlord Property

(Recorded Plat, Book L16, Page 0211)

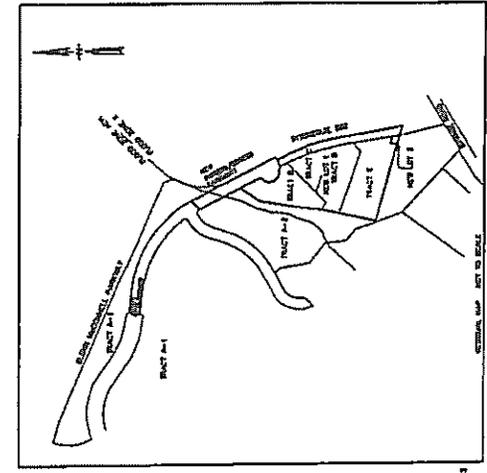


FOR CITY OF CHARLESTON AND CHARLESTON COUNTY USE ONLY

RECORDED

APPROVED PLAN

FOR THE CITY OF CHARLESTON



**NOTES AND REFERENCES:**

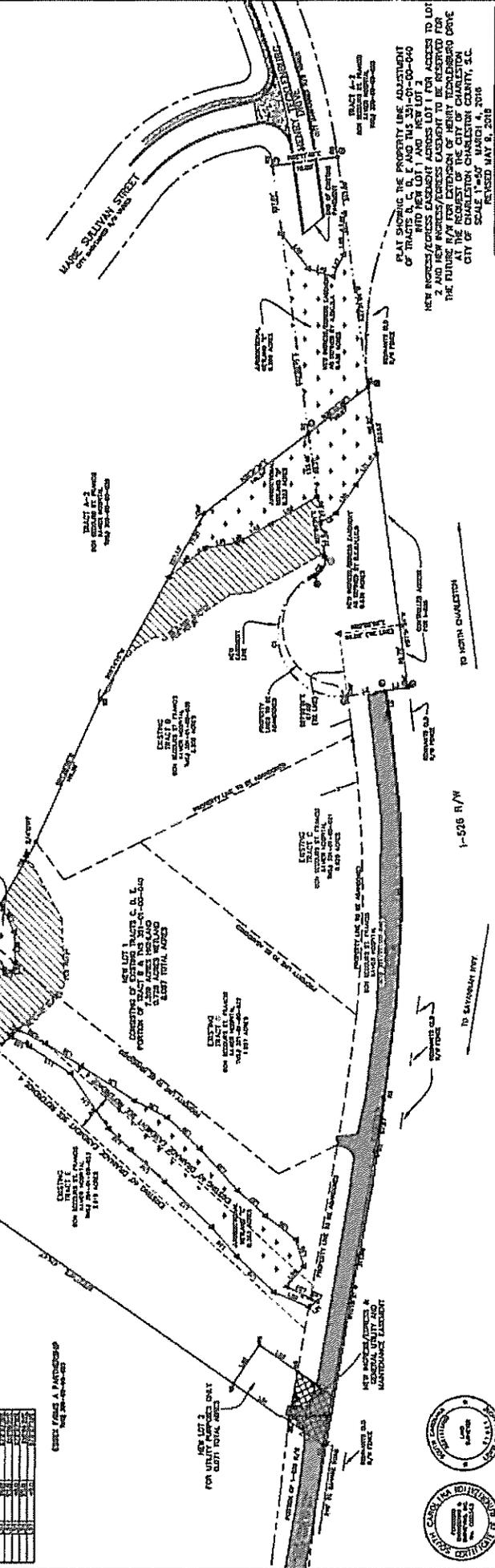
1. THE PROPERTY IS SHOWN BY THE RECORDS OF THE COUNTY OF CHARLESTON, SOUTH CAROLINA, THE SUBJECT IS SHOWN AT THE PROPERTY OF THE CITY OF CHARLESTON.
2. ALL DIMENSIONS ARE IN FEET AND INCHES UNLESS OTHERWISE NOTED.
3. THE TOTAL AREA SHOWN IS 8.62 ACRES.
4. APPROXIMATE BOUNDARY OF THE PROPERTY IS SHOWN BY THE RECORDS OF THE COUNTY OF CHARLESTON, SOUTH CAROLINA, THE SUBJECT IS SHOWN AT THE PROPERTY OF THE CITY OF CHARLESTON.
5. APPROXIMATE BOUNDARY OF THE PROPERTY IS SHOWN BY THE RECORDS OF THE COUNTY OF CHARLESTON, SOUTH CAROLINA, THE SUBJECT IS SHOWN AT THE PROPERTY OF THE CITY OF CHARLESTON.
6. APPROXIMATE BOUNDARY OF THE PROPERTY IS SHOWN BY THE RECORDS OF THE COUNTY OF CHARLESTON, SOUTH CAROLINA, THE SUBJECT IS SHOWN AT THE PROPERTY OF THE CITY OF CHARLESTON.
7. APPROXIMATE BOUNDARY OF THE PROPERTY IS SHOWN BY THE RECORDS OF THE COUNTY OF CHARLESTON, SOUTH CAROLINA, THE SUBJECT IS SHOWN AT THE PROPERTY OF THE CITY OF CHARLESTON.

**LEGEND**

EXISTING PROPERTY AND	EXISTING
PROPOSED PROPERTY AND	PROPOSED
EXISTING EASEMENTS	EXISTING
PROPOSED EASEMENTS	PROPOSED
EXISTING UTILITIES	EXISTING
PROPOSED UTILITIES	PROPOSED
EXISTING ROADS	EXISTING
PROPOSED ROADS	PROPOSED
EXISTING CURBS	EXISTING
PROPOSED CURBS	PROPOSED
EXISTING DRIVEWAYS	EXISTING
PROPOSED DRIVEWAYS	PROPOSED
EXISTING FENCES	EXISTING
PROPOSED FENCES	PROPOSED
EXISTING TREES	EXISTING
PROPOSED TREES	PROPOSED

**DESCRIPTIVE TABLE**

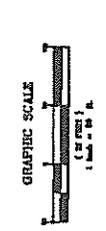
TRACT	AREA (ACRES)	TOTAL AREA (ACRES)
TRACT A-1	1.25	1.25
TRACT A-2	1.50	2.75
TRACT A-3	1.75	4.50
TRACT A-4	1.00	5.50
TRACT A-5	1.25	6.75
TRACT A-6	1.50	8.25
TRACT A-7	1.37	9.62
<b>TOTAL</b>	<b>9.62</b>	<b>9.62</b>



**FORSBERG ENGINEERING AND SURVEYING, INC.**

1001 EAST BAYVIEW AVENUE, SUITE 100  
 CHARLESTON, SOUTH CAROLINA 29405  
 PHONE: 771-1111 FAX: 771-1112  
 WWW.FORSBERG-ENGINEERING.COM

DATE: MARCH 4, 2018  
 REVISION: MAY 9, 2018



PLAT SHOWING THE PROPERTY LINE ADJUSTMENT OF TRACTS A, B, C, D, E, F, AND G AND THIS 2018-01-00-000 AND THE PROPERTY ADJUSTMENT FOR ACCESS TO LOT 2 AND NEW ADDRESS/ACCESS EASEMENT TO BE RECEIVED FOR THE FUTURE R/W EXTENSION OF HENRY WILKINSON DRIVE AT THE REQUEST OF THE CITY OF CHARLESTON, SOUTH CAROLINA.

SCALE: 1"=40' (AS SHOWN)

THE CITY OF CHARLESTON, SOUTH CAROLINA, HAS REVIEWED THIS PLAT AND HAS DETERMINED THAT IT IS IN ACCORDANCE WITH THE CITY CODE AND THE CITY CHARTER.

THE CITY OF CHARLESTON, SOUTH CAROLINA, HAS REVIEWED THIS PLAT AND HAS DETERMINED THAT IT IS IN ACCORDANCE WITH THE CITY CODE AND THE CITY CHARTER.

THE CITY OF CHARLESTON, SOUTH CAROLINA, HAS REVIEWED THIS PLAT AND HAS DETERMINED THAT IT IS IN ACCORDANCE WITH THE CITY CODE AND THE CITY CHARTER.

THE CITY OF CHARLESTON, SOUTH CAROLINA, HAS REVIEWED THIS PLAT AND HAS DETERMINED THAT IT IS IN ACCORDANCE WITH THE CITY CODE AND THE CITY CHARTER.



**COMMERCIAL REAL ESTATE FORM**

TO: Real Estate Committee      DATE: June 21, 2016

FROM: Colleen Carducci      DEPT: BFRC

ADDRESS: 85 Calhoun Street

TMS: 458-01-01-085

ACTION REQUEST: Request after the fact approval for the Facilities Use Agreement with the Mother Emanuel AME Church whereby the City provides the Church access to the Civic Design Center for an artwork exhibit as part of the anniversary commemoration

**ORDINANCE:** Is an ordinance required? Yes  No

**ACTION: What action is being taken on the Property mentioned?**

**ACQUISITION**      Seller (Property Owner) \_\_\_\_\_ Purchaser \_\_\_\_\_

**DONATION/TRANSFER**  
Donated By: \_\_\_\_\_

**FORECLOSURE**  
Terms: \_\_\_\_\_

**PURCHASE**  
Terms: \_\_\_\_\_

**CONDEMNATION**  
Terms: \_\_\_\_\_

**OTHER**  
Terms: \_\_\_\_\_  
\_\_\_\_\_

**SALE**      Seller (Property Owner) \_\_\_\_\_ Purchaser \_\_\_\_\_

**NON-PROFIT ORG, please name** \_\_\_\_\_  
Terms: \_\_\_\_\_

**OTHER**  
Terms: \_\_\_\_\_

**EASEMENT**      Grantor (Property Owner) \_\_\_\_\_ Grantee \_\_\_\_\_

**PERMANENT** \_\_\_\_\_

**COMMERCIAL REAL ESTATE FORM**

Terms: \_\_\_\_\_

TEMPORARY

Terms: \_\_\_\_\_

**LEASE**

Lessor: City of Charleston

Lessee: Mother Emanuel AME Church

**INITIAL**

The term of this Agreement shall begin June 13, 2016 and end July 6, 2016. There will be no rent/compensation. The Church will have use of the Facility between 8:30 am-5 pm Monday through Friday and the weekend of June 17, 2016.

Terms: \_\_\_\_\_

**RENEWAL**

Terms: \_\_\_\_\_

**AMENDMENT**

Terms: \_\_\_\_\_

**Improvement of Property**

Owner: \_\_\_\_\_

Terms: \_\_\_\_\_

**BACKGROUND CHECK: If Property Action Request is for the sale or lease of city property, has a background check been completed?**

Yes  No  N/A

Results: \_\_\_\_\_

Signature: \_\_\_\_\_

*C. Carducci*

**Director Real Estate Management**

**ADDITIONAL: Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.**

**NEED: Identify any critical time constraint(s).**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

### FACILITIES USE AGREEMENT

**THIS AGREEMENT** (the "Agreement") is made and entered into this \_\_\_\_ day of June, 2016, by and between the EMANUEL AME CHURCH (hereinafter referred to as "the Church"), with offices located at 110 Calhoun Street, SC 29401 and the CITY OF CHARLESTON (hereinafter referred to as "the City"), with offices located at 80 Broad Street, Charleston, SC 29401.

WHEREAS, the Church seeks to exhibit certain artwork and other items donated by the public to the Church following the tragedy on the evening of June 17, 2015 as part of the anniversary commemoration ("Exhibition") and;

WHEREAS, the City is willing to provide the Church with access to the First Floor of the Civic Design Center for purposes of the Exhibition.

For and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Description of Premises:** City hereby grants a license to and otherwise authorizes the Church to use, subject to the terms and conditions set forth in this Agreement, premises commonly known as the City of Charleston Civic Design Center, First Floor, 85 Calhoun Street, Charleston, SC 29401 ("Facility").
2. **Term of Agreement:**
  - a. The term of this Agreement shall begin on June 13, 2016 and end on July 6, 2016;
  - b. The Church shall have use of the Facility during the hours of 8:30 am – 5:00 pm, Monday through Friday and the weekend of June 17, 2016.
  - c. City staff will be responsible for unlocking the Facility each morning and locking the Facility each evening.
  - d. The Church will be responsible for staffing the Exhibition with a minimum of two persons at all times when the Facility is open to the public.
  - e. The Church will be responsible for providing a list of items included in the Exhibition prior to June 13, 2016 and will be responsible for all items during the time that the Church is using the Facility.

- f. The Church will be responsible for transporting Exhibition items to and removing items from the Facility. All items will be removed by no later than July 6, 2016.
3. **Rent/Compensation:** \$1.00.
4. **Use of Premises:** The Facility shall be used to provide a temporary Exhibition to display artwork and other items donated to the Church.
5. **Utilities:** The City will pay for electric, water, and other utility costs associated with the operation of the Facility.
6. **Maintenance and Repairs:** The Church shall maintain the Facility in good order and repair, and return the Facility to the City in as good a condition as existed at the beginning of the Term, normal wear and tear excepted. Any installation of artwork or other exhibits that involves hanging items or otherwise impact the Facility must receive prior approval of the City
7. **Security:** The Church will be responsible for security during the times when the Facility is open.
8. **Insurance:**
- a. The City shall, at all times during the term of this Agreement, keep all improvements that are now or hereafter a part of the Premises on which the Facility is located insured against loss or damage by fire, extended coverage, vandalism and malicious mischief in accordance with its current insurance policy.
- b. The Church acknowledges responsibility for the negligent acts of its employees, officers and/or representatives and shall maintain during the Term of this Agreement liability insurance with the City as a named insured with a limit not to exceed the amounts listed below for damages to person or property as the result of any one occurrence. Proof of insurance will be provided to the City by June 13.
- i) A limit of Three Hundred Thousand and No/100 (\$300,000.00) Dollars per person, per occurrence, for bodily injury, including death, arising from negligent acts of the Church its employees, officers and/or representatives; and
- ii) A limit of Six Hundred Thousand (\$600,000.00) Dollars per occurrence, in the aggregate, for bodily injury, including death, from negligent acts of the Church, its employees, officers and/or representatives; and
- iii) A limit of One Hundred Thousand and No/100 (\$100,000) Dollars for damage or destruction of property, per occurrence, arising from the negligence of the Church, its employees, officers and/or representatives.
9. **Notices:** Any and all notices or other communications provided for in this Agreement shall be in writing, shall be signed by the party giving the same, and shall be delivered

personally, or mailed by certified mail, return receipt requested, postage prepaid, addressed to the party to whom such communication is directed as herein below provided. Notice shall be deemed to be given and received hereunder on the date of delivery if personally delivered, or two (2) days after the date of mailing if mailed as aforesaid (not including the date of mailing). Any party may change his or its address at any time by giving the other party notice thereof. Such notice shall be addressed as follows:

If to the Church:

[please complete]

If to City:

Mayor John J. Teckienburg  
80 Broad Street  
Charleston, SC 29401

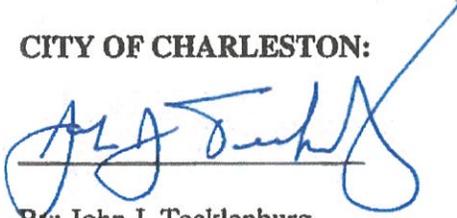
With a copy to:

City of Charleston Legal Department.  
50 Broad Street  
Charleston, SC 29401

10. **Governing Law:** This Agreement is being made in the State of South Carolina and shall be construed and enforced in accordance with the laws of the State of South Carolina.
11. **Severability:** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but should any provision of this Agreement be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, and without invalidating the remainder of such provision or the remaining provisions of this Agreement.
12. **Entire Agreement:** This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written or otherwise, relating to such subject matter. No provision hereof can be changed orally, and no change or attempted waiver of any provision hereof will be binding unless in writing and signed by the party against whom the same is sought to be enforced.
13. **Assignability:** This Agreement is not assignable without the express, written consent of the City.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals as of the date and year first written above.

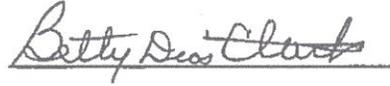
**CITY OF CHARLESTON:**



By: John J. Tecklenburg

Its: Mayor

**EMANUEL AME CHURCH**



By: Betty Deas Clark

Its: Pastor

d.)

**REAL ESTATE COMMITTEE**  
**GENERAL FORM**

TO: Real Estate Committee DATE: June 21, 2016

FROM: Colleen Carducci DEPT: BFRC

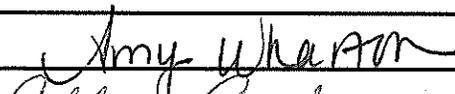
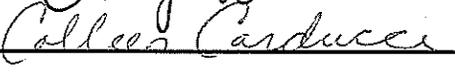
ADDRESS: Liberty Square Park, Concord Street

TMS: \_\_\_\_\_

**Action Request:** Request approval of the Mayor to execute the attached Special Use Permit whereby the National Park Service agrees to permit the City of Charleston's use of Liberty Square for the annual First Day Festival occurring on August 14<sup>th</sup>, 2016

**ORDINANCE:** Is an ordinance required? Yes  No

**COORDINATION:** The request has been coordinated with:  
*All supporting documentation must be included*

	<u>Signature</u>	<u>Attachments</u>
Department Head	<u></u>	<input type="checkbox"/>
Legal Department	_____	<input type="checkbox"/>
Chief Financial Officer	<u></u>	<input type="checkbox"/>
Director Real Estate Management	<u></u>	<input checked="" type="checkbox"/>
_____	_____	<input type="checkbox"/>

**FUNDING:** Was funding needed? Yes  No

If yes, was funding previously approved?\* Yes  No

If approved, provide the following: Dept/Div. \_\_\_\_\_ Acct: \_\_\_\_\_

Balance in Account \_\_\_\_\_ Amount needed for this item \_\_\_\_\_

**NEED:** Identify any critical time constraint(s).

\*Commercial Property and Community & Housing Development have an additional form.

**COMMERCIAL REAL ESTATE FORM**

TO: Real Estate Committee                      DATE: June 21, 2016

FROM: Colleen Carducci                      DEPT: BFRC

ADDRESS: Liberty Square Park, Concord Street

TMS: \_\_\_\_\_

Request approval of the Mayor to execute the attached Special Use Permit whereby the National Park Service agrees to permit the City of Charleston's use of Liberty Square for the annual First Day

ACTION REQUEST: Festival occurring on August 14<sup>th</sup>, 2016

**ORDINANCE:** Is an ordinance required? Yes  No

**ACTION: What action is being taken on the Property mentioned?**

**ACQUISITION**                      Seller (Property Owner) \_\_\_\_\_ Purchaser \_\_\_\_\_

**DONATION/TRANSFER**  
Donated By: \_\_\_\_\_

**FORECLOSURE**  
Terms: \_\_\_\_\_

**PURCHASE**  
Terms: \_\_\_\_\_

**CONDEMNATION**  
Terms: \_\_\_\_\_  
\_\_\_\_\_

**SALE**                      Seller (Property Owner) \_\_\_\_\_ Purchaser \_\_\_\_\_

**NON-PROFIT ORG, please name** \_\_\_\_\_  
Terms: \_\_\_\_\_

**OTHER**  
Terms: \_\_\_\_\_

**SPECIAL USE PERMIT**                      Permitter: National Park Service                      Permittee: City of Charleston

**PERMITTED**  
Terms:

The City of Charleston hereby agrees to abide by the outlined terms and conditions in the attached Permit Agreement, Attachments, and Addendum. All fees associated with this permit have been waived.

**COMMERCIAL REAL ESTATE FORM**

**LEASE**

Lessor: \_\_\_\_\_ Lessee: \_\_\_\_\_

**INITIAL**

Terms: \_\_\_\_\_

**RENEWAL**

Terms: \_\_\_\_\_

**AMENDMENT**

Terms: \_\_\_\_\_

**Improvement of Property**

Owner: \_\_\_\_\_

Terms: \_\_\_\_\_

\_\_\_\_\_

**BACKGROUND CHECK:** If Property Action Request is for the sale or lease of city property, has a background check been completed?

Yes  No  N/A

Results: \_\_\_\_\_

Signature: *Calvin Carducci*

Director Real Estate Management

**ADDITIONAL:** Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.

**NEED:** Identify any critical time constraint(s).

UNITED STATES DEPARTMENT OF THE INTERIOR  
National Park Service  
Fort Sumter National Monument  
Special Use Permit

NAME	Mindy Sturm
ORGANIZATION	City of Charleston
ADDRESS	50 Broad Street
	Charleston, SC 29401
TELEPHONE NUMBER	FAX NUMBER
(843) 965-4190	

Park Alpha Code: FOSU  
Type of Use: 2501  
Permit #: 16-0010

is hereby authorized to use the following described land or facilities in the above named area:

**Liberty Square**

The area must be restored to its original condition at the end of the permit.

The permit begins at 8:00 (am) on August 12, 2016 (Month/Day/Year)

The permit expires at 6:00 (pm) on August 14, 2016 (Month/Day/Year).

**SUMMARY OF PERMITTED ACTIVITY:**

**First Day Festival** – celebrates education and the start of a new school year, and provides parents with information regarding student support services. The actual event occurs on August 14 from 1:00 p.m. to 4:00 p.m.

Person on site responsible for adherence to the terms and conditions of the permit: Mindy Sturm (843) 860-2233 (cell)

NEPA Compliance: CATEGORICALLY EXCLUDED \_\_\_ EA/FONSI \_\_\_ EIS \_\_\_ PEPC # \_\_\_ OTHER \_\_\_

APPLICATION FEE Received \_\_\_ Not Required X Amount \$ \_\_\_\_\_

PERFORMANCE BOND: Required X Not Required \_\_\_ Amount \$ ~~500.00~~

LIABILITY INSURANCE: Required X Not Required \_\_\_ Amount \$ ~~1,000,000.00~~ \$600,000

COST RECOVERY: Required \_\_\_ Not Required X Amount \$ \_\_\_\_\_

FACILITY USE FEE: Required \_\_\_ Not Required X Amount \$ \_\_\_\_\_

LOCATION FEE: Required \_\_\_ Not Required X Amount \$ \_\_\_\_\_

**ISSUANCE of this permit is subject to the attached conditions. The undersigned hereby accepts this permit subject to the terms, covenants, obligations, and reservations, expressed or implied herein.**

PERMITTEE

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Authorizing NPS Official

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Superintendent

\_\_\_\_\_  
Date

**CONDITIONS OF THIS PERMIT**

1. The permittee is prohibited from giving false information; to do so will be considered a breach of conditions and be grounds for revocation: [36 CFR 2.32(a)(3)]. \_\_\_\_\_ (permittee initial)
2. The permittee shall exercise this privilege subject to the supervision of the Superintendent or designee, and shall comply with all applicable Federal, State, county and municipal laws, ordinances, regulations, codes, and the terms and conditions of this permit. Failure to do so may result in the immediate suspension of the permitted activity or the termination of the permit. \_\_\_\_\_ (permittee initial)
3. If any provision of this permit shall be found to be invalid or unenforceable, the remainder of this permit shall not be affected and the other provisions of this permit shall be valid and be enforced to the fullest extent permitted by law. \_\_\_\_\_ (permittee initial)
4. The permittee is responsible for making all necessary contacts and arrangements with other Federal, State, and local agencies to secure required inspections, permits, licenses, etc. \_\_\_\_\_ (permittee initial)
5. Failure to comply with any of the terms and conditions of this permit may result in the immediate suspension or revocation of the permit. All costs associated with clean up or damage repairs in conjunction with a terminated permit will be the responsibility of the permittee. \_\_\_\_\_ (permittee initial)
6. This permit may be revoked at the discretion of the Superintendent upon 24 hour notice, or without notice if damage to resources or facilities occurs or is threatened, notwithstanding any other term or condition of the permit to the contrary. \_\_\_\_\_ (permittee initial)
7. This agreement is made upon the express condition that the United States, its agents and employees shall be free from all liabilities and claims for damages and/or suits for or by reason of any injury, injuries, or death to any person or persons or property of any kind whatsoever, whether to the person or property of the (Permittee/Grantee), its agents or employees, or third parties, from any cause or causes whatsoever while in or upon said premises or any part thereof during the term of this agreement or occasioned by any occupancy or use of said premises or any activity carried on by the (Permittee) in connection herewith, and the (Permittee) hereby covenants and agrees to indemnify, defend, save and hold harmless the United States, its agents, and employees from all liabilities, charges, expenses and costs on account of or by reason of any such injuries, deaths, liabilities, claims, suits or losses however occurring or damages growing out of the same. \_\_\_\_\_ (permittee initial) See Attachment #A
8. N/A Permittee agrees to carry general liability insurance against claims occasioned by the action or omissions of the permittee, its agents and employees in carrying out the activities and operations authorized by this permit. The policy shall be in the amount of ~~\$1,000,000~~ and underwritten by a United States company naming the United States of America as **additionally insured**. The permittee agrees to provide the Superintendent with a Certificate of Insurance with the proper endorsements prior to the effective date of the permit. \_\_\_\_\_ (permittee initial)
9. N/A Permittee agrees to deposit with the park a bond in the amount of \$ ~~500.00~~ from an authorized bonding company or in the form of cash or cash equivalent, to guarantee that all financial obligations to the park will be met, including the restoration and rehabilitation of the permitted area. \_\_\_\_\_ (permittee initial)
10. Costs incurred by the park as a result of accepting and processing the application and managing and monitoring the permitted activity will be reimbursed by the permittee. Administrative costs and estimated costs for activities on site must be paid when the permit is approved. If any additional

costs are incurred by the park, the permittee will be billed at the conclusion of the permit. Should the estimated costs paid exceed the actual costs incurred; the difference will be returned to the permittee. \_\_\_\_\_ (permittee initial)

11. The person named on the permit as in charge of the permitted activity on-site must have full authority to make any decisions about the activity and must remain on-site at all times. He/she shall be responsible for all individuals, groups, vendors, etc. involved with the permit. \_\_\_\_\_ (permittee initial)
12. As a condition of acceptance of this permit by the permittee and pursuant to 41 U.S. C. 22, "No Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon." \_\_\_\_\_ (permittee initial)
13. Nothing herein contained shall be construed as binding the Service to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of this Agreement for the fiscal year, or to involve the Service in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations. \_\_\_\_\_ (permittee initial)
14. This permit may not be transferred or assigned without the prior written consent of the Superintendent. \_\_\_\_\_ (permittee initial)

**ADDENDUM OF  
ADDITIONAL TERMS AND CONDITIONS FOR SPECIAL USE PERMIT  
REGARDING SPECIAL USE ON PROPERTY KNOWN AS  
CHARLES PINCKNEY NATIONAL HISTORIC SITE  
BELONGING TO THE NATIONAL PARK SERVICE ("NPS")**

This Addendum is part of and incorporated into the Special Use Permit to which it is attached.

**TERMS AND CONDITIONS**

1. Access to the NPS Site is granted to the Permittee solely for the purpose of conducting all activities reasonably required for this Special Use Permit (the "Event"). The Event must be performed in a good and workmanlike manner and in compliance with all federal, state and local regulations. The Permittee shall at all times comply with applicable NPS regulations found at 36 CFR Parts 1-6. \_\_\_\_\_ (permittee initial)
2. The Permittee shall be permitted access only during regular business hours unless otherwise noted and approved. Access will be permitted only according to a schedule of activities approved in advance by NPS. \_\_\_\_\_ (permittee initial)
3. The Permittee assumes all risks and liabilities that are or may be associated with permitting entry onto the NPS site by its employees, contractors, volunteers, quests or other invitees, and is solely responsible for ensuring the safety of all its employees, contractors, volunteers, guests or invitees. \_\_\_\_\_ (permittee initial)
4. The Permittee shall implement the Event in a manner and at times that create minimal interference with the ongoing visitor use, maintenance activities, and activities by other permittees and their contractors and subcontractors. The NPS reserves the right to cancel, void or prohibit activities authorized under this permit when these activities pose a risk to public safety, park property or interfere with normal park operations or maintenance. \_\_\_\_\_ (permittee initial)
5. The Permittee shall ensure that the surface of the NPS Site used during the Event is promptly restored to

a condition satisfactory to NPS after the event is completed. \_\_\_\_\_ (permittee initial)

6.(a) ~~The Permittee shall indemnify, defend, reimburse and hold harmless NPS, its contractors and subcontractors, its successors and assigns, from and against any and all costs, expenses (including without limitation reasonable attorneys' fees), claims, judgments, damages, losses, penalties, fines or liabilities (including strict liability) which at any time arise out of or are incurred as a result of (i) the Event; (ii) the restoration of the surface of the NPS Site; or (iii) the Permittee's violation of or failure to comply with any regulations in connection with the Event.~~ \_\_\_\_\_ (permittee initial) See Attachment #B

(b) ~~For purposes of this provision the activities of the Permittee contractors, subcontractors, representatives, and employees shall be deemed to be the activities of the Permittee.~~ \_\_\_\_\_ (permittee initial)

(c) ~~The indemnity hereunder shall be applicable to all costs, expenses, claims, judgments, damages, losses, fines or liabilities, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, and whether or not any particular claim is ultimately defeated or settled. The matters against which NPS shall be indemnified hereunder shall include, but shall not be limited to, damages for personal injury to any third party, including, but not limited to, any contractor, subcontractor or employee of NPS or the Permittee and any guest, volunteer or invitee to the Event, and damages for the injury to the property of any third party.~~ \_\_\_\_\_ (permittee initial)

(d) The Permittee shall give NPS prompt written notice of any event or occurrence, known to the Permittee or which would be known to the Permittee with their exercise of reasonable diligence, that may give rise to the Permittee's liability hereunder (for example, injury to a third party's person or property). Notice shall be directed to the Superintendent of Fort Sumter National and shall be mailed certified mail, return receipt requested. \_\_\_\_\_ (permittee initial)

(e) The Permittee hereby waives and releases any and all debts, claims, lawsuit, demands, liabilities, losses, actions or causes of action, whether in law or in equity, whether direct or indirect, whether presently known or unknown, it may have now or in the future against NPS arising out of the issuance of this Permit and performance of the Event permitted hereunder, including, but not limited to, any claims that might arise out of a revocation of this Permit or an order to cease the Event. \_\_\_\_\_ (permittee initial)

7. The party accepting the Permit on behalf of the Permittee represents and warrants that he/she is a duly authorized to represent the Permittee, and that upon signing below indicating acceptance of the Permit, including, but not limited to this Addendum, the Permittee shall be bound and the conditions herein shall become the enforceable obligation of the Permittee. \_\_\_\_\_ (permittee initial)

#### TERMS SPECIFIC TO THIS EVENT

8. Activities should not have a negative impact on the visiting public (i.e. blocking walkways or waysides). Locations along with equipment and materials used will be subject to approval on the day of event by NPS official. \_\_\_\_\_ (permittee initial)

9. Smoking can only take place in designated areas. \_\_\_\_\_ (permittee initial)

10. Fort Sumter National Monument has a zero tolerance to drugs. Violators will be cited and/or arrested. \_\_\_\_\_ (permittee initial)

11. All wildlife at Liberty Square is protected by federal law. As such any approaching or feeding of animals is prohibited. \_\_\_\_\_ (permittee initial)

12. Event vehicles will be utilized for support service only. The Aquarium access road is to be used for

loading and unloading only – no extended parking is permitted. \_\_\_\_\_ (permittee initial)

13. Support equipment consists of tents, tables, chairs, stage, sound system, crowd pleaser, industrial fans, inflatables, water buffalo (2), recreational game supplies and media equipment. The set-up and break-down will be provided by the City of Charleston; no setup assistance or equipment will be provided by the National Park Service. The City of Charleston will coordinate with the National Park Service on setup planning inside Liberty Square; nothing will be setup immediately in front of the Fort Sumter Visitor Center or the South Carolina Aquarium. No vehicles or heavy equipment may be used or set-up on the bluestone pavers.  
\_\_\_\_\_ (permittee initial)

14. All permitted activities must be done in a manner that does not damage or deface park property permittee is responsible for all damage. The area must be left in the same condition as it was found. All trash, debris and support equipment must be removed prior to 6:00 p.m. on August 14, 2016. \_\_\_\_\_ (permittee initial)

15. Parking is restricted to available public facilities – operating vehicles on park property is prohibited.  
\_\_\_\_\_ (permittee initial)

16. NPS will assume no liability or be responsible for any damages to property removed as a result of permittee's failure to abide by the conditions of this permit. The permittee assumes all liability for any damage during work by third parties or permittee. The permittee will be responsible for any damage to Federal property.  
\_\_\_\_\_ (permittee initial)

**ATTACHMENT #A**

**Revision to Condition #7 of Conditions of Special use Permit between United States Department of the Interior, National Park Service and City of Charleston for 2015 First Day Festival:**

Permittee hereby further agrees that, at all times that this Permit is in effect, Permittee is responsible for any and all liability, if there be such liability, for any damage to person or property that may arise, or be alleged to have arisen, as a result of the use of the Permitted Property and as provided for in state law. The Permittee acknowledges that it is insured to the limits set forth in the South Carolina Tort Claims Act (S.C. Code Ann. Sec. 15-78-10 et seq., as amended). A certificate evidencing such insurance is attached. No personal judgment shall lie against the United State, its agents or employees as a result of the conduct of the Permittee.

**ATTACHMENT #B**

**Revision to Condition #6 of Addendum of Additional Terms and Conditions For Special Use Permit Regarding Special Use on Property Known as Fort Sumter National Monument Belonging to the National Park Service ("NPS"):**

**6. (a) Permittee hereby further agrees that, at all times that this Permit is in effect, Permittee is responsible for any and all liability, if there be such liability, for any damage to person or property that may arise, or be alleged to have arisen, as a result of the use of the Permitted Property and as provided for in state law. The Permittee acknowledges that it is insured to the limits set forth in the South Carolina Tort Claims Act (S.C. Code Ann. Sec. 15-78-10 et seq., as amended). A certificate evidencing such insurance is attached. No personal judgment shall lie against the United States, its agents or employees as a result of the conduct of the Permittee.**



**SOUTH CAROLINA BUDGET AND CONTROL BOARD**

**INSURANCE RESERVE FUND  
POST OFFICE BOX 11066  
COLUMBIA, SOUTH CAROLINA 29211**

Phone (803) 737-0020

<b>P</b>	<b>TY NUMBER</b>	<b>FROM</b>	<b>POLICY PERIOD</b>	<b>TO</b>	<b>TYPE OF INSURANCE</b>	<b>DATE PRINTED</b>
	T140670016	01/01/2015	01/01/2016		GENERAL TORT LIABILITY	31 DEC 2014

COVERAGE PROVIDED UNDER THIS POLICY PART IS SUBJECT TO THE FOLLOWING FORMS  
CD-01 CD-12 CD-37

<b>NAMED INSURED AND ADDRESS</b> CITY OF CHARLESTON POST OFFICE BOX 304 CHARLESTON, SC 29402	<b>CONTACT PERSON AND PHONE</b> TONI BENNETT (843)720-3857	<b>FORM #</b>	<b>PAGE</b> 154 OF 155
<b>TYPE OF ACTIVITY</b> *** RENEWAL DECLARATION ***			<b>ACTIVITY #</b> 001

EFFECTIVE 12:01 AM STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE 1 OF 1

**COVERAGE**

LIMIT OF LIABILITY - \$600,000 PER OCCURRENCE

e.)

**REAL ESTATE COMMITTEE**  
**GENERAL FORM**

**TO:** John J. Tecklenburg., Mayor      **DATE:** June 13, 2016

**FROM:** Geona Shaw Johnson      **DEPT:** HCD

**ADDRESS:** 342 North Nassau Street  
13 Boyers Court

**TMS:** 463-12-02-070; 459-01-01-046/047/048

Authorize the Mayor and City Council to execute the documents necessary to transfer 13 Boyers Court and 342 North Nassau Street to JJR Development, LLC for the sum of \$70,000 [13 Boyers Court \$40,000 & 342 North Nassau Street \$30,000] for the development of 5 affordable houses for persons earning up to

**ACTION REQUEST:** 80 percent of the Area Median Income.

**COORDINATION:** The request has been coordinated with:  
*All supporting documentation must be included*

	<u>Signature</u>	<u>Attachments</u>
Department Head	<u>Geona Shaw Johnson</u>	<input type="checkbox"/>
Legal Department	<u>Gynie Barber / ybc</u>	<input type="checkbox"/>
Chief Financial Officer	<u>Amy Wharton</u>	<input type="checkbox"/>
Director Real Estate Management	<u>C. Carducci</u>	<input checked="" type="checkbox"/>
		<input type="checkbox"/>

**FUNDING:** Was funding needed?      Yes       No

If yes, was funding previously approved?      Yes       No

\*If approved, provide the following:      **Dept/Div.** \_\_\_\_\_      **Acct:** \_\_\_\_\_

Balance in Account \_\_\_\_\_      Amount needed for this item \_\_\_\_\_

**NEED:** Identify any critical time constraint(s).

**COMMERCIAL REAL ESTATE FORM**

TO: Real Estate Committee      DATE: June 13, 2016

FROM: Geona Shaw Johnson      DEPT: HCD

ADDRESS: 342 North Nassau Street  
13 Boyers Court

TMS: 463-12-02-070; 459-01-01-046/047/048

Authorize the Mayor and City Council to execute the documents necessary to transfer 13 Boyers Court and 342 North Nassau Street to JJR Development, LLC for the sum of \$70,000 [13 Boyers Court \$40,000 & 342 North Nassau Street \$30,000] for the development of 5 affordable houses for persons earning up to

ACTION REQUEST: 80 percent of the Area Median Income

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**ACTION: What action is being taken on the Property mentioned?**

**ACQUISITION**      Seller (Property Owner) \_\_\_\_\_ Purchaser \_\_\_\_\_

**DONATION/TRANSFER**  
Donated By: \_\_\_\_\_

**FORECLOSURE**  
Terms: \_\_\_\_\_

**PURCHASE**  
Terms: \_\_\_\_\_

**CONDEMNATION**  
Terms: \_\_\_\_\_

**OTHER**  
Terms: \_\_\_\_\_

**SALE**      Seller (Property Owner) City of Charleston      Purchaser JJR Development, LLC

**NON-PROFIT ORG, please name** \_\_\_\_\_  
Terms: As outlined in Transfer Agreement

**OTHER**  
Terms: \_\_\_\_\_

**EASEMENT**      Grantor (Property Owner) \_\_\_\_\_      Grantee \_\_\_\_\_

**PERMANENT**  
Terms: \_\_\_\_\_

**COMMERCIAL REAL ESTATE FORM**

TEMPORARY  
Terms: \_\_\_\_\_

LEASE Lessor: \_\_\_\_\_ Lessee: \_\_\_\_\_

INITIAL  
Terms: \_\_\_\_\_

RENEWAL  
Terms: \_\_\_\_\_

AMENDMENT  
Terms: \_\_\_\_\_

Improvement of Property  
Owner: \_\_\_\_\_  
Terms: \_\_\_\_\_

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**BACKGROUND CHECK:** If Property Action Request is for the sale or lease of city property, has a background check been completed?

Yes  No  N/A

Results: \_\_\_\_\_

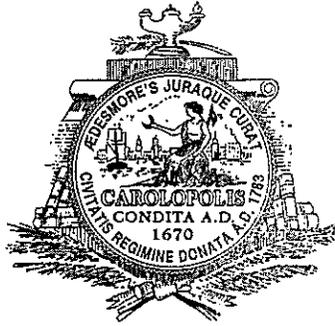
Signature: \_\_\_\_\_

Director Real Estate Management

**ADDITIONAL :** Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.

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**NEED:** Identify any critical time constraint(s).



Ratification  
Number \_\_\_\_\_

# AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE THE NECESSARY DOCUMENTS TO ENTER INTO THAT CERTAIN TRANSFER AGREEMENT BETWEEN THE CITY OF CHARLESTON AND JJR DEVELOPMENT, LLC, FOR THE TRANSFER OF 13 BOYERS COURT BEARING TMS NO.: 463-12-02-070 AND 342 NORTH NASSAU STREET BEARING TMS NOS.: 459-01-01-046, 459-01-01-047, 459-01-01-048 FOR THE DEVELOPMENT OF AFFORDABLE HOUSING. SAID TRANSFER AGREEMENT BEING MARKED AS EXHIBIT A, ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN.

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

**Section 1.** The Mayor is hereby authorized to execute the necessary documents to enter into that certain Transfer Agreement between the City of Charleston and JJR Development, LLC, for the transfer of 13 Boyers Court bearing TMS No.: 463-12-02-070 and 342 North Nassau Street bearing TMS Nos.: 459-01-01-046, 459-01-01-047, 459-01-01-048 for the development of affordable housing. Said Transfer Agreement being marked as Exhibit A, attached hereto and incorporated by reference herein.

**Section 2.** This Ordinance shall become effective upon ratification.

Ratified in City Council this \_\_\_\_\_  
day of \_\_\_\_\_ in the year of  
Our Lord, 2016, in the 240<sup>th</sup> Year of  
the Independence of the United States  
of America.

\_\_\_\_\_  
John J. Tecklenburg, Mayor  
Mayor, City of Charleston

ATTEST:

\_\_\_\_\_  
Vanessa Turner Maybank  
Clerk of Council



- (A) Due Organization: Developer is a Limited Liability Company duly organized and validly existing in good standing under the laws of the State of South Carolina and duly authorized to transact business in the State of South Carolina with full corporate power to execute, deliver and perform the obligations and transactions contemplated in this Transfer Agreement.
- (B) Due Authorization: The Developer and any officer, member, manager or partner executing this Transfer Agreement has full power, authority, and legal right to enter into this Transfer Agreement and to carry out the provision of this Transfer Agreement according to the terms hereof. The Developer has duly authorized the execution and delivery of this Transfer Agreement, and no other action of the Developer is requisite to the execution and delivery of this Transfer Agreement. No consents or approvals are required to be obtained from any Legal Authorities (as defined in Exhibit D, attached hereto and incorporated herein by reference) for the execution and delivery of this Transfer Agreement.
- (C) Violation of Other Agreements: The execution of this Transfer Agreement and the performance of the Developer pursuant to this Transfer Agreement does not and shall not (i) violate any provision of law or its organizational documents, or (ii) result in a breach of, constitute a default under, require any consent under, or result in the creation of any lien, charge, or encumbrance upon any property of the Developer pursuant to any instrument, order, or other agreement to which the Developer is a party or by which the Developer, or any of its property is bound.

4. CLOSING. Developer may elect to purchase and close on all of the Properties at one closing, or Developer may elect to close on one or more Properties in multiple closings over a period of time and in any order or combination which Developer desires; provided, however, that the closing or closings on all of the Properties shall take place no later than one (1) year from the date of this Transfer Agreement. All closings shall take place in Charleston County, South Carolina, at a time, date and place mutually agreed to by the City and the Developer.

5. POSSESSION. The City shall give Developer possession of the Properties at the closing hereof, provided title has passed.

6. TITLE. At each Property's respective closing, the City shall convey good and marketable or insurable fee simple absolute title to such Property by Limited Warranty Deed duly executed with revenue stamps in the proper amount affixed thereto, free and clear of all defects, restrictions, leases, judgments, taxes and assessments, liens or encumbrances of any sort; provided, however, that the City shall convey title to the Property to the Developer and the Developer agrees to take title to the Properties subject to the following:

- (A) That certain Declaration of Transfer Restrictions set forth on Exhibit "A" attached hereto and incorporated herein by reference (the "Declaration of Transfer Restrictions") to be executed by the Developer and delivered to the City at the same time that the City executes and delivers the deed conveying title to a Property to the Developer, which Declaration of Transfer Restrictions shall be recorded in the R.M.C. Offices for Charleston County, South Carolina.

- (B) Each and every one of the single family affordable housing restrictive covenants and other terms, conditions and restrictions (the “**Restrictive Covenants**”), set forth and contained in Exhibit “B” which is attached to the Declaration of Transfer Restrictions and incorporated herein by reference;
- (C) Those other matters set forth in Exhibit “C” (attached hereto and incorporated herein by reference, hereinafter the “**Permitted Exceptions**”); and
- (D) Such other matters as otherwise agreed to in writing by the City and the Developer.

If the City is unable to convey marketable or insurable title to the Properties without a court action, or incurring any unusual expenses or within thirty (30) days after the herein specified closing date for such Property, then the City or Developer shall have the option of terminating this Transfer Agreement as to such Property by giving written notice to the other party hereto; provided, however, that notwithstanding such termination as to such Property, this Transfer Agreement shall not be terminated as to the other Properties covered by this Transfer Agreement and shall nonetheless continue in full force and effect as to such other Properties.

7. CLOSING COSTS. The City shall be responsible for the fees and expenses of the City's attorneys, the fees for the preparation of the Limited Warranty Deed(s), the fees or taxes for documentary stamps due with respect to the Deed by which the Property is conveyed to the Developer, the costs necessary to provide marketable or insurable title to the Property being conveyed (except as otherwise provided in **Section 6** above), and any other costs and expenses actually incurred by the City. Except as may otherwise be provided in **Section 8(F)** herein below, the Developer shall be responsible for all other closing costs.

8. CONTINGENCIES. The obligations of the parties hereunder as to the Properties shall be subject to the fulfillment on the date of closing of the Properties, or sooner, of each of the following conditions:

- (A) The representations and warranties of the Developer contained in this Transfer Agreement and otherwise made by or on behalf of the Developer shall be true and correct in all material respects on and as of the date of the closing of the Property.
- (B) This Transfer Agreement is contingent on the City Council for the City of Charleston approving this Transfer Agreement, the Development Agreement (as hereinafter defined), and the purchase of the Properties by the Developer.
- (C) This Transfer Agreement shall be further contingent upon satisfaction of each of the conditions precedent to closing as set forth in the Redevelopment Contingencies Addendum attached to this Transfer Agreement as Exhibit “D” and made a part hereof.
- (D) This Transfer Agreement is further contingent on the Developer entering into an agreement with the City to redevelop the Properties, which agreement must be satisfactory to the City (hereinafter the “**Development Agreement**”). The Development Agreement shall provide, among other things that the Developer shall, upon completion of redevelopment, resell the Properties to low- to moderate-income individuals or families pre-approved by the City in accordance with the City of Charleston’s Homeownership Initiative Redevelopment Plan, the Declaration of

Transfer Restrictions, and the Restrictive Covenants. A separate Development Agreement must be executed for each lot, piece, parcel or tract of land comprising the Properties and must be delivered to the City on or before the closing of the Property.

(E) This transfer Agreement is further contingent on the Developer executing and delivering the Declaration of Transfer Restrictions to the City at the same time that the City executes and delivers the deed conveying title to a Property to the Developer, which Declaration of Transfer Restrictions shall be recorded in the R.M.C. Office for Charleston County, South Carolina. A separate Declaration of Transfer Restrictions must be executed for each Property and must be delivered to the City on or before the closing of each Property, and, unless otherwise consented to in writing by the City, shall be in the same form and content as the sample form Declaration of Transfer Restrictions attached hereto as "Exhibit A" and made a part hereof.

(F) If the above contingencies are not satisfied by closing for the Property, then either the Developer or the City shall have the option, in its sole discretion, to terminate and cancel this Transfer Agreement as to such Property; provided, however, that notwithstanding such termination as to such Property, this Transfer Agreement shall not be terminated as to the other Properties covered by this Transfer Agreement and shall nonetheless continue in full force and effect as to such other Properties. Each of the above contingencies shall apply to each Property to be conveyed under this Transfer Agreement, and each such contingency shall survive the closing of each Property, and, as a result, shall be a condition precedent to the closing of each other Property not then yet closed.

9. PRORATIONS. All ad valorem taxes due with respect to the Properties for the calendar year of the closing shall be prorated between the Developer and the City as of the closing date for such Property. If the actual amount of such taxes is not known as of such date, the proration at the closing shall be on an equitable basis and shall be based on the most current and accurate billing information available. All prorations at closing shall be final.

10. AGENTS/BROKERS. The City and the Developer hereby acknowledge, confirm and agree that no real estate agent or broker is involved in this transaction and, further, that no commissions are or shall be due and/or payable to any real estate agent or broker as a result of this Transfer Agreement and the closing(s) contemplated hereby.

11. RISK OF LOSS OR DAMAGE. In case the Property herein referred to is destroyed wholly or partially by fire or other casualty prior to the closing and delivery of the Deed for such Property, then the City or the Developer shall have the option of proceeding hereunder as to such Property or of terminating this Transfer Agreement. In the event either party elects to terminate this Transfer Agreement, then the terminating party must give the non-terminating party written notice of such termination. In the event that none of the parties elects to terminate this Transfer Agreement as a result of such damage or destruction, then the City shall be entitled to retain and keep any insurance proceeds payable on account of the damage or destruction unless the parties otherwise agree in writing.

12. DEFAULT AND REMEDY. In the event of a breach of this Transfer Agreement, the non-breaching party shall have all rights and remedies afforded under South Carolina law, including, without limitation, the right of specific performance, and the breaching party shall be liable to reimburse the non-breaching party for reasonable attorney's fees and all expenses incurred in enforcing any provisions hereof.

13. NOTICES. Any notice, demand, or communication called for hereunder shall be in writing, shall be signed by the party giving same, and shall be given, served, or delivered either in person, or by first-class, certified mail, return receipt requested, postage prepaid, or by Federal Express (or other nationally recognized overnight courier), return receipt requested, with postage or delivery charge prepaid, and if to the Developer, addressed to the Developer at the Developer's mailing address set forth below in this Section, and if to the City, addressed to the City's mailing address set forth in this Section, or to such other address as either party may designate by written notice to the other. Any and all such notices, demands or other communications addressed to the Developer shall be deemed to be given to and received by the Developer on the date of delivery if personally delivered, and two (2) days after the date of mailing if mailed as aforesaid, and one (1) day after it was placed with the overnight courier as aforesaid. Any and all such notices, demands or other communications addressed to the City shall be deemed to be given to and received by the City on the date of delivery if personally delivered, and two (2) days after the date of mailing if mailed as aforesaid, and one (1) day after it was placed with the overnight courier as aforesaid, to the City's Clerk of Council, to the Director of the City of Charleston's Department of Housing and Community Development, and to Corporation Counsel for the City, whichever date is later. Such notices, demands or other communications shall be addressed as follows:

If to the Developer:

JJR Development, LLC  
42 Broad Street, 2<sup>nd</sup> Floor  
Charleston, SC 29401

If to the City:

The City of Charleston  
Attention: Clerk of Council  
City Hall  
80 Broad Street  
Charleston, SC 29401

Copy to:       The City of Charleston  
                  Department of Housing and Community Development  
                  Attention: Geona Shaw Johnson  
                  75 Calhoun Street, Suite 3200  
                  Charleston, SC 29401-3506

                  City of Charleston  
                  Attention: Corporation Counsel  
                  Legal Department  
                  50 Broad Street  
                  Charleston, SC 29401

14. MISCELLANEOUS.

(A) Successors and Assigns. This Transfer Agreement shall inure to the benefit of and shall be binding upon the respective heirs, personal representatives, successors and assigns of the parties

hereto. This Developer shall have the right to assign its rights and interest in this Agreement to any entity that is directly controlled by or directly under the Developer's control.

(B) Governing Law. This Transfer Agreement is being made in South Carolina and shall be construed and enforced in accordance with the laws of South Carolina.

(C) Survival. This Transfer Agreement and the provisions hereof shall survive the closing of each Property and shall not be merged by the City's execution and delivery to the Developer of the Limited Warranty Deed for each such Property or the recording thereof.

(D) Severability. Wherever possible, each provision of the Transfer Agreement shall be interpreted in such manner as to be effective and valid under applicable law, and such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Transfer Agreement.

(E) Waiver of Breach. The failure or delay of any party to insist upon compliance with any provision hereof shall not operate as and is not to be construed to be a waiver or amendment of the provision or of the right of the aggrieved party to insist upon compliance with such provision or to take remedial steps to recover damages or other relief for noncompliance. Any express waiver of a breach of any provision of this Transfer Agreement shall not operate and is not to be construed as a waiver of any other or subsequent breach, irrespective of whether occurring under similar or dissimilar circumstances.

(F) Entire Agreement. This Transfer Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter. No provision hereof shall be changed orally, and no change or attempted waiver of any provision hereof shall be binding unless in writing and signed by the party against whom the same is sought to be enforced. The masculine pronoun, when used herein, shall include the feminine and neuter pronoun, if applicable, and the singular shall include the plural, if applicable.

(G) Authority of Redevelopment & Preservation Commission to Modify Agreement: The City of Charleston Redevelopment & Preservation Commission, on behalf of the City, shall have authority to modify any provisions of this Transfer Agreement as mutually agreed to in writing with the Developer.

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

(I) Days; Dates: Unless other specified herein, all references to day or days in this Transfer Agreement shall mean a calendar day or calendar days. If any date set forth in this Transfer Agreement or computed pursuant to this Transfer Agreement falls on a Saturday, Sunday, or national holiday, such date shall be deemed automatically amended to be the first business day following such weekend day or holiday.

(J) Execution of Agreement. This Transfer Agreement must be executed by all parties and delivered to the City by 3:00 P.M., June 30, 2016, or the offer is automatically withdrawn and this Transfer Agreement shall be null and void.

**(K) TIME IS OF THE ESSENCE. TIME IS OF THE ESSENCE AS TO ALL TERMS AND CONDITIONS OF THIS TRANSFER AGREEMENT.**

**(L) *THIS IS A LEGALLY BINDING AGREEMENT. THE DEVELOPER ACKNOWLEDGES AND AGREES THAT HAYNSWORTH SINKLER BOYD, ATTORNEYS AT LAW, ARE SERVING AS THE CITY'S ATTORNEYS IN THIS TRANSACTION AND DO NOT REPRESENT THE DEVELOPER. THE DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT THE DEVELOPER HAS BEEN ADVISED BY THE CITY AND THE CITY'S ATTORNEYS TO SEEK ASSISTANCE FROM INDEPENDENT LEGAL COUNSEL PRIOR TO THE DEVELOPER'S EXECUTION OF THIS AGREEMENT.***

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the day and year first herein above written.

WITNESSES:

CITY:

The City of Charleston

\_\_\_\_\_  
Witness 1

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

John Tecklenburg  
Its: Mayor

\_\_\_\_\_  
Witness 2

DEVELOPER:

JJR Development, LLC, a South Carolina Limited Liability Company

\_\_\_\_\_  
Witness 1

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

Its:

\_\_\_\_\_  
Witness 2



5. Developer agrees that it shall provide City with advance written notice of any sale, transfer or other conveyance of the Property and shall provide a copy of the proposed deed by Developer to the purchaser/grantee and any income or other documentation reasonably requested by City as to the purchaser/grantee not less than fourteen (14) days prior to the conveyance by Developer of the Property to a purchaser/grantee.

This Declaration can only be amended by a written instrument signed by both Developer and City, its successors or assigns.

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**EXHIBIT "A"**  
**TO**  
**DECLARATION OF TRANSFER RESTRICTIONS**

**The Legal Description**

**EXHIBIT "B"**  
**TO**  
**DECLARATION OF TRANSFER RESTRICTIONS**

**Single Family Affordable Housing Restrictive Covenants**

City of Charleston

1. **Covenant and Purpose.** The Property shall be conveyed subject to the conditions, covenants, restrictions and limitations set forth below (collectively, the Restrictive Covenants). The Restrictive Covenants shall be considered as covenants running with the land, and shall be binding on the Developer, its heirs, successors and assigns, together with all successors in title to the Property (the Developer, its heirs, successors and assigns, together with all successors in title to the Property, being collectively referred to herein as the Owner). Each Owner covenants and agrees, in the event the Property is sold, conveyed, including conveyed by foreclosure or by deed in lieu of foreclosure, or otherwise disposed of, the Property shall be conveyed subject to these Restrictive Covenants and that the recording information for this deed shall be inserted in the deed of conveyance or other instrument disposing of the Property. Each Owner further covenants and agrees that these Restrictive Covenants shall survive a foreclosure or conveyance by deed in lieu of foreclosure.

2. **Definitions.** As used in these covenants, conditions, and restrictions the following terms shall have the meaning set forth:

2.1. "Area Median Income" shall mean and have reference to the median family income, based upon applicable family size of a Qualified Purchaser (or of a Qualified Renter, if applicable), for the Charleston-North Charleston metropolitan statistical area as published by the United States Department of Housing and Urban Development. If the United States Department of Housing and Urban Development should no longer compile and publish such statistical information, the most similar information compiled and published by said Department or any other branch or department of the federal government or by the State of South Carolina shall be used for the purpose of determining Area Median Income.

2.2. "Base AMI" shall mean the Area Median Income for a family of four persons as of the date of the deed from the Developer to the first Qualified Purchaser of the Property. The Base AMI for this deed is \$ \_\_\_\_\_.

2.3. "Consumer Price Index" shall mean and have reference to the Consumer Price Index for All Urban Consumers (CPI-U) for the South urban area, All Items, (Base Period: 1982-84 = 100), as published by the United States Department of Labor. If the United States Department of Labor should no longer compile and publish such statistical information, the most similar information compiled and published by said Department or any other branch or department of the federal government or by the State of South Carolina shall be used for the purpose of determining the Consumer Price Index.

2.4. "Base CPI" shall mean the most recent published Consumer Price Index **as of** the date of the deed from the Developer to the first Qualified Purchaser of the Property. The Base CPI for this deed is \_\_\_\_\_.

2.5. "AMI Increase" shall mean the Area Median Income for a family of four persons at the date of calculation divided by the Base AMI. By way of example only and solely for purposes of

illustration, if the Developer conveyed the Property in July, 2002 to the first Qualified Purchaser and the Area Median Income for a family of four persons was \$49,200 in July, 2002 ( the "Base AMI" for purposes of this illustration only) and if the Area Median Income for a family of four persons was \$55,900 in September, 2005 when an Owner proposed to sell the Property, the AMI Increase would be \$55,900 divided by \$49,200 or 1.136 (rounded) (i.e. 113.6%).

2.6. "CPI Increase" shall mean the most recent published Consumer Price Index **as of** the date of calculation divided by the Base CPI. By way of example only and solely for purposes of illustration, if the Developer conveyed the Property in July, 2002 to the first Qualified Purchaser and the most recent published Consumer Price Index **as of** July, 2002 was 173.5 (the "Base CPI" for purposes of this illustration only) and if the most recent published Consumer Price Index **as of** September, 2005 was 189.4 when an Owner proposed to sell the Property, the CPI Increase would be 189.4 divided by 173.6 or 1.091 (rounded) (i.e. 109.1%).

2.7. "Base Purchase Price" shall mean the gross purchase price paid to the Developer by the first Qualified Purchaser of the Property. The Base Purchase Price for this deed is \$ \_\_\_\_\_.

2.8. "City" shall mean and have reference to the City of Charleston, a municipal corporation, duly organized and existing under the laws of South Carolina.

2.9. "Developer" shall mean and have reference to the 2.9. "Qualified Purchaser" shall mean and have reference to a proposed purchaser of the Property whose household income is between fifty percent (50%) and one hundred and twenty percent (120%) of Area Median Income as of the anticipated date of purchase of the Property by the Qualified Purchaser and who is certified in writing by the City as having the requisite income.

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

2.11. "Property" shall mean and have reference to that certain tract or parcel of land conveyed by this deed, together with all improvements, fixtures and equipment located thereon.

2.12. "Resale Price" shall mean and have reference to (i) an amount determined as the product of the Base Purchase Price 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 5 herein. By way of example and solely for purposes of illustration, if the Base Purchase Price were \$140,000 (solely for purposes of this illustration only) when the Developer transferred the Property to the first Qualified Purchaser in July, 2002 and the AMI Increase was 1.136 at the time of a proposed sale in September, 2005 and the CPI Increase was 1.091 at the time of a proposed sale in September, 2005 the Resale Price would be \$140,000 times 1.136 (i.e. 113.6%) or \$159,040.

2.13. "City Subsidy" shall mean \$ \_\_\_\_\_

2.14. "City Subsidy Percentage" shall mean the City Subsidy divided by the Base Purchase Price. By way of example only and solely for purposes of illustration, if the Base Purchase Price were

\$140,000 and the City Subsidy were \$21,000, the City Subsidy Percentage would be \$21,000 divided by \$140,000 or 15%.

2.15. "Lien Limitation Percentage" shall mean 100% minus the City Subsidy Percentage. By way of example only and solely for purposes of illustration, if the City Subsidy Percentage were 15%, the Lien Limitation Percentage would be 85%.

2.16. "Lien Limit" shall mean the amount that equal the Lien Limitation Percentage times the Resale Price as calculated by the City immediately prior to the execution of the mortgage. By way of example and solely for the purposes of illustration, if the Owner wanted to mortgage the Property in September, 2005 and the Resale Price in September, 2005 were \$159,040, the City Subsidy Percentage were 15%, the Lien Limitation Percentage were 85% , then the Lien Limit would be \$159,040 times 85% or \$135,184.

2.17. "Adjusted City Subsidy" shall mean the City Subsidy Percentage times the Resale Price as calculated at the time of determining the Adjusted City Subsidy. By way of example and solely for purposes of illustration, if the Resale Price in September, 2005 was \$159,040 and the City Subsidy Percentage was 15%, the Adjusted City Subsidy in September, 2005 would be \$159,400 times 15% or \$23,910.

2.18. "Non-City Share of the Resale Price" shall mean the Resale Price as calculated at the time of determining the Non-City Share of Resale Price minus the Adjusted City Subsidy. By way of example and solely for purposes of illustration, if the Resale Price were \$159,040 and the Adjusted City Subsidy were \$23,910 in September, 2005, the Non-City Share of Resale Price would be \$159,040 minus \$23,910 or \$135,130. In the event the Property is sold to the City for the Default Option Price, the Non-City Share of the Resale Price shall mean the Default Option Price minus the Adjusted City Subsidy. By way of example and solely for purposes of illustration, if the Resale Price were \$159,040 and the Adjusted City Subsidy were \$23,910 in September, 2005 and the Default Option Price applied, the Non-City Share of the Resale Price would be \$159,040 times 80% or \$127,232 minus \$23,910 or \$103,322.

2.18. "Default Option Price" shall mean 80% of the Resale Price as calculated at the time of the City's written notice of default under Section 13.1. By way of example and solely for the purposes of illustration, if the City gave notice of default in September, 2005 and the Resale Price were \$159,040 at that time, the Default Option Price would be \$159,040 times 80% or \$127,232.

2.19. "Option Term" shall mean 90 years from the date of the deed from the Developer to the first Qualified Purchaser. All provisions relating to the City's Right of First Refusal and the City's right to purchase the Property for the Default Option Price shall automatically terminate upon the expiration of the Option Term. If the South Carolina Uniform Statutory Rule Against Perpetuities (Section 27-6-10 *et seq.*, Code of Laws Of South Carolina, 1976, as amended) is amended, the Option Term shall automatically be modified to the longest period authorized by South Carolina law.

2.20. "Qualified Renter" shall mean and have reference to a proposed renter of the Property whose household income does not exceed eighty percent (80%) of Area Median Income and who is certified by the City as having the requisite income for the applicable household size.

2.21. "Qualified Rent" shall mean the monthly rent approved by the City as affordable rent in accordance with applicable federal guidelines.

2.22. "Qualified Lease" means a written lease approved by the City from the Owner to a Qualified Renter for a Qualified Rent. The lease must be for a term approved by the City and must include periodic recertification by the City of the income of the tenant, if the lease is for more than 12 months to insure that the tenant continues to be a Qualified Renter.

2.23. "City Transfer Certificate" shall mean the written certification to be provided by the City in connection with each transfer of the Property and each granting of a mortgage on the Property. In the event of a transfer, the City Transfer Certificate shall be in a recordable form and shall state the maximum Resale Price as of the date of the specific transfer, the names of the approved Qualified Purchaser(s), the amount of the Adjusted City Subsidy, the amount of the Non-City Share of the Resale Price, each as of the date of the particular transfer and the City's waiver of its right of first refusal. In the event of a mortgage, the City Transfer Certificate shall be in a recordable form and shall state the amount of the Resale Price as of the date of the mortgage, the Lien Limit Percentage, the Lien Limit as of the date of the mortgage, the City Subsidy Percentage, the Adjusted City Subsidy as of the date of the mortgage, together with the City's approval of the new mortgage. In the event that the City has given a one time waiver of any requirements in accordance with the procedures set forth in these Restrictive Covenants, the City Transfer Certificate shall set forth the existence and terms of such waiver. If there is a change in any address listed in Section 16 for notice to the City, the City Transfer Certificate shall provide the new address. An illustration of a City Transfer Certificate based on theoretical facts is attached as an exhibit to these Restrictive Covenants

2.24. "Taxes" means ad valorem taxes on the Property, together with all fees, assessments, penalties and accrued interest charged against the Property or owed by the Owner by reason of its ownership of the Property.

2.25. "City Maintenance Lien" shall have the meaning ascribed in Section 9.

2.26. "City Tax Lien" shall have the meaning ascribed in Section 10.

2.27. "City Lease Lien" shall have the meaning ascribed in Section 13.2.

3. City Subsidy. The City has made an investment in the Property equal to the City Subsidy and the City has agreed that each successive Owner of the Property shall have the benefit of the Adjusted City Subsidy for so long as these Restrictive Covenants remain in effect.

3.1. City's Equitable Interest in the Property. Each Owner covenants and agrees that the City has an equitable interest in the Property equal to the Adjusted City Subsidy. Each Owner covenants and agrees that the portion of any Resale Price as equals the Adjusted City Subsidy Amount belongs to the City and that the Owner's interest in the Resale Price is limited to the Non-City Share of the Resale Price. If these Restrictive Covenants are terminated for any reason, the City shall be entitled to receive payment in full of the Adjusted City Subsidy within thirty (30) days of such termination.

3.2. Transfer and Mortgage Procedures. All transfers of, and all mortgages on, the Property shall be made in accordance with these Restrictive Covenants.

(A) In the event that an Owner wishes to transfer or mortgage the Property, the Owner shall provide written notice of such proposed transfer or mortgage to the City. Such written notice shall request assistance from the City to identify potential Qualified Purchasers and shall request the City to calculate the maximum Resale Price, if a transfer and shall request

the City to calculate the current Lien Limit, if a mortgage. (*See the illustration contained in the definition of Resale Price contained in Section 2.12*) The Owner may transfer the Property for less than the Resale Price but a lower purchase price shall not change the amount of the Adjusted City Subsidy. The Owner agrees that it shall not mortgage the Property unless there is a monthly escrow for insurance and taxes that is reasonably acceptable to the City.

(B) Each Owner covenants and agrees that no transfer of the Property shall take place and no mortgage of the Property shall be granted unless it is in conformance with these Restrictive Covenants and unless the City has delivered a City Transfer Certificate. Each Owner agrees to record the City Transfer Certificate with the transferring deed and with any mortgage.

(C) The aggregate proceeds that the Owner and its mortgagees may receive, and the maximum amount that a Qualified Purchaser may pay, upon the transfer of the Property shall be limited to the lesser of (i) the Non-City Share of the Resale Price and (ii) the purchase price minus the Adjusted City Subsidy. By way of example and solely for purposes of illustration, if the Resale Price were \$159,040 and the Adjusted City Subsidy were \$23,910, the Qualifying Purchaser would pay \$135,130 and the maximum amount that would be available to pay closing costs, to satisfy any mortgages or other outstanding liens and to pay the selling Owner would be the Non-City Share of the Resale Price or \$135,130.

3.3. City Subsidy Lien. The City shall have a continuing lien against the Property in the amount of the Adjusted City Subsidy which lien shall survive the foreclosure of any mortgage or other lien on the Property and shall survive any other transfers of the Property.

4. Resale Only to Qualified Purchasers. Each Owner covenants and agrees that the Property shall be sold, transferred and conveyed only to such individual, party, or entity as described in this paragraph.

4.1. Qualified Purchasers. The Property shall be conveyed only to Qualified Purchasers who are certified by the City in accordance with subparagraph 4.4 (City Certification) or to such persons, parties or entities who are deemed Qualified Purchasers in accordance with subparagraphs 4.2 (Inheritance), 4.3 (Foreclosure), or 4.5 (City Waiver) of this paragraph or in accordance with Paragraph 6 (City Right of First Refusal).

4.2. Inheritance. A transfer that occurs by virtue of the death of an Owner and testate or intestate administration of the estate of the Owner shall be deemed a transfer to a Qualified Purchaser.

4.3. Foreclosure. A transfer that occurs by virtue of foreclosure of a mortgage encumbering the Property or a transfer that occurs by reason of a deed in lieu of foreclosure shall be deemed to be a transfer to a Qualified Purchaser or a transfer by an institutional mortgagee that acquires the Property in foreclosure or by a deed in lieu of foreclosure.

4.4. City Certification. An Owner shall submit, or cause to be submitted, to the City for certification as a Qualified Purchaser, any proposed purchaser of the Property. An Owner shall transfer the Property only to a purchaser who has been certified by the City as a Qualified Purchaser in a City Transfer Certificate. The City shall not decline, refuse or fail to certify as a Qualified Purchaser any potential purchaser of the Property except on the sole ground that the City is

unable to verify that the income of such proposed purchaser is within the income limits required of a Qualified Purchaser.

4.5. City Waiver. The City shall have the right to waive, in its sole discretion, the requirement for a specific purchaser that the purchaser be a Qualified Purchaser. A waiver shall apply to only one transfer and shall not apply to subsequent transfers. Upon receipt of a City Transfer Certificate that contains the written waiver from the City, the specific purchaser shall be deemed to be a Qualified Purchaser.

5. Resale Price. No Owner shall transfer the Property for an amount in excess of the Resale Price. The gross proceeds payable to the Owner on the transfer of the Property shall be limited to the lesser of (i) the Non-City Share of the Resale Price and (ii) the purchase price minus the Adjusted City Subsidy.

5.1. Adjustment to Resale Price. The Resale Price may be adjusted upward by the City to a higher amount if the City determines in its sole discretion that the nature and circumstances of the Owner, and the nature and condition of the Property, warrant such a higher amount and that such higher amount shall not preclude the ability to certify a potential purchaser as a Qualified Purchaser. The determination of any such upward adjustment in the Resale Price shall be in the sole discretion of the City which may elect to refuse to increase the Resale Price for any reason.

5.2. Documentation of Adjustment. No increase in the Resale Price shall be permitted or authorized unless the basis for the increase, and the amount of the Resale Price as adjusted, is set forth in the City Transfer Certificate. Such an increase to the Resale Price shall apply only for a period of 12 months from the date of the City Transfer Certificate and shall not apply to subsequent transfers.

6. Right of First Refusal. In the event that an Owner shall receive an offer to purchase the Property from a Qualified Purchaser or a person who is deemed to be a Qualified Purchaser pursuant to Section 4 for an amount equal to or less than the Resale Price which is acceptable to the Owner (the "Offer"), the City shall have a right to purchase the Property from the Owner for the price set forth in the Offer (the "Right of First Refusal"). Upon the receipt of an Offer, the Owner shall promptly forward a copy of the Offer to the City. In the event that the City elects to exercise the Right of First Refusal, the City shall give written notice thereof to the Owner within sixty (60) days of the City's receipt of the Offer and the closing of such purchase shall occur no later than ninety (90) days following the City's receipt of the Offer. In such circumstances, the sale and transfer of the Property to the City shall be subject to all other provisions of these Restrictive Covenants, and the City shall be deemed to be a Qualified Purchaser. In the event that the City does not exercise its Right of First Refusal within the time periods set forth above, the City Transfer Certificate shall include a waiver of the City's Right of First Refusal. This Right of First Refusal shall be a continuing right that applies to each proposed transfer of the Property. This Right of First Refusal shall automatically terminate upon the expiration of the Option Term.

7. Single Family Use and Leases. The Owner covenants and agrees that the Property shall be used and occupied solely as an Owner occupied, single family residential dwelling. The Owner shall not lease, nor permit to be leased, the Property, except as expressly authorized by this Section 7.

7.1. City Inspection. The City shall have the right to inspect the Property from time to time to insure compliance with these Restrictive Covenants. The Owner shall furnish the City upon

request with copies of paid Tax receipts, insurance policies, termite bonds and other documents required by these Restrictive Covenants.

7.2. Obligation to Sell. If an Owner ceases to occupy the Property, the Owner agrees to give prompt written notice to the City that the Property is no longer Owner occupied and the Owner agrees to sell the Property to a Qualified Purchaser for the Resale Price. The Owner agrees to actively list and market the Property and agrees that the City and its agents shall be entitled to show the Property to prospective purchasers at reasonable times of the day upon 24 hours notice.

7.3. Obligation to Rent to Qualified Renter. If an Owner ceases to occupy the Property, the Property may be occupied only by a Qualified Renter pursuant to a Qualified Lease for a Qualified Rent during the period of time that the Property is being marketed for resale to a Qualified Purchaser.

8. Lien Limit. The equity in the Property represented by the Adjusted City Subsidy shall not be mortgaged or otherwise encumbered by the Owner. The Owner agrees that the aggregate liens on the Property shall not exceed the Lien Limit. The Lien Limit includes any City Tax Lien, City Lease Lien and City Maintenance Lien but does not include the City's lien for the Adjusted City Subsidy. The Owner agrees that City shall have the right to review any proposed mortgage or other encumbrance on the Property and that no lien shall be placed on the Property unless the City delivers a City Transfer Certificate approving such lien. The City may in the exercise of its sole discretion authorize a higher level of encumbrances on the Property in the City Transfer Certificate. Any lien amount waiver by the City shall apply only to the current level of indebtedness of the existing encumbrances and shall not apply to any new obligations, judgments or debts.

9. Maintenance and Insurance Obligations. The exterior appearance of the Property shall be maintained in an attractive and orderly condition and shall be kept free from trash, salvage, junk cars, rubbish, garbage, and other unsightly or offensive material. The buildings now or hereafter located on the said premises shall be maintained in an attractive and sound condition and repairs as necessary to prevent damage to the building(s) or any part thereof shall be made promptly. The Owner shall maintain flood insurance and "All Risk" insurance on the Property for the lesser of the replacement value and its insurable value. All insurance policies shall name the City as an additional insured. The Owner shall maintain a current termite bond on the Property. In the event that the Owner shall breach the obligations contained in this Section, the City 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 and the City shall have the right (but not the obligation) to purchase such insurance and terminate bonds as are required by these Restrictive Covenants. The Owner shall promptly reimburse the City upon written demand for the costs incurred by the City to correct the Owner's breaches under this Section and the City shall have a continuing lien against the Property in the amount of such costs until paid in full which is separate and distinct from the City's lien for the Adjusted City Subsidy ("City Maintenance Lien").

10. Payment of Taxes. The Owner shall promptly pay each year the Taxes on the Property and shall deliver a copy of the paid receipt for such Taxes to the City within 30 days of payment. In order to protect the City's equitable interest in the Property, the City shall have the right (but not the obligation) to pay any delinquent Taxes on the Property and in such event, the Owner shall promptly reimburse the City for such Taxes upon written demand of the City. The City shall have a continuing lien against the Property for the amount of such Taxes paid by the City which is separate and distinct from the City's lien for the Adjusted City Subsidy ("City Tax Lien").

11. No Subdivision. Without the prior express written consent of the City, the Property shall not be subdivided, nor converted to any form of horizontal property regime, nor any portion less than all the Property be conveyed, nor shall any form of interval ownership of or time sharing of the Property be permitted.

12. Prevention of Heirs Property. The Owner shall maintain a current last Will and Testament and shall use reasonable efforts to prevent the Property from transferring upon the Owner's death pursuant to the laws of intestacy.

13. Enforcement of Covenants. The Developer and each Owner hereby acknowledge and agree that the covenants, conditions and restrictions set forth herein are imposed for the benefit of the City of Charleston, and that the City has interests in real property and social, cultural and economic interests that benefit from the imposition of these covenants and restrictions. The benefits of these covenants, conditions and restrictions run with the Property, and bind and burden the Property. These Restrictive Covenants shall be enforceable by the City. The Developer and each Owner further acknowledge and agree that a breach of the covenants, conditions, and restrictions set forth herein shall potentially result in a broad range of economic, social, cultural and residential damages to a large number of parties, that such damages are difficult if not impossible to determine, and that the City shall be entitled to seek such remedies as may be available at law or in equity including but not limited to injunctive relief and specific performance. The City shall be entitled to recover reasonable attorney fees and costs from the Owner in the event of a breach by the Owner of these Restrictive Covenants.

13.1. Default Option Price. During the Option Term and as an additional remedy in the event of an Owner's breach of these Restrictive Covenants, the City shall have the right to purchase the Property for the Default Option Price from the then current Owner:

(A) if a selling Owner sells the Property to a purchaser who is not a Qualified Purchaser or who is not deemed to be a Qualified Purchaser under the provisions of these Restrictive Covenants; or

(B) if a selling Owner sells the Property for a purchase price in excess the Resale Price and the City has not agreed in writing to an increased purchase price pursuant to Section 5.

If the City purchases the Property for the Default Option Price, the then current Owner shall be required to sell the Property to the City for a purchase price that is less than the price such Owner paid for the Property. The City shall have no obligation to the current Owner or its mortgagee to provide legal assistance in seeking redress against an Owner whose breach resulted in the City's exercising its right to purchase the Property at the Default Option Price. Purchasers and mortgagees can protect themselves from the losses resulting from the City's purchase at the Default Option Price by requiring a City Transfer Certificate as a condition of a sale or of a mortgage.

13.2. Unauthorized Leasing. In the event that the Owner leases the Property pursuant to a lease that is not a Qualified Lease, or leases the Property to someone who is not a Qualified Renter, or receives rent in excess of the Qualified Rent, the City shall have the remedies provided by this Section, in addition to any other remedies provided by law or equity. In the event that the Owner receives rent from a person who is not a Qualified Renter, or receives rent that is not Qualified Rent or receives rent pursuant to any lease other than a Qualified Lease, the Owner shall promptly remit all such unauthorized rent to the City upon written demand. The City shall have a lien against the Property in the amount of such unauthorized rent ("City Lease Lien"). In the event that the Owner

leases the Property to a person who is not a Qualified Renter, the Owner shall cause such person to vacate the Property within ten (10) days of written notice from the City.

13.3. City Liens. In addition to any other remedies provided by law or equity for the breach of these Restrictive Covenants, the City shall have the right to foreclose on a City Tax Lien, a City Lease Lien and a City Maintenance Lien in the event that the Owner fails to reimburse the City within sixty (60) days of written notice from the City. In such foreclosure action, the City shall be entitled to add to the amount of the liens, and to recover, its reasonable attorney fees and the costs of such a foreclosure action. All City Tax Liens, City Lease Liens and City Maintenance Liens shall be subordinate to any mortgage approved by the City in a City Transfer Certificate. If the Owner and the City mutually agree, the Owner and the City can elect to modify these Restrictive Covenants to add the amount of any outstanding City Tax Lien, City Lease Lien and/or City Maintenance Lien to the amount of the Adjusted City Subsidy; any such amendment must be in compliance with Section 14 (Duration and Amendment) and neither party has any obligation to consent to such an amendment.

14. Duration and Amendment. This Restrictive Covenants shall bind all persons claiming any interest in the Property and run with the land for a period of ninety (90) years from the date of recording, after which time these Restrictive Covenants shall be automatically extended for successive periods of ten (10) years unless amended as provided in this Section. These Restrictive Covenants may be amended only by a writing executed by both the then current Owner and the City which is filed in the land records office of the County where the Property is located.

15. Severability. Whenever possible, each provision of these Restrictive Covenants shall be interpreted in such manner as to be effective and valid, but if the application of any provision of these Restrictive Covenants shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of these Restrictive Covenants are declared to be severable. Notwithstanding anything contained herein to the contrary, if any of provision of these Restrictive Covenants shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provision shall continue only until ninety (90) years from the date of first recordation.

16. Notices. Any written notice, required by these Restrictive Covenants shall be in writing, and shall be delivered either (i) in person, or (ii) by first-class, certified mail, return receipt requested, postage prepaid, or (iii) by Federal Express (or other nationally recognized overnight courier), return receipt requested, with postage or delivery charge prepaid. If the notice is to the Owner, it shall be addressed to the Owner at the street mailing address for the Property. If the notice is to the City, it shall be addressed to the City at the three addresses set forth below, or as corrected in the last recorded City Transfer Certificate. In addition, either party may designate another address by notice to the other. Any notice shall be deemed to be given to and received by the other party on the date of delivery if personally delivered, and two (2) days after the date of mailing if mailed as described above, and one (1) day after it was placed with the overnight courier as described above. Notice to the City shall be complete only after City Hall, the Housing Director (or the equivalent successor) and Corporation Counsel have each received delivery of the notice:

The City of Charleston  
Attention: Clerk of Council  
City Hall  
80 Broad Street  
Charleston, SC 29401

Copy to: The City of Charleston  
Department of Housing and Community Development  
75 Calhoun Street, Suite 3200  
Charleston, SC 29401-3506

City of Charleston  
Attention: Corporation Counsel  
Legal Department  
50 Broad Street  
Charleston, SC 29401

**EXHIBIT  
TO  
SINGLE FAMILY AFFORDABLE HOUSING RESTRICTIVE COVENANTS**

**Example of City Transfer Certificate  
(This is an illustration of a City Transfer Certificate based on theoretical facts and is provided solely for purposes of illustration)**

STATE OF SOUTH CAROLINA	)	CITY TRANSFER CERTIFICATE
	)	FOR SINGLE FAMILY
COUNTY OF CHARLESTON	)	AFFORDABLE HOUSING
Property		<i>25 ABC Street Charleston SC TMS 123-00-00-456</i>
Current Owners		<i>Richard and Susan Jones</i>
First Deed		<i>Recorded in Book ____, Page ____ and dated July 5, 2002</i>
Base Purchase Price		<i>\$140,000</i>
AMI Increase		<i>113.6% from July 5, 2002 to September 15, 2005</i>
CPI Increase		<i>109.1% from July 5, 2002 to September 15, 2005</i>
Resale Price		<i>\$159,040 as of September 15, 2005</i>
City Subsidy		<i>\$21,000</i>
City Subsidy Percentage		<i>15%</i>
Adjusted City Subsidy Amount		<i>\$23,910 as of September 15, 2005</i>
Non-City Share of Resale Price		<i>\$135,130 as of September 14, 2005</i>
Lien Limitation Percentage		<i>85%</i>
Lien Limit		<i>\$135,184 as of September 15, 2005</i>

The City approves the transfer of the Property for \$159,040 to John and Mary Smith as Qualified Purchasers; provided that the gross proceeds paid by the Qualified Purchasers (inclusive of any financing) do not exceed \$135,130. The City waives its right of first refusal to purchase the Property. The City approves the mortgaging of the Property to XYZ Savings & Loan to secure a loan in the amount of \$135,184.

Date: September 15, 2005

City of Charleston Department of Housing  
and Community Development

\_\_\_\_\_  
(first witness)

BY: \_\_\_\_\_  
Housing Development Officer

\_\_\_\_\_  
(second witness)

STATE OF SOUTH CAROLINA    )  
  )  
COUNTY OF CHARLESTON    )     ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that \_\_\_\_\_, a Housing Development Officer for the City of Charleston Department o Housing and Community Development, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the \_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public For South Carolina  
My Commission Expires

**EXHIBIT "C"**  
**TO**  
**TRANSFER AGREEMENT**

**Permitted Exceptions**

1. Ad valorem real property taxes and user fees for the year of closing (provided same are not yet due and payable) and all subsequent years.
2. The Development Agreement referenced in the Transfer Agreement.
3. The Restrictive Covenants referenced in the Transfer Agreement.
4. All restrictive covenants, rights of way and easements of record as of the date of this Transfer Agreement, if any, provided they do not make the title unmarketable or uninsurable.
5. All existing federal, state, county, municipal and local governmental statutes, ordinances, rules and regulations, including, without limitation, zoning ordinances.

## EXHIBIT "D"

### TO

### TRANSFER AGREEMENT

#### Redevelopment Contingencies Addendum

1. Definitions: In addition to the words and terms defined elsewhere in the Transfer Agreement, the following terms shall have the following meanings for purposes of this Addendum:

- (A) "Architect" means the Developer's design architect or such other architect or architects as shall be employed by the Developer and approved by the City.
- (B) "Architect's Contract" means the written agreement between the Developer and the Architect providing for architectural services to the Developer relating to the Development of the Project.
- (C) "Change Orders" means any amendment or modification of the Development Documents.
- (D) "Construction Contract" means the agreement between the Developer and the General Contractor, as approved by the City, signed by all of the parties thereto and dated on or before the Initial Closing providing for the Development of the Property.
- (E) "Cost Estimate" means the detailed schedule and construction budget prepared by the Developer, as approved by the City, showing a detailed itemization of the costs of acquiring the Property and the Development, including a line item development budget (including a listing of all sources and uses of funds), an itemization of all costs anticipated by the Developer incident to the Project and the resale of the Project to an Eligible Buyer, and all costs or other amounts funded or to be funded by the City Loan, the Participating Lender Loan and from equity contributions of the Developer or others.
- (F) "Developer" means the original Developer named above, and its successors and assigns.
- (G) "Developer's Inspector" means an engineering or architectural firm hired by the Developer and approved by the City, which may be the Architect.
- (H) "Development" means any and all repairs, construction, reconstruction, renovations, development, redevelopment, improvements, modifications or additions now or hereafter made to or constructed on the Property as contemplated by the Transfer Agreement, the Development Agreement, the Drawings and the Development Documents.
- (I) "Development Documents" means the Construction Contract together with the general and special conditions attached thereto, the Architect's Contract, the Drawings, any Change Orders, and the General Contractor's bids and proposals.

- (J) “Development Schedule” means a schedule prepared by the Developer and delivered to and approved by the City providing a detailed schedule of the dates by which portions of the Project shall be completed, together with a detailed funding schedule for all items and showing the amount the Developer anticipates drawing during the Development of the Project from loans and other sources, as approved by the City, including any amendments or modifications thereto as may be made by the Developer from time to time and approved by the City according to the terms of the Development Agreement.
- (K) “Draw Request” means a request for disbursement of the City Loan proceeds prepared by the Developer and delivered to the City.
- (L) “Drawings” means the final plans and specifications for the Development of the Property, as approved by the City, including any amendments or modifications thereto as may be made by the Developer from time to time and approved by the City according to the terms of the Development Agreement.
- (M) “Final Closing” means the date on which the Project is sold and title thereto conveyed by the Developer to an Eligible Buyer
- (N) “General Contractor” means such contractor or contractors as shall be employed by the Developer for Development of the Project and approved by the City.
- (O) “Initial Closing” means the date on which a Property is sold and title thereto conveyed by the City to the Developer.
- (P) “Insurance Requirements” means the City’ requirements for the policies of insurance as provided for and required by the Transfer Agreement, the Development Agreement, the City Loan Documents, the Restrictive Covenants and the Participating Lender.
- (Q) “Legal Authorities” or “Legal Authority” means any federal, state or local governmental or quasi-governmental body, office, department, agency, board, court or other instrumentality thereof exercising jurisdiction over the Development of the Project, the operation and occupancy of the Project, the Developer, the performance by the Developer of any act or obligation, or the observance by the Developer of any agreement, provision or condition of any nature whatsoever contained in this Agreement.
- (R) “Legal Requirements” means any law, ordinance, order, code, rule, regulation or standard of any Legal Authority.
- (S) “Project” means the Property and the Development collectively.
- (T) “Qualified Purchaser” means a person (or persons) who is (are) qualified by the City for home ownership and to purchase the Project upon completion thereof in accordance with the Restrictive Covenants and the City of Charleston’s Homeownership Initiative Redevelopment Plan’s existing or future guidelines.
- (U) “Restrictive Covenant” means those certain covenants and restrictions specified in the Transfer Agreement.

- (V) “Substantial Completion” or “Substantially Completed” means the date when: (i) the Development of the Project shall have been fully completed in a good and workmanlike manner and according to the Development Documents, in full compliance with all applicable Legal Requirements of any Legal Authority, except for punch list items approved by the City; and (ii) all certificates of use and occupancy have been issued by all appropriate Legal Authorities for the Project.

2. The following contingencies shall apply to each Property to be conveyed under the Transfer Agreement. The City shall not be obligated to close and convey a Property to the Developer under the Transfer Agreement unless the following conditions shall have been satisfied for such Property on or before the closing for such Property:

- (A) The representations and warranties of the Developer contained in the Transfer Agreement, the Development Agreement, and otherwise made by or on behalf of the Developer shall be true and correct in all material respects on and as of the closing for such Property.
- (B) The Developer shall have satisfied each of the conditions precedent to the closing for the Property as contained in the Transfer Agreement.
- (C) The South Carolina Department of Transportation (“SCDOT”) shall have released the property to be conveyed pursuant to this Agreement, from the Restrictive Covenants reserved on behalf of the SCDOT in the various deeds conveying said property to the City, all in a form and manner acceptable to the City.
- (D) The Developer shall have satisfied each of the conditions precedent to the closing of the City Loan for the Property as contained in the City Loan Documents and the City Loan must close on or before the date of the closing for the Property.
- (E) The Developer shall have satisfied each of the conditions precedent to the closing of any other loan or loans, if any, approved by the City and necessary to finance the acquisition of the Property and the Development of the Project, and each such loan or loans must close on or before the date of the closing for the Property and each such loan is junior and subordinate to the City Loan, the City Loan Documents and the Restrictive Covenants.
- (F) The Developer, at its sole cost and expense, must have provided or caused to be provided to the City, in a format prescribed by the City, and the City must have received, reviewed and approved the following:
- (1) Authority and Capacity: Evidence of the Developer’s organization, valid existence, and authority to enter into the Development Agreement, good standing, and current compliance with all laws, payments of taxes, and such other documents as the City may require.
- (2) Financial Statements: The Developer shall provide the City with such financial reports and information relating to the Developer, the General Contractor and

the Project as the City may request (including, without limitation, balance sheets, profit/loss statements, and tax returns for the current year and the prior three (3) years), which financial reports and information shall be prepared in accordance with the requirements of the City, certified by an officer of the Developer or the General Contractor as the case may be, and, if requested by the City, prepared by an independent certified public accountant. The City may accept a letter of credit from an established financial institution regarding credit and financial capacity.

- (3) Other Developer Information: The Developer shall provide the City with such other reports and information relating to the Developer as the City may request, including, without limitation, information on the Developer's background, mission, history, list of Board of Directors and/or Trustees, experience, qualifications, list of projects, and resumes of key staff members.
- (4) Insurance: The original policies of insurance or certificates of insurance satisfactory to the City satisfying the Insurance Requirements, together with evidence of the payment of premiums therefore. Such insurance shall include, without limitation, the Developer's effective, paid-up policies of fire, flood and all-risk replacement cost coverage of all insurable improvements on the Property (during and with respect to Development, in builder's risk completed value form); workers compensation insurance; comprehensive general public liability insurance; and such other or additional insurance, and covering such risks, as the City requires. All policies must be written by insurers, in amounts, with endorsements, and on terms and conditions satisfactory to the City. If requested by the City, the Developer shall have the City named as an additional insured under the above-referenced insurance policies. The Developer shall keep all such insurance coverage in place until such time as the Final Closing occurs and has concluded.
- (5) Availability of Funds: Developer will provide a letter from an established financial institution regarding credit, financing etc.
- (6) Legal Opinion: An opinion of the Developer's counsel to the effect that the Developer is duly organized and validly existing and in good standing under the laws of the state of its organization, authorized to do business in the State of South Carolina, with full power to own the Property and execute, deliver and perform its obligations under the Development Agreement; that the Development Agreement is valid and legally binding and enforceable against the Developer in accordance with its terms, subject to laws pertaining to bankruptcy and insolvency; and opining to such other matters as may be required by the City.
- (7) Errors and Omissions Insurance: Copies of the Architects and the Developer's Inspector's certificate of Errors and Omissions Insurance in an amount acceptable to the City, and endorsed so that the policies shall not be terminated, expired or canceled without thirty (30) days advance written notice to the City.

- (8) Cost Estimate and Development Documents: The Cost Estimate and all Development Documents with any modifications thereto, together with evidence of written approval thereof by the City. If requested by the City, the Developer must also provide the City or cause to be provided to the City, and the City must have received, reviewed and approved, consents for the City to use the Development Documents in connection with the Development and collateral assignments to the City of the Developer's rights in the Development Documents and in such other contracts and agreements as the City shall require. The Developer's contractors, architects, engineers and any major subcontractors shall be subject to approval by the City. All Development Documents, including, without limitation, the Construction Contract, must be guaranteed maximum price contracts.
- (9) Payment and Performance Bonds: Assurance of completion of the Development by the General Contractor in the form of payment and performance bonds, each in the amount of one hundred percent (100%) of the Construction Contract satisfactory in all respects to the City and the Participating Lender as obligees, or, in the alternative, at the discretion of the City and the Participating Lender, a completion assurance agreement and an unconditional irrevocable letter of credit acceptable in all respects to the City and the Participating Lender in an amount equal to one hundred percent (100%) of the total sum of the Construction Contract to assure performance and payment, or other assurance acceptable to the City and the Participating Lender.
- (10) Authorized Signers: The Developer and the General Contractor shall advise the City in writing of the individual(s) within their organizations who are authorized to sign Draw Requests, Change Orders, forms relating to completion and cost certification, or any other forms required by the City during Development, or to certify completion of Development. It shall be the responsibility of the Developer and the General Contractor to notify the City in writing in advance of any changes in the designated signatories.
- (11) Development Schedule: The Developer shall deliver the Development Schedule to the City and the City must approve same.
- (12) Other Lender Documents: The Developer shall deliver to the City true copies of the promissory note(s) evidencing all loans relating to the Project, including, without limitation, the Participating Lender loan(s), together with any mortgage(s) securing said loans, certified by the lenders thereof as to their authenticity.
- (13) Development Team: The Developer shall provide in writing a list (including names, addresses and telephone numbers) of all development team members, including, but not limited to, the Developer's attorney, general contractor, architect, surveyor, consultants, etc.
- (14) Appraisal: An initial appraisal of the estimated market value of the Property with the proposed improvements to be followed by a certification of final As-

built value upon Substantial Completion. The appraisal(s) must be addressed to the City and must conform to the Uniform Standards of Professional Appraisal Practice ("USPAP") adopted by the Appraisal Standards Board of the Appraisal Foundation. Any deviation from the USPAP must be explained in the appraisal(s). The appraiser(s) must be licensed and/or certified if required by applicable Federal Deposit Insurance Corporation regulations or state laws, and must be approved by the City and the Participating Lender.

- (15) Survey: A current survey of the Property prepared by a registered surveyor satisfactory to the City within sixty (60) days of the Initial Closing, signed, sealed and certified by the surveyor to the Developer and the City.
- (16) Sales Pro-forma: A sales pro-forma evidencing the projected price for which the Project shall be re-sold by the Developer to an Eligible Buyer; provided, however, the parties hereby acknowledge and agree that the projected price may change as provided in the Development Agreement based on unexpected and/or unanticipated costs actually incurred by the Developer in the Development of the Project.
- (17) Building Permit/Approvals/Licenses: Copies of a valid building permit for the Project and all other permits, licenses and approvals necessary for Development of the Project, including, without limitation, any necessary permits, licenses and approvals for the Drawings, any demolition, historic preservation, use and occupancy, and for access and utility services to the Project.
- (18) Soil Tests: Soil tests and a foundation report regarding the Property by an engineer satisfactory to the City; provided, however, the City, at its option, may agree to waive this requirement if the Architect, General Contractor, or engineer provides the City with written certification satisfactory to the City that such tests and reports are not necessary.
- (19) Utilities: Evidence that the Project shall be directly connected to abutting public water, sewer, gas, electrical and telephone lines and pipes (and any other utilities necessary for the Project) properly operating and in sufficient capacity with all charges currently paid.
- (20) Zoning: Evidence that all applicable zoning ordinances and similar Legal Requirements permit the use for which the Project is intended and have been and shall be complied with (including building codes and requirements as to parking, building setbacks, lot size and ingress and egress), without the necessity of variance, without reliance on any other property, and without the Project being a nonconforming use.
- (21) Disabilities Laws: Evidence that the Developer, the Project and the Drawings, and the Development and present and intended use and occupancy of the Project, do and shall comply with all other applicable Legal Requirements, including those regarding access and facilities for handicapped or disabled persons.

- (22) Access: Evidence that the Project abuts and has fully adequate direct and free access to one or more dedicated public streets and thoroughfares and that all easements, leases and other rights necessary for the present and intended use of the Project, including those for ingress and egress, for vehicular and pedestrian traffic and for vehicle parking, are and shall continue in effect.
- (23) Storm Water: Evidence that the Project shall have adequate, properly approved and permitted storm water run-off and/or detention.
- (24) Cost Estimate: The Cost Estimate.
- (25) Taxpayer Identification Number: The federal taxpayer identification number for the Developer.
- (26) Miscellaneous: Such other evidence, documents, certificates and items reasonably requested by the City or the Participating Lender.

If the above contingencies are not satisfied by closing for a Property, then either the Developer or the City shall have the option, in its sole discretion, to terminate and cancel this Transfer Agreement as to such Property; provided, however, that notwithstanding such termination as to such Property, this Transfer Agreement shall not be terminated as to the other Properties covered by this Transfer Agreement and shall nonetheless continue in full force and effect as to such other Properties. Each of the above contingencies shall apply to each Property to be conveyed under this Transfer Agreement, and each such contingency shall survive the closing of each Property, and, as a result, shall be a condition precedent to the closing of each other property not they yet closed.

f.)

**REAL ESTATE COMMITTEE**  
**GENERAL FORM**

**TO:** Real Estate Committee **DATE:** 6/21/16

**FROM:** Colleen Carducci **DEPT:** BFRC

**ADDRESS:** 1900 Hazelwood Drive, Charleston, SC 29407

**TMS:** 3510600122

**Action Request:** Request authorization of the Mayor to execute the attached lease agreement between the City of Charleston and Atlantic Housing Management.

**ORDINANCE:** Is an ordinance required? Yes  No

**COORDINATION:** The request has been coordinated with:  
*All supporting documentation must be included*

	<u>Signature</u>	<u>Attachments</u>
Department Head	_____	<input type="checkbox"/>
Legal Department	<u>Susan Herdiana, CEC</u>	<input checked="" type="checkbox"/>
Chief Financial Officer	_____	<input type="checkbox"/>
Director Real Estate Management	<u>Colleen Carducci</u>	<input checked="" type="checkbox"/>
_____	_____	<input type="checkbox"/>

**FUNDING:** Was funding needed? Yes  No

If yes, was funding previously approved?\* Yes  No

If approved, provide the following: **Dept/Div.** \_\_\_\_\_ **Acct:** \_\_\_\_\_

**Balance in Account** \_\_\_\_\_ **Amount needed for this item** \_\_\_\_\_

**NEED:** Identify any critical time constraint(s).

**\*Commercial Property and Community & Housing Development have an additional form.**

**COMMERCIAL REAL ESTATE FORM**

TO: Real Estate Committee                      DATE: 6/21/16

FROM: Colleen Carducci                      DEPT: BFRC

ADDRESS: 1900 Hazelwood Drive, Charleston, SC 29407

TMS: 3510600122

ACTION REQUEST: Request authorization of the Mayor to execute the attached lease agreement between the City of Charleston and Atlantic Housing Management.

**ORDINANCE:** Is an ordinance required? Yes  No

**ACTION: What action is being taken on the Property mentioned?**

- ACQUISITION**                      Seller (Property Owner)                      Purchaser
- DONATION/TRANSFER**  
Donated By: \_\_\_\_\_
- FORECLOSURE**  
Terms: \_\_\_\_\_
- PURCHASE**  
Terms: \_\_\_\_\_
- CONDEMNATION**  
Terms: \_\_\_\_\_
- OTHER**  
Terms: \_\_\_\_\_

- SALE**                      Seller (Property Owner)                      Purchaser
- NON-PROFIT ORG, please name** \_\_\_\_\_  
Terms: \_\_\_\_\_
- OTHER**  
Terms: \_\_\_\_\_

- EASEMENT**                      Grantor (Property Owner)                      Grantee
- PERMANENT**  
Terms: \_\_\_\_\_

**COMMERCIAL REAL ESTATE FORM**

TEMPORARY  
Terms: \_\_\_\_\_

LEASE                      Lessor: Atlantic Housing Management                      Lessee: City of Charleston

INITIAL  
The City of Charleston leases from Atlantic Housing Management approximately 362 square feet of office space at the 1900 Hazelwood Drive apartment complex to be used as a CPD substation. The term is for one year with a one year option thereafter. There is no associated rent and the Landlord pays for all expenses.  
Terms: \_\_\_\_\_

RENEWAL  
Terms: \_\_\_\_\_

AMENDMENT  
Terms: \_\_\_\_\_

Improvement of Property  
Owner: \_\_\_\_\_  
Terms: \_\_\_\_\_

**BACKGROUND CHECK:** If Property Action Request is for the sale or lease of city property, has a background check been completed?

Yes  No  N/A

Results: \_\_\_\_\_

Signature: *Colleen Carducci*  
Director Real Estate Management

**ADDITIONAL:** Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.

**NEED:** Identify any critical time constraint(s).

**COMMERCIAL LEASE**

---

Tenant:	<b>City of Charleston</b>	Term: One (1) Year
Landlord:	Atlantic Housing Management	
Effective Date:	July 1, 2016	Date Signed:

---

**STATE OF SOUTH CAROLINA, COUNTY OF CHARLESTON**

**THIS AGREEMENT** entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, between **City of Charleston**, hereinafter referred to as Tenant, and Atlantic Housing Management hereinafter referred to as Landlord.

**WITNESSETH:**

1. **PREMISES:** That, Landlord, in consideration of payments, covenants, and conditions mentioned herein, to be paid, kept, performed, and observed by Tenant does hereby demise, lease and let unto Tenant, and Tenant does hereby hire and take from Landlord the premises known as:  
A 362 square foot portion of 1900 Hazelwood Drive, Charleston, South Carolina 29407. (The "Premises")  
The Premises shall be used by the Tenant as a City of Charleston Police Department Substation. The substation will be an area of approximately 362 square feet located in a portion of the apartment complex office.
2. **TERM:** To have and to hold said leased Premises for an initial term of one year, beginning July 1, and ending June 30, 2017.
3. **RENEWAL PERIODS:** This lease shall automatically renew on an annual basis, with all terms and conditions as set forth herein remaining the same. Either party maintains the right to terminate this lease by providing 60 days' advanced written notice at any point during the renewal period.
3. **CONSIDERATION:** Tenant shall pay, as rental consideration, the following:  
  - A. **RENT.** Tenant, upon receipt of invoice, shall pay \$10.00 per year.
4. **UTILITIES.** Landlord shall pay all charges or bills for all utility services used by the Tenant at the Premises during the term of the Lease or any extension thereof.
5. **TENANT RESPONSIBILITIES.** Tenant shall pay all charges or bills for the installation of any new phone or data lines and related services (if any) that may be required for Tenant's use at the Premises during the term of the Lease or any extension thereof.
6. **PROPERTY TAXES.** Landlord shall pay all the property taxes due on the Premises, if any, during the term of the lease and any extension periods.
7. **USE OF PREMISES.** Tenant agrees to use the Premises for a police office administrative substation.
8. **CONDITION OF PREMISES.** Tenant has seen the space and agrees to accept it "as is".

- 9. DELAY OF POSSESSION.** None.
- 10. PROPERTY AND LIABILITY INSURANCE.** Landlord shall keep in full force and effect, at Landlord's expense, property casualty insurance for the structure. Additionally, Tenant shall carry the following insurances, at Tenant's expense: 1) contents insurance for Tenant's personal property therein; and 2) public liability insurance on itself during the term of this Lease or any extension thereof in the sum of \$300,000 per claim/\$600,000 per occurrence/\$300,000 property damage or as set forth in the SC Tort Claims Act, if same shall be amended after the execution of this Lease. Landlord shall be responsible for maintaining liability coverage to protect any liability the Landlord may have relating to the property and this Lease.
- 11. SIGNAGE.** Tenant may affix signage to the office entry door identifying it as a City of Charleston Police location. Said signage shall meet all permitting requirements.
- 12. OFFICE.** The substation office space will be unmanned, and will be used as a location for officers to perform administrative duties as necessary. Officers shall have access to the office at all times. Access by Landlord shall be limited to perform standard maintenance and other operations as necessary.
- 13. MAINTENANCE AND REPAIRS.** Landlord shall maintain the Premises in a habitable condition at all times and be responsible for all necessary and routine repairs and replacements, including heating and air conditioning systems. Landlord shall not be responsible for damage to Premises caused by the Tenant. Tenant shall promptly notify Landlord of any and all needed repairs or replacements.
- 14. REGULATIONS AND SANITATION.** Tenant shall keep the Premises clean, safe, sanitary, and in compliance with applicable laws, ordinances, and requirements of any legally constituted public authority except as required of the Landlord as set forth in Paragraph 13 above. Tenant shall keep broom clean all areas in and around the Premises. Tenant's cleaning responsibilities include the removal of any trash or refuse deposited on the Premises . Landlord shall be responsible for pest control to keep the Premises free of pests and rodents.
- 15. ALTERATIONS.** Tenant shall make no alterations, additions, improvements, or rewiring in or to the Premises without the consent of Landlord.
- 16. ASSIGNMENT OR SUBLEASE.** Tenant shall not assign, transfer, mortgage, pledge, or otherwise encumber or dispose of this Lease, or sublet the Premises, or any part thereof.
- 17. WAIVER OF RIGHTS.** No failure of Landlord or Tenant to exercise any power given Landlord or Tenant hereunder, or to insist upon the other party's strict compliance with its obligation hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of Landlord's or Tenant's right to demand exact compliance with the terms of this Lease at a future time. The rights and remedies created by this Lease are cumulative and the use of one remedy shall not be taken to exclude the right to the use of another.
- 18. LIENS.** Tenant shall not create any liens for labor or materials against Landlord's interest in the Premises. All persons contracting with the Tenant for the erection, installation, alteration, repair, or demolition of any building or other improvements on the Premises, and all material suppliers, contractors, mechanics, and laborers are hereby charged with notice that they must look to the Tenant and to the Tenant's interest only in the Premises to secure the payment of any bill for work done or material furnished during the rental period created by this Lease.

19. **DAMAGE OR DESTRUCTION OF PREMISES.** Subject to Paragraph 21, if the Leased Premises or any part thereof shall be damaged or destroyed by fire or other casualty, Landlord shall repair all such damage and restore the Leased Premises without expense to Tenant, subject to delays due to adjustment of insurance claims, strikes and other causes beyond Landlord's control.
20. **DAMAGE TO PERSONAL PROPERTY.** All personal property, merchandise, fixtures, and equipment placed or moved into the Premises shall be at the risk of Tenant.
21. **TENANT'S LIABILITY.** Tenant acknowledges that it shall be responsible to Landlord for any and all claims, damages, costs, and expenses, including reasonable attorney's fees, arising from its use of the Premises in accordance with and to the extent provided in the SC Tort Claims Act, as amended.
22. **LANDLORD'S LIABILITY.** Landlord acknowledges that it shall be responsible to Tenant for any and all claims, damages, costs, and expenses, including reasonable attorney's fees, arising from the ownership and management of the Premises.
23. **REVERSION.** Tenant shall surrender to Landlord at the end of the term of this Lease or any extension thereof or upon cancellation of this Lease, broom clean and in as good a condition as the Premises were in at the beginning of the term of this Lease, ordinary wear and tear excepted, or Tenant shall pay to Landlord all damages that Landlord may suffer because of Tenant's failure to do so. .
24. **NOTICES.** All notices pursuant to this Lease shall be sent to the parties at the following addresses:

**TENANT:**

City of Charleston  
Real Estate Management Division  
P.O. Box 304  
Charleston, SC 29402

**LANDLORD:**

Orleans Gardens Apartments  
Atlantic Housing Management  
1900 Hazelwood Drive  
Charleston, SC 29407

**With a copy to:**

City of Charleston  
50 Broad Street  
Charleston, SC 29401  
Attn: Legal Department

25. **KEYS.** Landlord shall provide Tenant with one key per lock, and the Tenant is responsible for accounting for all keys provided or duplicated and shall return all keys of the Premise to the Landlord upon termination or cancellation of this Lease and/or Tenant's vacating said Premises. Tenant may change or install new locks or security systems at the Premises without written approval from Landlord so long as Tenant provides the Landlord with a copy of any new key made or any access code to any security system installed.
26. **PEACEFUL POSSESSION.** Subject to the terms, covenants, and conditions of this Lease, the Tenant shall have, hold and enjoy possession of the Premises, subject to the rights of the holders of any mortgage which now encumbers the Premises.

27. **DEFAULT.** If either party fails to fulfill its obligations pursuant to this Lease, the non-defaulting party shall have the right to declare the defaulting party in default, at which time the non-defaulting party shall provide written notice to the defaulting party of such default. Upon receipt of such notice, the defaulting party shall have 10 days in which to cure such default, or if the default is of the nature that requires more than 10 days to cure, the defaulting party shall have a reasonable time in which to cure the default. In the event the defaulting party fails to cure such default in compliance with this paragraph, the non-defaulting party shall have the right to terminate this Lease and shall have the right to pursue all available legal and equitable remedies against the defaulting party for breach of this Lease, including but not limited to damages, reasonable attorney's fees and court costs.
28. **SUBORDINATION OF LEASE.** It is agreed that the rights of Tenant hereunder shall be and remain subordinate to the right and lien of any bona fide mortgage placed upon said Premises by Landlord before the term of this Lease or during the term of this Lease if such mortgage does not violate any covenant or obligation contained in this Lease in the sole opinion of the Tenant. If requested by Landlord, Tenant shall execute a subordination agreement
29. **ENTIRE AGREEMENT.** This Lease contains the entire agreement between the parties hereto and shall be modified only by a dated written agreement signed by both Landlord and Tenant. **TIME IS OF THE ESSENCE IN THIS LEASE.**

IN WITNESS WHEREOF, Landlord and Tenant have executed these premises, the day and year first above written.

Witnesses as to Tenant

\_\_\_\_\_

\_\_\_\_\_

Witnesses as to Landlord

\_\_\_\_\_

\_\_\_\_\_

**TENANT: City of Charleston**

\_\_\_\_\_  
By: John J. Tecklenburg, Mayor

**LANDLORD: Atlantic Housing Management**

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

g(i).



Ratification  
Number \_\_\_\_\_

# AN ORDINANCE

TO PROVIDE FOR THE ANNEXATION OF PROPERTY KNOWN AS 5 TOVEY ROAD (0.17 ACRE) (TMS# 418-10-00-012), WEST ASHLEY, CHARLESTON COUNTY, TO THE CITY OF CHARLESTON, SHOWN WITHIN THE AREA ANNEXED UPON A MAP ATTACHED HERETO AND MAKE IT PART OF DISTRICT 9.

BE IT ORDAINED BY THE MAYOR AND THE MEMBERS OF CITY COUNCIL, IN CITY COUNCIL ASSEMBLED:

Section 1. As an incident to the adoption of this Ordinance, City Council of Charleston finds the following facts to exist:

- A) Section 5-3-150, Code of Laws of South Carolina (1976) as amended, provides a method of annexing property to a city or town upon a Petition by all persons owning real estate in the area requesting annexation.
- B) The City Council of Charleston has received a Petition requesting that a tract of land in Charleston County hereinafter described be annexed to and made a part of the City of Charleston, which Petition is signed by all persons owning real estate in the area requesting annexation.
- C) The area comprising the said property is contiguous to the City of Charleston.

Section 2. Pursuant to Section 5-3-150, Code of Laws of South Carolina (1976) as amended, the following described property be and hereby is annexed to and made part of the City of Charleston and is annexed to and made part of present District 9 of the City of Charleston, to wit:

SAID PROPERTY to be annexed, 5 Tovey Road, (0.17 acre) is identified by the Charleston County Assessors Office as TMS# 418-10-00-012, (see attached map) and includes all marshes, public waterways and public rights-of-way, shown within the area annexed upon a map attached hereto and made a part hereof.

Section 3. This ordinance shall become effective upon ratification.

Ratified in City Council this \_\_\_\_\_ day of \_\_\_\_\_ in the Year of Our Lord, 2016, in the \_\_\_\_\_ Year of the Independence of the United States of America.

By: \_\_\_\_\_  
John J. Tecklenburg  
Mayor

Attest: \_\_\_\_\_  
Vanessa Turner Maybank  
Clerk of Council

# Annexation Profile

**Parcel Address:** 5 Tovey Road

**Presented to Council:** 6/21/2016

**Status:** Received Signed Petition

**Owner Names:** Amanda Coté and Gilles Coté

**Year Built:** 1950

**Parcel ID:** 4181000012

**Number of Units:** 1

**Number of Persons:** 2

**Race:** Caucasian

**Acreage:** 0.17

**Mailing Address:** 5 Tovey Rd

**Current Land Use:** Residential

Charleston, SC 29407

**Current Zoning:** R-4

**Requested Zoning:** SR-2

**City Area:** West Ashley

**Recommended Zoning:** SR-2

**Subdivision:** Carolina Terrace

**Appraised Value:** \$229,600.00

**Council District:** 9

**Assessed Value:** \$9,190.00

**Within UGB:** Yes

**Stormwater Fees:** 72.00

<b>Police</b>	Located in existing service area - Team 4
<b>Fire</b>	Located in existing service area - Station 10
<b>Public Service</b>	
<b>Sanitation</b>	Located in existing service area. One additional stop.
<b>Storm Water</b>	Contiguous to existing service area.
<b>Streets and Sidewalks</b>	No additional City-maintained right-of-way
<b>Traffic and Transportation</b>	
<b>Signalization</b>	None
<b>Signage</b>	None
<b>Pavement Markings</b>	None
<b>Charleston Water Systems</b>	CWS service area.
<b>Planning</b>	
<b>Urban Growth Line</b>	Property is a developed site within the line.
<b>City Plan (Century Five)</b>	Development and zoning are consistent with the City Plan.
<b>Parks</b>	Already being served.

**Notes/Comments:**

**City Plan Recommendation:**

The existing development and proposed zoning is consistent with the City Plan. Recommend annexation.



# City of Charleston Annexation Map

Parcel Address:

5 Tovey Rd

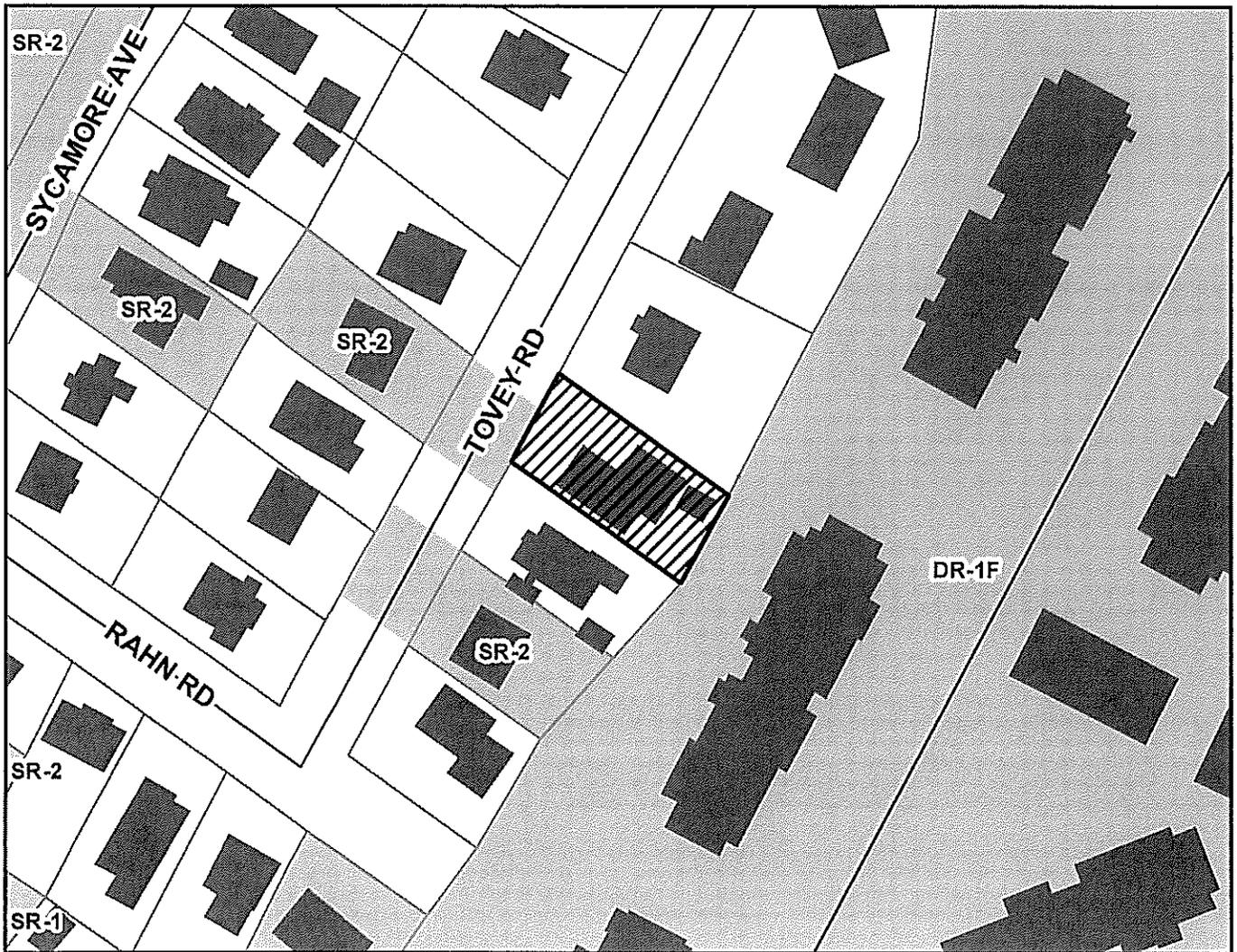
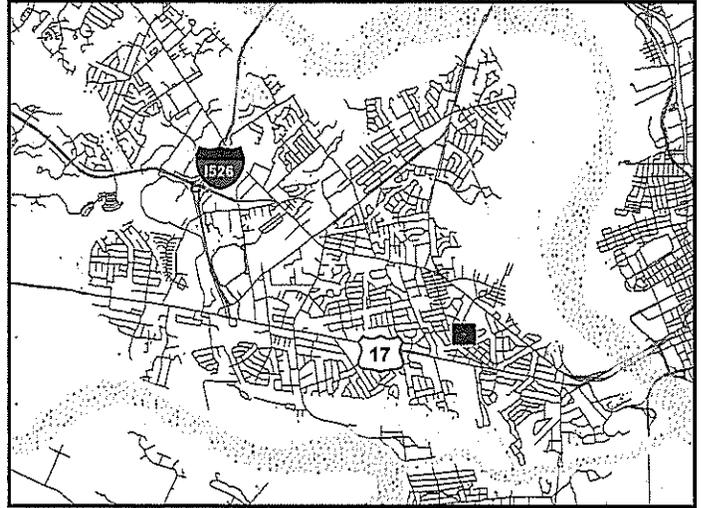
TMS #:

418100012

Acreage: 0.17

City Council District: 9

West Ashley



Subject Property



Corporate Limits  
City of Charleston



Water

