NOTICE OF MEETING

A meeting of the Committee on Real Estate will be held beginning at 2:00 p.m. Monday, February 8, 2021, Conference Call: 1-929-205-6099; Access Code: 835 678 884. The agenda will be as follows:

AGENDA

 Invocation – Chairman Shahid

 Approval of Minutes:

 January 25, 2021

 a. Approval of a three year lease with MUSC with two one-year options to renew. The property will be used as a parking lot. The property is owned by the City of Charleston. [Southeast corner of Fishburne Street and Hagood Avenue and known as the 1,143 parking spaces Fishburne Ballpark Parking Lot; TMS: 4600000008 and 4600000002 (Ordinance)].

 b. Request the Mayor and City Council approve an Option to Lease and Ground Lease Agreement for sixty (60) years with Lowline Housing, LP, Inc. for the development of the City of Charleston’s Lowline Affordable housing site. The property is owned by the City of Charleston. [The property is 0.7 acre and is located near the southern terminus of F Street adjacent to the planned Lowcountry Lowline. The site is also adjacent to 670 & 676 King Street, which are properties owned by the Housing Authority of the City of Charleston; TMS: 460-04-04-118; (Ordinance)].

 c. Approval of a Resolution authorizing the Mayor to take all necessary action and execute all necessary documents on behalf of the City of Charleston to accept from the South Carolina Department of Transportation that certain real property, containing approximately 0.31 acres, shown on the attached exhibit, and being a portion of the right-of-way for US Route 17, bounded on the north by US Route 17 (King Street Off-Ramp), on the south and east by the Septime P. Clark Parkway (US Route 17) (SB), and on the west by the intersection of Fishburne Street and Coming Street.

 d. Consider the following annexation:
(i) 2182 Parkway Drive (0.20 acre) (TMS# 343-01-00-144), James Island, (District 11). The property is owned by Peter Deen and Leigh Mendelssohn Wey.

e. Executive Session in accordance with Section 30-4-70 (a) (2) of the South Carolina Code to discuss negotiations incident to a proposed contractual relationship and receive legal advice regarding the 99 West Edge Parking Garage.

In accordance with the Americans with Disabilities Act, people who need alternative formats, ASL (American Sign Language) Interpretation or other accommodation please contact Janet Schumacher at (843) 577-1389 or email to schumacherj@charleston-sc.gov three business days prior to the meeting.
REAL ESTATE COMMITTEE
GENERAL FORM

TO: Real Estate Committee  DATE: February 9, 2021
FROM: Real Estate  DEPT: BFRC
ADDRESS: Southeast corner of Fishburne Street and Hagood Avenue and known as the 1,143 parking spaces Fishburne Ballpark Parking Lot, Charleston, SC 29403 in the County of Charleston, State of South Carolina.

TMS: 4600000008 and 4600000022
PROPERTY OWNER: City of Charleston

ACTION REQUEST: Recommend Council approval of 3 year lease, w/ 2 one-year options to renew, to MUSC as parking lot.

ORDINANCE: Is an ordinance required? Yes ☑ No ☐

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

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FUNDING: Was funding needed? Yes ☐ No ☐ X
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: February 9, 2021
FROM: Real Estate  DEPT: BFRC
ADDRESS: Southeast corner of Fishburne Street and Hagood Avenue and known as the 1,143 parking spaces Fishburne Ballpark Parking Lot, Charleston, SC 29403 in the County of Charleston, State of South Carolina

TMS: 4600000008 and 4600000022

PROPERTY OWNER: City of Charleston

ACTION REQUEST: Recommend Council approval of 3-year lease, w/ 2 one-year options, to MUSC as parking lot.

ORNADNCE: 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: 3 years, with two 1

☒ LEASE
Lessor: City of Charleston  Lessee: MUSC

☒ INITIAL
Terms: 3 years at 45.02 per space with annual CPI increase, capped at 3% annually.
No CPI decreases.

☒ RENEWAL
Terms: 2 one (1) year renewals

☐ 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: ________________________________
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).
AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY OF CHARLESTON ("CITY") THAT CERTAIN GOVERNMENTAL REAL ESTATE LEASE TO MEDICAL UNIVERSITY OF SOUTH CAROLINA ("TENANT"), FOR 1,143 PARKING SPACES AND A COVERED BUS SHELTER LOCATED AT THE SOUTHWEST CORNER OF FISHBURNE STREET AND HAGOOD AVENUE, KNOWN AS THE FISHBURNE BALLPARK PARKING LOT.

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

Section 1. That the Mayor is hereby authorized to execute, on behalf of the City of Charleston (the "City"), that certain Governmental Real Estate Lease (the "Lease") to the Medical University of South Carolina (the "Tenant") for 1,143 parking spaces and a covered bus shelter on the City's real property located at the southwest corner of Fishburne Street and Hagood Avenue and known as the Fishburne Ballpark Parking Lot.

Section 2. The Lease is attached hereto and incorporated herein by reference as Exhibit 1.

Section 3. The Mayor is further authorized to execute all other documents necessary to consummate the transaction set forth in the Lease without further approval by City Council; provided, however, the form of any such documents necessary to consummate the transaction set forth in the Lease shall first be approved by Corporation Counsel.

Section 4. This Ordinance shall become effective upon ratification.

Ratified in City Council this ______ day of _______ in the year of Our Lord, 2021, in the 245th Year of the Independence of the United States of America.

By: ___________________________
John J. Tecklenburg
Mayor, City of Charleston

ATTEST:
______________________________
Jennifer Cook
Clerk of Council
GOVERNMENTAL REAL ESTATE LEASE

THIS LEASE AGREEMENT (the “Lease”) is made as of the Effective Date (which is the date on which the Department of Administration, Real Property Services, approves this Lease as set forth on the signature page) by and between: The City of Charleston (the “Landlord”) having an address at 2 George Street, Suite 2601, Charleston, SC 29401, and the Medical University of South Carolina (MUSC) (the “Tenant”), an agency, institution, department (including any division or bureau thereof) or political subdivision of the State of South Carolina having an address at 1180 Sam Rittenberg Blvd, Suite 200, Charleston SC 29407.

ARTICLE 1 - DEMISE OF PREMISES

1.1. Landlord hereby leases and lets to Tenant and Tenant hereby takes and hires from Landlord, upon and subject to the terms, covenants and provisions hereof, 1,143 parking spaces and a covered bus shelter located at the southwest corner of Fishburne Street and Hagood Avenue and known as the Fishburne Ballpark Parking Lot, Charleston, SC 29403 in the County of Charleston, State of South Carolina (the “Parking Lot”), together with the benefit of any and all easements, appurtenances, rights and privileges now or hereafter belonging thereto.

ARTICLE 2 - TERM

2.1. The term of this Lease shall be three (3) years (the “Term”) beginning on June 1, 2021 (the "Commencement Date") and, unless terminated or extended, shall end on May 31, 2024. (the “Termination Date”). Provided there is no continuing event of default hereunder by Tenant, Tenant shall have the right to extend the term of this Lease for up to 2 consecutive terms of one (1) year each (the “Extended Term”) upon the same terms and conditions contained herein, by giving written notice to Landlord of Tenant’s intent to extend the then existing term at least one hundred and twenty (120) days prior to the expiration of the then existing term.

ARTICLE 3 - RENT

3.1. Tenant shall pay rent (the “Rent”) to Landlord during the first year of the Term at the rate of $45,02 per parking space, an annual aggregate amount of $617,494.32, payable in equal monthly installments of $51,457.86 in advance on or before the tenth (10th) day of each consecutive calendar month. Rent for the Term shall be increased annually as of the anniversary dated of the Commencement Date of each year for any change in the U.S. Consumer Price Index for all Urban Consumers (CPI-U) based on the percent change in the monthly index for April of each year, subject, however, to a 3% cap on annual increases over the immediately preceding year, regardless of whether the percent change in the CPI-U is higher than said cap. In no event shall rent shall be decreased due to any decrease in a CPI-U monthly index.

3.2 All rental payments to be made by Tenant pursuant to this Lease shall be apportioned and prorated as of the Commencement Date and the Termination Date or as of the date of an earlier termination pursuant to this Lease, as the case may be.

3.4. Unless notified otherwise in writing, all payments of Rent shall be mailed to Landlord at:

City of Charleston
2 George Street, Suite 2601
Charleston, SC 29401
ARTICLE 4 - USE

4.1. Tenant shall have the right to use the parking spaces in the Parking Lot for surface parking only.

4.2. Tenant shall have the right to use the parking spaces in the Parking Lot for parking Monday through Friday between the hours of 5:00 AM and 1:00 AM of the following day; provided, however, Tenant may use no more than 150 parking spaces at any one time in the Parking Lot between the hours of 5:00 PM and 1:00 AM of the following day.

4.3. If during the Term the application of any statute, code or ordinance of any government, authority, agency, official or officer applicable to the Parking Lot makes it impossible or not economical for Tenant to operate in the Parking Lot in accordance with subparagraph 4.1 or 4.2, then Tenant, at its option, may terminate this Lease, whereupon the Rent and all other charges payable hereunder by Tenant shall be apportioned as of such date of termination.

ARTICLE 5 - ASSIGNMENT AND SUBLETTING

5.1. Tenant shall have the absolute right to assign this Lease or sublet the bus shelter and parking spaces in the Parking Lot to any State agency, institution, department, bureau, political subdivision or State-operated entity, and, with the prior written consent of Landlord, which shall not be unreasonably withheld, to any other person or party, provided that any such assignment or sublease shall be upon the same terms and conditions as this Lease.

ARTICLE 6 - SERVICES

6.1. The services provided by the Landlord to Tenant as part of Rent shall include, but are not limited to, providing and making payment for all lighting, including all repairs, of the Parking Lot and for all maintenance and repairs to the Parking Lot, including but not limited to, the repair of any pot holes and maintaining all gravel and paved areas in good condition.

6.2. Tenant is responsible for obtaining and making payment for security services and trash pick-up, and for keeping the grounds of the Parking Lot in a clean condition.

ARTICLE 7 - LANDLORD’S REPRESENTATIONS AND WARRANTIES

7.1. Landlord represents and warrants to Tenant that:

(a) Landlord is the owner of the Parking Lot in fee simple, that title is marketable and not subject to any defects or encumbrances which could adversely affect the use of the Parking Lot as contemplated by this Lease; that Landlord has full right, power and authority to execute and deliver this Lease and to grant to Tenant the exclusive use and possession of the parking spaces and bus shelter in the Parking Lot;

(b) The use of the Parking Lot contemplated by the Lease will be a permitted use under all applicable statutes, codes, rules, regulations and ordinances now in effect and, to the best of the Landlord’s knowledge, there are no pending proceedings or plans to change such statutes, codes, rules, regulations and ordinances;

(c) Neither the Parking Lot, nor any portion thereof, is being condemned or taken by eminent domain and, to the best of the Landlord’s knowledge, no such proceedings are contemplated by any lawful authority;

(d) Landlord will keep the Parking Lot in good order and repair and make all reasonable improvement to maintain the Parking Lot for its intended purpose, normal wear and tear accepted, with the exception or damage to the Parking Lot which is caused by Tenant;

Page 2 of 8
7.2. Landlord acknowledges that Tenant is relying upon each of the representations and warranties set forth in subparagraph 7.1 and that the matters represented and warranted by Landlord are substantial and material to Tenant. In the event such representations and warranties shall be breached by Landlord, Tenant, at its sole election, may terminate this Lease in accordance with subparagraph 13.1(e).

ARTICLE 8 – TENANT’S COVENANTS

8.1. Tenant covenants and agrees that it shall:

(a) Pay Rent when due provided, however, that should any rent become more than fifteen (15) days past due, Landlord shall give Tenant notice in writing to pay the same within fifteen (15) days of receipt of such notice;

(b) Maintain the parking spaces in the Parking Lot in a clean and good condition and return the same to Landlord at the termination of this Lease in a good and clean condition. Tenant shall not be obligated to make any repairs arising out of or in any way caused by 1) settling, 2) defects in labor, workmanship, materials, fixtures or equipment employed, supplied or installed by or on behalf of Landlord, or 3) the negligence of Landlord, its agents or employees.

(c) Comply with all statutes, codes, ordinances, rules and regulations applicable to the Demised Premises;

(d) Give Landlord reasonable notice of any accident, damage, destruction or occurrence affecting the Parking Lot; and

(e) Allow Landlord reasonable access to the parking spaces and bus shelter in the Parking Lot for inspections.

(f) Provide general liability insurance coverage on the Parking Lot for personal injury, property damage, or death arising out of the Tenant’s use and enjoyment of premises. The limits of such insurance coverage shall be $300,000.00 for personal injury, per person per occurrence, $600,000.00 for personal injury in the aggregate per occurrence, and $300,000.00 for property damage, per occurrence. A certificate of insurance evidencing the coverage required herein shall be provided to the Landlord upon the execution of the Lease. Landlord reserves the right to increase the limits of coverage required to maintain compliance with limits of liability attributable to Tenant under S.C. Code of Laws Ann. Sec. 15-78-10, et. seq., the South Carolina Tort Claims Act; and

(g) Be fully responsible for any loss, damage, theft or destruction which takes place on the Parking Lot and will provide security in a form acceptable to Landlord at all times during the term of the Lease at no cost to Landlord; provided, however, nothing contained in this Lease shall be interpreted to create any obligation for Tenant to indemnify and/or hold harmless from or defend Landlord (or any other entity) against, any claims to any extent and nothing contained in this Lease shall be interpreted to create any obligation for Tenant to expend any funds that have not been appropriated by the South Carolina Legislature.

8.2 Tenant acknowledges that Landlord is relying upon each of the representations and covenants set forth in subparagraph 8.1 and that the matters represented and covenants by Tenant are substantial and material to Landlord. In the event such representations shall be breached by Tenant, Landlord, at its sole election, may terminate this Lease in accordance with subparagraph 13.1(d).
ARTICLE 10 - ADDITIONS, IMPROVEMENTS AND ALTERATIONS

10.1. Tenant may, with the prior written consent of Landlord, which shall not be unreasonably withheld, make nonstructural additions, improvements or alterations to the Parking Lot ("Improvements") at its sole cost and expense. Each such improvement shall be completed in a good and workmanlike manner and in accordance with all applicable codes, rules and regulations. Tenant shall advise Landlord, when requesting consent to install Tenant Improvements, whether Tenant will remove the Improvements at the termination of this Lease. If Tenant elects not to remove the Improvements, the Improvements shall become part of the Parking Lot and subject to this Lease. If the Improvements will be removed by Tenant, Tenant shall restore the Parking Lot to its condition prior to such installation.

10.3. Landlord agrees that all trade fixtures, signs, equipment, furniture or other personal property of whatever kind or nature kept or installed at the Parking Lot by Tenant shall not become the property of Landlord or a part of the realty no matter how affixed to the Parking Lot and may be removed by Tenant at any time and from time to time during the Term of this Lease.

ARTICLE 11 - CONDEMNATION AND CASUALTY

11.1. If there is any damage to or destruction of the Parking Lot or any portions thereof, or if any proceedings or negotiations are instituted which do or may result in a taking by condemnation or eminent domain ("Taking"), each party will promptly give notice thereof to the other, describing the nature and extent thereof.

ARTICLE 12 - TENANT CANCELLATION PRIVILEGE

12.1. Notwithstanding the Commencement Date and Termination Date set forth in subparagraph 2.1 of this Lease, Tenant shall have the right to cancel this Lease or to relinquish any portion of the Parking Lot upon giving Landlord thirty (30) days written notice of its cancellation hereof upon the occurrence of any one or more of the following:

(a) If appropriations, revenue, income, grants or other funding, from any source (including but not limited to Federal, State and/or County sources), are not provided to the Tenant in an amount sufficient to carry out the purposes and programs of Tenant, including the payment of Rent and all other payment obligations of Tenant pursuant to this Lease, the sufficiency of such funds to be determined solely by the Department of Administration, Real Property Services; or

(b) If the Tenant or Landlord is dissolved or no longer performs the functions and purposes ascribed to it; or

(c) If at any time during the Term the area in the Parking Lot is, in the sole opinion of the Department of Administration, Real Property Services, inadequate, insufficient or unnecessary for the normal operations and maximum efficiency of Tenant; or

(e) If either party shall have breached any covenant, condition, representation or warranty made by them in this Lease and such breach shall have continued uncured or uncorrected for a period of thirty (30) days after notice by the non-breaching party to the breaching party of such breach and request to cure or correct.
12.2. In addition to the cancellation privileges set forth in subparagraph 12.1, Tenant and Landlord shall each have the right to terminate leasing some or all of the parking spaces under this Lease for convenience at any time by giving one hundred twenty (120) days' written notice to the other of its intention to do so.

ARTICLE 13 – LANDLORD CANCELLATION

13.1 In addition to any and all other cancellation privileges as may be set forth herein, Landlord shall be entitled to cancel this Lease and take full possession of the parking spaces and bus shelter on the failure of the Tenant to pay Rent within the timeframe as set for in Article 8.1 (a).

13.2 Landlord shall be entitled to cancel this Lease and take full possession of the parking spaces and bus shelter upon the failure of Tenant to honor the representations and covenants contained in Article 8.1 (b) – (g) and Article 8.2 after 30 days' notice from Landlord to cure or correct the deficiency.

ARTICLE 14 – SURRENDER

14.1 Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Parking Lot to Landlord in good order and condition, except for ordinary wear and tear. Tenant shall remove from the Parking Lot on or prior to such expiration or earlier termination all of its property situated therein.

14.2 Upon damage or destruction to the Parking Lot which renders it unusable or upon a Taking thereof which results in termination, Rent and other payments and charges payable by Tenant hereunder shall abate as of the date of the occurrence. In the case of partial damage, destruction or Taking which does not cause Tenant to discontinue use of the Parking Lot as contemplated herein, the Basic Rent and any other payments and charges shall be equitably apportioned.

ARTICLE 15 – NOTICES

15.1 All notices, demands, requests, consents, approvals, offers, statements and other instruments or communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been given when either (i) personally delivered, or (ii) sent by first class mail, postage prepaid, or (iii) delivered, costs prepaid, by any reputable delivery service that provides written evidence of delivery, or (iv) sent during normal business hours by facsimile transmission or other electronic transmission, including e-mail, that is evidenced by written mechanical confirmation of delivery or written confirmation from the recipient that the transmission was received, in which case notice shall be deemed given on the date of facsimile or electronic transmission. Notice shall be given at the addresses appearing below:

Landlord:
The City of Charleston
2 George Street, Suite 2601
Charleston, SC 29401
Email: rascoep@charleston-sc.gov

Tenant:
The Medical University of South Carolina
1180 Sam Rittenberg Blvd, Suite 200
Charleston, SC 29407
Either party may, from time to time, by notice as herein provided, designate a different address to which notice to it shall be sent.

ARTICLE 16 - AMENDMENTS

16.1. This Lease may not be amended, modified or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination or waiver shall be effective for any purposes unless it is in writing and signed by the party against whom enforcement thereof is sought.

ARTICLE 17 - HOLDOVER

17.1. In the event Tenant shall remain in the Parking Lot after the Term, or Extended Term, as the case may be, has expired Tenant shall be deemed to be a tenant from month to month and Tenant shall continue to pay the Rent last in effect under the Lease for the Term plus twenty-five (25) percent of such Rent (hereinafter referred to as “125% Rent”) until either Landlord or Tenant, by ninety (90) days’ written notice to the other, shall terminate this Lease, whereupon the 125% Rent and all other charges payable by Tenant hereunder shall be apportioned as of such date of termination.

ARTICLE 18 - MISCELLANEOUS

18.1. If any provision of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such provision shall not be affected thereby.

18.2. This Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto.

18.3. This Lease may be executed in counterparts, each of which when so executed and delivered, shall constitute an original, fully executed counterpart for all purposes, but such counterparts shall constitute but one instrument.

18.4. The article headings of this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

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

18.6. In the event Landlord or Tenant is involved in any bankruptcy or insolvency proceedings and trustee fails to perform or rejects any of the bankrupt party’s obligations under this Lease, the non-bankrupt party shall have the option to terminate this Lease.

18.7. Tenant will be responsible for providing and maintaining signage to identify the leased parking spaces.

18.8. Any amendment, renewal, subordination, non-disturbance, attornment, estoppel or other agreement affecting a change to the terms and conditions herein and requiring the signature of Tenant requires the approval of Real Property Services.
18.9. This Lease is subject to and conditioned upon the approval of Real Property Services and shall be of no force or effect until the consent of such office shall be endorsed herein.

18.10 The parties acknowledge and agree that notwithstanding any law or presumption to the contrary, an electronic or telefaxed signature (hereinafter, an “Electronic Signature”) of any party or approver on this Lease shall be deemed valid and binding and admissible by any party against any other party as if same were an original ink signature. The parties further acknowledge and agree that they (a) intend to be bound by any Electronic Signatures affixed to this Lease, (b) are aware that the other party or parties will rely on any such Electronic Signatures, (c) such an electronically signed Lease may not be denied legal effect or enforceability solely because it is in electronic form or signed with an Electronic Signature, and (d) the foregoing provisions regarding Electronic Signature apply solely to the execution of this Lease, and shall in no event be deemed to amend any other written obligations of any party (including, but not limited to, any notice provisions) set forth in this Lease.

ARTICLE 19 – WAIVER OF CONTRACTUAL RIGHTS

19.1 The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party’s right to subsequently enforce and compel strict compliance with every provision of this Lease.

[Remainder of page intentionally left blank; signature page to follow.]
IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year indicated under their signature.

LANDLORD:
City of Charleston

____________________________
(signature for landlord)

____________________________
(printed name and title of signatory)

____________________________
(date signed by landlord)

TENANT:
Medical University of South Carolina

____________________________
(signature for tenant)

____________________________
(printed name and title of signatory)

____________________________
(date signed by tenant)

This Lease is approved in accordance with the South Carolina Code of Regulations §19-447.1000 by the Department of Administration, Real Property Services, this _____ day of ________________, 20__. This Lease was approved by the Joint Bond Review Committee at its ____________, 20__ meeting and by the State Fiscal Accountability Authority at its ____________, 20__ meeting.
REAL ESTATE COMMITTEE
GENERAL FORM

TO: Real Estate Committee DATE: February 9, 2021
FROM: Geona Shaw Johnson DEPT: HCD

Property is 0.7 acres and is located near the southern terminus of F Street adjacent to the planned Lowcountry Lowline. The site is also adjacent to 670 & 676 King Street, which are properties owned by the Housing Authority of the City of Charleston.

ADDRESS: Authority of the City of Charleston.

TMS: 460.04.04.118

PROPERTY OWNER: City of Charleston

Requesting the Mayor and City Council approve an Option to Lease and a Ground Lease Agreement for sixty (60) years with Lowline Housing, LP, Inc., for the development of the City of Charleston’s Housing site located off of King Street on Peninsula Charleston.

ACTION REQUEST: Lowline Affordable housing site.

ORDINANCE: Is an ordinance required? Yes ☒ No ☐

COORDINATION: The request has been coordinated with:

All supporting documentation must be included

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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: February 9, 2021

FROM: Geona Shaw Johnson DEPT: Housing & Community Development

Property is 0.7 acres and is located near the southern terminus of F Street adjacent to the planned Lowcountry Lowline. The site is adjacent to properties known as 670 & 676 King Street; owned by the Housing Authority of the City of Charleston. A map is attached for your information.

ADDRESS: 460.04.04.118

PROPERTY OWNER: City of Charleston

To authorize the Mayor to execute a Ground Lease Agreement for a period of sixty (60) years with Lowline Housing, LP Inc., for the development of a parcel known as the Lowline Affordable Housing site. The goal is to construct and manage fifty-five (55) apartments for persons earning fifty (50%) percent to eighty (80%) percent of the Area Median Income (AMI) along with the prescribed parking and storm water drainage for the site.

ACTION REQUEST:  

ORDINANCE: Is an ordinance required? Yes ☑ No ☐

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

☐ ACQUISITION

☐ DONATION/TRANSFER

© FORECLOSURE

☐ PURCHASE

☐ CONDEMNATION

☐ OTHER

☐ SALE

☐ NON-PROFIT ORG, please name

☐ OTHER

__Seller (Property Owner)__________________________Purchaser__________________________

See attached Option to Lease and Ground Lease documents
COMMERCIAL REAL ESTATE FORM

☐ EASEMENT | Grantor (Property Owner) ___________________________ | Grantee ___________________________

☐ PERMANENT Terms: __________________________________________

☐ TEMPORARY Terms: __________________________________________

☐ LEASE Lessor: ___________________________ Lessee: ___________________________

☐ INITIAL Terms: Sixty (60) years

☐ 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: __________________________
Director Real Estate Management

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

Developer is submitting an application to the State Housing Finance and Development Authority, February 12, 2021, for funding to assist in constructing the development. Funding for the development was previously approved by the Community Development Committee of City Council and City Council from the General Obligation Bond Funds for the construction and Cooper River Bridge Redevelopment Area for infrastructure funds.
**NEED:** Identify any critical time constraint(s).
KEY TERMS SUMMARY
(Lowline Housing)
(February 2, 2021 version)

The City owns the land generally shown and depicted on Exhibit A (the “Property”), and, contingent on
approval as to the form, the parties will enter into a Ground Lease containing the terms generally outlined
below.

The City will Ground Lease the Property to Developer for a term of not less than 60 years. Developer/Tenant
will construct the improvements contemplated in the RFP and Proposal (the “Improvements”) and rent and
operate the Improvements in keeping with the affordability requirements contained in the RFP and Proposal
(the “Affordability Requirements”):

Base Rent under the Ground Lease will be $1.00 per year, payable in full at the commencement of the
Ground Lease.

*Otherwise, the Ground Lease will be absolute net to City, with Developer being solely
responsible for all costs associated with ownership and operation of the Property and
Improvements.

Developer will be permitted to enter into Leasehold Mortgages subject to the City’s reasonable prior
consent.

The Ground Lease will require Tenant/Developer to construct the Improvements on or before the fourth
anniversary of the Ground Lease.

*Failure to complete Improvements by the outside date through or major failure to
operate in keeping with the Affordability Requirements will result in termination of the
Ground Lease (Property and any Improvements go back to City, free and clear). Developer shall have cure rights after written notice from the City.

*Any Lender will have step in and cure rights before Ground Lease terminates.

*Please note, the parties anticipate that the Charleston Redevelopment Corporation (the “CRC”) and Developer will enter into a loan agreement whereby the CRC will provide a $500,000 loan to Developer to defray certain costs of the Improvements.

*Please note, the City intends to enter into an infrastructure development agreement with Developer whereby the City will lend approximately $1,700,000 to be used to pay certain costs associated with the parking infrastructure required for the development of the Improvements (the “Parking Funds”). It is anticipated that the Parking Funds will be made available in draws, no more frequently than every 30 days. The percentage of the Parking Funds available for each draw shall not exceed the certified percentage of completion of the parking infrastructure improvements. There will also be a retainage of 10% which shall be available at final completion. The City and the Developer shall agree upon draw procedures and amounts.

This term sheet is non-binding and is intended simply to aid the parties in preparing a binding agreement.
Exhibit A

Property
AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY OF CHARLESTON ("CITY") THAT CERTAIN OPTION TO LEASE TO LOWLINE HOUSING, LP, INC. ("TENANT") THE CITY’S REAL PROPERTY, CONTAINING 0.708 ACRES, MORE OR LESS, AND DESIGNATED AS CHARLESTON COUNTY TMS NO. 460-04-04-118, UNDER WHICH THE TENANT WILL DEVELOP A MINIMUM OF 55 AFFORDABLE RESIDENTIAL RENTAL UNITS.

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

Section 1. That the Mayor is hereby authorized to execute, on behalf of the City of Charleston (the "City"), that certain Option to Lease to Lowline Housing, LP, Inc. (the "Tenant") the City’s real property, containing 0.708 acres, more or less, and designated as Charleston County TMS No. 460-04-04-118.

Section 2. The Option to Lease (the "Option") is attached hereto and incorporated herein by reference as Exhibit 1.

Section 3. The real property subject to the Option is more particularly described in Exhibit A to the Option.

Section 4. The Mayor is further authorized to execute all other documents necessary to consummate the transaction set forth in the Option, including without limitation, that certain ground lease attached as Exhibit B to the Option, without further approval by City Council; provided, however, the form of any such documents necessary to consummate the transaction set forth in the Option shall first be approved by Corporation Counsel.
Section 5. This Ordinance shall become effective upon ratification.

Ratified in City Council this _____
day of ___________ in the year of
Our Lord, 2021, in the 245th Year of
the Independence of the United States
of America.

By: __________________________

John J. Tecklenburg
Mayor, City of Charleston

ATTEST: _______________________

Jennifer Cook
Clerk of Council
STATE OF SOUTH CAROLINA )
) ) OPTION TO LEASE
COUNTY OF CHARLESTON )

THIS OPTION TO LEASE AGREEMENT ("Agreement") is entered into as of the ___ day of February, 2021 (the "Effective Date"), by and between City of Charleston, SC, a South Carolina body politic and corporate (herein called the "Landlord"), and Lowline Housing, L.P., a South Carolina limited partnership (collectively, herein called "Tenant"). Landlord and Tenant are referred to herein individually as "Party and collective as Parties"

WITNESSETH:

WHEREAS, The City of Charleston advertised for a Request for Proposal for the design, development and operation of an affordable apartment complex as part of the Lowline Redevelopment Area and

WHEREAS, Tenant is the developer selected by the City of Charleston to design, develop and operate the affordable apartments, to be named Lowline Housing (the "Project").

WHEREAS, Tenant has determined that prior to entering into a long-term ground lease of the Property, certain preliminary studies, due diligence, and design work related to the Property must be conducted in order to make a final determination as to the site's suitability; and

WHEREAS, the Parties have agreed that this Option to Lease provides the Parties with an adequate opportunity to make all necessary preliminary preparations for entering into a ground lease, and provide the Parties with adequate assurance of performance of the mutual obligations undertaken herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth below to be kept and performed, the sum of Five and No/100ths ($5.00) Dollars (the "Option Money") paid by Tenant to Landlord, and other good and valuable consideration passing between the Parties, the receipt and sufficiency of which is hereby acknowledged, the Landlord and Tenant do enter into this Agreement upon the terms and conditions specified below:

OPTION TO LEASE

1. GRANT OF OPTION, OPTION PERIOD. In consideration the Option Money paid by Tenant to Landlord, Landlord does hereby grant the Tenant the absolute right or option to lease (the "Option to Lease") the Property for a term of not less than sixty years by entering into the Lease (hereafter defined) with Landlord. The Option to Lease shall commence on the Effective Date of this Agreement and shall expire at 11:59 p.m. on December 31, 2021 (the "Option Period"). If the Tenant, on or before December 31, 2021, determines, in its sole discretion, that it will not build the Project, Tenant shall notify Landlord (the "Termination Notice") and this Agreement shall be terminated as of the date of Landlord's receipt of such Termination Notice, except for those provisions that specifically survive the termination of this Agreement. Upon payment of additional Option Money in the amount of One Thousand and No/100ths ($1,000.00) Dollars to the Landlord on or before December 31, 2021, the Option Period shall be extended to and expire at 11:59 p.m. on June 30, 2022 (the "Extended Option Period")
2. **THE PROPERTY.** The property which is the subject of this Option to Lease is described in Exhibit A attached hereto and incorporated herein by reference (the “Property”).

3. **THE LEASE.** The proposed form of the lease of the Property by and between Landlord and Tenant for the term of not less than sixty years is contained in Exhibit B attached hereto (the “Lease”) and incorporated herein by reference. The Mayor with advice from Corporation Counsel shall have the authority to modify the terms of the Lease if the Mayor determines such modifications are in the interest of the City. The form of Lease shall also be subject to further comments from Tenant’s lender and/or Tenant’s investors, provided, however, that in the event such further comments from Tenant’s lender and/or investors would result in a material modification of the terms of the Lease, such material modifications may require further approval by the City Council of Charleston.

4. **EXERCISE OF OPTION TO LEASE.** During the Option Period (and Extended Option Period, as applicable), Tenant shall have the absolute right to exercise its Option to Lease the Property in accordance with the terms of this Agreement by giving the Landlord written notice of its intention to do so in the manner described in Section 19 herein (“Notice of Exercise”). If the option granted by this Agreement is exercised by the Tenant during the Option Period or Extended Option Period, then the Parties shall execute the Lease not more than 45 days after the Notice of Exercise.

5. **FAILURE TO EXERCISE.** If the Tenant provides a Termination Notice prior to expiration of the Option Period or the Extended Option Period, as applicable, the option granted herein shall be null and void and of no further force and effect and the Option Money shall be retained by the Landlord.

6. **INSPECTION.**

   During the Option Period (and Extended Option Period, as applicable), Tenant and/or Tenant’s agents or employees shall have the right to enter upon the Property during regular business hours to conduct such inspections, tests and studies as Tenant may deem necessary, provided:

   (a) such inspections, tests and studies shall not interfere with or damage the Property; and

   (b) Tenant shall leave the Property in at least the same condition as it was prior to the entry onto the Property by Tenant or his agents or employees or, in the event of any damage to the Property by Tenant or his agents or employees, Tenant shall immediately repair and restore the Property to its prior condition. Tenant agrees to indemnify and hold harmless Landlord from any loss or damage, including reasonable attorneys’ fees, arising out of the inspections, tests or studies that Tenant, its agents or employees may conduct pursuant to this Paragraph, and to restore any damage to the Property resulting from such inspections. This indemnity and restoration obligation shall survive termination of this Agreement and the Closing of the transaction contemplated hereunder.

   (c) In the event that Tenant causes a Phase 1 environmental site assessment of the Land and the Improvements (the “Phase 1 Assessment”) to be performed, and the Phase 1 Assessment recommends the performance of a Phase 2 environmental site assessment or recommends subsurface investigations that involve borings or penetration of the Land, (the “Phase 2 Assessment”), Tenant may perform a Phase 2 Assessment only upon obtaining the prior written consent of Landlord. If Landlord permits Tenant to perform a Phase 2 Assessment,
Tenant must provide a copy of the Phase 1 Assessment and, if requested by Landlord, provide Landlord, at no cost, with a copy of the Phase 2 Assessment promptly after completion.

(d) Tenant understands and agrees the information during the inspection of the Property and the records is confidential and shall not be disclosed by the Tenant except to banks or other financial institutions, potential investors in the proposed project, and other third parties necessary for the development of the Property. If the Option is not exercised the Tenant shall return to the Landlord all documents and provide copies of all reports obtained during the inspection.

7. **LANDLORD’S REPRESENTATIONS AND WARRANTIES.** To induce Tenant to enter into this Agreement Landlord makes the following representations and warranties, all of which Landlord represents and warrants are true as of the Effective Date hereof and shall be true as of the Closing (as defined below):

   (a) Reserved.

   (b) There are no special assessments or condemnation or eminent domain proceedings which would affect the Property or any part thereof;

   (c) Landlord has all necessary power to execute and deliver this Agreement and to perform all of the obligations of Landlord hereunder;

   (d) Landlord has full capacity, power and authority to ground lease the Property to Tenant in accordance with the terms and conditions of this Agreement;

   (e) Neither the execution and delivery of this Agreement, the consummation of the transactions herein contemplated, nor the compliance with the terms, conditions and provisions hereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of any agreement, order or other instrument or document to which Landlord is a party or by which it is bound;

   (f) Landlord has not received written notice of any pending or threatened change to the zoning classification of the Property;

   (g) Landlord has not received written notice of any actions, suits or proceedings pending or threatened before any court, agency, governmental authority or arbitrator related to the Property;

   (h) Until the Closing, Landlord will continue to maintain the Property in its present condition and repair subject to normal wear and tear;

   (i) Landlord has not received written notice of any violations of law, ordinances or orders of any governmental authority having jurisdiction over the Property;

   (j) Reserved.

   (k) Reserved.

   (l) None of the representations or warranties of Landlord contained in this Agreement and, to the best of Landlord’s knowledge, no documents furnished in connection
herein or in connection with the transactions contemplated hereby, contain, or at the Closing will contain, any untrue statement of a material fact necessary to make the statements of fact herein and therein not misleading.

8. **CLOSING.** At the Closing, Landlord and Tenant shall execute the Lease, the leasehold being free and clear of all defects, claims, liens and encumbrances except the Permitted Exceptions. At Closing, Landlord shall also execute and deliver to Tenant the following:

   (a) A no lien affidavit reasonably satisfactory to the title insurance company issuing the title insurance on the Property for the benefit of the Tenant and/or his lender, in order to delete from the policies of title to be issued the standard printed exceptions relating to mechanics' liens and parties in possession;

   (b) An original or true copies of such documents of Landlord which authorize the lease of the Property to Tenant and the execution of all closing documents by Landlord as are reasonably required by the title insurance company issuing the title insurance policy on the Property for the Tenant and/or its lender;

   (c) Closing statement; and

   (d) Such other instruments as are necessary or reasonable to consummate this transaction in accordance with the terms of this Agreement.

9. **CLOSING AND DELIVERY OF POSSESSION.** The closing of the transaction contemplated by this Agreement (herein referred to as the “Closing”) shall take place on or before the date which is forty-five (45) days after Landlord’s receipt of Tenant’s Notice of Exercise, at the offices of the Tenant’s Closing Attorney. Upon the consummation of the Closing, Tenant shall be entitled to possession of the Property.

10. **EXPENSES.** In addition to other provisions for the payment of the expenses contained in this Agreement, Landlord shall pay Landlord’s attorney’s fees. Tenant shall pay for the cost of the title examination and title insurance, Tenant’s attorney’s fees and other fees and expenses incurred by Tenant in connection with acquiring the leasehold.

11. **MATTERS TO WHICH THE LEASEHOLD MAY BE SUBJECT.** The Property is being leased subject to the following exceptions (the “Permitted Exceptions”) and, appropriate provisions shall be contained in the Lease and other closing documents making the same subject to the following matters:

   (a) Ad valorem real property taxes for the year in which the transaction closes and all subsequent years;

   (b) Any valid and legally enforceable roads and road right-of-ways, streets and easements for utilities, all whether by reservation, dedication or grant of record;

   (c) Zoning and building ordinances, and rules and regulations of any governmental unit now or hereafter in effect;

   (d) Any matters which would be disclosed by a current survey of the Property.

   (f) All matters of public record as of the Effective Date hereof.
12. **CONDEMNATION.** In the event any portion of the Property shall be taken in an eminent domain proceedings prior to the Closing, Landlord shall promptly notify Tenant and Tenant, by notice to Landlord within thirty (30) days following Landlord's notice, may elect to either: (a) terminate this Agreement in which event this Agreement shall thereafter be null, void and of no further effect and the Option Money shall be refunded to Tenant; or (b) continue this Agreement in full force and effect. In the event the Tenant elects to continue this Agreement in full force and effect, the Landlord shall assign to Tenant all of its rights in and to any such condemnation awards or proceedings.

13. **RISK OF LOSS.** The risk of any and all losses to the Property as a result of casualty from and after the Effective Date hereof shall be on the Landlord. In the event that the Property is damaged by casualty prior to the Closing Date, Landlord may elect to either: (a) if the Property can be restored to substantially the same condition as it existed prior to such casualty within sixty (60) days following the date of the casualty, Landlord may, at its option elect to repair and restore the Property and the Closing Date shall be extended accordingly; or (b) subject to the rights of the Tenant described in (c) below, Landlord may elect to terminate this Agreement upon written notice to Tenant in which event this Agreement shall thereafter be null, void and of no further effect and the Option Money shall be returned to Tenant; or (c) if Landlord elects not to repair and restore the Property, Tenant may elect to purchase the Property in its damaged condition and receive an assignment of Landlord's insurance proceeds on the Property.

14. **BROKERS.** Landlord represents and warrants that no real estate brokerage commission is payable to any persons or entities in connection with the transaction contemplated hereby.

15. **DEFAULT BY THE LANDLORD.** In the event Landlord shall fail to perform or comply with any covenant, agreement or condition contained in this Agreement that is expressly required to be performed or complied with by Landlord on or prior to the Closing Date or should fail to consummate the transaction contemplated herein for any reason other than Tenant's default, then Tenant, at the option of the Tenant, may:

   (a) elect to receive a full refund of the Option Money; or

   (b) proceed at law or in equity to enforce the Tenant's rights under this Agreement.

16. **DEFAULT BY THE TENANT.** In the event Tenant shall fail to perform or comply with any covenant, agreement or condition contained in this Agreement that is required to be performed or complied with by the Tenant on or prior to the Closing Date or should fail to consummate the sale contemplated herein for any reason other than Landlord's default, then Landlord, may:

   (a) retain the Option Money as liquidated damage; or

   (b) proceed at law or in equity to enforce the Landlord’s rights under this Agreement, including the right to compel specific performance of Tenant's obligations under this Agreement.

Notwithstanding the preceding, the provisions of this Section 17 do not limit the liability of the Tenant to pay certain costs, indemnify the Landlord or restore damages to the Land as expressly provided in other sections of this Agreement.
17. **DOCUMENTS:** Within ten (10) days of the Effective Date hereof, Landlord shall provide Tenant with copies of:
   
   (a) Any boundary, topographic, geotechnical, or other surveys of the Property and all environmental studies or similar reports on the Property in Landlord's possession, if any; and
   
   (b) Any existing title insurance policy or policies on the Property in Landlord's possession.

18. **TIME.** Time is of the essence with respect to each and every provision of this Agreement. Any reference herein to time periods of less than six (6) days shall in the computation thereof include Saturdays, Sundays and legal holidays, and any time period provided for herein which shall end on a Saturday, Sunday or legal holiday, shall extend to 5:00 P.M. of the next full business day.

19. **NOTICES.** All notices or other communications provided for herein shall be in writing and shall be delivered in person or mailed by Registered or Certified Mail, Return Receipt Requested, and postage prepaid, to the parties at the following addresses:

   **If to the Landlord:**

   Geona Shaw Johnson, Director
   Housing and Community Development
   City of Charleston
   75 Calhoun Street, Suite 3200
   Charleston, SC 29401

   With a copy to:

   Susan J. Herdina
   City of Charleston
   50 Broad Street
   Charleston, SC 29401

   David C. Humphrey, III, Esq.
   Haynsworth Sinkler Boyd, P.A.
   134 Meeting Street, 3rd Floor
   Charleston, SC 29401

   **If to Tenant:**

   Lowline Housing, L.p
   c/o NHE, Inc.
   PO Box 5539
   Greenville, SC 29606

   With a copy to

   Todd Brockmann, Esq.
   Brockmann Law
   17250 Lancaster Hwy #608
   Charlotte, NC 28277
Notices delivered in person shall be effective when delivered. Notices by Registered or Certified Mail shall be deemed effective as of the earlier of the date when received or three (3) days after deposit in the United States mail, properly addressed, with postage prepaid. Any party wishing to change its address or the name of the person to whom notices should be delivered from that set forth above may do so in accordance with the notice provisions set forth in this paragraph.

20. PLANS AND SPECIFICATIONS: Tenant and Landlord will consult on the design of the Project. Tenant shall initiate the design and plans for the Project and the Landlord shall approve or disapprove (with comments). Landlord shall have sixty (60) days to approve or disapprove the design plans. If no response is received by the Tenant within ten (10) days, the design matter presented shall be deemed disapproved. The foregoing approval is separate and distinct from any City (or other) regulatory approvals necessary for the Project to commence, specifically including the obligation of Tenant to obtain City BAR, DRB and TRC approval, which obligation Tenant acknowledges and accepts.

21. RESERVED

22. RESERVED.

23. MISCELLANEOUS PROVISIONS.

(a) Counterparts. Any number of counterparts of this Agreement may be signed and delivered, each of which shall be considered an original and all of which, together, shall constitute one and the same instrument.

(b) Choice of Law. This Agreement is to be governed by, enforced and construed in accordance with the laws of the State of South Carolina.

(c) Modification. The parties acknowledge that no change, modification, termination or attempted waiver of any of the provisions of this Agreement shall be binding upon any party hereto unless reduced to writing and signed by the party or parties against whom enforcement is sought.

(d) Assignment. This Agreement shall inure to the benefit of and shall be binding upon the successors of the parties hereto except as otherwise stated herein. Tenant may not assign its rights and obligations pursuant to this Agreement; provided, however, that it shall have the right, without Landlord’s consent, to assign its rights under this Agreement to a special purpose entity that is wholly owned by Tenant.

(e) Entire Agreement. This Agreement contains the entire agreement between Landlord and Tenant and cannot be varied or modified except by written instrument signed by both parties hereto. The parties further agree that there are no other written or oral agreements, understandings, representations, or warranties which have not been expressly set forth herein.

(f) Attorney’s Fees. If any litigation shall be instituted for the purpose of enforcing or interpreting any of the provisions of this Agreement, the prevailing party or parties, as determined by the Court having jurisdiction thereof, shall be entitled to recover, in addition to all other relief, an amount equal to all reasonable costs and expenses incurred in connection therewith, including, without limitation, reasonable legal expenses (including but not necessarily limited to fees for services of attorneys, paralegals and legal assistants) at the trial level and in connection with all appellate proceedings.
(g) **Waiver.** No waiver hereunder of any condition or breach shall be deemed to be a continuing waiver or a waiver of a subsequent breach.

(h) **Headings.** Headings used hereunder are for convenience only and do not constitute a substantive part of this Agreement.

(i) **Survival of Agreement.** The warranties and representations made herein shall survive the Closing hereof and shall merge with the delivery of all related documents.

(j) **Interpretation Presumption.** The parties represent and warrant to one another that each has, by counsel or otherwise contributed substantially and materially to the provisions of this Agreement, actively participated in the finalization of this Agreement, and in the event of a dispute concerning the interpretation of this Agreement, each party hereby waives the doctrine that an ambiguity should be interpreted against the party which has drafted the document.

[Signatures on following page]
IN WITNESS WHEREOF, the parties hereto have executed this Option to Lease Agreement as of the date first above written.

LANDLORD:

CITY OF CHARLESTON, SC, a South Carolina public body corporate and politic
By: ______________________________
Its: ______________________________

TENANT:

LOWLINE HOUSING, L.P., a South Carolina limited partnership
By: ______________________________
Its: ______________________________
EXHIBIT A

Property or Leased Property

[Survey]
GROUND LEASE

LOWLINE HOUSING

THIS GROUND LEASE ("Lease") made and entered into as of the ____ of ____________, 2021 by and between CITY OF CHARLESTON, SC, a South Carolina public body corporate and politic ("CITY" or "Landlord"), and LOWLINE HOUSING, L.P., a South Carolina limited partnership ("Tenant"), upon the following terms and conditions:

RECITALS

Landlord and Tenant desire to enter into a ground lease in which Tenant will lease from Landlord certain property hereinafter described to develop a minimum of 55 affordable residential rental units upon the terms and subject to the conditions stated herein.

NOW, THEREFORE, in consideration of the premises hereof and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I - DEFINITIONS

Unless the context otherwise specifies or requires, the following terms shall have the meanings specified herein:

1.1 Additional Rent. The term “Additional Rent” shall have the meaning set forth in Section 4.6 hereof.

1.2 Base Rent. The term “Base Rent” shall mean the sum of one ($1.00) Dollar per year during each year of the Term of this Lease.

1.3 Buildings. The term “Buildings” has the meaning set forth in Section 5.1 hereof.

1.4 Commencement Date. The term “Commencement Date” shall be ____________, 2021.

1.5 Development Budget. The development budget shall mean the budget prepared by the Tenant with respect to development of the Improvements (defined in Section 5.1) and attached hereto as Exhibit “D”.

1.6 Expiration Date. The term “Expiration Date” shall mean sixty (60) years from the Commencement Date.

1.7 Improvements. The term “Improvements” has the meaning set forth in Section 5.1 hereof.
1.8 Reserved.

1.9 **Landlord's Address For Notices.** The term “Landlord's Address for Notices” shall mean: City of Charleston, 80 Broad Street, Charleston, South Carolina 29401 with a copy to (which will not constitute notice): Geona Shaw Johnson, 75 Calhoun Street, Suite 3200, Charleston South Carolina 29401.

1.10 **LIHTC UA.** The term “LIHTC UA” means the use agreement pursuant to Section 42 of the Internal Revenue Code which requires that, for the first thirty (30) years of the property's operation, the property and improvements will be subject to a low income housing tax credit use agreement which will restrict the rents at the Project and the incomes of the Project’s future residents in accordance with Low-Income Housing Tax Credit Requirements.

1.11 **Low-Income Housing Tax Credit Requirements.** The term "Low-Income Housing Tax Credit Requirements" shall mean those requirements which must be met in order to qualify for low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986, as amended from time to time, and including any requirements imposed by the South Carolina State Housing Finance and Development Authority or subsequent agency in order for the Project to qualify for such low-income housing tax credits.

1.12 Reserved.

1.13 **Plans and Specifications.** The term “Plans and Specifications” has the meaning set forth in Section 5.1 hereof.

1.14 **Premises.** The term “Premises” or “Leased Premises” shall mean that certain parcel of real property of record in the name of the Landlord located in Charleston, South Carolina as more particularly described on Exhibit “A” and incorporated herein by reference.

1.15 **Project.** The term “Project” means Lowline Housing, City of Charleston, County of Charleston, SC.

1.16 **Rent.** The term “Rent” shall mean the Base Rent, Additional Rent and any Taxes due under this Lease.

1.17 **Tax Credit Eligible Households.** The term “Tax Credit Eligible Households” shall mean those households that qualify for assistance in accordance with the income and occupancy restrictions set forth in the LIHTC UA and Section 42 of the Internal Revenue Code.

1.18 **Tax Credit Units.** The term “Tax Credit Units” shall mean units within the Project which shall be available for rental to eligible households subject to the income and occupancy restrictions set forth in Section 42 of the Internal Revenue Code.
1.19 **Tax Credit Requirements.** The term “Tax Credit Requirements” shall mean the requirements of the Project to qualify and remain qualified as a qualified low income housing project under Section 42(g) of the Internal Revenue Code.

1.20 **Tenant’s Address For Notices.** The term “Tenant’s Address for Notices” shall mean: NHE Inc., PO Box 5539, Greenville, SC 29606; with a copy to Tenant counsel: Todd Brockmann, 17250 Lancaster Hwy, Suite 608, Charlotte, NC 28277.

1.21 **Tenant’s Permitted Uses.** The term “Tenant’s Permitted Uses” shall mean the development and operation of the Project in a manner consistent with the LIHTC UA and the Tax Credit Requirements, and the marketing for lease and leasing of the residential units comprising the Project in a manner consistent with the requirements of this Lease, the LIHTC UA, the Tax Credit Requirements and the Affordability Requirements set forth in 1.22 below.

1.22 **Affordability Requirements.** Notwithstanding any other provision of this Ground Lease, the Affordability Requirements shall continue in full force and effect for the full term of the Ground Lease. Any provision or document purporting to decrease, amend, extinguish, or otherwise modify the affordability requirements is void. The “Affordability Requirements” are as follows:

(a) Rental to Qualified Low Income Tenants. During the term of the Ground Lease, the units within the Project shall only be leased and rented to members of the general public who are low- and very low-income households which are families and individuals whose incomes do not exceed eighty percent (80%) of the Area Median Income as established by HUD. The income average of all residents may not exceed sixty percent (60%) of the Area Median Income as established by HUD. Tenant shall annually verify the tenant’s income and also sign and deliver to the City a recertification that the incomes have been verified.

(b) Rents and Other Charges. The maximum monthly rental payable by a Qualified Tenant (taking into consideration rental assistance, if any, for such Qualified Tenant shall not exceed the maximum monthly rent permitted to be charged pursuant to Section 42 and the provisions of the applicable Low Income Housing Tax Credit Regulations.

(c) Tenant shall not include in, or allow to be included in, any lease any of the “prohibited lease provisions” as provided by the City or the State Housing Financing and Development Authority.

(d) Tenant shall not discriminate against or deny occupancy of any tenant or prospective tenant by reason of their receipt of, or eligibility for, housing assistance, under any Federal, State, or local housing assistance program; and not discriminate against or deny occupancy to any tenant or prospective tenant by reason that the tenant has a minor child or children who will be residing with them. Additionally, Tenant shall be responsible for renting the units without regard to race, color, religion, sex, national origin, familial status, age or disability of the tenant.
(e) Tenant shall comply with City’s Affirmative Marketing Policy, as the same is adopted and exists from time to time; provided nevertheless, changes, amendments, and modifications to the City Affirmative shall not be applicable to the Project unless agreed to in writing.

ARTICLE II - PREMISES

2.1 Lease of Premises. Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord, upon all of the terms, covenants and conditions contained in this Lease, subject to, without limitation, (i) any state of facts an accurate survey of the Premises would show; (ii) any state of facts a personal inspection would show; (iii) rights, easements and restrictions of record; (iv) present and future zoning laws, ordinances, resolutions and regulations of any governmental authority and all present and future ordinances, statutes, laws, regulations and orders of all boards, bureaus, departments, agencies, commissions and bodies of any municipal, county, state or federal sovereign; and (v) the effect of all present and future municipal, state or federal laws, orders and regulations relating to the Tenant, sub lessees or occupants of the Premises. Landlord makes no warranty of title. On the Commencement Date described herein, Landlord shall deliver the Premises to Tenant.

2.2 Acceptance of Premises. Tenant acknowledges that, except as otherwise provided in Section 6.3(g) with respect to pre-existing conditions, Landlord has not made any representation or warranty with respect to title, the condition of the Premises or with respect to its suitability or fitness for the conduct of Tenant’s Permitted Use or for any other purpose, and Tenant acknowledges that it is accepting the Premises “AS IS.”

ARTICLE III - TERM

3.1 Term. Unless sooner terminated as provided in this Lease, the term of this Lease (the “Term” or “Lease Term”) shall be for the period commencing on the Commencement Date described in Section 1.4 of this Lease and ending on the Expiration Date described in Section 1.6 of this Lease.

ARTICLE IV - RENTAL; PAYMENT OF TAXES, OPERATING EXPENSES AND OTHER CHARGES

4.1 Base Rent. Tenant shall pay to Landlord as rental for the Premises the Base Rent described in Section 1.2 and Landlord hereby acknowledges receipt as of the date hereof of advance payment in full by Tenant of the Base Rent of $60 for the entire Term.

4.2 Taxes, Expenses and Other Charges. Notwithstanding anything herein to the contrary, Tenant shall, during the Lease Term, as Additional Rent, pay and discharge punctually, as and when the same shall become due and payable, and before any fine, penalty, interest or other charges may be added thereto for nonpayment, all property taxes, as hereafter defined, and all other governmental impositions and charges and obligations owed to governmental authorities of every kind and nature whatsoever, extraordinary as well as ordinary and each and every installment thereof which shall or may during the Lease Term be charged, levied, laid, assessed, imposed, become due and payable or liens upon, or for, or with respect to, the Premises or any part thereof, the Buildings and Improvements, appurtenances, or equipment thereon or therein or any part thereof, together with all interest and penalties thereon, under or by virtue of all present or future laws, ordinances, requirements, orders, directives, rules or regulations of the federal, state, and
local governments and of all other governmental authorities whatsoever, all Operating Expenses (as hereafter defined) and all charges for water, steam, heat, gas, hot water, electricity, light and power, and other service or services, furnished to the Premises or occupants thereof during the Lease Term. In the event Tenant shall be required by the terms of any Leasehold Mortgage permitted hereunder to pay any funds into escrow with respect to Taxes, Tenant agrees to make such payments in accordance with the terms of such Leasehold Mortgage. In the event Tenant shall fail to pay Taxes before they shall have become delinquent, Landlord, without prejudice to any other rights it may have, may, but shall not be required to, pay such Taxes and Tenant will remit the amount of such payment to Landlord upon demand together with interest thereon at the rate provided in Section 4.4 below. Tenant shall promptly provide to Landlord proof of timely payment of all Property Taxes and other charges to be paid by Tenant hereunder. Notwithstanding the foregoing, Tenant shall have the right to contest the imposition of Property Taxes against the Premises, so long as Tenant pursues any such contest in accordance with applicable laws. As used herein,

(A) "Property Taxes" or "Taxes" shall mean the aggregate amount of all ad valorem real and personal property taxes, payments in lieu of taxes, assessments (whether they be general or special), sewer rents and charges, transit taxes, taxes based upon the receipt of rent, and any other federal, state or local governmental charge, general, special, ordinary or extraordinary taxes (but not including income or franchise taxes, capital stock, inheritance, estate, gift, or any other taxes imposed upon or measured by Landlord's gross income or profits). Taxes shall include all fees and costs, including attorneys' fees, appraisals and consultants’ fees, incurred by Landlord in seeking to obtain a reduction of, or a limit on the increase in, any Taxes, regardless of whether any reduction or limitation is obtained. Taxes for any calendar year shall be Taxes which are due for payment or are paid during such year. If at any time during the Lease Term the method of taxation then prevailing shall be altered so that any new tax, payment in lieu of taxes, assessment, levy, imposition or charge shall be imposed upon Landlord in place or partly in place of any such Taxes, or contemplated increase in any such Taxes and shall be measured by or be based in whole or in part upon the Premises, Improvements or the rents or other income received by Tenant from the Premises, then all such new taxes, assessments, levies, impositions or charges, to the extent that they are so measured or based, shall be included in Taxes to the extent that such items would be payable if the Premises was the only property of Landlord subject to same. Taxes shall also include any personal property taxes imposed upon any furniture, fixtures, machinery, equipment, apparatus systems and appurtenances of Tenant used in connection with the Premises.

(B) "Operating Expenses" shall mean all costs, fees, disbursements and expenses of any kind paid or incurred in the operation, ownership, maintenance, administration, insurance, management, replacement and repair of the Premises (excluding Property Taxes).

4.3 Payment. All Rent, and all other amounts payable to Landlord by Tenant pursuant to the provisions of this Lease, shall be paid to Landlord, without notice, demand, abatement, deduction or offset, in lawful money of the United States at Landlord's address for notice purposes, or to such other person or at such other place as Landlord may designate from time to time by written notice given to Tenant. No payment by Tenant or receipt by Landlord of a lesser amount than the correct Rent due hereunder shall be deemed to be other than a payment on account; nor shall any endorsement or statement on any check or any letter accompanying any
check or Payment be deemed to affect or evidence an accord and satisfaction; and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance or pursue any other remedy in this Lease or at law or in equity provided.

4.4 **Late Charge; Interest.** Tenant acknowledges that the late payment of Base Rent or any other amounts payable by Tenant to Landlord hereunder (all of which shall constitute Additional Rent to the same extent as Base Rent) will cause Landlord to incur administrative costs and other damages, the exact amount of which would be impracticable or extremely difficult to ascertain. Landlord and Tenant agree that if Landlord does not receive any such payment on or before five (5) business days after the date the payment is due, Tenant shall pay to Landlord, as additional rental, and without notice or demand (a) a late charge equal to five percent (5%) of the overdue amount to cover such additional administrative costs; and (b) interest on the delinquent amounts at the lesser of the maximum rate permitted by law, if any, or twelve percent (12%) per annum from the date due to the date paid.

4.5 **Penalty Rent.** If the Tenant does not complete the Project in accordance with the Plans and Specifications (as evidenced by the issuance of a final certificate of occupancy by the appropriate governing authority or authorities), in compliance with the terms hereof (such conditions, together, “Final Completion”), within thirty (30) months of the commencement of the Lease, Tenant shall, commencing on the first day of the thirty-first (31st) month, pay a penalty rent of FOUR THOUSAND AND NO/100 DOLLARS ($4,000.00) per month during each partial or whole month the Project is has not reached Final Completion. Such payment of penalty rent will terminate upon the earlier of the month after the Project reaches Final Completion or the date the provisions of Section 15.1(F) first apply.

4.6 **Additional Rental.** For purposes of this Lease, all amounts payable by Tenant to or for the benefit of Landlord pursuant to this Lease, whether or not denominated as such, shall constitute “Additional Rent” hereunder.

4.7 **Net Lease.** Notwithstanding anything to the contrary herein, the Base Rent hereunder shall be absolutely net to Landlord so that this Lease shall yield, net to Landlord, the Base Rent specified in Sections 1. and 4.1 hereof in each year of the Lease Term and that all Taxes, impositions, insurance premiums, utility charges, maintenance, repair and replacement expenses, all expenses relating to compliance with laws (including, without limitation, and except as otherwise provided herein, Environmental Laws), and all other costs, fees, charges, expenses, reimbursements and obligations of every kind and nature whatsoever relating to the Premises which may arise or become due during the Lease Term or by reason of events occurring during the Lease Term shall be paid or discharged by Tenant as Rent hereunder.

**ARTICLE V – CONSTRUCTION OF IMPROVEMENTS, TITLE, INSPECTIONS**

5.1 **Construction of Improvements.** Tenant shall construct, or cause to be constructed, all buildings, fixtures, equipment and components thereof, of every kind, including, but not limited to the Project, apartment buildings, townhouses, housing units, ancillary buildings to be utilized in the operations of a multifamily apartment buildings described in the final site plan as approved by applicable government authority (the “Buildings”), all driveways, parking areas, utilities, landscaping, accessory buildings, parks, sidewalks, alleys and all other common areas of the Premises (collectively, the “Common Area Improvements”), necessary or appropriate to service the Buildings (the Buildings and Common Area Improvements, together with any
alterations, changes or additions made during the Term of this Lease to the Buildings or Common Area Improvements are hereinafter collectively referred to as the "Improvements"). The construction of all such Improvements shall be done strictly in accordance with the plans and specifications therefor ("Plans and Specifications") as approved in writing by Landlord and in compliance with all applicable laws. Tenant shall defend, indemnify and hold Landlord harmless from any liability therefore or arising from the construction of the Improvements except for any liability arising from Landlord’s gross negligence or willful misconduct.

(A) In addition, Tenant shall construct, or cause to be constructed, certain off-site improvements, including without limitation such off-site driveways, parking areas, utilities, landscaping, accessory buildings, parks, sidewalks, and alleys necessary to service the Buildings (the "Off-Site Improvements"). The Off-Site Improvements are further set forth in that certain Request for Proposals submitted by Landlord to Tenant (the "RFP"), attached hereto as Exhibit E and incorporated herein by reference. The construction of all such Off-Site Improvements shall be done strictly in accordance with the plans and specifications therefor ("Plans and Specifications") as approved in writing by Landlord and in compliance with all applicable laws. Tenant shall defend, indemnify and hold Landlord harmless from any liability therefore or arising from the construction of the Off-Site Improvements except for any liability arising from Landlord’s gross negligence or willful misconduct. For the avoidance of doubt, Tenant shall be responsible for obtaining, at Tenant’s sole cost and expense, any and all leases, easements, or other rights in order to construct the Off-Site Improvements and ensure the ongoing functionality of same, provided, however, that Landlord shall reasonable cooperate with Tenant in its efforts to procure such leases, easements, or other rights.

5.2 Title to Improvements. Until the expiration or termination of this Lease, (i) the title to all Improvements situated or erected on the Premises by Tenant shall be vested in the Tenant, (ii) Tenant alone shall be entitled to deduct all depreciation on Tenant’s income tax returns for such Improvements and claim any and all Tax Credits, and (iii) Tenant alone shall be entitled to all profits from the operation of the Improvements on the Premises. Notwithstanding the foregoing, in the event that any Improvements are constructed upon areas which are to become publicly dedicated streets, Landlord and Tenant shall, upon notice by Tenant that such improvements are complete, convey such improvements to the applicable municipal authority without compensation therefore. Upon the expiration or earlier termination of this Lease, all of Tenant’s right, title and interest in and to the Premises and the Improvements shall automatically and without notice vest in Landlord in fee simple free and clear of all liens, claims and encumbrances and may be sold, used or disposed of in the sole and absolute discretion of Landlord and Tenant shall quit and surrender the Premises and all Improvements thereon to Landlord. Notwithstanding the foregoing, title to any moveable equipment and other personal property installed by Tenant and located upon the Premises not used by residential occupants of the Premises and not fixtures and which may be removed without damage to the Improvements and without impairing its value (collectively, "Other Property") shall remain in Tenant provided that Tenant removes the Other Property within a reasonable period of time, not to exceed thirty (30) days following the expiration or termination of this Lease. Any Other Property remaining on the Premises after said thirty (30) day period shall automatically and without notice vest Landlord with such Other Property in fee simple free of all liens, claims and encumbrances and may be sold, used or disposed of in the sole and absolute discretion of Landlord.
ARTICLE VI - USE OF PREMISES

6.1 **Tenant's Permitted Use.** Tenant shall use the Premises and Improvements only for Tenant's Permitted Uses as set forth in Section 1.21 above and shall not use or permit the Premises, Improvements or any portion thereof to be used for any other purpose without the prior written consent of Landlord. Tenant shall, at its sole cost and expense, obtain all governmental licenses and permits required to allow Tenant to conduct Tenant's Permitted Uses. Landlord disclaims any warranty that the Premises are suitable for Tenant's use and Tenant acknowledges that it has had a full opportunity to make its own determination in this regard.

6.2 **Compliance With Laws and Other Requirements.**

(A) Tenant shall cause the Premises and Improvements to comply with all laws, ordinances, regulations and directives of any governmental authority having jurisdiction, including without limitation, any certificate of occupancy and any law, ordinance, regulation, covenant, condition or restriction affecting all or any portion of the Premises and/or Improvements which in the future may become applicable to all or any portion of the Premises and/or Improvements (collectively “Applicable Laws”).

(B) Tenant shall not use all or any portion of the Premises and/or Improvements, or permit all or any portion of the Premises and/or Improvements to be used in any manner which: (a) violates any Applicable Law; or (b) would constitute, or is reasonably likely to constitute, a public nuisance under South Carolina law or local ordinance.

6.3 **Hazardous Materials.**

(a) From and after the date of this Lease, Tenant shall not cause or permit any “Tenant’s Hazardous Materials” (as defined herein) to be “handled” (as defined herein) upon, about, above or beneath all or any portion of the Premises or any portion of the Improvements by or on behalf of a “Responsible Party” (as defined herein), except in compliance with “Environmental Laws” (as defined herein) and this Lease. Any such Hazardous Materials so handled during the Term of this Lease, or the presence of which is a result of the act or omission of a Responsible Party, shall be known as “Tenant's Hazardous Materials.” Notwithstanding the foregoing, normal quantities of those Hazardous Materials customarily used in the development and operation of a multi-family residential development may be handled at the Premises. Prohibited Substances shall be handled at all times in compliance with all applicable Environmental Laws.

Neither the Landlord or Tenant shall all bring onto the Premises, or permit their agents, contractors or employees to bring onto the Premises any (i) asbestos or asbestos-containing material or polychlorinated biphenyl material, or (ii) hazardous substances or hazardous waste as defined under any Environmental Laws, that may require remediation under applicable law (other than quantities of such substances, including gasoline, diesel fuel and the like as are customary and necessary to prosecute construction of the Project), or (iii) soil containing volatile organic compounds (collectively (i)-(iii) are also “Tenant's Hazardous Materials”). Each party shall be liable for the consequences of, and responsible for proper removal and lawful disposal, at its sole expense, of any Tenant’s Hazardous Materials brought onto the site resulting from a violation by such party of this
Section 6.3(a) and shall be responsible for any conditions caused by the negligent failure of such party or its agents, contractors or employees to protect against any further harm caused by any Tenant’s Hazardous Materials already on the site. Each party further covenants and agrees to indemnify, defend and hold the other party free and harmless from and against any and all losses, liabilities, penalties, claims, fines, litigation, demands, costs, judgments, suits, proceedings, damages, disbursements or expenses, including reasonable attorneys’ fees which may at any time be imposed upon, reasonably incurred by or asserted or awarded against the other party in connection with or arising from a violation of this Section 6.3(a). The provisions of this Section 6.3(a) shall survive the closing of the Project and the termination of this Agreement relative only to any claims that arises from an event that occurs prior to such closing regardless of when the claim is presented.

(b) Notwithstanding the obligation of Tenant to indemnify Landlord pursuant to this Lease, Tenant shall, at its sole cost and expense, promptly take all actions required by any federal, state or local governmental agency or political subdivision, which requirement arises from the handling of Tenant’s Hazardous Materials upon, about, above or beneath the Premises. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Premises, the preparation of any feasibility studies or reports and the performance of any cleanup, remedial, removal or restoration work. Tenant shall take all actions necessary to satisfy any remediation requirements under applicable Environmental Laws, shall provide reasonably detailed notice to Landlord of any such actions (prior to the action being taken unless prior notice is not reasonably possible) and, if reasonably possible, provide Landlord with a reasonable opportunity to comment upon such proposed actions prior to their being undertaken (provided that in no event shall prior notice to Landlord or Landlord’s approval be required before any such action may be taken in any event).

(c) "Environmental Laws" means and includes all now and hereafter existing statutes, laws, ordinances, codes, regulations, rules, rulings, orders, decrees, directives, policies and requirements by any federal, state or local governmental authority regulating, relating to or imposing liability or standards of conduct concerning hazardous materials or the environment, including, without limitation, the following:

(d)  "Hazardous Materials" means (a) any material or substance: (i) which is defined or becomes defined as a "hazardous substance," "hazardous waste," "infectious waste," "chemical mixture or substance," or "air pollutant" under Environmental Laws; (ii) containing petroleum, crude oil or any fraction thereof; (iii) containing polychlorinated biphenyls (PCB's); (iv) containing asbestos; or (v) which is radioactive; (b) any other material or substance displaying toxic, reactive, ignitable, or corrosive characteristics, as all such terms are used in their broadest sense, and are defined or become defined by Environmental Laws; or (c) materials which cause a nuisance upon or waste to all or any portion of the Premises and/or Improvements.

(e)  "Handle," "handle," "Handled," "handled," "Handling" or "handling" shall mean any installation, handling, generation, storage, treatment, use, disposal, discharge, release, manufacture, refinement, presence, migration, emission, abatement, removal, transportation, or any other activity of any type in connection with or involving Hazardous Materials excluding any Hazardous Materials existing on the Premises prior to the Commencement Date, and any migration of Hazardous Materials onto the Premises from a source not at the Premises.

(f)  "Responsible Party" shall mean Tenant, its subtenants and its assignees, any occupants of all or any portion of the Premises, and their respective contractors, clients, officers, directors, employees, agents, customers, suppliers, guests and invitees, or any of them as the case may be during the Term of this Lease.

(g)  Nothing contained herein shall limit Tenant's right or ability to seek contribution or other appropriate relief from the Landlord with respect to any liability for claims relating to a violation of Environmental Laws or the presence of Hazardous Materials on, in or under all or any portion of the Leased Premises attributable to the period of Landlord's ownership prior to the Commencement Date or after the end of the Lease Term and not caused or exacerbated by Tenant.

(h)  Landlord and Tenant acknowledge that the Premises are subject to a Voluntary Contribution Contract ("VCC") by and between Landlord and South Carolina Department of Health and Environmental Control, dated February 15, 2018, and Landlord and Tenant will comply with the VCC and each will fully carry out its responsibilities as enumerated in the VCC. Notwithstanding the preceding, Tenant shall not be responsible for any action or cost associated with conditions of property subject to the VCC not a part of the Premises. Tenant shall indemnify, defend and hold Landlord harmless from any and all liability resulting from a breach of the terms of the VCC during the terms of this Lease by Tenant, its successors, assigns, guests, employees, invitees and contractors.

ARTICLE VII - UTILITIES AND SERVICES

7.1  Services. Landlord shall have no obligation to provide utility services or connections into the Premises or Improvements, nor any other services or facilities of any kind or nature whatsoever. Tenant, at its sole expense, shall arrange with the appropriate utility company or governmental entity to install all necessary additional connections and shall, without fail, maintain in continuous operation during the Lease Term, all such utility service, whether or not
Tenant is in actual possession of the Premises. Tenant shall pay for all water, gas, heat, light, cable television or other telecommunications, power, sweeping and other janitorial services, rubbish and trash disposal, sewer and any other utilities and services supplied in, about or related to the Premises, together with any taxes thereon, connection charges and deposits. Landlord, with Tenant’s consent, reserves the right during the Term of this Lease to grant easements for public utility purposes on, over or below the Premises without any abatement in rent, and without the same being deemed a default of Landlord hereunder, provided that said easements do not unreasonably interfere with the normal operation of the Premises by Tenant. Landlord shall not be required to pay for any service, supplies or upkeep in connection with the Premises or the Improvements.

If Tenant fails to perform any obligation or pay any charge imposed upon Tenant by this Section 7.1, Landlord shall have the right, but not the obligation, to perform any such obligation or pay such charge, in which event Tenant shall promptly reimburse Landlord for all costs and expenses incurred or paid by Landlord on Tenant's behalf, together with an overhead charge of 15% of such amounts. Any amounts which Tenant is required to pay to Landlord pursuant to this Section 7.1 shall be payable upon demand by Landlord and shall constitute Additional Rent under this Lease.

7.2 **Interruption of Services.** Landlord shall not be liable for any failure to furnish, stoppage of, or interruption in furnishing any of the services or utilities described in Section 7.1. Further, in the event any governmental authority or public utility promulgates or revises any law, ordinance, rule or regulation or issues mandatory controls or voluntary controls relating to the use or conservation of energy, water, gas, light or electricity, the reduction of automobile or other emissions, or the provision of any other utility or service, Landlord may take any reasonably appropriate action to comply with such law, ordinance, rule, regulation, mandatory control or voluntary guideline without affecting Tenant's obligations hereunder.

**ARTICLE VIII - MAINTENANCE AND REPAIRS**

8.1 **Landlord’s Obligations.** During the Lease Term, Landlord shall have no obligation to make or perform any repairs or maintenance of any kind whatsoever, all of which shall be Tenant's sole obligation.

8.2 **Tenant's Obligations.**

(a) During the Lease Term, Tenant shall, at its risk and at its own sole cost and expense, construct and maintain the Premises and all Improvements located in or on the Premises in good repair and condition (including all necessary replacements), including, but not limited to the roof, outer walls and foundations of all Buildings, the drainage facilities and fire safety sprinkler systems, heating, ventilation and air conditioning systems, all glass elements and doors and regular removal of debris. Tenant shall take good care of the Premises and Improvements, including all Common Area Improvements, and suffer no waste.

(b) Tenant shall, at its own cost and expense, repair or replace any damage or injury to all or any part of the Premises and Improvements thereon.
(c) Tenant shall not commit or allow any waste or damage to be committed on any portion of the Premises, and at the termination of this Lease, by lapse of time or otherwise, and upon termination of the Lease Term, Tenant shall deliver the Premises to Landlord in good condition, ordinary wear and tear excepted. Tenant understands that "ordinary wear and tear" does not mean Tenant shall be relieved of performing its obligations under this Lease relating to maintenance, repairs and replacements as provided for in the Lease.

(d) Tenant shall further keep and maintain the Premises and all Improvements at any time situated upon the Premises safe, secure, clean and sanitary (including without limitation, snow and ice clearance and planting and replacing flowers and landscaping), and in full compliance with all health, safety and police regulations in force. Tenant shall be deemed to have failed to perform the obligations of Tenant pursuant to this Section 8.2 in the event that during the Lease Term, as extended from time to time, any Hazardous Materials are released, brought upon, stored, produced, emitted, disposed of or used upon, about or beneath the Premises in violation of Environmental Law, except where Hazardous Materials have come to be present beneath the Premises solely as a result of subsurface migration from a source not at the Premises, in which case Tenant shall be liable to remEDIATE such condition at the Premises and shall have the right to pursue an action against the party causing such condition. Tenant's obligations under this Section 8.2 shall survive the expiration or earlier termination of this Lease.

(c) Except and only to the extent permitted by Section 6.3(A) above, Tenant shall not permit during the Lease Term, as extended from time to time, any Hazardous Materials to be released, brought upon, stored, produced, emitted, disposed of or used upon, about or beneath the all or any portion of the Premises or Improvements in violation of Environmental Law, except where Hazardous Materials have come to be present beneath the Premises solely as a result of subsurface migration from a source not at the Premises or property not owned or controlled by Tenant, except to the extent that Tenant fails to take commercially reasonable actions to prevent migration of Hazardous Materials known to Tenant or takes action that exacerbates the contamination resulting from such migration. The Tenant shall be liable for the consequences of, and responsible for removal thereof, at its sole expense, any Hazardous Materials on the site resulting from a default under this Section. Tenant's obligations under this Section 8.2 shall survive the expiration or earlier termination of this Lease. Nothing contained herein shall limit the Tenant's right or ability to seek contribution or other appropriate relief from the Landlord with respect to any liability for claims relating to: (i) a violation of Environmental Laws or the presence of Hazardous Materials on, in or under all or any portion of the Premises attributable to the period prior to the Commencement Date and caused or created by Landlord; or (ii) any Hazardous Materials on, in or under all or any portion of any parcels of land owned by Landlord that are adjacent to the Premises (the term "adjacent" as used herein being deemed to mean parcels of land sharing a common boundary line with the Premises); or (iii) any violation of Environmental Laws by Landlord prior to the Commencement Date.

8.3 **Landlord's Rights.** Landlord and its contractors shall have the right, upon reasonable advance notice, at reasonable times, to enter upon the Premises to exercise any right reserved to Landlord hereunder; provided, that residents of the Improvements shall not be
unreasonably disturbed and any entry to residential units shall be in conformance with such residents’ lease agreements.

ARTICLE IX - IMPROVEMENTS, ADDITIONS AND ALTERATIONS,

9.1 Amendments to Plans and Specifications. Tenant shall take no action to effectuate any material amendments, modifications or any other alterations to the Plans and Specifications (“Alterations to Plans”) unless Landlord is notified of such, in writing and in advance and approves the Alterations to Plans in writing. Landlord shall have (30) thirty days to approve or disapprove such Alterations to Plans and if no response is received within the allowed (30) thirty days the Alterations to Plans are deemed approved. “Material” shall be deemed to mean any amendments, modifications or alterations to the Plans and Specifications costing in the aggregate in excess of 1.50% of the cost of the Project, or which in any way impact the size and number of affordable units in the Project.

9.2 Alterations. Tenant may make any additions, alterations or changes (sometimes collectively referred to herein as “Alterations”) in or to the Improvements subject, however, to the following conditions:

(a) No Alterations shall be made that would tend to impair the structural soundness of the Improvements;

(b) No Alterations shall be undertaken that are prohibited by, or would cause the Leased Premises, the Improvements, the Tenant or the Landlord to be in breach or violation of the LIHTC UA or the Tax Credit Requirements;

(c) No Alterations shall be undertaken until Tenant shall have procured, to the extent the same may be required from time to time, all permits and authorizations of all applicable governmental authorities and all required consents of any Leasehold Mortgagee. Landlord shall join in the application for such permits or authorizations whenever such action is necessary or helpful and is requested by Tenant, and shall use Landlord’s reasonable efforts to obtain such permits or authorizations; provided, however, that all such permits shall be at Tenant’s sole cost and expense;

(d) Any Alterations shall be performed in good and workmanlike manner and in compliance with all applicable legal requirements and all applicable Insurance Requirements.

9.3 Liens. Tenant shall pay when due all costs for work performed and materials supplied to the Premises. Tenant shall not suffer nor permit any construction liens to be filed or exist against the Premises or any part thereof, by reason of work, labor, services or materials supplied or claimed to have been supplied to Tenant or its agent, contractors, subcontractors and subtenants. If any such construction lien shall at any time be filed, Tenant shall within thirty (30) business days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of court of competent jurisdiction or otherwise. If Tenant fails to pay and remove such lien, claim or encumbrance within such thirty (30) days, Landlord, at its election, may pay and satisfy the same and in such event the sums so paid by Landlord, with interest from the date of payment at the rate set forth in Section 4.4 hereof for amounts owed.
Landlord by Tenant, shall be deemed to be additional rent due and payable by Tenant at once without notice or demand. During the progress of such work, Tenant shall, upon Landlord's request, furnish Landlord with sworn contractor's statements and lien waivers covering all work theretofore performed and Tenant shall otherwise observe and comply with any and all requirements under South Carolina Law, and shall indemnify, defend and hold Landlord harmless from any loss, cost, or damage incurred by Landlord as a result of the assertion of any construction lien claim. The provisions of this Section 9.3 shall be subject to the rights of the Leasehold Mortgagees.

9.4 Lease Termination. All Alterations shall become a part of the Premises and shall become the property of Landlord upon the expiration or earlier termination of this Lease unless Landlord shall, by written notice given to Tenant, require Tenant to remove some or all of Tenant's Alterations, in which event Tenant shall promptly remove the designated Alterations and shall promptly repair any resulting damage, all at Tenant's sole expense.

ARTICLE X - INDEMNIFICATION AND INSURANCE

10.1 Indemnification. Tenant and Tenant's permitted assignees and subtenants (other than residential tenants of the units in the Improvements) agree to protect, indemnify, hold harmless, and defend Landlord, and its elected or appointed officials, directors, its officers, agents and employees, successors and assigns, regardless of any negligence of, or imputed to Landlord as owner of the Premises (collectively “Indemnities”) (except for the gross negligence or willful acts of Landlord, its agents or employees) from and against:

(A) any and all loss, cost, damage, liability or expense as incurred (including but not limited to actual reasonable attorneys' fees and legal costs) arising out of or related to any claim, suit or judgment brought by or in favor of any person or persons for damage, loss or expense due to, but not limited to, bodily injury, including death, or property damage sustained by such person or persons which arises out of, is occasioned by the use or occupancy of all or any portion of the Premises or Improvements by Tenant or the acts or omissions of Tenant or its agents, employees, contractors, clients, invitees or subtenants relating to the Premises. Such loss or damage shall include, but not be limited to, any injury or damage to, or death of, Landlord's employees or agents or damage to the Premises or any portion of the Buildings or Improvements located thereon.

(B) any and all Environmental Damages which arise from (i) the Handling of any Tenant Hazardous Materials, as defined in Section 6.3 (except for any Handling undertaken by Tenant in connection with the fulfillment of its obligations under any VCC) or (ii) the breach of any of the provisions of this Lease. For the purpose of this Lease, “Environmental Damages” shall mean (a) all claims, judgments, damages, penalties, fines, costs, liabilities, and losses, (including, without limitation, diminution in the value of the Premises) (b) all reasonable sums paid for settlement of claims, reasonable actual attorneys' fees, consultants fees and experts fees; and (c) all costs incurred by Landlord in connection with investigation or remediation relating to the Handling of Tenant's Hazardous Materials to the extent Tenant does not perform all such investigation and remediation as is required by applicable Environmental Laws. To the extent that Landlord is strictly liable under any Environmental Laws as owner, Tenant's obligation to Landlord and the other indemnitees under the foregoing indemnification shall likewise be without regard to fault on Tenant's part with respect to the violation of any Environmental Law which results in liability to the
indemnities. Tenant's obligations and liabilities pursuant to this Section 10.1 shall survive the expiration or earlier termination of this Lease.

(C) any and all testing or investigation as may be required by any governmental agency or lender for the purpose of investigating the presence of Tenant's Hazardous Materials that may not be in compliance with Environmental Laws.

(D) notwithstanding anything to the contrary contained herein, nothing shall be interpreted or used to in any way affect, limit, reduce or abrogate any insurance coverage provided by any insurers to either Tenant or Landlord.

Nothing herein shall be construed to infer or imply that Tenant is a partner, joint venturer, agent, employee, or otherwise acting by or at the direction of Landlord.

10.2 **Property Insurance.** At all times during the Lease Term, Tenant shall procure and maintain, at its sole expense, "all-risk" property insurance, in an amount not less than one hundred percent (100%) of the replacement cost covering (a) all Buildings and Improvements in and upon the Premises; and (b) Tenant's trade fixtures, equipment and other personal property from time to time situated in the Premises. Subject to the obligations of the Tenant to the Leasehold Mortgages, the proceeds of such insurance shall be used for the repair or replacement of the property so insured, except that if not so applied or if this Lease is terminated following a casualty, the proceeds applicable to the buildings and improvements shall be paid to the Landlord and the proceeds applicable to personal property which Tenant is permitted to remove pursuant to Section 5.2 shall be paid to Tenant.

10.3 **Liability Insurance.** At all times during the Lease Term, Tenant shall procure and maintain, at its sole expense, general liability insurance applying to the use and occupancy of the Premises and the business operated by Tenant. Such insurance shall have a minimum combined single limit in a commercially reasonable amount satisfactory to Landlord, in the exercise of reasonable discretion, but in no event less than $1,000,000 per occurrence and a general aggregate limit of at least $5,000,000. All such policies shall be written to apply to all bodily injury, property damage, personal injury losses and shall be endorsed to include Landlord and its elected or appointed officials, directors, officers, agencies, employees. Such liability insurance shall be written as primary policies, not excess or contributing with or secondary to another insurance as may be available to the Landlord or additional insureds.

10.4 **Workers' Compensation Insurance.** At all times during the Lease Term, if Tenant shall have any employees spending all or part of their time at the Premises, Tenant shall procure and maintain Workers' Compensation Insurance in accordance with the laws of the State of South Carolina and Employers' Liability insurance in commercially reasonable amounts satisfactory to Landlord in the exercise of reasonable discretion, but in no event less than statutorily required minimums.

10.5 **Policy Requirements.** All insurance required to be maintained by Tenant shall include Landlord as an additional insured, and shall be issued by insurance companies authorized to do insurance business in the State of South Carolina and rated not less than A-VIII in Best's Insurance Guide and a Standard and Poor's claims paying ability rating of not less than AA. A certificate of insurance (or, at Landlord's option, copies of the applicable policies) evidencing the
insurance required under this Article X shall be delivered to Landlord not less than thirty (30) days prior to the Commencement Date. No such policy shall be subject to cancellation or modification without thirty (30) days prior written notice to Landlord. Tenant shall furnish Landlord with a replacement certificate with respect to any insurance not less than thirty (30) days prior to the expiration of the current policy.

10.6 **Waiver of Subrogation.** Each party hereby waives any right of recovery against the other for injury or loss covered by insurance, to the extent of the injury or loss covered thereby. Any policy of insurance to be provided by Tenant pursuant to this Article X shall contain a clause denying the insurer any right of subrogation against Landlord.

10.7 **Failure to Insure.** If Tenant fails to maintain any insurance which Tenant is required to maintain pursuant to this Article X, Landlord may, but shall not be obligated to, procure such policies of insurance, in which case Tenant shall reimburse Landlord upon demand for the cost thereof, provided that Landlord's rights hereunder shall be subject to the rights of the Leasehold Mortgagors.

10.8 **Claims.** In the event of an insurance claim under the insurance policies contemplated by Section 10.2 hereof, the Tenant will notify the Landlord within thirty (30) days following discovery of the claim by the Tenant. In addition, the Tenant will investigate and furnish the Landlord with reports of all accidents, claims and known potential claims for damage or injury and will cooperate with its insurers and those of the Landlord.

10.9 **Restoration, Casualty, Condemnation.** If any act or occurrence of any kind or nature (including any taking by condemnation or any casualty) shall result in damage to or loss or destruction of the Improvements, in whole or in part, and without diminution of any obligation of the Tenant in respect thereof under the approved Leasehold Mortgages, the Tenant, to the extent that insurance proceeds or condemnation proceeds and other funds, if any, made available (including, without limitation, by further advance pursuant to the approved Leasehold Mortgages or Section 13.2 hereof) permit, shall promptly cause the restoration, reconstruction, and/or repair of the Improvements as nearly as possible to its value, condition and character immediately prior to such taking or casualty. To the extent required under any approved Leasehold Mortgages, condemnation and casualty proceeds may be remitted directly to the first priority Leasehold Mortgagee, however, unless waived by Landlord, the approved Leasehold Mortgage loan documents shall contain provisions requiring restoration consistent with the foregoing if such restoration shall be reasonably determined feasible by the first priority Leasehold Mortgagee. If such condemnation or insurance proceeds and other available funds are not sufficient or restoration is otherwise determined in accordance with the first priority Leasehold Mortgage loan documents to be not feasible, such proceeds shall be applied as provided in the first priority Leasehold Mortgage loan documents.

10.10 **Waiver of Subrogation.** Each party hereby waives any right of recovery against the other for injury or loss covered by insurance, to the extent of the injury or loss covered thereby. Any policy of insurance to be provided by Tenant pursuant to this Article X shall contain a clause denying the insurer any right of subrogation against Landlord.

10.11 **Failure to Insure.** If Tenant fails to maintain any insurance which Tenant is required to maintain pursuant to this Article X, Landlord may, but shall not be obligated to, procure such policies of insurance, in which case Tenant shall reimburse Landlord upon demand.
for the cost thereof, together with interest thereon at the lesser of the maximum rate permitted by law, if any, or twelve percent (12%) per annum from the date due to the date paid, as Additional Rent and, in addition, Tenant shall be liable to Landlord for any loss or cost resulting from such failure to maintain. Tenant may not self-insure against any risks required to be covered by insurance.

**ARTICLE XI - DAMAGE OR DESTRUCTION**

11.1 **Continuation of Lease.** Except as set forth in Article XII hereof, this Lease shall not terminate, nor shall there be any abatement of rent or any other charges to be paid by Tenant hereunder, or relief from any other obligations of Tenant hereunder as a result of the partial or total destruction of the Premises or any buildings or improvement located thereon.

11.2 **Destruction of Premises.** Except as set forth in Article XII hereof, if the Premises and/or any Improvements located thereon are damaged by any casualty, Tenant shall promptly and with due diligence reconstruct and/or repair any damage to the Premises and the Improvements located thereon in the manner and as required by Sections 5.1, 8.2, and 10.9 above.

11.3 **Waiver.** The provisions contained in this Lease shall supersede any contrary laws now or hereafter in effect relating to damage or destruction.

**ARTICLE XII - CONDEMNATION**

12.1 **Condemnation.** If the entire Premises or a portion of the development or so much of the Premises or such portion as to render, in the Tenant's reasonable discretion (subject further to the requirements of any approved first priority Leasehold Mortgage), the balance unusable by Tenant shall be taken by condemnation, sale in lieu of condemnation or in any other manner for any public or quasi-public purpose (collectively "Condemnation"), this Lease shall terminate with respect to the entire Lease or to such portion, as the case may be, on the date that title or possession to the Premises is taken by the condemning authority, whichever is earlier. In the event that this Lease is not terminated as provided above, the Lease shall continue in full force and effect and unmodified as to the remainder of the Premises. Notwithstanding any provision contained herein, in the event of a partial taking, (i) the Improvements shall be rebuilt and restored by Tenant, if feasible, unless the first priority Leasehold Mortgagee consents to distribution of the proceeds from such condemnation or casualty, (ii) proceeds from any condemnation or casualty award distributed pursuant to clause (i) shall be distributed in accordance with the first priority Leasehold Mortgage approved in accordance with Article XIII hereof. The first priority Leasehold Mortgage may require that proceeds be applied first to the reduction of the balance of the first priority Leasehold Mortgage.

12.2 **Apportionment of Award.** If there is a Condemnation, whether whole or partial, Landlord and Tenant shall be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings, or as may be otherwise agreed, taking into consideration the fact that Landlord's interest in the Leased Premises is limited to the land (exclusive of the Improvements), as encumbered by this Lease. If the Leased Premises shall be restored as is contemplated in Section 10.4 above, Tenant shall be entitled to recover the costs and expenses incurred in such restoration out of any "Net Condemnation Award" (as defined in this Section below). Thereafter, if the condemning authority does not make separate awards the parties agree that any Net Condemnation Award will be
allocated on a proportionate basis. As used herein, “Net Condemnation Award” means the net amounts owed or paid to the parties or to which either of the parties may be or become entitled by reason of any Condemnation pursuant to any agreement with any condemning authority which has been made in settlement of any proceeding relating to a condemnation, less any costs and expenses incurred by the parties in collecting such award or payment.

Notwithstanding the foregoing or anything to the contrary contained herein, any Condemnation Award payable to Tenant shall be directed or paid in the manner prescribed in the first priority Leasehold Mortgage loan documents approved in accordance with Article XIII hereof.

12.3 **Temporary Taking.** No temporary taking of the Premises shall terminate this Lease or entitle Tenant to any abatement of the Rent payable to Landlord under this Lease; provided, further, that any award for such temporary taking shall belong to Tenant to the extent that the award applies to any time period during the Lease Term and to Landlord to the extent that the award applies to any time period outside the Lease Term.

**ARTICLE XIII – LEASEHOLD MORTGAGES**

13.1 **Right to Mortgage Leasehold.** The parties contemplate that Tenant will obtain financing for completion of the development of the Premises from lenders who will require security for repayment of the indebtedness. Tenant shall have the right to mortgage its leasehold interest in the Premises to a bank, insurance company, governmental or other subordinate bona fide lender ("Leasehold Mortgagor") with Landlord’s written approval, such approval not to be unreasonably withheld, conditioned, or delayed.

13.2 **Notice to Leasehold Mortgagor.** If Tenant shall grant a leasehold mortgage to secure debt ("Leasehold Mortgage") in accordance with Paragraph 13.1, and if Tenant or the Leasehold Mortgagee shall have notified Landlord, in the manner hereinafter provided for the giving of notice by Tenant to Landlord, of the existence of such Leasehold Mortgage and of the address to which any notices to the Leasehold Mortgagee are to be mailed, then no notice by Landlord to Tenant under this Lease shall be effective unless and until a copy of such notice has been provided to each Leasehold Mortgagee of which Landlord has received notice from Tenant.

13.3 **Mortgagee Right to Cure.** Leasehold Mortgagees shall have the right, but not the obligation, to remedy any default under this Lease or cause the same to be remedied and Landlord shall accept such performance by or at the instance of such Leasehold Mortgagee as if the same had been made by Tenant. There shall be added to any grace period allowed by the terms of this Lease to Tenant for curing any default, an additional thirty (30) days in the case of default in payment of Rent and an additional ninety (90) days in the case of all other defaults, for such Leasehold Mortgagee to cure the same beyond the time allowed to Tenant.

13.4 **Foreclosure Action.** In the case of a default, other than failure to pay Rent or any sum due hereunder, Landlord shall not be empowered to terminate this Lease by reason of the occurrence of such non-monetary default if Leasehold Mortgagee, (a) within ninety (90) days after the giving of notice of such default as provided in Paragraph 13.2, shall commence foreclosure or similar proceedings under the Leasehold Mortgage for the purpose of acquiring Tenant’s interest in this Lease and thereafter diligently prosecutes the same, (b) shall bring current and continue to pay timely all payments of Rent or any sum due hereunder, and (c) shall
cure such non-monetary default within ninety (90) days after the Leasehold Mortgagee or the purchaser at the foreclosure sale first obtains possession of the Premises, whether as mortgagee-in-possession, titleholder or otherwise.

13.5 **Holder through Foreclosure.** The Leasehold Mortgagee or its nominee may become the legal owner and holder of the leasehold estate under this Lease by foreclosure of its leasehold mortgage or as a result of the assignment of this Lease in lieu of foreclosure and, in the event that it does become the legal owner, it shall be required to assume the obligations of the Tenant under this Lease and it shall be subject to all of the terms hereof and be required to perform all of the obligations of Tenant hereunder. To the extent that any loan made by a Leasehold Mortgagee to Tenant is secured by liens, pledges, collateral assignments or security interests in, to or of Tenant’s rights in the Premises and/or the Improvements, the term “Leasehold Mortgage” shall be construed to include such other loan documents and any amendment or modifications thereto.

13.6 **Foreclosure.** The term foreclosure, used in this Lease, shall include both judicial foreclosure and the exercise of a power of sale.

13.7. **Reserved.**

13.8. **Limitation on Liability of Leasehold Mortgagee.** No Leasehold Mortgagee shall be or become liable to Landlord as an assignee of this Lease or otherwise unless it expressly assumes by written instrument executed by Landlord and Leasehold Mortgagee such liability (in which event the Leasehold Mortgagee's liability shall be limited to matters occurring during the period of time during which it is the owner of the leasehold estate created hereby); provided, however, that an assumption shall be assumed upon a foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by such Leasehold Mortgage or other instrument or from a conveyance from Tenant pursuant to which the purchaser at foreclosure or grantee shall acquire the rights and interest of Tenant under the terms of this Lease.

13.9. **Estoppel Certificates.** Landlord and Tenant agree that at any time and from time to time upon not less than twenty (20) days' prior written notice by the other Party, or upon request from any Leasehold Mortgagee or a permitted assignee or other interested party, Landlord or Tenant will execute, acknowledge and deliver to the other Party or to such Leasehold Mortgagee a statement in writing certifying (a) that, if such is the case, this Lease is unmodified and in full force and effect; (b) the date through which the Rents have been paid; and (c) that, to the knowledge of the certifier (if such be the case), there is no default, set-off, defense or other claim against Landlord or Tenant, as applicable, other than those, if any, so specified under the provisions of this Lease. It is intended that such statement may be relied upon by any persons proposing to acquire the interest of Landlord, Tenant or any Leasehold Mortgagee, as the case may be, in this Lease or by any prospective Leasehold Mortgagee or assignee of any Leasehold Mortgage.

13.10. **Registration of Leasehold Mortgages.** Tenant shall provide written notice to Landlord of the name and address of each Leasehold Mortgagee under this Lease. Landlord acknowledges receipt of notice that: _________________ is the original first priority Leasehold Mortgagee and its address for notices is as follows: ________________, with a copy to ________________ (which shall not constitute notice) to ________________.
ARTICLE XIV - ASSIGNMENT AND SUBLETTING

14.1 **Restriction on Assignment.** Except to the extent specifically provided herein, Tenant shall not, without the prior written consent of Landlord, either voluntarily or by operation of law, assign, or otherwise transfer this Lease or any interest herein, nor sublet or encumber all or any portion of the Premises (and hereinafter any such action may sometimes be referred to as a "Transfer"). Any person to whom any Transfer is attempted without such consent shall have no claim, right or remedy whatsoever hereunder against Landlord, and Landlord shall have no duty to recognize any person claiming under or through the same. Any assignment, subletting or other action in violation of the foregoing shall be void and, at Landlord's option, shall constitute a material breach of this Lease. For purposes of this section 14.1 an assignment shall include any transfer of any interest in this Lease or the Premises by Tenant pursuant to mergers, division, consolidation or liquidation, or pursuant to a change in ownership of Tenant involving transfer of voting control in Tenant (whether by transfer of partnership interests, membership interests, corporate stock or otherwise). Anything herein to the contrary notwithstanding, Tenant shall have the right to sublease individual residential rental units to occupants thereof without Landlord's consent, provided that all such leases be done in the normal course of business, any Leasehold Mortgage, and all other governmental requirements.

14.2 **Prohibited Transfers.** Except to the extent specifically provided herein, Tenant agrees for itself and its successors and assigns in interest hereunder that it will not, other than pursuant to any Leasehold Mortgages that are approved by Landlord and the exercise of remedies by any Leasehold Mortgagee hereunder: (1) assign this Lease or any of its rights under this Lease as to all or any portion of the Premises or the rest of the Improvements, or (2) make or permit any voluntary or involuntary total or partial sale, lease, assignment, conveyance, mortgage, pledge, encumbrance or other transfer of any or all of the Premises or the rest of the Improvements or the occupancy or use thereof, other than in accordance with this Lease (including but not limited to (i) any sale at foreclosure or by the execution of any judgment of any or all of Tenant's rights hereunder, or (ii) any Transfer by operation of law), without first obtaining Landlord's express written consent thereto.

14.3 **Landlord's Costs.** If Tenant shall assign this Lease or shall sublet all of the Premises or shall request the consent of Landlord to any such assignment, subletting or other act, Tenant shall pay to Landlord as Additional Rent Landlord's costs related thereto, including Landlord's reasonable attorneys' fees.

14.4 **Continuing Liability of Tenant.** Notwithstanding any assignment or sublease, Tenant shall remain as fully and primarily liable for the payment of Rent and for the performance of all other obligations of Tenant contained in this Lease to the same extent as if the assignment or sublease had not occurred. Any act or omission of any assignee or subtenant, other than Landlord, that violates the terms of this Lease shall be deemed a violation of this Lease by Tenant.

14.5 **Non-Waiver.** The consent by Landlord to any assignment or subletting shall not relieve Tenant or any person claiming through or by Tenant, of the obligation to obtain the consent of Landlord, pursuant to this Article XIV, to any further assignment or subletting. In the event of an assignment or subletting, Landlord may collect rent from the assignee or the subtenant without waiving any rights hereunder and collection of the rent from a person other than Tenant shall not be deemed a waiver of any of Landlord's rights under this Article XIV, an acceptance of
assignee or subtenant as Tenant, or a release of Tenant from the performance of Tenant's obligations under this Lease.

14.6 **Assignments to Leasehold Mortgagees.** Notwithstanding the foregoing, Tenant may transfer, assign, convey, or otherwise encumber the leasehold estate created hereunder to Leasehold Mortgagees approved by Landlord pursuant to Section 13.1 hereof, and the approval by Landlord thereof shall constitute approval of the terms, including remedies upon default, of the leasehold mortgages, including but not limited to, the right of the approved Leasehold Mortgagee (after a foreclosure, or deed in lieu of foreclosure) to transfer, convey or assign the Premises and the leasehold estate granted hereunder to another party without Landlord's consent.

14.7 **No Surrender of Lease.** Landlord agrees, and Tenant acknowledges that Landlord shall not accept a voluntary surrender of Premises and/or the leasehold estate granted hereunder without the written consent of any first priority Leasehold Mortgagee.

**ARTICLE XV - DEFAULT AND REMEDIES**

15.1 **Events of Default By Tenant.** The occurrence of any of the following shall constitute a material default and breach of this Lease by Tenant:

(A) The failure by Tenant to pay Base Rent or make any other payment required to be made by Tenant hereunder as and when due and the continuation of such failure for five (5) days following written notice from Landlord.

(B) The making by Tenant of an assignment of this Lease or any sublease of all or part of the Premises except as expressly permitted under Article XIV of this Lease.

(C) The failure by Tenant to observe or perform any other provision of this Lease to be observed or performed by Tenant other than those described in Sections 15.1(A) or 15.1(B) above, if such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of the default is such that it cannot be cured within the thirty (30) day period, no default shall be deemed to exist if Tenant commences the curing of the default promptly within such thirty (30) day period and thereafter diligently prosecutes the same to completion. The thirty (30) day notice described herein shall be in lieu of, and not in addition to, any notice required under law now or hereafter in effect requiring that notice of default be given prior to the commencement of an unlawful detainer or other legal proceeding. Notwithstanding the foregoing, a notice of intent to cancel insurance coverage by an insurer shall be an event of default for which there shall be a 15-day cure period.

(D) The making by Tenant of any general assignment for the benefit of creditors or the filing by or against Tenant of a petition under any federal or state bankruptcy or insolvency laws (unless in the case of a petition filed against Tenant the same is dismissed within sixty (60) days after filing) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets at the Premises or Tenant's interest in this Lease or the Premises when possession is not restored within sixty (60) days; or the attachment, execution or other seizure of substantially all of such assets located at the Premises or Tenant's interest in this Lease or the Premises if such seizure is not discharged within sixty (60) days.
(E) The failure by Tenant to start construction (break ground) on the Project within six (6) months after the Commencement Date.

(F) The failure of the Tenant to reach Final Completion of the Project by the fourth (4th) anniversary of the Commencement Date, subject nevertheless to the force majeure provisions.

15.2 Landlord’s Right To Terminate Upon Tenant Default. Subject to any Leasehold Mortgagee's rights to cure as set forth in Article XIII hereof, in the event of any default by Tenant as provided in Section 15.1 above, Landlord shall have the right without further notice or demand to Tenant except as provided in Section 15.1 (Tenant hereby irrevocably waiving all notices and demands except as provided in Section 15.1), statutory or otherwise, to terminate this Lease and Tenant's right to possession of the Premises without terminating Tenant's liabilities under this Lease, in which event ownership of all of the improvements shall immediately vest in Landlord and Landlord shall be entitled to receive from Tenant such amounts as may be permitted from time to time by applicable law.

15.3 Landlord’s Additional Remedies. In the event of a default of this Lease by Tenant, whether or not Landlord elects to terminate this Lease as provided in Section 15.2 above, Landlord may from time to time enforce all of its rights and remedies under this Lease, at law or in equity.

15.4 Right of Landlord to Perform. All covenants and agreements to be performed by Tenant under this Lease shall be performed by Tenant at Tenant’s sole cost and expense. If Tenant shall fail to pay any sum of money, other than Rent, required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, Landlord, upon advance written notice to Tenant and reasonable opportunity to cure, may, but shall not be obligated to, make any payment on Tenant's behalf without waiving or releasing Tenant of its obligations under this Lease. Any sums so paid by Landlord and all necessary incidental out-of-pocket costs, together with interest thereon at the lesser of the maximum rate permitted by law, if any, or twelve percent (12%) per annum, from the date of such payment shall be payable to Landlord as Additional Rent on demand and Landlord shall have the same rights and remedies in the event of nonpayment as in the case of default by Tenant in the payment of Rent.

15.5 Non-Waiver. Nothing in this article shall be deemed to affect Landlord's rights to indemnification for liability or liabilities arising prior to termination of this Lease for personal injury or property damages under the indemnification clause or clauses contained in this Lease. No acceptance by Landlord of a lesser sum than the Rent then due shall be deemed to be other than on account of the earliest installment of such Rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedy provided in the Lease.

15.6 Cumulative Remedies. The specific remedies to which Landlord may resort under the terms of the Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any breach or threatened breach by Tenant of any provisions of the Lease. In addition to the other remedies
provided in the Lease, including the right to terminate Tenant's right of possession of the Premises, Landlord shall be entitled to a restraint by injunction of the violation or attempted or threatened violation of any of the covenants, conditions or provisions of the Lease or to a decree compelling specific performance of any such covenants, conditions or Provisions.

15.7 **Default by Landlord.** Landlord's failure to perform or observe any of its obligations under this Lease shall constitute a default by Landlord under this Lease only if such failure shall continue for a period of sixty (60) days (or the additional time, if any, that is reasonably necessary promptly and diligently to cure the failure) after Landlord receives written notice from Tenant specifying the default. The notice shall give in reasonable detail the nature and extent of the failure and shall identify the Lease provision(s) containing the obligation(s). If Landlord shall default in the performance of any of its obligations under this Lease (after notice and opportunity to cure as provided herein), Tenant may pursue any remedies available to it under the law and this Lease.

15.8 **Force Majeure.** No default in the performance of the terms, covenants or conditions of this Lease on the part of the Tenant or the Landlord (other than in the payment of any Rent) shall be deemed to continue if and so long as the Landlord or the Tenant, as the case may be, shall be delayed in or prevented from remedying the same due to Force Majeure (as defined below); but if and when the occurrence or condition which delayed or prevented the remedying of such default shall cease or be removed, it shall be the obligation of the Landlord or the Tenant, as the case may be, without further delay, to commence the correction of such default or to continue and complete the correction thereof. The foregoing notwithstanding, with respect to the time for achieving Final Completion and the timeframes established with respect thereto in Sections 4.5 and 15.1(F), no extension of time such time shall be awarded and no default or penalty on account thereof abated on account of Force Majeure unless Tenant notifies Landlord in writing, within 30 days after the occurrence of the event amounting to Force Majeure (a) that the event occurred and that Tenant is claiming the same amounts to Force Majeure and (b) the number of days of delay resulting therefrom. As used herein, the term "Force Majeure" shall mean damage or destruction by fire or other casualty or act of terrorism, strike, widespread shortages of construction materials, governmental delays, unusually adverse weather conditions such as, by way of illustration and not limitation, hurricanes, flooding, tornadoes or cyclones, and other material adverse events or conditions beyond the reasonable control of the party affected which in fact delay such party in discharging its obligations hereunder.

**ARTICLE XVI - ATTORNEYS FEES; COSTS OF SUIT**

16.1 **Attorneys' Fees.** If either Landlord or Tenant shall commence any action or other proceeding against the other arising out of, or relating to, this Lease, the Premises and/or Improvements, the prevailing party shall be entitled to recover from the losing party, in addition to any other relief, its reasonable attorney's fees, irrespective of whether or not the action or other proceeding is prosecuted to judgment. In addition, Tenant shall reimburse Landlord, upon demand, for all reasonable attorneys' fees incurred in collecting Rent or otherwise seeking enforcement against Tenant, its sublessees and assigns, of Tenant's obligations under this Lease.
ARTICLE XVIII - QUIET ENJOYMENT

17.1 Provided that Tenant performs all of its obligations hereunder, Tenant shall have and peaceably enjoy the Premises during the Lease Term, subject to all of the terms and conditions contained in this Lease and the Permitted Encumbrances.

17.2 Landlord hereby warrants that as of the Commencement Date, no mortgage or deed to secure debt affects the Premises which were created by, under or through Landlord, except as may be referenced as a permitted encumbrance set forth at Exhibit C hereto.

17.3 Landlord covenants and agrees that Landlord shall not mortgage, convey, pledge, or otherwise encumber the Premises after the Commencement Date without the written consent of Tenant and any Leasehold Mortgagees. Any document evidencing such encumbrances shall be expressly subordinate to the leasehold estate created hereunder and any Leasehold Mortgages permitted under Article XIII hereof. In such event, Tenant shall not be required, nor shall Tenant be permitted without the consent of all Leasehold Mortgagees, to subordinate the leasehold established hereunder to any mortgage entered into by Landlord after the date hereof.

ARTICLE XVIII - ACCESS TO BOOKS & RECORDS

18.1 Right of Access to Books & Records. Tenant grants a right of access to the Landlord, or any of their authorized representatives, with respect to any books, documents, papers, or other records related to this Lease in order to make audits, examinations, excerpts, and transcripts.

ARTICLE XIX - LIMITATION ON LANDLORD'S LIABILITY

19.1 Landlord's Lease Undertakings. Notwithstanding anything to the contrary contained in this Lease or in any exhibits or addenda hereto, it is expressly understood and agreed by and between the parties hereto that: (a) the recourse of Tenant or its successors or assigns against Landlord with respect to the alleged breach by or on the part of Landlord of any representation, warranty, covenant, undertaking or agreement contained in the Lease ("Landlord's Lease Undertakings") shall extend only to Landlord's interest in the Premises and not to any other assets of Landlord; and (b) except to the extent of Landlord's interest in the Premises, no personal liability or personal responsibility of any sort with respect to any of Landlord's Lease Undertakings or any alleged breach thereof is assumed by, or shall at any time be asserted or enforceable against Landlord, or any affiliate, subsidiary or agency, or against any of their respective officers, directors, officers, employees, agents, trustees or representatives.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties, covenants, undertakings and agreements herein made on the part of Landlord while in form purporting to be the representations, warranties, covenants, undertakings and agreements of Landlord are nevertheless each and every one of them made and intended, not as personal representations, warranties, covenants, undertakings and agreements by Landlord or for the purpose or with the intention of binding Landlord personally, but are made and intended for the purpose only of subjecting Landlord's interest in the Premises to the terms of this Lease and for no other purpose whatsoever, and in case of default hereunder by Landlord (or default through, under or by any of
its beneficiaries, or agents or representatives of said beneficiaries), the Tenant shall look solely to the Landlord's interest in the Premises.

19.2 **Transfer of Landlord's Interest.** Landlord and each successor to Landlord shall be fully released from the performance of Landlord's obligations subsequent to their transfer of Landlord's interest in the Premises only if (1) the transfer is not to an affiliate of Landlord, and (2) the transferee assumes in writing the performance of all of Landlord's obligations hereunder arising on or after the date of such transfer.

**ARTICLE XX - HOLDOVER TENANCY**

20.1 **Holdover Tenancy.** If Tenant holds possession of the Premises after the expiration or termination of the Lease Term, by lapse of time or otherwise, Tenant shall become a tenant at sufferance upon all of the terms contained herein except as to Lease Term and Rent. During such holdover period, Tenant shall pay to Landlord a rental equal to one hundred fifty percent (150%) of the fair market rent of similar property located within five miles of the Premises (as determined by an independent appraiser) payable by Tenant hereunder on a monthly basis in advance. The monthly rent payable for such holdover period shall in no event be construed as a penalty or as liquidated damages for such retention of possession. Without limiting the foregoing, Tenant hereby agrees to indemnify, defend and hold harmless Landlord, and its agents contractors and employees, from and against any and all claims, liabilities, actions, losses, damages (including without limitation, direct, indirect, incidental and consequential) and expenses (including, without limitation court costs and reasonable attorneys' fees) asserted against or sustained by any such party and arising from or by reason of such retention of possession, which obligations shall survive the expiration or termination of the Lease.

**ARTICLE XXI - NOTICES**

21.1 **Notices.** All notices, demands and requests which are required to be given by the Landlord or Tenant shall be in writing and shall be served by personal service on the recipient or as an alternative to personal service, by mailing the same by registered or certified mail, postage prepaid, or may be sent by overnight courier, addressed to the Landlord at the address for Landlord set forth in Section 1.9 above and to Tenant at the address for Tenant set forth in Section 1.20 above, unless a request for a change in this address has been sent to the party giving the notice by registered or certified mail or by overnight courier prior to the time when such notice is given. Any notice shall be deemed to have been given and served upon the earlier of the date (a) actually received; or (b) of first attempted delivery, as evidenced by written verification.

**ARTICLE XXII - BROKERS**

22.1 **Brokers.** The parties each represent to the other that they have not engaged any broker in connection with this Lease. If Tenant has dealt with any person or real estate broker in respect to leasing, subleasing or renting space in the Premises, Tenant shall be solely responsible for the payment of any fee due said person or firm and Tenant shall protect, indemnify, hold harmless and defend Landlord from any liability in respect thereto. Said indemnity and hold harmless shall survive the expiration or earlier termination of this Lease.
ARTICLE XXIII – RESERVED

ARTICLE XXIV - MISCELLANEOUS

24.1 Amendments. This Lease may be amended by mutual agreement of the Landlord and Tenant, so long as such amendment is consented to in writing by any first priority Leasehold Mortgagee and provided that all amendments must be in writing and signed by both parties and that no amendment shall impair the obligations of the Tenant to develop and operate the Project. Landlord shall not have waived or released any of its rights hereunder unless in writing and executed by the Landlord.

24.2 Successors. Except as expressly provided herein, this Lease and the obligations of Landlord and Tenant contained herein shall bind and benefit the successors and assigns of the parties hereto.

24.3 INTENTIONALLY OMITTED

24.4 Survival of Obligations. Any obligations of Tenant accruing prior to the expiration of the Lease shall survive the expiration or termination of the Lease, and Tenant shall promptly perform all such obligations whether or not this Lease has expired or been terminated.

24.5 Governing Law. This Lease shall be governed by, and construed in accordance with, the laws of the State of South Carolina.

24.6 Severability. In the event any provision of this Lease is found to be unenforceable the remainder of this Lease shall not be affected, and any provision found to be invalid shall be enforceable to the extent permitted by law. The parties agree that in the event two different interpretations may be given to any provision hereunder, one of which will render the provision unenforceable, and one of which will render the provision enforceable, the interpretation rendering the provision enforceable shall be adopted.

24.8 Captions. All captions, headings, titles, numerical references and computer highlighting are for convenience only and shall have no effect on the interpretation of this Lease.

24.9 Interpretation. Tenant acknowledges that it has read and reviewed this Lease and that it has had the opportunity to confer with counsel in the negotiation of this Lease. Accordingly, this Lease shall be construed neither for nor against Landlord or Tenant, but shall be given a fair and reasonable interpretation in accordance with the meaning of its terms and the intent of the parties.

24.10 Independent Covenants. Each covenant, agreement, obligation or other provision of this Lease to be performed by Tenant are separate and independent covenants of Tenant, and not dependent on any other provision of the Lease.

24.11 Number and Gender. All terms and words used in this Lease, regardless of the number or gender in which they are used, shall be deemed to include the appropriate number and gender, as the context may require.
24.12 **Time is of the Essence.** Time is of the essence of this Lease and the performance of all obligations hereunder.

24.13 **Exhibits and Schedules.** Exhibit “A” (Legal Description), Exhibit “B” (Survey of Premises) Exhibit “C” (Permitted Encumbrances), Exhibit “D” (Development Budget) and Exhibit “E” (RFP) are incorporated into this Lease by reference and made a part hereof.

24.14 **Waiver: No Counterclaim; Choice of Laws.** To the extent permitted by applicable law, Tenant hereby waives the right to a jury trial in any action or proceeding regarding this Lease and the tenancy created by this Lease. In addition, Tenant hereby submits to local jurisdiction in the State of South Carolina, County of Charleston, and agrees that any action by Tenant against Landlord shall be instituted in the State of South Carolina and that Charleston County State courts shall have personal jurisdiction over Tenant for any action brought by Landlord against Tenant in the State of South Carolina. To the extent permitted by applicable law, Tenant hereby waives any and all rights of redemption granted by any present or future laws.

24.15 **No Merger of Title.** There shall be no merger of the leasehold estate created by this Lease with the fee estate in the Premises by reason of the fact that the same person may acquire or hold (a) the leasehold estate created by this Lease or any interest in such leasehold estate, and (b) the fee estate in the Premises or any interest in such fee estate; and no such merger shall occur unless and until all persons, including any Leasehold Mortgagee and any other mortgagee, having any interest in (i) the leasehold estate created by this Lease, and (ii) the fee estate in the Premises, shall join in a written instrument effecting such merger and shall duly record the same.

24.16 **Recording.** Neither Party shall record the Ground Lease. Nevertheless, a Memorandum of Ground Lease shall be recorded.

[SIGNATURES ARE ON FOLLOWING PAGE]
IN WITNESS WHEREOF, the parties hereto have executed this Ground Lease as of the date first above written.

LANDLORD:

CITY OF CHARLESTON, SC, a South Carolina public body corporate and politic
By: 
Its: 

TENANT:

LOWLINE HOUSING, L.P., a South Carolina limited partnership
By: 
Its: 
EXHIBIT "A"

LEGAL DESCRIPTION
EXHIBIT “B”

SURVEY OF PREMISES

[on file with Landlord]
EXHIBIT "C"

PERMITTED ENCUMBRANCES

The permitted encumbrances shall be as set forth in Schedule B to the Tenant’s Leasehold Title Policy Number [TBD], together with all matters of record in the ROD Office for Charleston County as of the date of this Lease.
EXHIBIT “D”

DEVELOPMENT BUDGET
A RESOLUTION

AUTHORIZING THE MAYOR TO TAKE ALL NECESSARY ACTION AND EXECUTE ALL NECESSARY DOCUMENTS ON BEHALF OF THE CITY OF CHARLESTON TO ACCEPT FROM THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION THAT CERTAIN REAL PROPERTY, CONTAINING APPROXIMATELY 0.31 ACRES, SHOWN ON THE ATTACHED EXHIBIT, AND BEING A PORTION OF THE RIGHT-OF-WAY FOR US ROUTE 17, BOUNDED ON THE NORTH BY US ROUTE 17 (KING STREET OFF-RAMP), ON THE SOUTH AND EAST BY THE SEPTIMA P. CLARK PARKWAY (US ROUTE 17) (SB), AND ON THE WEST BY THE INTERSECTION OF FISHBURNE STREET AND COMING STREET.

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

Section 1. That the Mayor is hereby authorized to take all necessary action and execute all necessary documents on behalf of the City of Charleston to accept from the South Carolina Department of Transportation ("SCDOT") that certain real property, containing approximately 0.31 acres, being a portion of the right-of-way for US Route 17, further shown on Exhibit A, attached hereto and incorporated herein by reference, bounded on the north by US Route 17 (King Street Off-Ramp), on the south and east by the Septima P. Clark Parkway (US Route 17) (SB) and on the west by the intersection of Road L-658 (Fishburne Street) and Road S-553 (Coming Street).

Section 2. That the consideration for the conveyance may not exceed $5.00.

Section 3. That the draft quitclaim deed from SCDOT to the City is attached hereto and incorporated herein by reference as Exhibit B. The final form of the quitclaim deed will be subject to the approval of the City's Corporation Counsel. Upon approval by Corporation Counsel, the Mayor is authorized to accept the quitclaim deed without further action of City Council.
Section 4. That this resolution shall be effective upon adoption.

Adopted in City Council this 9th day of February in the year of Our Lord, 2021, in the 245th Year of the Independence of the United States of America.

By: ________________________________
    John J. Tecklenburg, Mayor

ATTEST:

______________________________
Jennifer Cook
Clerk of Council
EXHIBIT B

STATE OF SOUTH CAROLINA     )     QUITCLAIM DEED
COUNTY OF CHARLESTON       )

WHEREAS, pursuant to Section 57-5-340, Code of Laws of South Carolina, 1976, as amended, the South Carolina Department of Transportation has authority to dispose of the premises hereinbelow described, which premises are no longer required for purposes of the South Carolina Department of Transportation;

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the South Carolina Department of Transportation ("Grantor"), for and in consideration of the sum of Five and no/100 Dollars ($5.00) to it in hand paid, receipt of which is hereby acknowledged, does hereby grant, bargain, remise, release and quitclaim unto the City of Charleston ("Grantee"), all its right, title, interest in or to the following described property:

All that certain piece, parcel, or tract of land, situate, lying, and being in the City of Charleston in Charleston County, State of South Carolina, containing approximately 0.31 of an acre, as shown on the South Carolina Department of Transportation Highway Plans for Route I-26 under File 10.517, sheet 9, and being a portion of right of way for US Route 17, further shown on Exhibit A, attached herein and made a part hereof. Said property being bounded on the North by US Route 17 (King Street Off-Ramp), on the South and East, by US Route 17 (SB) and on the West by intersection of Road L-658 (Fishburne Street) and Road S-653 (Coming Street).

This being a portion of the right of way acquired by the South Carolina Department of Transportation for Route I-26 under File 10.517 from Anna E. Stooson by Title to Real Estate dated March 8, 1963 (Tract 105), Mona Sokol by Title to Real Estate dated March 13, 1963 (Tract 106), Thelma Georgis Carter by Title to Real Estate dated May 1, 1963 (Tract 107), Georgette Holmes Gilcrest by Title to Real Estate dated April 11, 1963 (Tract 108), and Fannie A. Patrik by Title to Real Estate dated November 24, 1965 (Tract 126), and being filed in the South Carolina Department of Transportation Deed Vault in Columbia, South Carolina under 10.517.

Grantee's Address:     50 Broad Street
                       Charleston, SC 29401

This conveyance is being made subject to any and all existing public utility rights of user, reservations, easements, rights of way, control of access, zoning ordinances and restrictions or protective covenants that may appear on record or on the premises for the benefit of parties other than Grantor.
CONDITIONS FOR REVERTER: This conveyance is being made to the Grantee for the express use for public purposes in perpetuity. If the Grantee shall cease to utilize this property for public purposes, then the property shall revert to the Grantor herein, who will have the right to re-enter and take possession of the property free of all restrictions and restraints.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the City of Charleston, its heirs, successors and assigns, forever.

WITNESS the hand and seal of the South Carolina Department of Transportation this ____________ day of _______________, in the year of our Lord Two Thousand Twenty-One.

Signed, sealed and delivered in the presence of

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

By: ________________________________ (L.S.)

Christy A. Hall, P.E.
Secretary of Transportation

By: ________________________________ (L.S.)

Justin P. Powell
Deputy Secretary for Finance and Administration.

THE STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Personally appeared before me the above named officers on behalf of South Carolina Department of Transportation and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this ______day of ____________________, 2021.

Notary Signature

Printed Name of Notary

NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA
My Commission Expires: ____________________
(Affix Seal if outside SC)
AN ORDINANCE

TO PROVIDE FOR THE ANNEXATION OF PROPERTY KNOWN AS 2182 PARKWAY DRIVE (0.20 ACRE) (TMS# 343-01-00-144), JAMES ISLAND, CHARLESTON COUNTY, TO THE CITY OF CHARLESTON, SHOWN WITHIN THE AREA ANNEXED UPON A MAP ATTACHED HERETO AND MAKE IT PART OF DISTRICT 11. THE PROPERTY IS OWNED BY PETER DEEN AND LEIGH MENDELSOHN WEY.

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 11 of the City of Charleston, to wit:

SAID PROPERTY to be annexed, 2182 Parkway Drive, (0.20 acre) is identified by the Charleston County Assessors Office as TMS# 343-01-00-144, (see attached map).

Section 3. This ordinance shall become effective upon ratification.

Ratified in City Council this ___ day of ____________, in the Year of Our Lord, ____________, in the ____ year of the Independence of the United States of America.

By: ___________________________

John J. Tecklenburg
Mayor

Attest: _________________________

Jennifer Cook
Clerk of Council
Annexation Profile

Parcel Address: 2182 Parkway Drive

Owner Names: Peter Deen and Leigh Mendelsohn Wey

Parcel ID: 3430100144

Presented to Council: 2/9/2021
Status: Received Signed Petition
Year Built: 2019
Number of Units: 1
Number of Persons: 4
Race: Caucasian
Acreage: 0.20
Current Land Use: Residential
Current Zoning: R-4
Requested Zoning: SR-1
Recommended Zoning: SR-1
Appraised Value: $957,000.00
Assessed Value: $39,810.00
Stormwater Fees: To Be Calculated

<table>
<thead>
<tr>
<th>Police</th>
<th>Located in existing service area - Team 3</th>
</tr>
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<tbody>
<tr>
<td>Fire</td>
<td>Located in existing service area - Station 13</td>
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<tr>
<td>Public Service</td>
<td></td>
</tr>
<tr>
<td>Sanitation</td>
<td>Located in existing service area. One additional stop.</td>
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<tr>
<td>Storm Water</td>
<td>Contiguous to existing service area.</td>
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<tr>
<td>Streets and Sidewalks</td>
<td>No additional City-maintained right-of-way</td>
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<td>Traffic and Transportation</td>
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</tr>
<tr>
<td>Signalization</td>
<td>None</td>
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<tr>
<td>Signage</td>
<td>None</td>
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<tr>
<td>Pavement Markings</td>
<td>None</td>
</tr>
<tr>
<td>Charleston Water System</td>
<td>CWS provides water. James Island PSD provides sewer.</td>
</tr>
<tr>
<td>Planning</td>
<td></td>
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<tr>
<td>Urban Growth Line</td>
<td>Property is a developed site within the line.</td>
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<tr>
<td>City Plan (Century Five)</td>
<td>Suburban Edge</td>
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<tr>
<td>Elevation Range</td>
<td>11-13 ft</td>
</tr>
<tr>
<td>Parks</td>
<td>Already being served.</td>
</tr>
</tbody>
</table>

Notes/Comments:

City Plan Recommendation: The existing development and proposed zoning is consistent with the City Plan. Recommend annexation.
STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  

PETITION FOR ANNEXATION

TO THE HONORABLE MAYOR AND CITY COUNCIL OF CHARLESTON

WHEREAS, SECTION 5-3-150 (3) Code of laws of South Carolina provides for the 
annexation of an area or property which is contiguous to a City by filing with the municipal 
governing body a petition signed by all persons owning real estate in the area requesting 
annexation, and

WHEREAS, the undersigned are all persons owning real estate in the area requesting 
annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

SAID PROPERTY, located on James Island (0.20 acre) to be annexed is identified by the 
Charleston County Assessors Office as Property Identification Number: TMS# 343-01-00-144 
(2182 Parkway Drive).

NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the 
above described area into the municipal limits of the City of Charleston.

Dated this 25th day of 
January, 2021

FREEHOLDERS (OWNERS) SIGNED                   DATE OF SIGNATURE

Peter Dean Wey                                  1-26-21

(Please Print Name)                              (Date)

Leigh Mendelsohn Wey                            1-26-21

(Please Print Name)                              (Date)
Annexation Map

Location: James Island
Property Address: 2182 Parkway Dr
Tax Map # (TMS): 3430100144
Area (Acres): approx. 0.20
Council District: 11