NOTICE OF MEETING

A meeting of the Committee on Real Estate will be held beginning at 2:30 p.m. Monday, May 10, 2021, Conference Call: 1-929-205-6099; Access Code: 835 678 884. The agenda will be as follows:

AGENDA

Invocation – Councilmember Waring

Approval of Minutes:

April 26, 2021

a. Request approval authorizing the Mayor to execute on behalf of the City three Easements to Dominion in order to construct, maintain, operate, replace, and alter thereon and thereunder one or more lines for the transmission or distribution of electric energy, a line or lines of pipe to be buried to such depth so that it will not interfere with ordinary cultivation of said land, with valves, tieovers and appurtenant facilities, for the transportation of gas, oil petroleum products or any other liquids, gases or substances which can be transported through a pipe line. The property is owned by the City of Charleston. (TMS No. 457-07-04-034) (The SW Corner of Chisolm Street), (TMS No. 457-03-01-096) (The NW corner adjacent to Ashley Avenue), (TMS No. 352-10-00-001) (The SW Corner of 1350 Orange Grove Road).

b. Request authorization for the Mayor to execute any necessary documents and take any necessary action to accept, on behalf of the City of Charleston, a temporary construction easement over property owned by The Citadel Trust, Inc., for the renovations to Stoney Field. The property is owned by the Citadel Trust, Inc. (TMS No. 460-00-00-031) (Northwest corner of Hagood Avenue and Fishburne Street).

c. An ordinance amending Ordinance No. 2019-128, adopted December 3, 2019, by authorizing the Mayor to execute, on behalf of the City of Charleston, that certain Fourth Amendment to Option to Lease by and among the City of Charleston, as landlord; and Flatiron Partners, LLC and Classic Development Company, LLC, as tenants, under which the Ground Lease attached to the Option is revised to include language required by lender(s) for the development of the James Lewis, Jr. Apartment site.

d. Request authorization for the Mayor to execute a Declaration of Easements and take any other necessary action to memorialize the existence of a new permanent 40' City of Charleston subsurface tunnel easement and a new permanent variable width drainage easement on property owned by the City, commonly known as Harmon Field. (201 President Street) (TMS
No. 460-07-03-001).

e. Request authorization for the City to take all necessary actions and execute all necessary documents to accept a drainage easement from St. James Church, James Island, S.C., over property designated as Charleston County TMS No. 425-01-00-032, as shown on pertinent plat. The property is owned by St. James Church, James Island, S.C. (Camp Road; TMS No. 425-01-00-032)

f. Consider the following annexation:

(i) 1453 S Edgewater Drive (0.47 acre) (TMS# 349-13-00-008), West Ashley, (District 11). The property is owned by Constantine D and Cherie A Liollio.

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) 577-1369 or email to schumacherj@charleston-sc.gov three business days prior to the meeting.
COMMITTEE ON REAL ESTATE
GENERAL FORM

TO: Committee on Real Estate

DATE: April 28, 2021

FROM: Julia Copeland

DEPT: Legal

ADDRESS:
TMS#: 457-07-04-034 (The SW corner of Chisholm Street)
TMS#: 457-03-01-096 (The NW corner adjacent to Ashley Avenue)
TMS#: 352-10-00-001 (The SW corner of 1350 Orange Grove Road)

PROPERTY OWNER: City of Charleston

Request for approval authorizing Mayor to execute on behalf of City three Easements to Dominion in order to construct, maintain, operate, replace and alter thereon and thereunder one or more lines for the transmission or distribution of electric energy, a line or lines of pipe to be buried to such depth so that it will not interfere with ordinary cultivation of said land, with valves, tieovers and appurtenant facilities, for the transportation of gas, oil petroleum products or any other liquids, gases or substances which can be transported through a pipe line.

ACTION REQUEST: __________________________

ORDINANCE: Is an ordinance required? Yes □ No □

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

______________________________  Signature  ________________________________
Department Head

______________________________  Signature  ________________________________
Legal Department

______________________________  Signature  ________________________________
Chief Financial Officer

______________________________  Signature  ________________________________
Director Real Estate Management

______________________________  ________________________________
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).
Easement # 901685
State of South Carolina

County of Charleston

KNOW ALL MEN BY THESE PRESENTS that I (WE) City of Charleston of the County and State aforesaid, hereinafter sometimes referred to as “Grantor” (whether singular or plural), for and in consideration of the sum of One Dollar ($1.00) to me (us) in hand paid, receipt of which is hereby acknowledged at and before signing and sealing of these presents, do hereby bargain, grant and convey to the DOMINION ENERGY SOUTH CAROLINA, INC., a South Carolina corporation having its principal office in Cayce, South Carolina, hereinafter sometimes referred to as “Grantee”, a right of way, over such route as Grantee has selected, having a width of Thirty feet by Thirty feet (30) feet, upon, over, under and across lands of Grantor situated in the County of Charleston, State of South Carolina, described as follows: Being a tract of land containing 7.40 acres, more or less, and being the same lands conveyed to Grantor by deed of City of Charleston, dated 1/1/1970, and recorded in the Register of Deeds Office for Charleston County in Deed Book H094 at Page 181 (the “Property”).

The SW corner of 1350 Orange Grove Road.
TMS: 3521000001  The Right of Way as shown on Exhibit “A”, which is attached hereto and by reference made a part hereof.

Together with the right to construct, maintain, operate, replace and alter thereon and thereunder one or more lines for the transmission or distribution of electric energy, consisting of supporting structures, overhead and underground conductors and lightning protective wires, municipal, public or private communication wires, guys, push braces and other accessory apparatus and equipment deemed by Grantee to be necessary or desirable thereof, as well as the right to install, maintain and use anchors and guy wires on land adjacent to the right of way herein granted; and also the right to construct, maintain, operate, replace and alter thereon and thereunder a line or lines of pipe to be buried to such depth so that it will not interfere with ordinary cultivation of said land, with valves, tieovers and appurtenant facilities, for the transportation of gas, oil, petroleum products or any other liquids, gases or substances which can be transported through a pipe line.

Together also with the right from time to time to redesign, rebuild or alter said lines and to install such additional lines, apparatus and equipment as Grantee may at any time deem necessary or desirable, and the right to remove any line or any part thereof.

Together also with the right of ingress, egress, and access to and from the right of way across and upon the Property as may be necessary or convenient for purposes connected with said right of way.

Grantee shall have the right from time to time to remove or clear and keep clear such trees, underbrush, structures and other obstructions upon said right of way and such trees ("danger trees") beyond the same as in the judgment of Grantee may interfere with or endanger said lines or appurtenances when erected; provided that Grantee will pay to Grantor the fair market value of such danger trees at the time of cutting as determined by a registered professional forester, and the right of entry upon said property of Grantor for all of the purposes aforesaid.

PROVIDED, however, any damage to the property of Grantor (other than to property cleared or removed as hereinbefore provided) caused by Grantee in the course of constructing, rebuilding or repairing said lines shall be borne by Grantee.

Reserving, however, to Grantor the right to cultivate and use the ground within the limits of said right of way, provided that such use shall not interfere with or obstruct the rights herein granted, and provided further that no building or other structure shall be erected by Grantor within the width of said right of way. Should any liens and encumbrances exist, Grantee reserves the right at its discretion to pay all or any portion of the consideration for this agreement to the holders of any liens on the Property. Such payments to lien holders shall be part of the consideration for this agreement to the same effect as if made directly to the Grantor.

TO HAVE AND TO HOLD the aforesaid rights by Grantee, its successors and assigns, as aforesaid.

And Grantor agrees to warrant and forever defend the above granted rights against themselves or their heirs and against any other person lawfully claiming or to claim the same or any part thereof.

The word “Grantor” shall include Grantor’s heirs, executors, administrators, successors, and assigns, as the case may be. The word “Grantee” shall include Grantee’s successors and assigns and its wholly or partially owned subsidiaries.

IN WITNESS WHEREOF, Grantor has duly executed this indenture the day of , 2021.

WITNESS:

City of Charleston

By: ________________________________ (SEAL)

1st Witness

2nd Witness

RW-2-E-G-SC (Rev. 4-2019)
Easement # 901685

ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA  
COUNTY OF Charleston

The foregoing instrument was acknowledged before me, the undersigned Notary, and I do hereby certify that the within named, of City of Charleston, personally appeared before me this day and that the above named acknowledged the due execution of the foregoing instrument.

Sworn to before me this ______ day of ____________, 2021

                                      _____________________________
Signature of Notary Public State of SC

My commission expires: ____________

                                      _____________________________
Print Name of Notary Public

RIGHT OF WAY GRANT TO
DOMINION ENERGY SOUTH CAROLINA, INC.

Line: Orange Grove Rd Rectifier

County: Charleston

R/W File Number: 23403

Grantor(s): City of Charleston

Return to: Dominion Energy Right of Way
            2392 West Aviation Avenue MC: CH-29
            North Charleston, SC 29402
1350 Orange Grove Rd
TMS#3521000001

Requesting a 30'x30' area in the front left corner of property.

THIS AREA

Sources: Esr
Easement # 901677
State of South Carolina
County of Charleston

KNOW ALL MEN BY THESE PRESENTS that I (WE) City of Charleston of the County and State aforesaid, hereinafter sometimes referred to as "Grantor" (whether singular or plural), for and in consideration of the sum of One Dollar ($1.00) to me (us) in hand paid, receipt of which is hereby acknowledged at and before signing and sealing of these presents, do hereby bargain, grant and convey to the DOMINION ENERGY SOUTH CAROLINA, INC., a South Carolina corporation having its principal office in Cayce, South Carolina, hereinafter sometimes referred to as "Grantee", a right of way, over such route as Grantee has selected, having a width of Fifty Feet (50) by Twenty Feet (20), upon, over, under and across lands of Grantor situated in the County of Charleston, State of South Carolina, described as follows: Being a tract of land containing 2.01 acres, more or less, and being the same lands conveyed to Grantor by deed of City of Charleston, dated 1/1/1900, and recorded in the Register of Deeds Office for Charleston County in Deed Book xxx at Page xxx (the "Property").

TMS: 4570704034  The SW corner of TMS 4570704034 Chisholm Street  
The Right of Way is more generally shown on Exhibit "A", which is attached hereto and by reference made a part hereof.

Together with the right to construct, maintain, operate, replace and alter thereon and thereunder one or more lines for the transmission or distribution of electric energy, consisting of supporting structures, overhead and underground conductors and lightning protective wires, municipal, public or private communication lines, guy wires, push braces and other accessory apparatus and equipment deemed by Grantee to be necessary or desirable thereof, as well as the right to install, maintain and use anchors and guy wires on land adjacent to the right of way herein granted; and also the right to construct, maintain, operate, replace and alter thereon and thereunder a line or lines of pipe to be buried to such depth so that it will not interfere with ordinary cultivation of said land, with valves, tieovers and appurtenant facilities, for the transportation of gas, oil petroleum products or any other liquids, gases or substances which can be transported through a pipe line.

Together also with the right from time to time to redesign, rebuild or alter said lines and to install such additional lines, apparatus and equipment as Grantee may at any time deem necessary or desirable, and the right to remove any line or any part thereof.

Together also with the right of ingress, egress, and access to and from the right of way across and upon the Property as may be necessary or convenient for purposes connected with said right of way.

Grantee shall have the right from time to time to remove or clear and keep clear such trees, underbrush, structures and other obstructions upon said right of way and such trees ("danger trees") beyond the same as in the judgment of Grantee may interfere with or endanger said lines or appurtenances when erected; provided that Grantee will pay to Grantor the fair market value of such danger trees at the time of cutting as determined by a registered professional forester, and the right of entry upon said property of Grantor for all of the purposes aforesaid.

PROVIDED, however, any damage to the property of Grantor (other than to property cleared or removed as hereinbefore provided) caused by Grantee in the course of constructing, rebuilding or repairing said lines shall be borne by Grantee.

Reserving, however, to Grantor the right to cultivate and use the ground within the limits of said right of way, provided that such use shall not interfere with or obstruct the rights herein granted, and provided further that no building or other structure shall be erected by Grantor within the width of said right of way.

Grantee reserves the right at its discretion to pay all or any portion of the consideration for this agreement to the holders of any liens on the Property. Such payments to lien holders shall be part of the consideration for this agreement to the same effect as if made directly to the Grantor.

TO HAVE AND TO HOLD the aforesaid rights by Grantee, its successors and assigns, as aforesaid.

And Grantor agrees to warrant and forever defend the above granted rights against themselves or their heirs and against any other person lawfully claiming or to claim the same or any part thereof.

The word "Grantor" shall include Grantor's heirs, executors, administrators, successors, and assigns, as the case may be. The word "Grantee" shall include Grantee's successors and assigns and its wholly or partially owned subsidiaries.

IN WITNESS WHEREOF, Grantor has duly executed this indenture the ______ day of __________________, 2021.

WITNESS:

_________________________________________ By: ______________________________________ (SEAL)

City of Charleston

_________________________________________ 1st Witness

_________________________________________ 2nd Witness

RW-2-E-G-SC (Rev. 4-2019)
Easement # 901677

ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

The foregoing instrument was acknowledged before me, the undersigned Notary, and I do hereby certify that the within named , of City of Charleston, personally appeared before me this day and that the above named acknowledged the due execution of the foregoing instrument.

Sworn to before me this _____ day of __________, 2021

_______________________________
Signature of Notary Public State of SC

My commission expires: __________

_______________________________
Print Name of Notary Public

RIGHT OF WAY GRANT TO
DOMINION ENERGY SOUTH CAROLINA, INC.

Line: Chisolm St.-Rectifier Replacement

County: Charleston

R/W File Number: 24421

Grantor(s): City of Charleston

Return to: Dominion Energy Right of Way
2392 West Aviation Avenue MC: CH-29
North Charleston, SC 29406
Easement # 901684
State of South Carolina

County of Charleston

KNOW ALL MEN BY THESE PRESENTS that I (WE) City of Charleston of the County and State aforesaid, hereinafter sometimes referred to as “Grantor” (whether singular or plural), for and in consideration of the sum of One Dollar ($1.00) to me (us) in hand paid, receipt of which is hereby acknowledged at and before signing and sealing of these presents, do hereby bargain, grant and convey to the DOMINION ENERGY SOUTH CAROLINA, INC., a South Carolina corporation having its principal office in Cayce, South Carolina, hereinafter sometimes referred to as “Grantee”, a right of way, over such route as Grantee has selected, having a width of Twenty feet (20) by Fifty feet (50) (20) feet, upon, over, under and across lands of Grantor situated in the County of Charleston, State of South Carolina, described as follows: Being a tract of land containing 2.70 acres, more or less, and being the same lands conveyed to Grantor by deed of City of Charleston, dated 1/1/1900, and recorded in the Register of Deeds Office for Charleston County in Deed Book xxx at Page xxx (the “Property”).

The Right of Way is shown on Exhibit “A”, which is attached hereto and by reference made a part hereof.

TMS: 4570301096 The NW corner of TMS 4570301096 adjacent to Ashley Avenue.

Together with the right to construct, maintain, operate, replace and alter thereon and thereunder one or more lines for the transmission or distribution of electric energy, consisting of supporting structures, overhead and underground conductors and lightning protective wires, municipal, public or private communication wires, guys, push braces and other accessory apparatus and equipment deemed by Grantee to be necessary or desirable thereof, as well as the right to install, maintain and use anchors and guy wires on land adjacent to the right of way herein granted; and also the right to construct, maintain, operate, replace and alter thereon and thereunder a line or lines of pipe to be buried to such depth so that it will not interfere with ordinary cultivation of said land, with valves, tieovers and appurtenant facilities, for the transportation of gas, oil, petroleum products or any other liquids, gases or substances which can be transported through a pipe line.

Together also with the right from time to time to redesign, rebuild or alter said lines and to install such additional lines, apparatus and equipment as Grantee may at any time deem necessary or desirable, and the right to remove any line or any part thereof.

Together also with the right of ingress, egress, and access to and from the right of way across and upon the Property as may be necessary or convenient for purposes connected with said right of way.

Grantee shall have the right from time to time to remove or clear and keep clear such trees, underbrush, structures and other obstructions upon said right of way and such trees (“danger trees”) beyond the same as in the judgment of Grantee may interfere with or endanger said lines or appurtenances when erected, provided that Grantee will pay to Grantor the fair market value of such danger trees at the time of cutting as determined by a registered professional forester, and the right of entry upon said property of Grantor for all of the purposes aforesaid.

PROVIDED, however, any damage to the property of Grantor (other than to property cleared or removed as hereinbefore provided) caused by Grantee in the course of constructing, rebuilding or repairing said lines shall be borne by Grantee.

Reserving, however, to Grantor the right to cultivate and use the ground within the limits of said right of way, provided that such use shall not interfere with or obstruct the rights herein granted, and provided further that no building or other structure shall be erected by Grantor within the width of said right of way.

Should any liens and encumbrances exist, Grantee reserves the right at its discretion to pay all or any portion of the consideration for this agreement to the holders of any liens on the Property. Such payments to lien holders shall be part of the consideration for this agreement to the same effect as if made directly to the Grantor.

TO HAVE AND TO HOLD the aforesaid rights by Grantee, its successors and assigns, as aforesaid.

And Grantor agrees to warrant and forever defend the above granted rights against themselves or their heirs and against any other person lawfully claiming or to claim the same or any part thereof.

The word “Grantor” shall include Grantor’s heirs, executors, administrators, successors, and assigns, as the case may be. The word “Grantee” shall include Grantee’s successors and assigns and its wholly or partially owned subsidiaries.

IN WITNESS WHEREOF, Grantor has duly executed this indenture the _______ day of __________________, 2021.

WITNESS:

City of Charleston

By: ________________________________ (SEAL)

1st Witness

2nd Witness

RW-2-E-G-SC (Rev. 4-2019)
Easement # 901684

ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA )
) )
COUNTY OF Charleston )

The foregoing instrument was acknowledged before me, the undersigned Notary, and I do hereby certify that the within named , of City of Charleston, personally appeared before me this day and that the above named acknowledged the due execution of the foregoing instrument.

Sworn to before me this _____ day of ____________, 2021

______________________________
Signature of Notary Public State of SC

My commission expires: __________

______________________________
Print Name of Notary Public

RIGHT OF WAY GRANT TO
DOMINION ENERGY SOUTH CAROLINA, INC.

Line: Calhoun St and Ashley Ave. Rectifier Replacement -

County: Charleston

R/W File Number: 24225

Grantor(s): City of Charleston

Return to: Dominion Energy Right of Way
2392 West Aviation Avenue MC: CH-29
North Charleston, SC 29406

RW-2-E-G-SC (Rev. 4-2019)
REAL ESTATE COMMITTEE
GENERAL FORM

TO: Real Estate Committee DATE: May 3, 2021
FROM: Julia Copeland DEPT: Corporation Counsel
ADDRESS: Northwest corner of Hagood Avenue and Fisburne Street
TMS: 460-00-00-031
PROPERTY OWNER: Citadel Trust, Inc.

ACTION REQUEST:

Request authorization for the Mayor to execute any necessary documents and take any necessary action to accept, on behalf of the City of Charleston, a temporary construction easement over property owned by The Citadel Trust, Inc., for the renovations to Stoncy Field.

ORDINANCE: Is an ordinance required? Yes ☐ No ☒

COORDINATION: The request has been coordinated with:

All supporting documentation must be included

Department Head Signature Attachments
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. N/A Acct: N/A
Balance in Account N/A Amount needed for this item N/A

NEED: Identify any critical time constraint(s).

*Commercial Property and Community & Housing Development have an additional form.
STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

TEMPORARY CONSTRUCTION EASEMENT

Road/Route: Hagood Avenue S-10-227
File: CP 1812 Stoney Field Renovations
Item: Temporary Construction Easement
Project: CP1812 Sitework & Landscaping
PIN: 460-00-00-031
Tract: 65 Hagood Avenue

KNOW ALL MEN BY THESE PRESENTS, That I (or we) The Citadel Trust, Inc., in consideration of the sum of One Dollar ($1.00), to me (or us) in hand paid, and other valuable consideration at and before the sealing and delivering hereof, do hereby grant to the City of Charleston, its successors or assigns, permission to do the work as outlined below, with the understanding that this work is to be done on property of the grantor. It being fully understood and agreed that no property is being granted to the City of Charleston for the purpose of this construction. Further, permission is granted to perform construction such as grading and other work necessary to adjust the grades to conform to the proposed parking and driveway improvements as shown on the plans for the construction of this project.

SPECIAL PROVISIONS:

Herein granted is permission for a temporary construction easement (5,251 SF/ 0.12 Acres) as shown on the attached construction plan Exhibit “A” and as shown on the attached PLAT SHOWING A TEMPORARY CONSTRUCTION EASEMENT ACROSS THE PROPERTY OF THE CITADEL TRUST, INC TMS# 460-00-00-031 ABOUT TO BE ACQUIRED BY THE CITY COUNCIL OF CHARLESTON LOCATED OFF FISHBURN STREET AS SHOWN LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA DATED SEPTEMBER 10, 2020 and prepared by Milton P. Muckenfuss.

Also, herein granted is permission to use heavy equipment for clearing, grading, placement of soil, maintenance, and access for grading and other work necessary to adjust the grades to conform to the proposed parking and driveway improvements. Herein it is understood that the City of Charleston has the right to remove shrubbery, trees and other growth from the easement provided that the temporary construction easement area will be restored as nearly as practical to its original condition upon completion of the construction.

GRANTEE’S ADDRESS:
City of Charleston
80 Broad Street
Charleston, SC 29401

Checked ______________________  By ______________________  TRACT __
Recorded ______________________  By ______________________
Project ______________________  File No. _________________
TO HAVE AND TO HOLD, all and singular, the said Temporary Construction Easement hereinbefore granted, unto the said City of Charleston, its successors or assigns.

IN WITNESS WHEREOF, I (or we) have hereunto set my (or our) hand(s) and seal(s) this 10th day of March 2021, in the year of our Lord, Two Thousand and Twenty-One.

Signed, sealed and delivered in the presence of:

Tamara Alexander
Notary Public, State of South Carolina
My Commission Expires 10/4/2027

(Charles Cash)

(L.S.)

Acknowledgement

I, the undersigned Notary Public, do hereby certify that Charles Cash personally appeared before me this 10th day of March, 2021, and acknowledge the due execution of the foregoing instrument.

Tamara Alexander
Notary Public for the state of South Carolina
My Commission Expires 10/4/2027
AN ORDINANCE

AMENDING ORDINANCE NO. 2019-128, ADOPTED DECEMBER 3, 2019, BY AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY OF CHARLESTON, THAT CERTAIN FOURTH AMENDMENT TO OPTION TO LEASE BY AND AMONG THE CITY OF CHARLESTON, AS LANDLORD; AND FLATIRON PARTNERS, LLC AND CLASSIC DEVELOPMENT COMPANY, LLC, AS TENANTS, UNDER WHICH THE GROUND LEASE ATTACHED TO THE OPTION IS REVISED TO INCLUDE LANGUAGE REQUIRED BY LENDER(S) FOR THE DEVELOPMENT OF THE JAMES LEWIS, JR. APARTMENT SITE.

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 Lessee 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, 2021.
6. Pursuant to the Third Amendment to Option to Lease, the Option Period was extended to August 31, 2021.

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

8. City Council desires to authorize the Mayor to execute the Fourth Amendment to Option to Lease, the revised Lease as set forth therein, and all other necessary documents to facilitate the transactions set forth therein, in conformity with all other terms and conditions of Option, as amended.

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 Fourth Amendment to Option to Lease, a copy of which is attached hereto and incorporated herein by reference as Exhibit 1 (the "Fourth Amendment").

Section 2. That the Mayor is authorized to execute the revised Ground Lease (the "Revised Lease") in accordance with the terms of the Option, as amended, without further action of City Council. A copy of the Revised Lease is attached to the Fourth Amendment and incorporated herein by reference.

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 Revised 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  )  

FOURTH AMENDMENT TO OPTION TO LEASE

THIS FOURTH AMENDMENT TO OPTION TO LEASE (the "Fourth Amendment") made effective as of the ___ day of May, 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 (as amended, the “Option”); and

WHEREAS, the Parties desire substitute Exhibit A to the Option to Lease with a revised Exhibit A, as attached hereto and incorporated herein by reference.

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

1. Exhibit A. Exhibit A to the Option to Lease is hereby deleted in its entirety and replaced with Exhibit A, attached hereto and incorporated by this reference.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

***Signature pages to follow.***
IN WITNESS WHEREOF, the undersigned have caused this Fourth 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

______________________________
EXHIBIT A

GROUND LEASE

James Lewis, Jr. 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:

RECATALS

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 copies 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, alley 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 (PCB's); (iv) containing asbestos; or (v) which is radioactive; (b) any other material or substance displaying toxic, reactive, ignitable, or corrosive characteristics, as all such terms are used in their broadest sense, and are defined or become defined by Environmental Laws; or (c) materials which cause a nuisance upon or waste to all or any portion of the Premises and/or Improvements.

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

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

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

(h) Landlord and Tenant acknowledge that the Premises are subject to a Voluntary Contribution Contract 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 **Interuption 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, or order of court of competent jurisdiction or otherwise. If Tenant fails to pay and remove such lien, claim or encumbrance within such thirty (30) days, Landlord, at its election, may pay and satisfy the same and in such event the sums so paid by Landlord, with interest from the date of payment at the rate set forth in Section 4.4 hereof for amounts owed Landlord by Tenant, shall be deemed to be additional rent due and payable by Tenant at once without notice or demand. During the progress of such work, Tenant shall, upon Landlord's request, furnish Landlord with sworn contractor's statements and lien waivers covering all work.
theretofore performed and Tenant shall otherwise observe and comply with any and all requirements under South Carolina Law, and shall indemnify, defend and hold Landlord harmless from any loss, cost, or damage incurred by Landlord as a result of the assertion of any construction lien claim. The provisions of this Section 9.3 shall be subject to the rights of the Leasehold Mortgagees.

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

**ARTICLE X - INDEMNIFICATION AND INSURANCE**

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

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

(B) any and all Environmental Damages which arise from (i) the Handling of any Tenant Hazardous Materials, as defined in Section 6.3 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 – LEASEHOLD MORTGAGES**

13.1 **Right to Mortgage Leasehold.** The parties contemplate that Tenant will obtain financing for completion of the development of the Premises from lenders who will require security for repayment of the indebtedness. Tenant shall have the right to mortgage its leasehold interest in the Premises to 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 to 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; 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 Mortgagee 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 (on the same terms and conditions as this 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, to or of Tenant's rights in the Premises and/or the Improvements, the term "Leasehold Mortgage" shall be construed to include such other loan documents and any amendment or modifications thereto.
13.6 **Foreclosure.** The term foreclosure, used in this Lease, shall include both judicial foreclosure and the exercise of a power of sale.

13.7. **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 successors, or assignees, 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 as set forth in Section 13.3 of 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; Prudential Multifamily Mortgage, LLC, its successors and/or assigns, as successor first lien Leasehold Mortgagee and its address for notices is as follows: 4350 North Fairfax Drive, Suite 700, Arlington Virginia, 22203, with a copy to (which shall not constitute notice) to Jeffrey E. Weissman, Esq., Tiber Hudson LLC, 1900 M Street NW, 3rd Floor, Washington, DC 20036; and Charleston Redevelopment Corporation is the second and third priority Leasehold Mortgagee and its address for notices is [__________________________], with a copy of all notices to Leasehold Mortgagees (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 Mortgagor hereunder: (1) assign this Lease or any of its rights under this Lease as to all or any portion of the Premises or the rest of the Improvements, or (2) make or permit any voluntary or involuntary total or partial sale, lease, assignment, conveyance, mortgage, pledge, encumbrance or other transfer of any or all of the Premises or the rest of the Improvements or the occupancy or use thereof, other than in accordance with this Lease (including but not limited to (i) any sale at foreclosure or by the execution of any judgment of any or all of Tenant's rights hereunder, or (ii) any Transfer by operation of law), without first obtaining Landlord's express written consent thereto. 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 Mortgagees.** Notwithstanding the foregoing, Tenant may transfer, assign, convey, or otherwise encumber the leasehold estate created hereunder to Leasehold Mortgagees approved by Landlord pursuant to Section 13.1 hereof, and the approval by Landlord thereof shall constitute approval of the terms, including remedies upon default, of the leasehold mortgages, including but not limited to, the right of the approved Leasehold Mortgagee (after a foreclosure, or deed in lieu of foreclosure) to transfer, convey or assign the Premises and the leasehold estate granted hereunder to another party without Landlord's consent.

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

**ARTICLE XV - DEFAULT AND REMEDIES**

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

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

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

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

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

(E) The failure by Tenant to start construction (break ground) on the Project within six (6) months after the Commencement Date.

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

15.2 Landlord's Right To Terminate Upon Tenant Default. Subject to any Leasehold Mortgagee's rights to cure as set forth in Article XIII hereof 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 remediying the same due to Force Majeure (as defined below); but if and when the occurrence or condition which delayed or prevented the remediying 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 XX - HOLDOVER TENANCY

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

ARTICLE XXI - NOTICES

21.1 Notices. All notices, demands and requests which are required to be given by the Landlord or Tenant shall be in writing and shall be served by personal service on the recipient or as an alternative to personal service, by mailing the same by registered or certified mail, postage prepaid, or may be sent by overnight courier, addressed to the Landlord at the address for Landlord set forth in Section 1.6 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
REAL ESTATE COMMITTEE
GENERAL FORM

TO: Real Estate Committee DATE: May 3, 2021
FROM: Chip McQueeney DEPT: Corporation Counsel
ADDRESS: 201 President Street
TMS: 460-07-03-001
PROPERTY OWNER: City of Charleston

ACTION REQUEST:

Request authorization for the Mayor to execute a Declaration of Easements and take any other necessary action to memorialize the existence of a new permanent 40’ City of Charleston subsurface tunnel easement and a new permanent variable width drainage easement on property owned by the City, commonly known as Harmon Field.

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 s/Daniel S. McQueeney, Jr.
Attachments ☐ ☒

FUNDING: Was funding needed? Yes ☐ No ☒
If yes, was funding previously approved?* Yes ☐ No ☒

*If approved, provide the following:
Dept/Div. N/A Acct: N/A
Balance in Account N/A Amount needed for this item N/A

NEED: Identify any critical time constraint(s).

*Commercial Property and Community & Housing Development have an additional form.
STATE OF SOUTH CAROLINA  )
COUNTY OF CHARLESTON    ) DECLARATION OF EASEMENT

THIS DECLARATION OF EASEMENT (the "Declaration") is made and entered into as of the _____ day of _____________, 2021, by The City of Charleston, a South Carolina municipality, formerly known as the City Council of Charleston (the “Declarant”).

WITNESSETH

WHEREAS, the Declarant is the owner of a parcel of real property located in the City and County of Charleston, State of South Carolina, shown and designated as Harmon Field bearing TMS Number 460-07-03-001 containing 13.43 Acres located at the intersections of Fishburne Street and President Street and Line Street and Hagood Street, more fully shown on a plat prepared by Milton P. Muckenfuss, SCRLS No. 21231 of Davis & Floyd, Inc., dated 28 December 2020 and recorded on ____________, in Plat Book__________, page__________ in the Charleston County RMC Office (“Harmon Field”); and

WHEREAS, the Declarant intends to construct a deep tunnel stormwater conveyance tunnel (the “Stormwater Conveyance Tunnel”) and shaft (the “Shaft”) on a portion of Harmon Field more fully described herein in order to improve the storm and surface water drainage system in the Fishburne Street area located in the City and County of Charleston, State of South Carolina (the “Drainage System”); and

WHEREAS, by and pursuant to the terms of this Declaration, the Declarant desires to create a perpetual easement on a portion of Harmon Field in order to maintain, repair and replace, as necessary, the Drainage System on a portion of Harmon Field.

NOW, THEREFORE, for and in consideration of the above recitals and for the sum of $1.00 and other valuable consideration, the Declarant declares as follows:

1. DECLARATION OF PERMANENT EASEMENTS.

a. Subject to the terms hereinafter set forth, the Declarant hereby establishes, creates and declares for itself, its heirs, successors and assigns, two (2) permanent, transferable right-of-way and utility easements for a commercial purpose under and across a strip of land on a portion of Harmon Field which is owned by the City of Charleston bearing TMS Number 460-07-03-001, more fully described in Exhibit A, attached hereto and incorporated by reference herein. These two easements shall be referred to herein as “President Street Deep Tunnel Easement,” “Permanent Surface Utility Easement” and collectively the “Easements”.

b. President Street Deep Tunnel Easement: The President Street Deep Tunnel Easement is located on a portion of Harmon Field, more fully described in Exhibit B and is

1
designated as “Permanent 40’ COC Subsurface Tunnel Easement” containing 7,828 SF/0.18 Acre being contained within the lines running between the points designated as F-S-T-U-G-F by Milton P. Muckenfuss, SCRLS No. 21231 of Davis & Floyd, Inc., dated 28 December 2020 and recorded on ________________, in Plat Book __________, page __________ in the Charleston County RMC Office for Charleston County, South Carolina. Said strip of land having such size, shape, dimensions, buttins and boundings as by reference to said plat shall more fully appear.

c. **Exclusive Surface Stormwater Drainage Easement:** The Exclusive Surface Stormwater Drainage Easement which is located on a portion of Harmon Field, more fully described in Exhibit C is designated as “Variable Width COC Exclusive Surface Drainage Easement” containing 29,483 SF/0.67 Acre and is shown as being contained within the lines running between the points designated as B-C-P-Q-R-D-E-F-G-H-J-K-L-M-N-B by Milton P. Muckenfuss, SCRLS No. 21231 of Davis & Floyd, Inc., dated 28 December 2020 and recorded on ________________, in Plat Book __________, page __________ in the Charleston County RMC Office for Charleston County, South Carolina. Said strip of land having such size, shape, dimensions, buttins and boundings as by reference to said plat shall more fully appear.

2. **DECLARATION OF RIGHTS AND RESTRICTIONS.**

a. The City shall have the right, together with the right to lay, construct, locate, install, operate, maintain, inspect, repair and replace the Drainage System with related equipment and other related appurtenances within the 0.18 Ac. President Street Deep Tunnel Easement below the surface of the Property but only at depths below negative eighty-five feet (–85.0’) referenced in the North American Vertical Datum of 1988 (NAVD88). See the drawing entitled “City of Charleston Proposed Stormwater Tunnel Typical Easement Sketch Profile View” marked as Figure 1, attached hereto and incorporated by reference.

b. Any subsequent owner of the Property shall have the right to construct structures, store materials, and otherwise have full use and enjoyment of the President Street Deep Tunnel Easement to a depth of no more than negative eighty-five feet (–85.0’) referenced in the North American Vertical Datum of 1988 (NAVD88); provided however, any subsequent owner of the Property shall be prohibited from constructing a structure or any portion of a structure within the President Street Deep Tunnel Easement, including but not limited to the foundation and pilings thereof, and shall be further prohibited from penetrating the President Street Deep Tunnel Easement to depths exceeding negative eighty-five feet (–85.0’) referenced in the North American Vertical Datum of 1988 (NAVD88). See the “City of Charleston Proposed Stormwater Tunnel Typical Easement Sketch Profile View”, marked as Figure 1, attached hereto and incorporated by reference.

c. No subsequent owner of the Property may construct any permanent structure on the Exclusive Surface Stormwater Drainage Easement. No subsequent owner of the Property may penetrate the surface of the President Street Deep Tunnel Easement with structures, foundations, pilings, building materials into depths exceeding negative eighty-five feet (–85.0’) referenced in
the North American Vertical Datum of 1988 (NAVD88) without providing the City an opportunity to review and approve, in the City’s sole discretion, said activity.

d. In the event any subsequent owner of the Property breaches any term of this Declaration of Easement and/or causes damage to the Drainage System on the Property, the City shall have the right to enforce the provisions herein, to seek injunctive relief for any violation thereof, and to enforce the provisions herein through an action for specific performance or any other remedy available to it at law or in equity. In any such enforcement action, the defaulting subsequent owner shall bear and pay the reasonable attorneys’ fees and expenses and court costs incurred by the City in connection therewith. Prior to initiating any action hereunder, the City shall first provide notice of default to the defaulting subsequent owner, whereupon the defaulting subsequent owner, if it so elects, shall have a period of thirty (30) days to cure the alleged default by paying the City the cost to cure the default, failing which the City may initiate an action for the enforcement of such breach in the Charleston County Court of Common Pleas. All notices shall be given in writing, and shall be sent by United States certified mail or via overnight delivery by Federal Express or any nationally recognized overnight delivery carrier. As to such defaulting subsequent owner, such notice shall be provided to the address for such defaulting subsequent owner of the Property maintained by the Charleston County, South Carolina, Tax Assessor’s Office.

e. The Declarant, for itself and its successors and assigns, reserves the right to use the Drainage System, and any portion of the Property on which the Drainage System is located, for any purposes not inconsistent with this Declaration.

f. The Easements described herein shall run with the land and continue to exist so long as it is used for utility purposes. In the event the City abandons the Easements, the City shall provide written notice to the current owner of Harmon Field which includes the Property subject to the Easements stating that the City has given up and relinquishes all rights to the Easements.

g. The Easements granted herein is for a utility purpose and may be transferred and assigned by the City and its heirs, successors and assigns at the City’s sole election, at which time the owner of the Property subject to the Easements shall be notified in writing by the City.

h. The rights and obligations contained herein shall be binding upon the City of Charleston and any subsequent owner of Harmon Field, which includes the Property and their respective heirs, successors and assigns.

i. No person except the Declarant shall be entitled to any award or compensation by reason of the condemnation of all or any portion of the Property.
IN WITNESS WHEREOF, the Declarant has set its hand and seal as of the date first above written.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

Witnesses: 

The City of Charleston, a South Carolina municipality, formerly known as the City Council of Charleston

By: ________________________________
    John T. Tecklenburg
    Its: Mayor

______________________________

______________________________

STATE OF SOUTH CAROLINA  )
    )
COUNTY OF CHARLESTON  )

ACKNOWLEDGMENT

THE FOREGOING instrument was acknowledged before me this _____ day of ________________, 2021, by the City of Charleston, a South Carolina municipality, formerly known as the City Council of Charleston, by John T. Tecklenburg, its Mayor.

Notary Public for South Carolina
Print Name: ________________________________
My Commission Expires: ____________________

[SEAL]
EXHIBIT A

(Legal Description of Harmon Field)

ALL that certain piece, parcel or tract of land owned by the City of Charleston being known as Harmon Field containing 13.43 Acre, bearing TMS No. 460-07-03-001 located in the City and County of Charleston, State of South Carolina, and being bounded generally, now or formerly, as follows, to wit: On the North by Fishburne Street; on the East by President Street; on the South by the Line Street; and on the West by Hagood Street.
ALL THAT CERTAIN piece, parcel or tract of land located in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as “Permanent 40' COC Subsurface Tunnel Easement” containing 7,828 SF/0.18 Acre, more or less, on a certain plat titled “EASEMENT PLAT SHOWING TMS# 460-07-03-001 PROPERTY OF CITY COUNCIL OF CHARLESTON CREATING A PERMANENT 40' SUBSURFACE TUNNEL EAUSEMENT AND A PERMANENT EXCLUSICE SURFACE DRAINAGE EASEMENT AS SHOWN TO BE ACQUIRED BY THE CITY OF CHARLESTON LOCATED CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, D&F JOB #: 30295.00 PHS 0021” prepared by Milton P. Muckenfuss, SCRLS No. 21231 of Davis & Floyd, Inc., dated 28 December 2020 and recorded on____________________, in Plat Book____________, page__________ in the Charleston County RMC Office for Charleston County, South Carolina.
EXHIBIT C

ALL THAT CERTAIN piece, parcel or tract of land located in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as “Permanent Variable Width City of Charleston Exclusive Surface Drainage Easement” containing 29,483 SF/0.67 Acre, more or less, on a certain plat titled “EASEMENT PLAT SHOWING TMS# 460-07-03-001 PROPERTY OF CITY COUNCIL OF CHARLESTON CREATING A PERMANENT 40’ SUBSURFACE TUNNEL EASEMENT AND A PERMANENT EXCLUSIVE SURFACE DRAINAGE EASEMENT AS SHOWN TO BE ACQUIRED BY THE CITY OF CHARLESTON LOCATED CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, D&F JOB #: 30295.00 PHS 0021” prepared by Milton P. Muckenfuss, SCRLS No. 21231 of Davis & Floyd, Inc., dated 28 December 2020 and recorded on ________________, in Plat Book____________, page________ in the Charleston County RMC Office for Charleston County, South Carolina.
FIGURE 1

(City of Charleston Proposed Stormwater Tunnel Typical Easement Sketch Profile View)

PROFILE
NO SCALE

NOTE: FIGURE INTENDED TO DEPICT VISUAL REPRESENTATION ONLY.
REAL ESTATE COMMITTEE
GENERAL FORM

TO: Real Estate Committee DATE: May 3, 2021
FROM: Chip McQueeny DEPT: Corporation Counsel
ADDRESS: St. James Church, James Island, S.C. (Camp Road)
TMS: 425-01-00-032
PROPERTY OWNER: St. James Church, James Island, S.C.

ACTION REQUEST:

Request authorization for the City to take all necessary actions and execute all necessary documents to accept a drainage easement from St. James Church, James Island, S.C., over property designated as Charleston County TMS No. 425-01-00-032, as shown on pertinent plat.

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

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
s/Daniel S. McQueeny, Jr.

Attachments

FUNDING: Was funding needed? Yes [ ] No [x]
If yes, was funding previously approved? Yes [ ] No [ ]

*If approved, provide the following:
Dept/Div. N/A Acct: N/A
Balance in Account N/A Amount needed for this item N/A

NEED: Identify any critical time constraint(s).

*Commercial Property and Community & Housing Development have an additional form.
STATE OF SOUTH CAROLINA  )  STORMWATER DRAINAGE
                  )  EASEMENT AGREEMENT
COUNTY OF CHARLESTON   )  (CITY OF CHARLESTON)

This Stormwater Drainage Easement Agreement (this “Agreement”) is made and entered into this ______ day of __________________, 2021, by and between ST. JAMES CHURCH, JAMES ISLAND, S.C. (“Grantor”) and the CITY OF CHARLESTON, a South Carolina municipality (the “City” or “Grantee”).

RECATALS

WHEREAS, the City desires to maintain storm water drainage pipes, yard inlets, ditches and/or appurtenances (the “Storm Water Facilities”) across that certain piece, parcel or tract of land owned by Grantor and more fully described on Exhibit A, attached hereto and incorporated herein by reference (the “Property”);

WHEREAS, to accomplish this objective, the City also desires to obtain an easement from Grantor, through the Property, in the location more particularly described on Exhibit B, attached hereto and incorporated herein by reference (the “Easement Area”); and

WHEREAS, Grantor desires to cooperate with the City and to grant unto the City a permanent storm water drainage easement in and to the Easement Area necessary to repair and/or maintain the Storm Water Facilities.

NOW, THEREFORE, in consideration of the foregoing and the benefits to be derived by the drainage improvements to the Property, the receipt and sufficiency of which are hereby acknowledged, Grantor has granted, bargained, sold, released and conveyed, and by these presents does grant, bargain, sell, release and convey unto Grantee, its successors and assigns, a permanent, exclusive storm water drainage easement (the “Easement”) on, over, under and through the Easement Area, for the purpose of repairing and/or maintaining the Storm Water Facilities through the Property for the benefit of the Property and other properties in the area, said Easement being subject to the following terms and conditions:

1. The recitals and exhibits are incorporated into this Agreement by reference, as if fully restated verbatim.

2. The City shall at all times have the right of ingress and egress to the Easement Area for purposes of periodic inspection, maintenance, repair and replacement of the Storm Water Facilities. The Easement shall be commercial in nature and shall run with title to the Property.

3. The City has no obligation to repair, replace, relocate or compensate Grantor for any structures, trees, plants, grass, shrubs, or other elements damaged or destroyed within the confines of the Easement Area during the conduct of the City’s allowable activities as described in this Easement.
4. Subject to Section 3 of this Agreement, any existing encroachments within the Easement Area, as shown on the Plat, shall be considered as permissible encroachments. Future encroachments into the Easement Area, including but not limited to any expansion or enlargement of existing encroachments into the Easement Area, shall require an encroachment permit from the City in accordance with the City’s standard rules and procedures governing encroachments.

5. Pursuant to Sec. 27-18 of the Code of Ordinances of the City of Charleston, the City’s Director of Stormwater Management is authorized to execute this Agreement on behalf of the City upon approval by the City Council of Charleston.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the Grantee, its successors and assigns, against Grantor and Grantor’s heirs and assigns, and all persons whosoever lawfully claiming or to claim the same or any part thereof.

[REMAINDER OF PAGE INTENTIONALLY BLANK]
IN WITNESS WHEREOF, Grantor has set its hand and seal this ___ day of ________________, 2021.

WITNESSES:

Witness #1
Print Name: ____________________________

By: ____________________________
Print Name: ____________________________
Its: ____________________________

Witness #2
Print Name: ____________________________

STATE OF SOUTH CAROLINA )
COUNTY OF CHARLESTON )

ACKNOWLEDGEMENT

THE FOREGOING instrument was acknowledged before me this ___ day of ________________, 2021, by St. James Church, James Island, S.C., by ____________________________, its ____________________________, on behalf of St. James Church, James Island, S.C.

Signature: ____________________________
Notary Public for South Carolina
Print Name of Notary: ____________________________
My Commission Expires: ____________________________

(SEAL OF NOTARY)

[REMAINDER OF PAGE INTENTIONALLY BLANK]
IN WITNESS WHEREOF, the City of Charleston has set its Hand and Seal this ___ day of ______________, 2021.

WITNESSES:  

CITY OF CHARLESTON

By: Matthew Fountain
Its: Director of Stormwater Management

Witness #1
Print Name: __________________________

Witness #2
Print Name: __________________________

STATE OF SOUTH CAROLINA  )
COUNTY OF CHARLESTON  )

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me (the undersigned notary) by Matthew Fountain, the Director of Stormwater Management of the City of Charleston, a South Carolina municipality, on this ______ day of ______________, 2021, on behalf such municipality.

Signature: ____________________________
Notary Public for South Carolina
Print Name of Notary: ____________________________
My Commission Expires: ____________________________
(SEAL OF NOTARY)

[REMAINDER OF PAGE INTENTIONALLY BLANK]
EXHIBIT A

[LEGAL DESCRIPTION OF THE PROPERTY]

All those certain pieces, parcels, or tracts of land situate, lying and being in the City of Charleston, Charleston County, South Carolina, shown and designated as “TRACT D (15.5 Acres of Highland)” and “TRACT E (1.06 Ac.),” on that certain plat entitled, “PLAT OF PROPERTY OWNED BY ST. JAMES EPISCOPAL CHURCH, CHARLESTON COUNTY, SOUTH CAROLINA,” prepared by The John McCrady Co., Engineers, dated October 1956, and recorded on July 12, 1957, in Plat Book L at Page 048 in the ROD Office for Charleston County, South Carolina, said pieces, parcels, or tracts of land butting and bounding, measuring and containing, and having such courses and distances as are shown on said plat. Reference being had to the aforesaid plat for a full and complete description, being all of the said dimensions, a little more or a little less.

TMS #425-01-00-032

[REMAINDER OF PAGE INTENTIONALLY BLANK]
EXHIBIT B

[DESCRIPTION OF THE EASEMENT AREA]

That certain piece or parcel of land shown and designated as “NEW VARIABLE WIDTH DRAINAGE EASEMENT, AREA=16072.13 s.f./0.37 ac.,” on that certain plat entitled, “PLAT SHOWING NEW VARIABLE WIDTH DRAINAGE EASEMENT LOCATED IN THE CITY OF CHARLESTON ON JAMES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA,” prepared by Edward Glen Chears (SCPLS No. 16488), dated March 12, 2021, last revised as shown thereon, and recorded on ________________, 2021, in Plat Book ____ at Page ____ in the ROD Office for Charleston County, South Carolina (the “Plat”).

SAID EASEMENT having such the size, shape, dimensions, buttlings, and boundings as will by reference to said Plat more fully and at-large appear.

[END OF DOCUMENT]
AN ORDINANCE

TO PROVIDE FOR THE ANNEXATION OF PROPERTY KNOWN AS 1453 S EDGEWATER DRIVE (0.47 ACRE) (TMS# 349-13-00-008), 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 11. THE PROPERTY IS OWNED BY CONSTANTINE D AND CHERIE A LIOLLIO.

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

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

A) Section 5-3-150, Code of Laws of South Carolina (1976) as amended, provides a method of annexing property to a city or town upon a Petition by all persons owning real estate in the area requesting annexation.

B) The City Council of Charleston has received a Petition requesting that a tract of land in Charleston County hereinafter described be annexed to and made a part of the City of Charleston, which Petition is signed by all persons owning real estate in the area requesting annexation.

C) The area comprising the said property is contiguous to the City of Charleston.

Section 2. Pursuant to Section 5-3-150, Code of Laws of South Carolina (1976) as amended, the following described property be and hereby is annexed to and made part of the City of Charleston and is annexed to and made part of present District 11 of the City of Charleston, to wit:

SAID PROPERTY to be annexed, 1453 S Edgewater Drive, (0.47 acre) is identified by the Charleston County Assessors Office as TMS# 349-13-00-008, (see attached map) and includes all marshes, public waterways and public rights-of-way, shown within the area annexed upon a map attached hereto and made a part hereof.

Section 3. This ordinance shall become effective upon ratification.

Ratified in City Council this __ day of __________ in the Year of Our Lord, __________, 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:** 1453 S Edgewater Drive  
**Owner Names:** Constantine D and Cherie A Liollio  
**Parcel ID:** 3491300008  
**Presented to Council:** 5/11/2021  
**Status:** Received Signed Petition  
**Year Built:** 1990  
**Number of Units:** 1  
**Number of Persons:** 3  
**Race:** Caucasian  
**Acreage:** 0.47  
**Current Land Use:** Vacant  
**Current Zoning:** R-4  
**Requested Zoning:** SR-1  
**Recommended Zoning:** SR-1  
**Appraised Value:** $1,315,900.00  
**Assessed Value:** $46,330.00  
**Stormwater Fees:** To Be Calculated

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<tr>
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<tr>
<td>Police</td>
<td>Located in existing service area - Team 4</td>
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<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 service area. One additional stop.</td>
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<tr>
<td>Storm Water</td>
<td>Contiguous to existing service area.</td>
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<td>Additional State-maintained right-of-way</td>
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<td>Signalization</td>
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<td>Signage</td>
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<td>Pavement Markings</td>
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<td>Charleston Water System</td>
<td>CWS service area.</td>
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<td>Urban Growth Line</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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**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 47 acres) to be annexed is identified by the Charleston County Assessors Office as Property Identification Number: TMS# 345-13-00-008 Address: 1453 S EDGEEWATER DR. CMS. 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.

FREETHOLDERS (OWNERS) SIGNED                      DATE OF SIGNATURE

C. McClellan                          APRIL 26, 2021
(Signature)                           (Date)

CHERIE A. LOLLICO
(Print Name)

(Mark)

(Signature)

(April 26, 2021)

(Date)
Annexation Map

Location: West Ashley

Property Address: 1453 Edgewater Dr

Tax Map # (TMS): 3491300008

Area (Acres): approx. 0.47

Council District: 11