NOTICE OF MEETING

A meeting of the Committee on Real Estate will be held beginning at 3:30 p.m. Monday, April 26, 2021, Conference Call: 1-929-205-6099; Access Code: 835 678 884. The agenda will be as follows:

AGENDA

Invocation – Councilwoman Jackson

Approval of Minutes:

April 12, 2021

a. Request approval of a new Lease Agreement with the Beach Company & Pastime Amusement Co. for the City’s new lease of three parcels for inclusion in City’s Market-Horlbeck Municipal Parking Lot. 2-year lease, no extensions. Rent to be a base amount of $25,000 and a percentage of net revenue. (Former 40-year lease expired December 31, 2020, with interim extensions since.) (131 Broad Street; TMS# 457-08-02-113 (Pastime); TMS# 457-08-02-111 (Beach); TMS# 457-08-02-012 (Beach)). The property is owned by the City of Charleston.

b. Request approval a new Lease Agreement with GoHoBe, LLC for the City’s new lease of its parcel for inclusion in the City’s Market-Horlbeck Municipal Parking Lot. 2-year lease, no extensions. Rent to be a base amount of $1,500/month, City reimburses property tax cost, City provides 3 free parking cards; no percentage of net revenue. (Former 40-year lease Expired December 31, 2020, with interim extensions since.) (131 Meeting Street; TMS# 457-08-02-112). The property is owned by GoHoBe, LLC. (To be sent under separate cover by the Real Estate Department)

c. An ordinance amending ordinance No. 2019-129, adopted December 3, 2019, by authorizing the Mayor to execute, on behalf of the City of Charleston, all necessary documents to enter into that certain Third Amendment to Option to Lease and that certain Amended Ground Lease by and among the City of Charleston, as Landlord; and Flat Iron Partners, LLC and Classic Development Company, LLC, as tenants, under which (1) the Ground Lease is amended to include language required by lender(s) for the development of the James Lewis, Jr. Apartment site; and (2) the tenants’ option to enter into the Ground Lease, as amended, is extended to August 31, 2021.
d. Consider the following annexations:

(i) 807 Savage Road (0.193 acre) (TMS# 309-15-00-053), West Ashley, (District 7). The property is owned by Andrew Dufresne and Grace Dufresne

(ii) Clements Ferry Road (0.15 acre) (TMS# 271-00-02-153), Cainhoy, Berkeley County, (District 1). The property is owned by Sweetwater Apts SC PH II, LLC.

e. Executive Session pursuant to Section 30-4-70(a)(2) of the South Carolina Code, to receive legal advice to discuss potential sale of property located in Grace Bridge area.

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.
TO: Real Estate Committee
DATE: April 27, 2021
FROM: Real Estate
DEPT: BFRC

ADDRESS: 131 Broad Street

TMS: 4570802113 (Pastime); 4570802111 (Beach); 4570802012 (Beach)

PROPERTY OWNER: City of Charleston

Request approval of new Lease Agreement with the Beach Company & Pastime Amusement Co. for City's new lease of three parcels for inclusion in City's Market-Horlbeck Municipal Parking Lot. 2-year lease, no extensions. Rent to be a base amount of $25,000 and a percentage of net revenue. (Former 40-year lease expired December 31, 2020, with interim extensions since.)

ACTION REQUEST: ____________________________

ORDINANCE: Is an ordinance required? Yes ☐ No ☐

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

Department Head
Legal Department
Chief Financial Officer
Director Real Estate Management

Signature

Attachments

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: April 27, 2021
FROM: Real Estate DEPT: BFRC
ADDRESS: 131 Market Street
TMS: 4570802113 (Pastime); 4570802111 (Beach); 4570802012 (Beach)
PROPERTY OWNER: The Beach Company and Pastime Amusement Company

Request approval of new Lease Agreement with the Beach Company & Pastime Amusement Co. for City's new lease of three parcels for inclusion in City's Market-Horlbeck Municipal Parking Lot. 2-year lease, no extensions. Rent to be a base amount of $25,000 and a percentage of net revenue. (Former 40-year lease expired December 31, 2020, with interim extensions since.)

ACTION REQUEST: ____________________________

ORDINANCE: Is an ordinance required? Yes ☒ No ☐

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

☐ ACQUISITION
  Seller (Property Owner) ____________________________ Purchaser ____________________________

☐ DONATION/TRANSFER
  Donated By: ____________________________

☐ FORECLOSURE
  Terms: ____________________________

☐ PURCHASE
  Terms: ____________________________

☐ CONDEMNATION
  Terms: ____________________________

☐ OTHER
  Terms: ____________________________

☐ SALE
  Seller (Property Owner) ____________________________ Purchaser ____________________________

☐ NON-PROFIT ORG, please name ____________________________
  Terms: ____________________________

☐ OTHER
  Terms: ____________________________

1
COMMERCIAL REAL ESTATE FORM

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

☐ PERMANENT
Terms: __________________________________________

☐ TEMPORARY
Terms: __________________________________________

☒ LEASE

Lessor:  Amusement Company  Lessee: City of Charleston

☒ INITIAL 2-year lease, no extensions. Rent to be a base amount of $25,000 and a percentage of net revenue. (Former 40-year lease expired December 31, 2020, with interim extensions since.)

Terms: __________________________________________

☐ RENEWAL Terms: 0 __________________________________________

☐ 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).
STATE OF SOUTH CAROLINA )
COUNTY OF CHARLESTON )

LEASE AGREEMENT

THIS LEASE AGREEMENT (this “Agreement”) is made and entered into this ___ day of April, 2021, by and between the City of Charleston (the “City”) and The Pastime Amusement Company and The Beach Company, (herein collectively the “Owner”).

WHEREAS, City and Owner entered into a Lease Agreement dated May 20, 1981, and thereafter amended same on September 24, 1981, and on April 28, 1987, and on July 1, 1990 (as amended, the “Lease”), providing for the letting to the City of certain property described in the Lease, said property being currently designated as Charleston County TMS Nos. 457-08-02-012, 457-08-02-111, and 457-08-02-113;

WHEREAS, the Lease ended on December 31, 2020, and the Owner has since let or otherwise provided the aforementioned property to the City for its use as a portion of a Municipal Parking Lot, as described in the Lease;

WHEREAS, the City and the Owner now desire to enter into a formal Lease Agreement for the same certain described property, with the new Lease Agreement containing terms and provisions that, for the benefit of the parties, essentially equal to those requirements and benefits of the Lease Agreement ended on December 31, 2020

NOW, THEREFORE, for and in consideration of those certain covenants as set forth in this Lease Agreement, and in further consideration of the sum of $10.00, the receipt and sufficiency of which is hereby acknowledged, the City does hereby agree to lease from the Owner, and the Owner does hereby agree to lease to the City, the below described property upon the following terms and conditions:

1. DEMISED PREMISES

ALL that certain place, parcel, or lot of land with any and all improvements situated thereon, located between Market Street and Horlbeck Alley and King and Meeting Streets, City of Charleston, County of Charleston, South Carolina, and being designated with TMS Nos. 457-08-02-012, 457-08-02-111, and 457-08-02-113. Also being the same property designated as “Demised Premises” as described in that original Lease Agreement between the parties dated May 20, 1981 and terminated on December 31, 2020.

2. MUNICIPAL PARKING LOT USE

Subject to the terms, conditions and covenants herein provided, the City agrees to make use of the aforementioned parcel along with other adjoining properties located between Market Street and Horlbeck Alley and King and Meeting Streets, as a Municipal Parking
Lot (hereinafter "Lot") and for no other use unless expressly permitted in writing by the Owner.

3. TERM

The term of this Lease Agreement shall commence on the date of execution hereof and end on April 30, 2023. Upon termination of said Lease Agreement, the demised premises and permanent improvements thereon will revert to the possession of the Owner. Specifically excepted from reversion to the Owner are the City’s parking attendant kiosk, entrance and exit gates and operating mechanical devices, and any City installed signage, all of which shall be retained by the City.

4. OPERATION OF PARKING LOT

The City agrees to maintain and operate the Lot at all times, including providing for all utility services, maintenance, and lot attendants. It is understood and agreed that, during the operation of said Lot under the terms and conditions of this Lease Agreement, the City will in no way obstruct either the present or future rear entrances to Owner’s buildings fronting on the east side of King Street, between Market Street and Horlbeck Alley. Commercial delivery vehicles of up to forty-foot lengths will have free access to the Lot for delivery of merchandise to Owner’s property.

5. RENTAL

The City agrees to pay Owner as annual rent for the demised premises the sum of TWENTY-FIVE THOUSAND AND NO/100 ($25,000) DOLLARS. This annual base rent shall be paid in prorated equal monthly payments by the City to the Owner, in advance, beginning May 1, 2021 and, continuing on the first day of each month thereafter for the entire duration of this Lease Agreement.

6. PERCENTAGE RENTAL

In addition to the base rental specified in the aforesaid paragraph, the City agrees to pay to the Owner additional rent referred to herein as "Percentage Rental", which shall be calculated by the City and paid to the Owner within sixty (60) days after December 31st of each year during the term of this Lease Agreement.

The Percentage Rental shall be calculated and arrived at by totaling all revenues received from operation of the Lot and subtracting therefrom all base rents paid owners of portions of the Lot between Market Street and Horlbeck Alley and King and Meetings Streets as shown on the aforesaid plat, and after subtracting all "maintenance and operation expenses" (herein below defined) attributable to the Lot. The remaining net revenues shall then be calculated, and the Owner and City shall be entitled to fifty (50%) percent each of such remaining net revenues.
Regarding the calculation of net revenues, the City agrees to keep a careful accounting of all revenues received from operation of the Municipal Parking Lot and within sixty (60) days after December 31st of each year, the City shall render unto the Owner at the address shown below, a written accounting of all such revenues, along with an accounting of all "maintenance and operation expenses ".

It is understood and agreed that the “maintenance and operation expenses" shall consist of the following items:

a) Operating expenses directly attributable to operation of the Market-Horlbeck Municipal Parking Lot, including electricity, telephone, lot maintenance contract, tickets, gates, and ribbons.

b) Lot attendants’ salaries and expenses necessary to the daily operation of the Market-Horlbeck Municipal Parking Lot.

c) Management, supervisory and clerical expenses related to the operation of the Market-Horlbeck Municipal Parking Lot, provided that the maximum for such expenses shall not exceed sixteen (16%) percent of the total maintenance operation expenses, excluding excess real property taxes as set forth here-in below.

d) A replacement reserve expense not to exceed two (2%) percent of the total maintenance and operation expenses, excluding excess real property taxes as set forth below.

e) Real property taxes and assessments as may be levied against other properties included in the Lot, and including excess real property taxes and assessments as set forth below.

The Percentage Rental shall be due, payable, and paid at the time of rendering the accounting to the Owner.

7. **REAL ESTATE TAXES**

The Owner agrees to timely pay all real estate taxes and assessments as may be levied against the demised premises during the term of this Lease Agreement, if any, up to a maximum amount of Four Thousand Six Hundred Thirteen and 00/100 ($4,613.00) per year. It is agreed between the City and the Owner that they will have the proper County of Charleston Officials determine the tax liability each year for the demised premises and that the Owner shall be responsible for the said taxes up to the maximum amount of Four Thousand Six Hundred Thirteen and 00/100 (4,613.00) Dollars and that the City shall be responsible for the said real property taxes in excess of the aforesaid amount. This excess amount shall be an expense as set forth in the "maintenance and operation expenses” as set forth above (Para. 6. e).
8. RENTAL OF INDIVIDUAL PARKING SPACES

It is understood and agreed between the parties herein that Owner, for itself or on behalf of its tenants, shall have the option of renting parking rights for at least sixty-three (63) parking spaces at the City’s prevailing rate for spaces in the Lot. The Owner shall have the privilege of allocating the said rights to parking spaces to the guests and tenants of the properties in the Owner’s discretion, subject however to the current rules of operation of the Lot.

It is fully understood and agreed between the City and the Owner that this commitment by the City to the Owner concerning the availability of the aforementioned individual parking spaces shall be and will stay in full force and effect during the whole term of this Lease Agreement. The City does hereby concede to the Owner that the Owner would have serious financial losses as a result of the loss of the aforementioned rights to individual parking spaces.

Furthermore, nothing contained in this Lease Agreement shall prohibit the City from renting individual parking spaces, if available, on a monthly basis to the Owner and/or its tenants of properties on the eastern side of King Street between Market Street and Horlbeck Alley and/or their employees, so long as the monthly charge for all such rentals shall be the City’s prevailing rate for such rentals in the Lot.

9. INSURANCE

City shall keep in force at its expense, as long as this Lease Agreement remains in effect, public liability insurance (provided by the South Carolina Insurance Reserve Fund or other insurance provider chosen by the City) with a limit not to exceed the amounts listed below for damages as the result of any one occurrence including damages for care and loss of services, because of personal injury sustained by one or more persons, because of all property damage sustained by one or more persons or organizations, or by any combination of personal injury or property damage sustained by one or more persons or organizations:

a. A limit of Three Hundred Thousand and No/100 ($300,000.00) Dollars per person arising because of loss from a single occurrence on account of bodily injuries, because of property damage sustained, or by any combination of personal injury or property damage; and

b. A total sum not to exceed Six Hundred Thousand ($600,000.00) Dollars as the result of any one occurrence, accident or disaster.

10. SUBLEASE AND ASSIGNMENT

The City shall not sublease the demised premise, nor assign this Lease Agreement or any part hereof, to any third party without the prior written consent of Owner, which consent shall not be unreasonably withheld. In the event of an Owner-allowed assignment of this
Lease, the City shall continue to guarantee performance of the covenants herein. Owner agrees and understands the City may contract with a third-party operator to operate the Lot.

11. GOOD FAITH NEGOTIATIONS

During the term of this Lease Agreement, the City and Owner shall in good faith, confer in person and with all other Owners of leased properties in the Lot, at selected convenient times and places for the purpose of planning and good-faith negotiating the future uses of the leased parcels - specifically the future means of ingress and egress to and from each of the leased parcels from and to a public street.

12. NOTICES

Any notice to be given to the parties hereto shall be made by certified mail, return receipt requested with proper postage affixed thereon, addressed to such party at the addresses below or to such address as the party may later notify the other party:

FOR THE CITY:
City of Charleston
Real Estate Management Division
PO Box 304
Charleston, SC 29402

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

FOR TENANT:
Pastime Amusement Company
The Beach Company
c/o Mr. Charles S. Way, Jr.
PO Box 242
Charleston, SC 29402

13. APPROVAL OF LEASE

This Lease Agreement is contingent upon all owners of properties within said Lot, specifically GoHoBe, LLP, entering into lease agreements with the City with a term similar to that in this Lease Agreement. The Owner understands and acknowledges the City’s governing body, its City Council, must approve this Lease Agreement on behalf of the City.

SIGNATURES ON FOLLOWING PAGE
IN WITNESS WHEREOF, the parties have set their hands and seals on the date and year first above-written.

WITNESSES:
Print Name: ________________________________

Print Name: ________________________________

WITNESSES:
Print Name: Todd Hendrickse
Print Name: Niko Lestie

WITNESSES:
Print Name: Todd Hendrickse
Print Name: Niko Lestie

CITY OF CHARLESTON
BY: John S. Tecklenburg
Mayor

The Pastime Amusement Company
BY: ________________________________
Print Name: Leonard O. Way
Its: Corporate Secretary

The Beach Company
BY: ________________________________
Print Name: Leonard O. Way
Its: Corporate Secretary
REAL ESTATE COMMITTEE
GENERAL FORM

TO: Real Estate Committee DATE: April 27, 2021
FROM: Real Estate DEPT: BFRC
ADDRESS: 131 Meeting Street
TMS: 4570802112
PROPERTY OWNER: GoHoBe, LLC

Request approval of new Lease Agreement with GoHoBe, LLC for City's new lease of its parcel for inclusion in City's Market-Horlbeck Municipal Parking Lot. 2-year lease, no extensions. Rent to be amount of $1,500/month, City reimburses property tax cost, City provides 3 free parking cards; no percentage of net revenue. (Former 40-year lease expired December 31, 2020, with interim extensions since.)

ACTION REQUEST: __________________

ORDINANCE: Is an ordinance required? Yes ☐ No ☐

COORDINATION: The request has been coordinated with:

All supporting documentation must be included

Department Head
Legal Department
Chief Financial Officer
Director Real Estate Management

Signature Attachments

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: April 27, 2021
FROM: Real Estate DEPT: BFRC
ADDRESS: 131 Market Street
TMS: 4570802112

PROPERTY OWNER: GoHoBe, LLC

Request approval of new Lease Agreement with GoHoBe, LLC for City's new lease of its parcel for inclusion in City's Market-Horlbeck Municipal Parking Lot. 2-year lease, no extensions. Rent to be amount of $1,500/month, City reimburses property tax cost, City provides 3 free parking cards; no percentage of net revenue. (Former 40-year lease expired December 31, 2020, with interim extensions since.)

ACTION REQUEST:

ORDINANCE: Is an ordinance required? Yes ☒ No ☐

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

☐ ACQUISITION Seller (Property Owner) __________________________ Purchaser __________________________

☐ DONATION/TRANSFER
Donated By: ____________________________________________

☐ FORECLOSURE
Terms: ________________________________________________

☐ PURCHASE
Terms: ________________________________________________

☐ CONDEMNATION
Terms: ________________________________________________

☐ OTHER
Terms: ________________________________________________

☐ SALE Seller (Property Owner) ____________________________ Purchaser __________________________

☐ NON-PROFIT ORG, please name __________________________
Terms: ________________________________________________

☐ OTHER
Terms: ________________________________________________
COMMERCIAL REAL ESTATE FORM

☐ EASEMENT
Grantor (Property Owner) __________________________
Grantee __________________________

☐ PERMANENT
Terms: ________________________________________

☐ TEMPORARY
Terms: ________________________________________

☑ LEASE
Lessor: GoHoBe, LLC
Lessee: City of Charleston

☐ INITIAL
2-year lease, no extensions. Rent to be amount of
$1,500/month, City reimburses property tax cost, City provides
3 free parking cards; no percentage of net revenue. (Former
40-year lease expired December 31, 2020, with interim
extensions since.)
Terms: ________________________________________

☐ RENEWAL
Terms: 0

☐ 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).
REAL ESTATE COMMITTEE
GENERAL FORM

TO: Real Estate Committee DATE: April 26, 2021
FROM: Geona Shaw Johnson DEPT: HCD
ADDRESS: James Lewis Jr., Apartments, 89 & 91 Hanover Street
TMS: Parcel C: 459-05-04-116

PROPERTY OWNER: City of Charleston
AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE
CITY OF CHARLESTON ("CITY”) A THIRD AMENDMENT TO THE
OPTION TO LEASE AND APPROVAL OF THE AMENDED GROUND
LEASE FOR THE SITE KNOWN AS THE JAMES LEWIS JR.
APARTMENTS IN THE COOPER RIVER BRIDGE REDEVELOPMENT

ACTION REQUEST: AREA.

ORDINANCE: Is an ordinance required? Yes [x] No [□]

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

Department Head [Signature] [□]
Legal Department [□]
Chief Financial Officer [□]
Director Real Estate Management [□]

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: April 26, 2021

FROM: Geona Shaw Johnson DEPT: HCD
James Lewis Jr., Apartments, Cooper River Bridge Redevelopment Area –
ADDRESS: 89 & 91 Hanover Street

TMS: Parcel C: 459-05-04-116

PROPERTY OWNER: City of Charleston
Request that City Council authorize the Mayor to execute the necessary documents for a third (3rd) amendment to the Option to Lease and approval of the amended Ground Lease for the James Lewis, Jr., Apartments located @ 89 & 91 Hanover Street. The agreements will be executed by the City of Charleston and the lessee, Flatiron Partners and Classic Development Company, Inc., The property will be utilized for the construction of 64 affordable rental apartments for persons earning sixty (60%) percent and below the Area Median Income (AMI).

ACTION REQUEST:

ORDINANCE: Is an ordinance required? Yes [ ] No [ ]

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

☐ ACQUISITION Seller (Property Owner) __________________________ Purchaser __________________________

☐ DONATION/TRANSFER
Donated By: __________________________

☐ FORECLOSURE
Terms: __________________________

☐ PURCHASE
Terms: __________________________

☐ CONDEMNATION
Terms: __________________________

☐ OTHER
Terms: __________________________

☐ SALE Seller (Property Owner) __________________________ Purchaser __________________________

☐ NON-PROFIT ORG, please name __________________________
Terms: __________________________
COMMERCIAL REAL ESTATE FORM

☐ OTHER
Terms:

☐ EASEMENT
Grantor (Property Owner) ______________________
Grantee ______________________

☐ PERMANENT
Terms:

☐ TEMPORARY
Terms:

☐ LEASE
Lessor: ______________________
Lessee: ______________________

☐ INITIAL
Terms:

☐ RENEWAL
Terms:

☐ AMENDMENT
Terms: See the attached

☐ 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

AMENDING ORDINANCE NO. 2019-129, ADOPTED DECEMBER 3, 2019, BY AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY OF CHARLESTON, ALL NECESSARY DOCUMENTS TO ENTER INTO THAT CERTAIN THIRD AMENDMENT TO OPTION TO LEASE AND THAT CERTAIN AMENDED GROUND LEASE BY AND AMONG THE CITY OF CHARLESTON, AS LANDLORD; AND FLATIRON PARTNERS, LLC AND CLASSIC DEVELOPMENT COMPANY, LLC, AS TENANTS, UNDER WHICH (1) THE GROUND LEASE IS AMENDED TO INCLUDE LANGUAGE REQUIRED BY LENDER(S) FOR THE DEVELOPMENT OF THE JAMES LEWIS, JR. APARTMENT SITE; AND (2) THE TENANTS’ OPTION TO ENTER INTO THE GROUND LEASE, AS AMENDED, IS EXTENDED TO AUGUST 31, 2021.

INCIDENT TO THE ADOPTION OF THIS ORDINANCE, CITY COUNCIL MAKES THE FOLLOWING FINDINGS OF FACT:

1. On December 3, 2019, City Council adopted Ordinance No. 2019-128, authorizing the Mayor to execute necessary documents to enter into that certain Option to Lease (the “Option”) and Ground Lease (the “Lease”) between the City of Charleston, as landlord; and Flatiron Partners, LLC and Classic Development Company, Inc., as tenants, for the development of affordable housing on that certain parcel located in the Cooper River Bridge Redevelopment Area, owned by the City, now designated as Charleston County TMS No. 459-05-04-116, and commonly known as the site for the future James Lewis, Jr. Apartments.

2. The Option not only permitted the tenants to elect to enter into the Lease on or before June 30, 2020 (the “Option Period”), but also permitted the tenants to extend the Option Period to September 30, 2020.

3. The tenants elected to extend the Option Period to September 30, 2020, in accordance with the terms of the Lease.

4. Pursuant to the First Amendment to Option to Lease, the Option Period was extended to December 31, 2020.

5. Pursuant to the Second Amendment to Option to Lease, the Option Period was extended to March 31, 2020.
6. Tenants desire that the Option Period be extended to August 31, 2021, to permit tenants to secure necessary financing for the development of the James Lewis, Jr. Apartments.

7. As a condition to obtaining necessary financing for the development of the James Lewis, Jr. Apartments, the lender(s) have requested that the Lease be amended to provide the lender(s) with various rights to cure certain tenant defaults under the Lease and to be substituted as tenant under the Lease in the event of a tenant default, either individually or through an assignee.

8. City Council desires to authorize the Mayor to execute necessary documents to extend the Option Period and amend the Lease as set forth herein, with all other terms and conditions of Option and Lease to remain in full force and effect.

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

Section 1. That the Mayor is authorized to execute the Third Amendment to Option to Lease, a copy of which is attached hereto and incorporated herein by reference as Exhibit 1 (the “Third Amendment”).

Section 2. That the Mayor is authorized to execute the Amended Ground Lease (the “Amended Lease”) in accordance with the terms of the Option, as amended, without further action of City Council. A copy of the Amended Lease is attached hereto and incorporated herein by reference as Exhibit 2.

Section 3. That the Mayor is authorized to execute all necessary documents to consummate the transactions set forth in the Option, as amended, and the Amended Lease, in compliance with such Option, as amended, upon of the approval of the form of such documents 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

ATTEST: _____________________________
         Jennifer Cook
         Clerk of Council
STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  

THIRD AMENDMENT TO OPTION TO LEASE

THIS THIRD AMENDMENT TO OPTION TO LEASE (the “Third Amendment”) made effective as of the 31st day of March, 2021, is by and among the City of Charleston, South Carolina, a South Carolina body politic and corporate (herein called the “Landlord”) and Flatiron Partners, LLC, a North Carolina limited liability company, and Classic Development Company, LLC, a South Carolina limited liability company (together, the “Tenant”). Landlord and Tenant are referred to herein individually as a “Party” and together as the “Parties”.

WITNESSETH:

WHEREAS, Landlord and Tenant entered into that certain Option to Lease dated as of December 3, 2019 (the “Option”), said Option providing for an “Extended Option Period” to expire on September 30, 2020; and

WHEREAS, Landlord and Tenant entered into that certain First Amendment to Option to Lease dated as of September 30, 2020 (the “First Amendment”), which First Amendment extended the Extended Option Period to December 31, 2020, and that certain Second Amendment to Option to Lease dated as of December 31, 2020 (the “Second Amendment”), which Second Amendment extended the Extended Option Period to March 31, 2021; and

WHEREAS, the Parties desire to extend the Extended Option Period until August 31, 2021; and

NOW, THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. Extended Option Period. The Option is hereby amended to provide that the “Extended Option Period”, as such term is defined therein, shall be extended, such that it shall expire on August 31, 2021.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

***Signature pages to follow.***
IN WITNESS WHEREOF, the undersigned have caused this Third Amendment to Option to Lease to be executed and delivered as of the date first written above.

WITNESSES:

TENANT:

Flatiron Partners, LLC,
a North Carolina limited liability company

By: Fitch Irick Partners, LLC, a North Carolina limited liability company
Its: Managing Member

By: ___________________________
Name: Hollis M. Fitch
Title: Manager

_____________________________

Classic Development Company, LLC,
a South Carolina limited liability company

By: ___________________________
Name: James M. Bernstein
Its: Managing Member

_____________________________

WITNESSES:

LANDLORD:

CITY OF CHARLESTON

By: ___________________________
John J. Tecklenburg
Its: Mayor

_____________________________
GROUND LEASE

Eastside Apartments

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 EASTSIDE SC LLC, a South Carolina limited liability company ("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 64 affordable residential rental units and commercial space 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 4.5 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 no less than 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 **Investor.** The term “Investor” means individually and collectively, Affordable Housing Equity Fund II Limited Partnership, a North Carolina limited partnership, the federal investor member, and Affordable Housing Fund II LLC, a Missouri limited liability company, the state investor member.

1.9 **Landlord’s Address For Notices.** The term “Landlord’s Address for Notices” shall mean: City of Charleston, ______________________________, Charleston, South Carolina 29________ with a copy to (which will not constitute notice): ______________________________

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 **Management Agent.** The term “Management Agent” shall mean [TBD] or such other management company as may serve as management agent.

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 James Lewis, Jr. Eastside Apartments, 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 **Address For Notices.** The term "Tenant's Address for Notices" shall mean: Eastside SC LLC, % Flatiron Group, 1515 Mockingbird Lane, Suite 1010, Charlotte, NC 28209; with a copy to Tenant counsel: Robert M. Nettles, Esq., Howell Linkous & Nettles, LLC, 106 Broad Street, Charleston, SC 29401; with a copy to Investors: Affordable Housing Equity Fund III Limited Partnership, 7700 Falls of Neuse Road, Ste 200, Raleigh, NC 27615; and Affordable Housing Fund II LLC, c/o Sugar Creek Capital, 17 W. Lockwood Avenue St. Louis, MO 63119, Attn: Legal Dept.

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 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 1.1 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, Leasehold Mortgage debt service, 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 project, retail and commercial buildings described in the final site plan as approved by applicable government authority (the “Buildings”), and 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 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.

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 (PCBs); (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 11-6027-NRP ("VCC") by and between South Carolina Department of Health and Environmental Control and City of Charleston, dated September 23, 2011, 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 any 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 $50,000 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 or, 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 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 indemnitees. 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 Mortgagees.

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, provided 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 – LEASEHOOLD 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 Fannie Mae, Freddie Mac, HUD, a bank, insurance company, governmental or other bona fide lender (“Leasehold Mortgagee”) with Landlord’s written approval. Landlord hereby consents to Tenant granting now or after completion of the Project that certain first priority Leasehold Mortgage to Secure Debt, Assignment, Security Agreement and Fixture Filing, dated approximately even date herewith, for the benefit of short term bond mortgagee during construction replaced by Fannie Mae lender at permanent conversion, the second and third priority Mortgage of Real Estate, dated approximately of even date herewith, for the benefit of Nonprofit Lender, each of which evidences security for construction and permanent financing of the development of the Project.

13.2 **Notice to Leasehold Mortgagee.** 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 and/or Investor as if the same had been made by Tenant. Tenant constitutes and appoints the Leasehold Mortgagee as Tenant’s agent and attorney-in-fact with full power, in Tenant’s name, place and stead, and at Tenant’s cost and expense, to perform any of Tenant’s obligations according to the provisions of this Lease. In this regard, the Leasehold Mortgagee is irrevocably granted full and complete access and right of entry to the Premises by Landlord and Tenant for purposes of curing any non-monetary default of Tenant declared to exist by Landlord under the terms of this Ground Lease, provided Leasehold Mortgagee provides Landlord with not less than forty-eight hours prior written notice (except in the event of emergency). 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 and/or Investor to cure the same beyond the time allowed to Tenant; provided further, that:

(a) in the event any non-monetary default is not cured or caused to be cured by the Leasehold Mortgagee prior to the expiration of the ninety (90) day period specified herein, the default shall nevertheless be deemed cured if within said ninety (90) day period the Leasehold Mortgagee commences or causes to commence curative action and the same is continued to completion with reasonable diligence within thirty (30) additional days; and

(b) if the Leasehold Mortgagee, after use of its good faith reasonable efforts, is unable to cure any default which exists under this Lease within the aforesaid ninety (90) day period as a result of any bankruptcy proceeding, court order or the unenforceability or potential unenforceability of any self-help provisions provided for in this Lease or in the Leasehold Mortgagee’s respective loan documents, Landlord shall not terminate this lease or seek to evict Tenant even after the ninety (90) day period otherwise specified herein has expired so long as; (1) the Leasehold Mortgagee provides Landlord with a written undertaking to promptly cure the subject default as soon as the Leasehold Mortgagee is permitted to do so; (2) the Leasehold Mortgagee diligently and continuously seeks to obtain appropriate legal relief to permit it to cure the subject default, including proceeding with foreclosure to the extent permitted to do so; and (3) the Leasehold Mortgagee promptly proceeds to cure the subject default as soon as it is permitted to do so.

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, if capable of cure by a lender, 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. The Leasehold Mortgagee shall have the right to elect to receive from the Landlord a new lease to such Leasehold Mortgagee (or to its nominee) covering the Leased Premises for the unexpired term of the Lease as provided in Section 13.7 below. To the extent that any loan made by a Leasehold Mortgagee to Tenant is secured by liens, pledges, collateral assignments or security interests in, 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. **Replacement Lease.** On the prior written request of the Leasehold Mortgagee, within thirty (30) days of termination of this Lease by reason of a default (as distinguished from the expiration of this Lease in accordance with its terms), Landlord shall enter into a new or direct lease of the Premises with the Leasehold Mortgagee, or its designee. The Mayor of the City of Charleston, its successor or assignee shall execute the new lease on behalf of the Landlord. Such new or direct lease shall be effective as of the date of termination of this Lease, and shall be for the remainder of the term of this Lease and at the rent and additional rent and on all the agreements, terms, covenants, and conditions of this Lease. To the extent Landlord acquires any interest related to the Improvements as a result of the termination of this Lease, Landlord shall undertake all such action as reasonably requested by the Leasehold Mortgagee or its designee to place Leasehold Mortgagee or its designee in the same position that the Tenant would have enjoyed had no termination of this Lease occurred. On the execution of such new or direct lease, the Leasehold Mortgagee or its designee named therein shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for its termination and shall otherwise fully remedy or agree in writing to timely remedy any non-monetary defaults existing under this Lease. The Leasehold Mortgagee or its designee shall pay all necessary and reasonable expenses, including reasonable attorneys’ fees and court costs incurred by Landlord in the preparation, execution and delivery of such new or direct lease. In addition, nothing contained herein shall release Tenant from any of its obligations under this Lease which may not have been discharged or fully performed by any Leasehold Mortgagee, or its designee.

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 any 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: TD Bank, N.A. is the original first priority Leasehold Mortgagee and its address for notices is as follows: 40 Calhoun Street, Charleston, South Carolina 29401, Attn: Suzanne Lynch, with a copy to (which shall not constitute notice) to Parker Poe
Adams & Bernstein LLP, 1221 Main Street, Columbia, South Carolina 29401, Attn: Todd Haynie; is the second priority Leasehold Mortgagee and its address for notices is [__________________________________________]; and [__________________________________________] original third and fourth priority Leasehold Mortgagee and its address for notices is as follows: [__________________________________________]; with a copy (which shall not constitute notice) to Robert M. Nettles, Esq., Howell Linkous & Nettles, LLC, Post Office Box 1768 (29402), 106 Broad Street, Charleston, South Carolina 29401.

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, (i) Tenant shall have the right to sublease individual residential rental units and commercial space 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, and (ii) Tenant shall have the right to transfer Investor interests within Tenant, to transfer managing member interests among affiliates (“Affiliate” shall be any entity having a direct or indirect, in part or in whole, owner in common with Tenant,) or, to transfer managing member interests pursuant to any removal provisions of Tenant’s organizational documents, without Landlord’s consent.

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 thereunder: (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. Notwithstanding the foregoing, Tenant shall have the right to transfer Investor interests within Tenant, to transfer managing member interests among Affiliates or, to transfer managing member interests pursuant to any removal provisions of Tenant's organizational documents, without Landlord's consent.

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 Mortgagors.** Notwithstanding the foregoing, Tenant may transfer, assign, convey, or otherwise encumber the leasehold estate created hereunder to Leasehold Mortgagors 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 Mortgagor.

**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 and Investor's right to cure as set forth in Section 23.3, 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, subject to the consent and requirements of the First Priority Leasehold Mortgagee, 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.
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 XXI - HOLODOVER 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 1.6 above and to Tenant at the address for Tenant set forth in Section 1.25 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 - INVESTOR PROVISIONS

23.1 Notwithstanding anything to the contrary in this Lease, the Investor, nor the partners, members, successors or assigns of any of them shall have any personal liability hereunder.

23.2 Subject to paragraph 14.2, notwithstanding anything to the contrary herein, the Investor shall have the right to sell, transfer or pledge their interests in Tenant pursuant to the terms of the Amended and Restated Operating Agreement (the “Operating Agreement”) and any such sale, transfer or pledge shall not (i) be an event of default hereunder, or (ii) entitle Landlord to raise the rent hereunder or impose any transfer fee.

23.3 Notwithstanding anything to the contrary herein, if an event of default as specified in Article XV herein shall have occurred hereunder, Landlord shall deliver to the Investor copies of any notices of default which are to be sent to the Tenant hereunder, and shall afford the Investor the same opportunities to cure any such defaults as are offered to the Leasehold Mortgagees hereunder, provided, that all such rights shall run concurrently with the rights of the Leasehold Mortgagees.

23.4 Notwithstanding anything to the contrary herein, if the managing member of Tenant is removed as managing member pursuant to the terms of the Operating Agreement, such removal shall not (i) be an event of default under this Lease, or (ii) entitle Landlord to raise the Rent under this Lease, or impose any transfer fee, provided that the new managing member is either an affiliate of the Investor or another managing member reasonably acceptable to Landlord, and is appointed pursuant to the terms of the Operating Agreement.

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 the Investor 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) and Exhibit “C” (Permitted Encumbrances) 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 Investor, each 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:

EASTSIDE SC LLC, a South Carolina limited liability company
By: Eastside GP LLC, a South Carolina limited liability company
Its: Managing Member

By: _________________________________
   Hollis M. Fitch
Its: Manager
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
AN ORDINANCE

TO PROVIDE FOR THE ANNEXATION OF PROPERTY KNOWN AS 807 SAVAGE ROAD (0.193 ACRE) (TMS# 309-15-00-053), WEST ASHLEY, CHARLESTON COUNTY, TO THE CITY OF CHARLESTON, SHOWN WITHIN THE AREA ANNEXED UPON A MAP ATTACHED HERETO AND MAKE IT PART OF DISTRICT 7. THE PROPERTY IS OWNED BY ANDREW DUFRESNE AND GRACE DUFRESNE.

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 7 of the City of Charleston, to wit:

SAID PROPERTY to be annexed, 807 Savage Road, (0.193 acre) is identified by the Charleston County Assessors Office as TMS# 309-15-00-053, (see attached map) and includes all public rights-of-way, shown within the area annexed upon a map attached hereto and made a part hereof.

Section 3. This ordinance shall become effective upon ratification.

Ratified in City Council this _____ day of

__________________________ in the Year of Our Lord,

__________________________ in the _____ Year of the Independence of

the United States of America.

By:

__________________________

John J. Tecklenburg
Mayor

Attest: ______________________
Jennifer B. Cook
Clerk of Council
# Annexation Profile

Parcel Address: 807 Savage Road  
Presented to Council: 4/27/2021  
Status: Received Signed Petition  
Year Built: 1960  
Number of Units: 1  
Number of Persons: 2  
Race: Hispanic  
Acreage: 0.193  
Current Land Use: Residential  
Current Zoning: M-12  
Requested Zoning: DR-12  
Recommended Zoning: DR-12  
Appraised Value: $80,000.00  
Assessed Value: $4,800.00  
Stormwater Fees: To Be Calculated

<table>
<thead>
<tr>
<th>Police</th>
<th>Located in existing service area - Team 4</th>
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<tbody>
<tr>
<td>Fire</td>
<td>Located in existing service area - Station 11</td>
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<tr>
<td>Sanitation</td>
<td>Located in existing contract 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>Additional State-maintained right-of-way</td>
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<td>Traffic and Transportation</td>
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<tr>
<td>Signalization</td>
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<td>Signage</td>
<td>None</td>
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<td>Pavement Markings</td>
<td>None</td>
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<tr>
<td>Charleston Water System</td>
<td>CWS service area.</td>
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<td>Planning</td>
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<td>Urban Growth Line</td>
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<td>City Plan (Century Five)</td>
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<td>Elevation Range</td>
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<td>Parks</td>
<td>Already being served.</td>
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</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 in West Ashley (approximately 0.193 acres) to be annexed is identified by the Charleston County Assessor's Office as Property Identification Number: TMS# 309:15:00.003 (Address: 807 Savage Road, Charleston, SC 29407). 

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.

OWNERS (OWNERS) SIGNED  

Andrew deFresne
(Signature)  

Andrew deFresne
(Print Name)  

Jean
(Signature)  

Jean deFresne
(Print Name)  


DATE OF SIGNATURE  

4/15/2021  
(Date)
Annexation Map

Location: West Ashley

Property Address: 807 Savage Rd

Tax Map # (TMS): 3091500053

Area (Acres): approx. 0.193

Council District: 7
AN ORDINANCE

TO PROVIDE FOR THE ANNEXATION OF PROPERTY KNOWN AS CLEMENTS FERRY ROAD (0.15 ACRE) (TMS# 271-00-02-153), CAINHOY, BERKELEY COUNTY, TO THE CITY OF CHARLESTON, SHOWN WITHIN THE AREA ANNEXED UPON A MAP ATTACHED HERETO AND MAKE IT PART OF DISTRICT 1. THE PROPERTY IS OWNED BY SWEETWATER APTS SC PH II LLC.

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 1 of the City of Charleston, to wit:

SAID PROPERTY to be annexed, Clements Ferry Road, (0.15 acre) is identified by the Berkeley County Assessors Office as TMS# 271-00-02-153 (see attached map), shown within the area annexed upon a map attached hereto and made a part hereof.

Section 3. This ordinance shall become effective upon ratification.

Ratified in City Council this _____ day of

______________________, in the Year of Our Lord,

______________________, 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:  Clements Ferry Road

Presented to Council:  4/27/2021

Status:  Received Signed Petition

Owner Names:  Sweewater Apts SC Ph II LLC

Year Built:

Number of Units:  0

Number of Persons:  0

Race:  NA

Acreage:  0.15

Current Land Use:  Vacant

Current Zoning:  PD-MU

Requested Zoning:  PUD

Recommended Zoning:  PUD

Appraised Value:  $17,250.00

Assessed Value:  $1,040.00

Stormwater Fees:  0.00

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</tr>
</thead>
</table>

Mailing Address:  320 Dahlonega St

City Area:  Caithly

Subdivision:

Council District:  1

Within UGB:  Yes

<table>
<thead>
<tr>
<th>Police</th>
<th>Located in existing service area - Team 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fire</td>
<td>Located in existing service area - Station 20</td>
</tr>
</tbody>
</table>

**Public Service**

<table>
<thead>
<tr>
<th>Sanitation</th>
<th>Located in existing service area. Property is undeveloped.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Storm Water</td>
<td>Contiguous to existing service area.</td>
</tr>
<tr>
<td>Streets and Sidewalks</td>
<td>No additional City-maintained right-of-way</td>
</tr>
</tbody>
</table>

**Traffic and Transportation**

<table>
<thead>
<tr>
<th>Signalization</th>
<th>None</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signage</td>
<td>Good Condition</td>
</tr>
<tr>
<td>Pavement Markings</td>
<td>Good Condition</td>
</tr>
</tbody>
</table>

**Charleston Water System**

<table>
<thead>
<tr>
<th>CWS service area.</th>
</tr>
</thead>
</table>

**Planning**

<table>
<thead>
<tr>
<th>Urban Growth Line</th>
<th>Property is an undeveloped site within the line.</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Plan (Century Five)</td>
<td>Job Center</td>
</tr>
<tr>
<td>Elevation Range</td>
<td>43-44 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 BERKELEY  
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 in the Cainhoy area of Berkeley County (approximately 0.15 acre) to be annexed is identified by the Berkeley County Assessors Office as Property Identification Number: TMS# 271-00-02-153 (Clements Ferry Road).

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 14th day of April, 2021

FREEHOLDERS (OWNERS) SIGNED 

(Carl L. Carlson IV, as authorized agent) 

DATE OF SIGNATURE 

4/14/21 

(Carl I Carlson IV, as authorized agent for Sweetwater Apartments SC Phase II, LLC) 

(Date)

(Print Name) 

(Signature) 

(Date)

(Print Name)
Annexation Map

Location:        Cainhoy

Property Address:  Clements Ferry Road

Tax Map # (TMS):  2710002153

Area (Acres):  approx. 0.15

Council District:  1

Legend

- UGB
- Water
- Parcels

Charleston City Limits

Annexation Area

City of Charleston
Dept. of Planning, Preservation & Sustainability
2 George St, Third Floor
Charleston, SC 29401
www.charleston-sc.gov

Date: 4/19/2011