

PUBLIC INFRASTRUCTURE IMPROVEMENTS AGREEMENT

THIS PUBLIC INFRASTRUCTURE IMPROVEMENTS AGREEMENT (this “**Agreement**”) is made effective as of the ____ day of _____, 2021 (the “**Effective Date**”), by and between the CITY OF CHARLESTON, SOUTH CAROLINA, a South Carolina municipal corporation (the “**City**”); and LRA Promenade, LLC, a Delaware limited liability company and LRA Promenade North, LLC, a Delaware limited liability company (collectively, “**LRA**”), LRA’s successors, successors-in-title, designees and assigns (collectively, the “**Developer**”). The City and the Developer are sometimes referred to individually as a “**Party**” and together as the “**Parties**” as the context may require.

RECITALS

1. Pursuant to the “Tax Increment Financing Law” codified at Title 31, Chapter 6, Code of Laws of South Carolina, 1976 as amended (the “**TIF Act**”) the City is authorized to establish redevelopment project areas, issue obligations to carry out a redevelopment project and pay redevelopment project costs, each as defined in the TIF Act.

2. On October 8, 2019, the City Council (“**City Council**”) by ordinance (the “**TIF Ordinance**”) established the Morrison Drive Redevelopment Project Area (the “**TIF District**”). A copy of the TIF Ordinance is included as Exhibit A. The Redevelopment Plan attached to the TIF Ordinance describes the expectation that certain public improvements will be funded by TIF Revenues or will be financed by borrowings secured by a pledge of revenues generated by the TIF District and the Assessments (as hereinafter defined) generated by the anticipated Improvement District (as hereinafter defined). The “**Property**” for purposes of this Agreement shall mean the TIF District less and except Charleston County Tax Map Sequence Numbers 4590200001 (“**The Office at Morrison Yard**”) and 4590700010 (“**Morrison Yard Apartments**”).

3. Pursuant to the Municipal Improvements Act of 1999, Title 5, Chapter 37 of the Code of Laws of South Carolina, 1976 as amended (the “**Municipal Improvements Act**”), the Parties anticipate that the City Council will enact an ordinance (the “**MID Ordinance**”) designating portions of the TIF District consisting of Charleston County Tax Map Sequence Numbers 4640000006, 4640000002, 4590200013, 4640000038 and 4640000023, as a Municipal Improvement District referred to as the “Laurel Island Improvement District” (the “**Improvement District**”) and containing an assessment methodology.

4. The Developer proposes to develop all or portions of the Improvement District in multiple phases (or convey portions of such Improvement District to third parties for development consistent with and subject to this Agreement). The Developer may also develop all or a portion of Charleston County Tax Map Sequence Numbers 4590200011 (990 Morrison Drive). The parcels that comprise the Improvement District and 990 Morrison Drive shall be defined herein as the “**Laurel Island Property**.”

5. In conjunction with the development of all or portions of the TIF District, subject to the terms and conditions hereof, the Developer or Developer Affiliate will undertake certain improvements on the Laurel Island Property or within and near the TIF District, which

improvements are set forth on **Exhibit B** attached hereto and made a part hereof (collectively the **“Public Infrastructure Projects”** and individually as the context may require a **“Public Infrastructure Project”**). The TIF Ordinance and the anticipated MID Ordinance will describe revenue bonds to be issued to defray the cost of a portion of such Public Infrastructure Projects (**“TIF Bonds”**). The TIF Ordinance and MID Ordinance, as amended and to be amended, describe certain public infrastructure improvements to be undertaken within the TIF District.

6. The Parties intend that certain costs to be incurred by the Developer (or Developer Affiliate as defined herein) in connection with the remediation, engineering, design, permitting, construction, development, and equipping of the Public Infrastructure Projects (as set forth in **Exhibit B**) (collectively the **“Public Infrastructure Costs”**), which shall include all types of costs eligible for reimbursement under applicable law, will be funded from the proceeds available from TIF Bonds (**“TIF Bond Proceeds”**) and Excess TIF Revenues (as herein defined). In addition, a portion of the funds advanced by the Developer for Public Infrastructure Costs will be reimbursed from the TIF Bonds Proceeds and Excess TIF Revenues. The estimated Public Infrastructure Costs are set forth on **Exhibit F** attached hereto.

TIF Bond Proceeds and Excess TIF Revenues generated by the Laurel Island Property (**“Revenue Source 1”**) shall be available for the exclusive use by the Developer in order to reimburse the Developer for Public Infrastructure Costs. Developer shall have no access to TIF Bond Proceeds or Excess TIF Revenues generated by the parcels known as the Morrison Yard Apartments and The Office at Morrison Yard (**“Revenue Source 2”**). For the remaining portion of the TIF District (i.e., those portions of the TIF District not part of the Laurel Island Property and not part of Morrison Yard Apartments and The Office at Morrison Yard which shall hereinafter be referred to as the **“Remaining Property”**), the City shall use the TIF Bond Proceeds and Excess TIF Revenues generated by the Remaining Property (**“Revenue Source 3”**) for Public Infrastructure Costs where such costs relate to Public Infrastructure Projects, including those associated with road improvements, utilities and flood abatement within or near the TIF District; provided however, that such TIF Bond Proceeds and Excess TIF Revenues generated by Revenue Source 3 shall first be used by the City in the following priority: (i) improvements to Singleton Park including the upgrading of playground equipment (the cost of such improvements reimbursable from Revenue Source 3 not to exceed \$200,000); (ii) improvements to at the intersection Cool Blow Street and Nassau Street in order to address storm water drainage issues (the cost of such improvements reimbursable from Revenue Source 3 not to exceed \$350,000) and (iii) sidewalk improvements within the neighborhood surrounding the Laurel Island Property (the cost of such improvements reimbursable from Revenue Source 3 not to exceed \$100,000). After use of funds in Revenue Source 3 for improvements in items (i), (ii) and (iii) above, the remaining Excess TIF Revenues and TIF Bond Proceeds generated by Revenue Source 3 shall then first be used to fund the off-site neighborhood/traffic improvements (**“Off-Site Improvements”**) as identified in the Laurel Island Phasing Plan attached hereto and made a part hereof as **Exhibit F** to the extent constructed by the Developer and/or the City (in each instance the Developer and the City to meet and determine who constructs such Off-Site Improvement) and as consistent with or supported by traffic studies. To the extent Developer constructs such Off-Site Improvements, then Developer shall be reimbursed from Revenue Source 3. Developer may also, at its election, use Revenue Source 1 to fund a portion of these Off-Site Improvements.

In instances in which TIF Revenue generated by the Laurel Island Property and the Remaining Property are both used as collateral for a bond issuance, the TIF Bond Proceeds shall be allocated by the City separately between Revenue Source 1 and Revenue Source 3 in manner consistent with the dollar amount of existing and projected TIF Revenue used from each of the Laurel Island Property and the Remaining Property to support the total amount of the bond issuance. In instances in which TIF Revenue generated by The Office at Morrison Yard/Morrison Yard Apartments and the Remaining Property are both used as collateral for a bond issuance, the TIF Bond Proceeds shall be allocated by the City separately between Revenue Source 2 and Revenue Source 3 in manner consistent with the dollar amount of existing and projected TIF Revenue used from The Office at Morrison Yard/Morrison Yard Apartments and the Remaining Property to support the total amount of the bond issuance. Reimbursement to the Developer from TIF Bond Proceeds and Excess TIF Revenue for Public Infrastructure Costs incurred by the Developer shall not exceed \$360 million, which as depicted on **Exhibit F**, is less than the projected Public Infrastructure Costs associated with only three of the four phases to be constructed.

7. The City is willing to facilitate the reimbursement described above to the Developer and/or Developer Affiliate from the TIF Bond Proceeds and Excess TIF Revenues for such Public Infrastructure Costs and to disburse TIF Bond Proceeds and Excess TIF Revenues on the terms and conditions hereinafter set forth.

8. In connection with the City's issuance of TIF Bonds, it is necessary that the City Council by ordinance (the "**Bond Ordinance**") approve such TIF Bonds and it is further necessary that a successful financing of the TIF Bonds be accomplished.

9. One or more of the TIF Bonds series may be secured, at the Developer's election, by the Assessments.

10. The Parties intend to enter into one or more supplemental amendments or addendums to this Agreement in connection with the issuance of TIF Bonds.

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I - RECITALS

Section 1.1 The foregoing Recitals are incorporated into and made a part of this Agreement.

ARTICLE II - DEFINITIONS

Section 2.1 **Defined Terms.** In addition to the terms defined in the Recitals and elsewhere herein, the following terms shall have the meanings specified herein:

"Applicable Requirements" shall mean, collectively, all requirements contained in this Agreement, the Indenture, the Construction Documents, all City standards and requirements for publicly dedicated infrastructure improvements, and all applicable and duly enacted federal,

state, county and City laws, codes, ordinances, rules, regulations, approvals, and permits (all as may have been modified by any documents applicable to the Laurel Island Property, including without limitation any subsequent Development Agreement executed pursuant to Section 6-31-160 of the Code of Laws of South Carolina, as amended). The Applicable Requirements shall not include the City procurement code.

“Assessments” means those assessments to be levied against tracts and lots within the Improvement District for the purposes provided for in the Municipal Improvements Act of 1999, Title 5, Chapter 37 of the Code of Laws of South Carolina, as amended, specifically Section 5-37-30 to be established by the MID Ordinance.

“City Project Manager” shall mean the individual proposed by Developer and approved by the City’s Mayor’s Office who is responsible for coordinating the City’s obligations and rights under this Agreement and who is responsible for coordinating all City responses to the Developer’s applications for Development Permits, for assisting the Developer with the application and review process for Development Permits and for obtaining timely and unified City responses to the Developer’s requests for approvals, permits and consents. The costs of the City Project Manager shall be included as a Public Infrastructure Costs and shall not exceed \$150,000 annually.

“Construction Documents” shall mean, collectively, the Plans, and all construction budgets, engineering reports, Design Professional contracts, construction management agreements, contracts for environmental services and remediation, supply contracts, construction contracts, project schedules, and other documentation pertaining to the design, equipping, and construction of the Public Infrastructure Projects (but not including any construction financing documents with third party construction loan lenders, if any), each as may be amended from time to time in accordance herewith.

“Construction Fund” shall mean a fund established into which TIF Bond Proceeds and Excess TIF Revenues are deposited in order to reimburse the Developer for and/or pay directly Public Infrastructure Costs.

“Design Professional” means the properly licensed architects and/or engineers engaged by the Developer for a Public Infrastructure Project as further described in Section 5.13 of this Agreement.

“Developer Affiliate” shall mean any entity owned in whole or part by the Developer or by any entity that controls, is controlled by, or is under common control with the Developer.

“Development Permits” includes building permits, zoning permits, subdivision approvals, rezoning certifications, special exceptions, variances, certificates of occupancy, municipal separate storm sewer system (MS4) permits, and/or any other official action of the City having the effect of permitting all or portions of the Public Infrastructure Project or use of all or portions of the Laurel Island Property.

“Disbursement Request” has the meaning set forth in Section 6.2 of this Agreement.

“Excess TIF Revenue” means excess funds from TIF Revenues that exist beyond that necessary to support annual payments for outstanding TIF Bonds and required debt coverage ratio if any, beyond debt service.

“Indenture” shall mean the master trust indenture or similar document or ordinance of the City pursuant to which TIF Bonds are issued, if any, as may be modified or supplemented by one or more supplemental indentures.

“Plans” shall mean the final plans and specifications, including all drawings and design calculations, prepared by a Design Professional and approved by the City in accordance with the procedures set forth in Section 8.2 with respect to a Public Infrastructure Project or portion thereof.

“Project Schedule” has the meaning set forth in Section 5.5 of this Agreement.

“Redevelopment Plan” shall mean the certain Redevelopment Plan included within the TIF Ordinance (as amended from time to time) for the TIF District, a copy that is attached as **Exhibit C** and made a part of this Agreement.

“TIF Revenues” shall mean tax increment revenues generated by the TIF District.

ARTICLE III - CONDITIONS TO THE DEVELOPER’S OBLIGATIONS HEREUNDER

Section 3.1 Modification of TIF Ordinance, Enactment of MID Ordinance and Related Ordinances and Documents. The respective obligations of the Developer and City hereunder are conditioned upon, among other conditions set forth in this Agreement (including but not limited Recital 6), the following:

- (i) Adoption by the City Council of the MID Ordinance;
- (ii) Agreement of the Developer and City that, with respect to future issuance of TIF Bonds, at such time as TIF Revenues exceed 102% of the current bond year’s principal and interest payment such excess shall transfer to the Construction Fund for reimbursement of the Developer of Project Infrastructure Costs (such agreement being subject to the obligations imposed by purchaser of such TIF Bonds);
- (iii) The City’s commitment to issue subsequent series of TIF Bonds in order to finance Public Infrastructure Costs, recognizing that the principal amount of such future issuance of TIF Bonds is dependent upon such factors as the income stream securing such borrowings as well as interest rates then prevailing;
- (iv) The Developer’s acquisition of title to (or a valid easement or other right to construct upon) the portion or portions of the property on which a Public Infrastructure Project is to be located.

ARTICLE IV

Section 4.1 In connection with the issuance of TIF Bonds, the Developer and the City shall have the right, upon mutual agreement, to designate additional Public Infrastructure Projects (the existing Public Infrastructure Projects are listed on **Exhibit B**) in accordance with the Redevelopment Plan and shall enter into an amendment or addendum hereto or a separate agreement in form and substance equivalent hereto; provided however that TIF Bond Proceeds and Excess TIF Revenues shall first be applied to Public Infrastructure Projects listed on **Exhibit F**. Provided that the Developer is not in default hereunder or with respect to any Assessments, the City shall proceed with the issuance of such subsequent series of TIF Bonds for the continued development of the Laurel Island Property in accordance with the Redevelopment Plan. The TIF Bond Proceeds and Excess TIF Revenues (and revenues from any Assessments imposed upon the Improvement District) shall not be used by the City for any purposes other than as provided hereunder.

Section 4.2 The City agrees to deposit all TIF Bond Proceeds and Excess TIF Revenues generated by the TIF District into the Construction Fund established for Public Infrastructure Costs, including the reimbursement of the Developer for Public Infrastructure Costs and to apply such TIF Bond Proceeds and Excess TIF Revenues for such purposes. Excess TIF Revenues shall be made available hereunder for payment or reimbursement of Public Infrastructure Costs including those paid or incurred by Developer or any other Developer Affiliate to the extent that such amounts have not been reimbursed. As a final distribution prior to dissolution of the special tax allocation fund as described at Section 31-6-70 of the TIF Act, any funds remaining in such Construction Fund shall be applied to reimburse the Developer or any other Developer Affiliate as described in the preceding sentence to the extent such reimbursement shall not previously have been made. The reimbursements contemplated in this Agreement will include the amount of any Assessments (including imputed interest thereon at the interest rate of the most recently issued TIF Bonds) paid by Developer with respect to the TIF Bonds. Beginning with the first year that any Assessments are payable with respect to the TIF Bonds and continuing each year thereafter, the Developer shall be required to deliver to the City a written report indicating which amounts of the Assessments for the applicable year are being paid by the Developer or any other Developer Affiliate and are therefore potentially reimbursable under this Agreement. Such annual report shall also indicate any imputed interest to date that is applicable to previously paid Assessments as provided above. This Section 4.2 is subject to the provisions of Recital 6.

Section 4.3 The City agrees that any proceeds of Assessments imposed within the Improvement District, or proceeds of loans to the City or bonds issued by the City to be paid or secured in part from assessments imposed thereon (including without limitation the TIF Bonds), shall not be used by the City for any purposes other than as provided under this Agreement or as otherwise agreed by the Parties.

ARTICLE V- CONSTRUCTION REQUIREMENTS

Section 5.1 Responsibilities with Respect to Construction.

(a) The Developer (or Developer Affiliate) shall cause all work performed by it with respect to the construction of Public Infrastructure Projects to be conducted in a good workmanlike and commercially reasonable manner. The Developer shall retain at all times adequate staff or consultants to administer and coordinate all work related to the design, engineering, acquisition, construction, and installation of the Public Infrastructure Projects. Pursuant to Section 5.5 and Section 5.7 of this Agreement, the Developer and City shall meet prior to commencement of construction of each phase of the Public Infrastructure Projects and develop a schedule and budget for each such phase. The City shall make available Excess TIF Revenues and the TIF Bond Proceeds for the payment or reimbursement of Public Infrastructure Costs as set forth herein.

(b) To the extent Public Infrastructure Projects identified on **Exhibit F** are undertaken by the Developer, the Public Infrastructure Costs incurred in connection therewith as set forth in **Exhibit F** shall be reimbursed and/or directly paid from the TIF Bond Proceeds and Excess TIF Revenues in accordance with the terms of this Agreement.

(c) Upon written agreement of the City and the Developer, **Exhibit F** may be amended from time to time to change individual Public Infrastructure Projects provided that such change does not compromise the economic viability of the Laurel Island Property and TIF Bonds as a whole. In addition, additional Public Infrastructure Projects may be added to **Exhibit F** from time to time at the request of the City or the Developer upon written agreement of the City and the Developer.

Section 5.2 Compliance with Applicable Requirements. The Developer shall construct the Public Infrastructure Projects that are undertaken in accordance with Applicable Requirements. The Developer shall obtain all necessary permits and approvals prior to commencing construction of any portion of an individual Public Infrastructure Project, and promptly thereafter shall commence and diligently pursue the completion of the approved portion of the Public Infrastructure Project in accordance with all Applicable Requirements and the timetable established pursuant to Section 5.5.

Section 5.3 Approval of Plans. The Developer shall cause all Plans to be prepared for the Public Infrastructure Projects by a Design Professional, duly licensed and in good standing in the State of South Carolina, and submitted for the City's prior written approval in accordance with the City's requirements and procedures as set forth in Section 8.2. The City shall not be obligated to make any disbursements hereunder with respect to a Public Infrastructure Project or portion thereof until the City has approved the Plans for the applicable Public Infrastructure Project or portion thereof, provided that design costs shall be reimbursed prior to approval of the Plans and prior to approval of the Schedule of Values (as defined in Section 5.7 below) for the applicable Public Infrastructure Project. The City's approval of the Plans shall not be deemed to waive the obligation of the Developer and/or the Design Professional to provide amendments to the Plans so that the Plans comply with Applicable

Requirements if it is reasonably determined by the City that any such Plans do not comply. The Developer shall promptly provide to the City copies of each set of the Plans as required by the City's building codes and requirements and one reproducible copy of each set of the approved Plans, which shall become the property of the City, at no cost to the City. The Developer may not materially modify or amend the Plans approved by the City without the prior written consent and approval of the City as provided herein. For purposes of this Section 5.3, a material modification or amendment of the Plans for a Public Infrastructure Project shall be any change or changes which (a) involves a cost increase greater than 15 percent in aggregate of the cost of the particular Public Infrastructure Project, (b) impairs the structural integrity or configuration of the Public Infrastructure Project, or (c) results in a violation of any Applicable Requirement. Approvals of material modifications or amendments to the Plans that are requested by the Developer shall be subject to the reasonable discretion of the City. Notwithstanding any provision to the contrary, the Developer shall consult with the City Project Manager before amending or modifying the Plans for a Public Infrastructure Project.

Section 5.4 Completion. Subject to Section 8.5 and sufficient TIF Bond Proceeds and Excess TIF Revenues being available to reimburse the Developer for Public Infrastructure Costs, the Developer shall complete individual Public Infrastructure Projects undertaken by the Developer for dedication by the Developer and acceptance by the City within the applicable period of time as set forth in the Project Schedule developed pursuant to Section 5.5. Changes to the commencement and completion dates set forth in the Project Schedule may only be made pursuant to the terms of this Agreement. The Developer reasonably expects that the TIF Bond Proceeds will be fully disbursed and expended in accordance with the Project Schedule.

Section 5.5 Project Schedule. The Developer shall prepare and submit to the City project schedules for the individual Public Infrastructure Projects (each a "**Project Schedule**") for the City's approval prior to commencement of a Public Infrastructure Project. Failure to meet a date set forth in a Project Schedule shall not, in and of itself, constitute a material breach of this Agreement by the Developer, but shall be subject to the Developer's opportunity to cure as provided herein; whether a material breach has occurred shall be based upon the totality of circumstances, including but not limited to materiality of the date and *force majeure* events. The obligation to meet a Project Schedule date shall at all times be subject to the availability of Excess TIF Revenues or TIF Bond Proceeds to reimburse the Developer for the costs of the Public Infrastructure Project. If the Developer requests a modification to the dates as set forth in a Project Schedule and is able to demonstrate and establish that there is good cause to modify those dates, including, without limitation, changes in market conditions, delivery dates of materials, or production requirements, and any such change will not adversely affect the tax exempt status of the TIF Bonds, those dates shall be modified to the extent necessary in accordance with the terms of this Agreement. Individual Project Schedules shall be modified as applicable to reflect any changes in the applicable Plans. The modification of individual Project Schedules shall be submitted and reviewed in accordance with the approval procedure set forth in Section 8.2.

The Laurel Island Phasing Plan identified as **Exhibit F** (attached hereto and made a part hereof) indicates the order in which the parks are to be built on the island (subject to caveats contained in Exhibit F) as further described as follows:

- Phase I development identified in Exhibit F will include the first portion (+/- ½ mile) of the Bike/Pedestrian Path located on the outer edge of the island, near the water's edge, Park 1 and Temporary Park
- Phase II development identified in Exhibit F will include Park 2, Crabbing Docks, Park 3 and extends the Bike/Pedestrian Path (an additional +/- ½ mile).
- Phase III development identified in Exhibit F will include Park 4, Park 5 and completes the Bike/Pedestrian Path (2 miles in total).
- Phase IV development identified in Exhibit F will include Park 6, Park 7 and pedestrian wharf.

The public parks shall be owned and maintained by the City with the right reserved by the Developer to take over grounds maintenance if necessary.

Section 5.6 Independent Contractor. In performing this Agreement, the Developer is an independent contractor and not the employee of the City. Except as set forth in this Agreement, the City shall not be responsible for making any payments to any contractor, subcontractor, agent, consultant, employee, or supplier of the Developer but shall be responsible to fund amounts to the Developer (or Developer Affiliate as applicable) in accordance with this Agreement, unless otherwise directed in writing by the Developer to fund directly to the Developer's contractors, suppliers and consultants.

Section 5.7 Schedule of Values. Prior to commencement of work on any Public Infrastructure Project, the Developer shall prepare and submit to the City for the City's review and approval a detailed cost breakdown allocating values to various portions of the applicable Public Infrastructure Project by each trade and division of the work ("**Schedule of Values**"). The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the City may reasonably require. The Schedule of Values with trade payment breakdown shall provide sufficient detail to identify sections of the Public Infrastructure Project by convenient or meaningful units and shall be updated as reasonably required by the City. Any Schedule of Values or trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the work shall be rejected. The Schedule of Values for one or more Public Infrastructure Projects shall be modified from time to time as necessary to reflect any changes to the applicable Plans or any differences in estimated and actual costs. The approval of a Schedule of Values or any modification thereto shall be submitted and reviewed in accordance with the approval procedure set forth in Section 8.2.

Section 5.8 Mortgages and Other Liens to be Subject to this Agreement. In connection with the acquisition, financing of, development and construction on the Laurel Island Property (other than Public Infrastructure Projects funded under this Agreement), the Developer may from time to time grant mortgages or other liens to its lenders. Any mortgage or other liens which may encumber the Laurel Island Property shall be subject to the condition that all Public Infrastructure Projects funded under this Agreement, together with all easements necessary for the operation and maintenance thereof, shall upon acquisition by Lender or its assignee be conveyed to the City upon completion thereof and acceptance thereof by the City as provided herein and in the Applicable Requirements without further consideration from the City, free and clear of any such mortgage or other lien or encumbrance, and any such lien holder shall upon

request execute and record an acknowledgement that such Public Infrastructure Project, and all easements associated therewith, are released from such lien. In order to provide record notice of this provision, the City may require that this Agreement or a short form notice thereof be recorded in the county office of Register of Mesne Conveyance. Any existing mortgagee or other lien holder as of the date of such recording must execute a subordination of its lien to this Agreement. The City agrees that if requested by the Developer it shall issue estoppels confirming that no default exists under this Agreement or associated TIF documents. Developer and Developer Affiliate shall have the right, in connection with an existing or future financing secured by the Laurel Island Property, or any part thereof, to assign for collateral purposes its interest hereunder to its lender, and the other Parties hereby agree to execute and deliver any consent or acknowledgement to any such collateral assignment.

Section 5.9 Subordination to Lien for Assessments. As provided at Section 5-37-130 of the Municipal Improvements Act, the lien for Assessments against the Improvement District and any lots or tracts subdivided therein shall be superior to any lien other than property tax liens, and accordingly shall be superior to any mortgage, lien or other encumbrance granted by the Developer to any lender or any other party.

Section 5.10 Payment and Performance Bonds. Contractors for Public Infrastructure Projects shall be required to obtain payment and performance bonds, unless the Developer shall determine otherwise with the consent of the City Project Manager. However, the City shall not require payment and performance bonds for contracts for less than \$250,000. Such bonds are to be secured by cash, or a letter of credit or must be issued by a surety company licensed in the State of South Carolina with an “A” minimum rating of performance as stated in the most current publication of “Best Key Rating Guide, Property Liability” or other equivalent protection as approved by City Project Manager. Such bonds will name the City and the Developer as the obligees and will be on a modified AIA Bond Form A312-2010, as such document form may be amended or modified, or such other form agreed to by the City.

Section 5.11 Developer’s Agent. The Developer may from time to time appoint an agent to act on its behalf hereunder (“**Developer’s Agent**”). The initial Developer’s Agent shall be provided to the City by the Developer pursuant to the notice provisions in Section 10.3 of this Agreement. The Developer may replace the Developer’s Agent at any time and shall provide written notice of such replacement to the City.

Section 5.12 Warranty. The City and the Developer shall obtain warranties from the Contractor constructing the Public Infrastructure Project that (a) materials and equipment furnished will be of good quality and new (unused) unless otherwise permitted by this Agreement or unless the City approves of reasonable substitutes presented by the Developer (such approval not to be unreasonably withheld); and (b) that the work will be of good quality, free from faults and defects and in conformance in all material respects with this Agreement, any amendments hereto, and the Plans. Contractors constructing Public Infrastructure Projects shall agree that any defects found within the said work will be repaired at contractor’s expense for the period of at least one year (two years for road improvements) from substantial completion of the Public Infrastructure project or portion thereof as agreed to by the City Project Manager. Defects shall be defined as any work or services performed that do not comply with the Plans. With respect to roads, for purposes of commencement of such two year period applicable to road

improvements, final approval shall mean approval by the City Project Manager of all work other than the final wearing surface of the road if such surface application is postponed with the consent of the City to avoid damage from ongoing construction activities.

Section 5.13 Contractors. Contractors to perform work on a Public Infrastructure Project shall be selected by the Developer, subject to consultation with the City provided however, except as set forth herein or unless City agrees otherwise, the Developer shall obtain at least three competing bids. Notwithstanding the preceding sentence, contractors and consultants performing environmental remediation work and Design Professionals (because of their unique expertise) shall be selected by the Developer. The Parties affirm the City's Minority/Women Disadvantaged Business goals of 20% and their intention to work to achieve such goals.

Section 5.14 Indenture Provisions. Upon issuance of the TIF Bonds, certain procedures for the City's requisitioning of TIF Bond Proceeds may be set forth in an Indenture. The Developer shall provide all items and other information as may be reasonably required by the City to comply with such requisitioning procedures. Notwithstanding anything to the contrary contained herein, however, the City shall not be obligated to pay for a Public Infrastructure Project except as set forth herein. The City agrees to make available the Excess TIF Revenues and the TIF Bond Proceeds in the amounts as set forth herein. The City and the Developer make no warranty, express or implied, that the available TIF Bond Proceeds and Excess TIF Revenues will be sufficient to pay the Public Infrastructure Costs provided, however, that the Developer shall have no obligation to construct individual Public Infrastructure Projects if TIF Bond Proceeds and Excess TIF Revenues do not exist to reimburse the Developer for such individual Public Infrastructure Costs.

Section 5.15 Notice of Project Commencement. The Developer shall require its general contractors to file a Notice of Project Commencement in accordance with the provisions of South Carolina Code Section 29-5-23 prior to the commencement of any Public Infrastructure Project.

Section 5.16 Right of Way Abandonments. The Parties contemplate that parts or all of certain rights of way or portions thereof may be abandoned and/or relocated. To the extent permitted by applicable laws, the City shall abandon and/or convey to the Developer any rights of way or portions thereof that do not constitute part of the new streets or other public areas to be constructed by the Developer, and the City shall cooperate with and support the Developer in connection with the timing of any abandonments and obtaining approvals of any other governmental authorities that may be required. The City and the Developer shall work together to provide temporary access to property owners affected by Public Infrastructure Projects, including the City making available other existing public roads.

ARTICLE VI - DISBURSEMENT REQUESTS

Section 6.1 Monthly Disbursements. The Developer and Developer's contractor upon written directive by the Developer shall be entitled to receive from the City disbursements of TIF Bond Proceeds or direct disbursements of Excess TIF Revenues for reimbursement and/or direct payment of the Public Infrastructure Costs incurred by them which are eligible for reimbursement on a monthly basis provided the requirements and conditions for such

disbursements set forth herein are met. No more frequently than once per month, the Developer may request disbursement of TIF Bond Proceeds (and/or Excess TIF Revenues) only for Public Infrastructure Costs that the Developer has actually incurred (or if to be paid directly to contractor, for work already performed) and for which disbursements have not been previously made. Public Infrastructure Costs that are eligible for reimbursement hereunder shall include any such costs incurred by Developer from and after the City Council's establishment of the TIF District (October 8, 2019). Any Public Infrastructure Costs paid by the Developer prior to the availability of TIF Bond Proceeds and Excess TIF Revenues remain eligible for reimbursement hereunder as and when TIF Bond Proceeds and Excess TIF Revenues become available.

Section 6.2 Disbursement Requests. When the Developer (or as applicable, its contractors) seeks disbursements for Public Infrastructure Costs that it has incurred or that are to be paid directly, the Developer shall deliver to the City an application for payment on Standard AIA forms (i.e., G702 or G703) or such other form agreed to by the City, together with the information and documentation required pursuant to the applicable sections of ARTICLE VI hereof as applicable for such disbursement and, in all cases, the following documentation in form and content reasonably satisfactory to the City (collectively, a **"Disbursement Request"**):

6.2.1 Work Completed. Written notice from the Developer or its designee of the performance of the portions of the work that constitute Public Infrastructure Projects as set forth on the applicable Schedule of Values for which the Developer is seeking reimbursement of associated Public Infrastructure Costs;

6.2.2 Evidence of Costs Incurred. Evidence that the Developer has incurred the Public Infrastructure Costs for which reimbursement is being sought (or that the work has been performed if contractor is to be paid directly) and for which payment has not been previously made;

6.2.3 Lien Waivers. Duly executed waivers of mechanic's and materialmen's liens from the Developer's general contractor (partial or final, as applicable); and a duly executed and acknowledged affidavit of the general contractor showing all subcontractors with whom the Developer's contractor has entered into subcontracts, the amount of such subcontract, the amount requested for any subcontractor in the Disbursement Request, the amount to be paid to the contractor from such progress payment, statements that there are no claims of mechanic's or materialmen's liens submitted to the contractor at the date of such Disbursement Request and that all due and payable bills with respect to the work have been paid to date or shall be paid from the proceeds of such Disbursement Request;

6.2.4 Indenture Requisition. All other items and information required to be submitted for a requisition of funds as set forth in the Indenture (if such Indenture exists), which shall include a certification with respect to each Disbursement Request: (a) the amount to be paid; (b) the nature and purpose of the obligation for which such payment is requested; (c) the person, firm, or corporation to whom such obligation is owed or to whom a reimbursable advance has been made; (d) that such obligation has been properly incurred and is a proper payment under the Indenture and has not been the basis of any previous advance; (e) that the Developer has not received notice of any mechanic's, materialmen's or other liens or right to liens or other obligations (other than those being contested in good faith) that should be satisfied

or discharged before payment of such obligation is made; and (f) that such payment does not include any amount that is then entitled to be retained under any holdbacks or retainages provided for in any agreement; and

6.2.5 Other Information. Such other information, certificates, inspections, opinions and reports as may be reasonably requested by the City for the purposes of confirming that the TIF Bond Proceeds and/or Excess TIF Revenues are being used for the purpose intended.

At no time shall the Developer's failure to submit a Disbursement Request for any given month constitute or be construed as a waiver by the Developer of its rights hereunder to be reimbursed for such Public Infrastructure Costs.

Section 6.3 City Approval and Payment of Disbursement Request. Within ten business days following the City's receipt of a satisfactory Disbursement Request and provided that all of the applicable conditions precedent as set forth in Articles VI and VII herein (if applicable) have been met, the City shall issue its approval for such Disbursement Request and direct the disbursement of such amount set forth in the Disbursement Request within 3 business days. The City shall have no obligation to approve a Disbursement Request unless all of the applicable conditions set forth in Articles VI and VII have been satisfied; provided, however, the City may waive the Developer's satisfaction of any condition from time to time in its sole discretion. Acceptance or approval by the City or any inspector designated by the City of a Disbursement Request or payment made in response to a Disbursement Request shall not constitute final acceptance or approval by the City of defective work.

Section 6.4 Limited Liability of City. The Developer agrees that any and all obligations of the City arising out of or related to this Agreement are special obligations of the City, and the City's obligations to make any payments hereunder are restricted entirely to available TIF Bond Proceeds and Excess TIF Revenues (plus such additional TIF Revenues as provided under the Indenture) as provided pursuant to the terms of the Indenture, and from no other source. No member of the City Council, the Mayor, or any other past, present or future City employee, officer, attorney, agent or representative shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of their actions hereunder or execution hereof.

Section 6.5 Audit. The City or its designee shall have the right, during normal business hours in the Developer's offices (or such other place designated by the Parties) and upon the giving of ten days prior written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer with respect to any of the Public Infrastructure Projects and any bids taken or received for the construction thereof or materials therefor.

For purposes of Articles III, IV, V, VI, VII and VIII herein, references to the Developer shall include the Developer or Developer Affiliate.

ARTICLE VII - CONDITIONS TO DISBURSEMENTS

Section 7.1 Conditions Precedent to Certain Initial Disbursements. At least 15 business days prior to the first Disbursement Request for Public Infrastructure Costs for each Public Infrastructure Project, the Developer shall provide the City with the following with respect to each Public Infrastructure Project or portion thereof:

7.1.1 Evidence of Title. An affidavit in the form attached as **Exhibit E** by the Developer confirming that the Developer has title to or a valid easement over or other valid right to construct upon the land upon which such Public Infrastructure Project is to be constructed.

7.1.2 Release of Mortgage or Other Lien. To the extent that the property upon which the Public Infrastructure Project is constructed is to be conveyed to the City, if such property is encumbered by any mortgage or other lien, the Developer shall provide a release or written confirmation that such release will be granted or subordination provided from the holder of such mortgage or any other lien.

7.1.3 Insurance Requirements. A certificate of insurance for each Public Infrastructure Project naming the City as an additional insured and showing the following types of insurance and in the amounts set forth below, all of which must be from companies with an “A-” rating or better as rated by A.M. Best:

7.1.3.1 Workers’ Compensation Insurance. Workers Compensation Insurance, as prescribed by applicable law covering all employees of the Developer’s general contractor(s) and Employer’s Liability coverage of the Developer with limits as required by law.

7.1.3.2 Commercial General Liability Insurance (Primary and Umbrella). Commercial General Liability Insurance or equivalent with limits of not less than \$10,000,000 per occurrence for bodily injury, personal injury, and property damage liability. The City is to be named as an additional insured or loss payee as applicable with respect to such coverage.

7.1.3.3 Automobile Liability Insurance (Primary and Umbrella). When any motor vehicle (owned, non-owned and/or hired) is used in connection with work to be performed in connection with a Public Infrastructure Project, the general contractor for such Public Infrastructure Project shall provide (or cause to be provided by its subcontractors) Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage if such coverage is not maintained by the Developer. The City shall be named as an additional insured or loss payee as applicable with respect to such coverage.

7.1.3.4 Builders Risk Insurance. When the general contractor for a Public Infrastructure Project undertakes any vertical construction in connection with a Public Infrastructure Project, including improvements, and/or repairs, it shall provide, or cause to be provided All Risk Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery, and fixtures (that are or will be part of the Public Infrastructure Project. The City shall be named as an additional insured or loss payee as applicable with respect to such coverage.

7.1.3.5 Contractor's Pollution Liability. Contractor's Pollution Liability shall be provided on claims made policy with limits of not less than \$1,000,000 insuring bodily injury, property damage and environmental remediation, cleanup costs and disposal with respect to environmental conditions caused or exacerbated by Contractor or its sub-contractors. The City shall be named as an additional insured or loss payee as applicable with respect to such coverage.

7.1.4 Survey. If the Public Infrastructure Project is to be constructed upon property to be conveyed to the City, a preliminary survey meeting the reasonable requirements of the City and sufficient for preparing a legal description for recording a mortgage of the land upon which such Public Infrastructure Project is to be located and which boundary survey will be the basis of the legal description for the real property to be conveyed and/or dedicated to the City.

7.1.5 Environmental. Evidence reasonably satisfactory to the City that any environmental contamination located within the property upon which such Public Infrastructure Project is to be located either is, or will be, remediated, contained, or otherwise addressed in a manner as required under state and federal laws and regulations to permit the use of such land for its intended purpose. Such satisfactory evidence shall include but not be limited to as-built drawings of engineering controls to address environmental conditions for such land that comply with control methods that have been approved by the South Carolina Department of Health and Environmental Control ("DHEC"). The City acknowledges the existence of hazardous materials on the land and agrees to accept the Public Infrastructure Projects and applicable land provided that any environmental contamination located within the property upon which such Public Infrastructure Project is to be located either is, or will be, remediated, contained, or otherwise addressed in a manner consistent with applicable state and federal environmental laws.

7.1.6 Compliance with Requirements; Permits. A certificate of the Developer's Design Professional that the Public Infrastructure Project and the land on which it is located will comply in all material respects with all Applicable Requirements (except those which might be contractually imposed under the Development Agreement) and that all permits necessary for construction have been obtained for such portion of the Public Infrastructure Project or can be obtained in the ordinary course.

7.1.7 Construction Documents. Copies of the applicable Construction Documents, including approved Plans for the applicable Public Infrastructure Project, and a completion and draw schedule and a breakdown of direct and indirect costs of the work on which all payment requests by the Developer will be based. The Developer shall not modify or amend any of the Construction Documents in any material respect without the prior written consent of the City, which consent shall not be unreasonably withheld, provided that the Construction Documents shall be amended as reasonably required to comply with any approved changes to the Plans or otherwise as reasonably requested by the Developer with respect to change orders.

7.1.8 Collateral Assignment of Contracts. A collateral assignment to the City of the portion of Construction Documents applicable to the Public Infrastructure Project, all of which shall be reasonably acceptable to the City as to form and content, together with all necessary consents from the Design Professional and general contractor.

7.1.9 Payment and Performance Bonds. Payment and performance bonds as required under Section 5.10 hereof.

7.1.10 Notice of Project Commencement. Notice of Project Commencement with proof of filing as required under Section 5.15 hereof.

Section 7.2 Conditions Precedent to Subsequent Disbursements. All Disbursement Requests subsequent to the initial Disbursement Request for a Public Infrastructure Project shall be subject to the following conditions at the time of the Disbursement Request:

7.2.1 Prior Conditions. All other applicable conditions set forth in Section 6.2 shall have been met to the satisfaction of the City or waived in writing by the City.

7.2.2 Disbursement Request. The City and if applicable the Trustee shall have received a Disbursement Request conforming to the requirements set forth in Section 6.2 of this Agreement and the Indenture.

7.2.3 City Inspection. The City Project Manager shall have determined, in accordance with the provisions of this Agreement, that the portion of the work that is the subject of the Disbursement Request has been completed in accordance with the Plans, this Agreement and all other Applicable Requirements, such determination to be made within five business days (excepting Saturdays, Sundays, and legal federal holidays) of the date the City receives the Disbursement Request.

7.2.4 Certificate. The Developer shall furnish to the City the items required to be provided pursuant to Sections 7.1.1 and 7.1.2.

Section 7.3 Conditions for All Payments. Unless otherwise expressly agreed in writing by the City, the obligation of the City to make any payment to the Developer under this Agreement is subject to the satisfaction of the following conditions at the time of making such payment;

7.3.1 Representations True. All representations and warranties of the Developer under this Agreement and all other agreements delivered by the Developer in connection with this Agreement for the benefit of the City shall be true and correct in all material respects as of the date of the payment.

7.3.2 No Defaults. The Developer shall not have received notice that it is in default under any material terms of this Agreement or any of the Construction Documents, or any other related agreement with or for the benefit of the City not cured within the time provided herein or therein.

7.3.3 Compliance. The Developer shall have complied in all material respects with all agreements and satisfied in all material respects all conditions on its part to be performed or satisfied at or prior to the date of such payment.

7.3.4 No Damage. The work shall not have been materially injured or damaged by fire or other casualty, or if so damaged, provisions reasonably satisfactory to the City have been made to effect necessary restoration, repair or compensation to the City.

7.3.5 Certificate. If required by the City, the Developer shall furnish to the City a certificate dated as of the date of such request for payment and executed by an authorized Developer representative, confirming the satisfaction of any one or more conditions of the foregoing Sections 7.3.1 through 7.3.4.

Section 7.4 Surveys. Prior to the final disbursement on a particular Public Infrastructure Project, if land or infrastructure is to be conveyed to the City, then upon the request of the City, the Developer shall provide a current certified survey of as built conditions, showing all improvements, easements (existing and proposed, labeled accordingly), rights of way, utilities, means of ingress and egress, setback lines and encroachments, if any, that is acceptable to the City.

Section 7.5 Additional Terms or Agreements. The City and the Developer agree that they shall execute amendments to this Agreement or other documents as may be reasonably necessary to effectuate this Agreement.

ARTICLE VIII - CITY'S REVIEW AND INSPECTION RIGHTS; CONVEYANCE TO THE CITY

Section 8.1 City Project Manager. The City Project Manager shall monitor the Developer's construction of the Public Infrastructure Projects in accordance with all Applicable Requirements. The City Project Manager shall coordinate with all City departments in a timely manner in order to ensure that he or she has the necessary environmental, engineering and other resources readily available to discharge the duties of this position. The City Project Manager shall respond as promptly as reasonably possible to requests for approval and permits from the Developer. Failure of the City Project Manager to act upon or respond to a Developer request (including, but not limited to, requests for additional information) accompanied with all required documentation within 30 calendar days shall be deemed approval by the City, and the Developer shall have the rights to proceed as provided in Section 6-29-1150 of the Code of Laws of South Carolina. Costs, as provided for herein, properly allocable to the City and/or the City Project Manager, shall be payable from TIF Bond Proceeds, provided that such work and fees by or on behalf of the City or the City Project Manager shall be properly documented by the City and provided that such fees and expenses shall not exceed \$150,000 annually. The City shall notify the Developer of the name and address of the City Project Manager. All inspectors for the City shall, upon entry to the Public Infrastructure Project site, check in with the site superintendent or project manager. While on the site, all inspectors for the City shall comply at all times with all applicable safety guidelines required by applicable law and reasonable site safety rules imposed by the Developer's contractor. The City shall reasonably require such inspectors to perform their duties in a timely manner.

Section 8.2 City Review Processes. Each Public Infrastructure Project shall be subject to the Applicable Requirements for review and permitting. As part of City's regular plan review process, the Plans for each Public Infrastructure Project shall be reviewed by the City

prior to commencement of construction, with the anticipation that such Public Infrastructure Project is to be built for public dedication and acceptance. The Developer shall submit its proposed Plans for a Public Infrastructure Project to the City Project Manager for review and approval. The City Project Manager shall be responsible for coordinating and compiling comments from any relevant City departments. Within 30 calendar days of such submittal, the City Project Manager shall provide any comments on the proposed Plans and be available to meet with the Design Professionals. Within 30 calendar days of re-submittal of any revised Plans, the City Project Manager shall respond with any further comments. In the event that the City Project Manager fails to substantively respond to the Developer within 30 calendar days of such submittal, the submitted Plans shall be deemed approved. Approval of Plans shall not be unreasonably withheld so long as the Plans conform to the Applicable Requirements and the other terms of this Agreement. Any proposed modifications to approved Plans shall be submitted to the City Project Manager and shall be subject to the process set forth above. In connection with its review, the City Project Manager shall, in addition to the inspecting Design Professional, monitor the construction for compliance with all Applicable Requirements. Provided, however, such review and monitoring shall not impose any liability on the City for compliance of any Public Infrastructure Project or any part thereof with any such requirements. Except as expressly set forth herein, nothing in this Agreement shall be deemed to modify, amend, alter, or waive any of the procedures and requirements as prescribed by the City for review, approval, dedication, and acceptance of the Public Infrastructure Projects. In the event of any dispute with regard to the Plans, Project Schedules, Schedule of Values, or acceptance of completed Public Infrastructure Projects, the City Project Manager and the Developer's applicable Design Professionals shall meet and attempt to resolve such dispute. In the event that the dispute is not resolved within 30 calendar days, the City Project Manager and the Design Professionals shall select a third party qualified professional to resolve the issue. When a certain number of "business" days is specified it is understood that this does not include weekends and holidays observed by the City.

Section 8.3 Completion; Acceptance. When all or a portion of a Public Infrastructure Project is to be conveyed to the City, the Developer shall provide the City Project Manager with "as-built" drawings (as appropriate and customary for a particular project), applicable warranties, plats, deeds, bills of sale, and other documentation as may be necessary to cause such Public Infrastructure Project to be dedicated and/or conveyed to the City. After the City determines that a Public Infrastructure Project is in substantial compliance with all Applicable Requirements, the City Project Manager shall use reasonable efforts to place the item on the agenda at the earliest practical regularly scheduled meeting of City Council for action by City Council to accept conveyance and/or formal dedication of the applicable Public Infrastructure Project. Individual Public Infrastructure Projects and applicable land will be accepted by the City upon tender by the Developer provided that such Public Infrastructure Projects are completed in accordance with the terms hereof. The Developer acknowledges that it is required to complete all Public Infrastructure Projects only if required and funded under this Agreement and, with respect to any Public Infrastructure Project to be conveyed to City upon completion, to convey the same to the City or other appropriate public entities, free and clear of all liens and encumbrances subject to applicable deed restrictions in place with DHEC. In compliance with the provisions of the Indenture, it is the intent of the Parties that such conveyances shall be made in such fashion and within such time as shall be necessary in order to

maintain the exclusion from gross income for federal income tax purposes of interest on the TIF Bonds.

Section 8.4 Non-Compliance. If in the course of its review of a Public Infrastructure Project the City determines that the Developer has failed to construct a Public Infrastructure Project in accordance with all Applicable Requirements, the City shall provide specific, written notice of how the Public Infrastructure Project does not comply with the Applicable Requirements. In the event that the Developer fails to diligently pursue and complete the cure of such defects within 30 days after written notice from the City of such breach (as such date shall be extended if the Developer timely commenced such cure and is proceeding with due diligence to complete such cure), the City shall have, in addition to any other rights and remedies which may be available under this Agreement or at law or in equity, the right to draw on the TIF Bond Proceeds to cure such defects and reduce the amount of TIF Bond Proceeds to which the Developer is entitled under this Agreement by the amount necessary to cure such defects.

Section 8.5 Failure to Complete. If, after commencement of physical work on an individual Public Infrastructure Project, the Developer has been reimbursed for related Public Infrastructure Costs paid on work performed and, the Developer fails to complete such Public Infrastructure Project within the time period provided herein (excluding delays due to *force majeure*), the City may provide specific, written notice of such failure. In the event that the Developer fails to diligently pursue and complete that Public Infrastructure Project within 30 days after written notice from the City of such failure, as such date shall be extended if the Developer timely commenced such cure and is proceeding with due diligence to complete such cure, the City shall have, in addition to any other rights and remedies which may be available under this Agreement or at law or in equity, the right to draw on the TIF Bond Proceeds to complete the Public Infrastructure Project and reduce the amount of TIF Bond Proceeds to which the Developer is entitled under this Agreement by the amount necessary to complete such Public Infrastructure Project. For purposes of this Agreement, *force majeure* shall include but not be limited to delays due to strikes, lock-outs, war, pandemics, civil disturbance, natural disaster, acts of terrorism or acts of God, weather, or other similar events beyond the control of the Party which delay performance, including unexpected or unanticipated environmental subsurface, geotechnical or structural conditions (including historical artifacts) encountered during construction and/or delays due to DHEC or other governmental reviews and approvals with respect to environmental conditions within the TIF District.

ARTICLE IX - TERMINATION

Section 9.1 Events of Default. The following events shall constitute grounds for the City, at its option, to terminate this Agreement, without the consent of the Developer.

9.1.1 **Bankruptcy.** The Developer shall voluntarily file for reorganization or other relief under any federal or state bankruptcy or insolvency law, or the Developer shall have any involuntary bankruptcy or insolvency action filed against it which is not dismissed within 180 days, or shall suffer a trustee in bankruptcy or insolvency or receiver to take possession of its assets, or shall suffer an attachment or levy of execution to be made against the property it owns which is not dismissed within 180 days.

9.1.2 Stop Work. The Developer shall for reasons other than *force majeure* or other reasonable causes (reasonable causes including insufficient TIF Bond Proceeds or Excess TIF Revenues to reimburse the Developer for Public Infrastructure Costs) abandon or substantially suspend construction of a Public Infrastructure Project for which a construction contract has been issued or the Developer abandons the development of the Laurel Island Property in its entirety and such abandonment or suspension is not cured or remedied within 180 days after written demand is made by the City unless the Developer is proceeding diligently to complete such cure.

9.1.3 Covenant Default. The Developer shall breach any material covenant or default in the performance of any material obligation under this Agreement, any of the Construction Documents, or any other agreement with or for the benefit of the City unless the Developer is proceeding diligently to cure such breach or default.

9.1.4 Misrepresentation. The Developer shall have made any material misrepresentation or omission in any written materials furnished in connection with the development of the Laurel Island Property or any offering document or bond purchase agreement used in connection with the sale of the TIF Bonds, or any representation or warranty contained in this Agreement shall have been or shall be untrue or incorrect in any material respect when made or when deemed made.

9.1.5 Invalidity. The Developer shall at any time challenge the validity of the Development Agreement between the Developer and City in effect at that time, any of the TIF Bonds, this Agreement, any of the documents related thereto, or the levy of any *ad valorem* property tax or the imposition of any Assessment or other charge on the Laurel Island Property subject to the right to contest the amount of any Assessment in accordance with the terms of the MID Ordinance and the Municipal Improvement Act, or any of the foregoing shall be deemed invalid, illegal or unenforceable and the Developer refuses to enter into such modifications or new agreements as required to establish the validity, legality, or enforceability thereof.

Section 9.2 Right to Terminate. If any such event of default occurs and is not cured within the applicable cure period, as extended by the Developer's diligent efforts to cure such default the City shall give written notice of its knowledge thereof to the Developer and the Developer agrees to meet and confer with the City or appropriate City staff as to options available to assure timely completion of any Public Infrastructure Project. Such options may include, but are not limited to, the termination of this Agreement by the City. If the City elects to terminate this Agreement, the City shall first notify the Developer (and any mortgagee or trust deed beneficiary specified in writing by the Developer to the City to receive such notice) of the grounds for such termination and allow the Developer a minimum of 90 days to eliminate or mitigate to the satisfaction of the City the grounds for such termination; provided that no cure period shall apply for any voluntary bankruptcy filing listed in Section 9.1.1; and provided that in the event of a default listed in Section 9.1.2 or Section 9.1.5, no additional cure period shall be provided beyond the applicable cure period. Such period shall be extended if the Developer is proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof) the default has not been cured, the City may then terminate this Agreement. In the event of the termination of this Agreement, the Developer is entitled to reimbursement for work related to the Public Infrastructure Project undertaken prior to

the termination date of this Agreement solely from the available TIF Bond Proceeds and Excess TIF Revenues according to the terms and conditions set forth in this Agreement.

Section 9.3 Cease Payments. Notwithstanding the foregoing, so long as any event listed in any of Section 9.1.1 through 9.1.5 above has occurred, notice of which has been given by the City to the Developer, and such event has not been cured or otherwise mitigated by the Developer or the Developer has not commenced and diligently pursued such cure, the City may in its discretion cease making payments for the Public Infrastructure Costs, provided that the Developer may receive payment of the Public Infrastructure Costs that have been incurred for work completed at the time of the occurrence of an event listed in Section 9.1 upon submission of a Disbursement Request and compliance with the Applicable Requirements. In the event a cessation of payment occurs pursuant to this Section, such payment shall resume upon cure or appropriate mitigation by the Developer.

Section 9.4 Additional Remedies. In addition to the rights set forth above, the City shall have the right upon any termination of this Agreement to redeem any of the TIF Bonds in accordance with the provisions of the TIF Bond Ordinance and the Indenture and shall have the right to (but shall not be required to) execute contracts for or perform any remaining work related to the Public Infrastructure Projects not otherwise completed and use all or any portion of the TIF Bond Proceeds for such purposes, and, except as otherwise provided herein, the Developer shall have no claim or right to any further payments for the Public Infrastructure Costs hereunder. In addition to any of the foregoing rights and remedies, the City may pursue all other rights and remedies available to it under this Agreement and otherwise available to it at law or in equity including the remedy of specific performance. Without limiting the generality of the foregoing, the City shall be entitled to take title, without additional compensation other than payment of any outstanding Public Infrastructure Costs to the extent of available remaining funds available hereunder, to all Public Infrastructure Projects previously funded under this Agreement, but the City shall not be required to do so until any such Public Infrastructure Project is completed to the City's satisfaction in accordance with this Agreement.

Section 9.5 Waivers. To the extent permitted by law, the City may waive a specific breach or default by the Developer hereunder by delivering to the Developer notice of such specific waiver in writing signed by the Mayor or his assigns. Provided, however, no waiver of any default or breach by the Developer hereunder shall be implied from any delay or omission by the City to take action on account of such default, and no such express waiver shall affect any default other than the default specified in the waiver and it shall be operative only for the time and to the extent therein stated. No advance of TIF Bond Proceeds shall constitute a waiver of any of the provisions, conditions or obligations set forth herein, nor shall any advance of TIF Bond Proceeds constitute an affirmation by the City that all provisions, conditions and obligations of this Agreement have been met.

Section 9.6 Assignment of Contracts. Should the City terminate this Agreement as set forth herein, the City shall have the right, but not the obligation, to require the Developer to assign to the City each contract agreement for any of the Public Infrastructure Projects to be completed under this Agreement, provided (1) such assignment will be effective only after termination of the Agreement and only for the contract agreements which the City accepts by notifying the Developer and applicable contractor in writing; and (2) such assignment is subject

to the prior rights of a surety, if any, obligated under any surety bonds relating to this Agreement and/or any Public Infrastructure Project. The Developer shall have the right to assign this Agreement with the consent of the City, such consent not to be unreasonably withheld.

Section 9.7 The Developer’s Option to Terminate. If, through no fault of the Developer, the City wrongfully rejects or fails to approve a Disbursement Request within the timeframe set forth in Section 6.3 of this Agreement, then the Developer may, upon the expiration of 30 days written notice to the City (hereinafter the “**Cure Period**”), terminate this Agreement if the City has not (i) approved the Disbursement Request or (ii) provided valid written explanation of the City’s rejection of the Disbursement Request within the Cure Period. In addition to its rights as provided herein, the Developer shall have such other remedies as are available at law or in equity as a result of any breach by the City of its obligations hereunder.

9.7.1 **Late Payment Costs.** If the Developer incurs additional costs following expiration of the Cure Period as a direct result of late payment of any Disbursement Request caused by the City’s failure to approve or wrongful rejection of same, the Developer shall be entitled to recover such additional costs as Public Infrastructure Costs in its next Disbursement Request, provided that if adequate funds are not available within the applicable Schedule of Values, then the City shall be liable for such additional cost. Notwithstanding the foregoing, the City shall not be liable to the Developer for any lost profits or consequential damages that may arise out of the late payment of any Disbursement Request unless due to wrongful rejection.

9.7.2 **Delays to Critical Path Resulting from Late Payment.** If the critical path of a Project Schedule is delayed as direct result of late payment of any Disbursement Request caused by the City’s failure to approve or wrongful rejection of same, the Developer shall be entitled to an extension of time in such Project Schedule commensurate to the delay in the critical path.

ARTICLE X - GENERAL MATTERS

Section 10.1 Term. This Agreement shall be effective as of the Effective Date and shall terminate upon the earlier to occur of (1) termination pursuant to Article IX, or (2) acceptance by the City of the final Public Infrastructure Project to be constructed by the Developer and receipt by the Developer of TIF Bond Proceeds and Excess TIF Revenues. If the Public Infrastructure Projects have not been completed, conveyed, dedicated and accepted in full by such date, the City may declare the Developer to be in default and pursue all available legal and equitable remedies against the Developer. Nothing in this Section 10.1 shall be construed as a limitation of any other right or remedy that the City may have elsewhere under this Agreement.

Section 10.2 City Council Legislative Discretion. Except as limited by any Development Agreement executed between the City and the Developer, the use by the City of its reasonable efforts shall in no way impair or limit the authority of the City Council to exercise its discretion in taking legislative action and shall in no way require City Council to take any legislative action. In satisfying their obligations under this Agreement, the City and the Developer shall act diligently and in a timely fashion.

Section 10.3 Notices. All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth below, by any of the following means: (1) personal service; (2) electronic communications, whether by telex, facsimile, telegram or other telecopy, with proof of receipt by addressee; (3) overnight courier; or (4) registered or certified first class mail, postage prepaid, return receipt requested.

To whom notice is to be given:

If to the City; City of Charleston
116 Meeting Street
Charleston, SC 29401
ATTN: Chief Financial Officer

Department of Public Services
75 Calhoun Street
Charleston, South Carolina 29401
ATTN:

With a copy to: Office of Corporation Counsel
50 Broad Street
Charleston, SC 29401
ATTN: Corporation Counsel

If to the Developer: LRA
c/o Lubert-Adler Partners, L.P.
171 17th Street, Suite 1575
Atlanta, GA 30363
Attn: Robert Morgan

11 Cunnington Avenue
Charleston, SC 29405
Attn: Robert L. Clement III

With a copy to: Gerald L. Pouncey, Esq.
Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, NE
Atlanta, Georgia 30326

Any Party may change the address for notices to such Party by written notice to the other Parties to this Agreement. Notice given by personal service shall be effective upon the date delivered, if personally delivered, or the date of attempted delivery, if refused. Notice given by mail shall be effective on the third business day after posting. Notice by overnight courier shall be effective on the next business day following delivery of such notice to such courier. Notice

given by fax shall be effective on the date of completion of the fax transmission, so long as such notice is further sent by personal service, the U.S. Mail, or overnight courier, as aforesaid.

Section 10.4 Amendment. The City and the Developer may, by mutual consent, agree in writing to amend the terms and conditions set forth in this Agreement and/or any exhibit attached hereto; provided, however, that the Developer's successor and assigns shall have no right to amend this Agreement unless such right is expressly conveyed by the Developer to such successor or assign. No purported oral amendment to this Agreement shall be binding or enforceable.

Section 10.5 Entire Agreement. This Agreement and the related agreements executed by the Parties simultaneously herewith set forth all agreements, understandings, and covenants between the Developer and the City relative to the subject matter hereof.

Section 10.6 Waiver. Waiver by the City or the Developer with respect to any breach or default under this Agreement shall not be considered or treated as a waiver of the rights of the respective Party with respect to any other default or with respect to any particular default, except to the extent specifically waived by the City or the Developer.

Section 10.7 Remedies Cumulative. The remedies available to the Parties are cumulative and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any other remedies of such Party unless specifically so provided herein.

Section 10.8 Disclaimer. Nothing contained in this Agreement, nor any act of the City, shall be deemed or construed by any of the Parties, or by any third person, to create or imply any relationship of third-party beneficiary, principal or agent, limited or general partnership or joint venture, or to create or imply any association or relationship involving the City.

Section 10.9 Headings. The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.

Section 10.10 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

Section 10.11 Severability. If any section, subsection, paragraph, sentence, clause or phrase of this Agreement or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Agreement, or any part thereof.

Section 10.12 Governing Law. This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by and construed in accordance with the laws of the State of South Carolina, without regard to its conflicts of law principles.

Section 10.13 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns to whom the rights and obligations are specifically covered or assigned. Nothing herein shall prohibit the alienation, sale or any other transfer of all or any portion of the Laurel Island Property or any rights, interests or

obligations therein, provided that no such alienation, sale or any other transfer of all or any portion of the Laurel Island Property or the rights therein shall operate to release the Developer from its obligations or liability hereunder as to that portion of the Laurel Island Property so transferred, without the prior written consent of the City which consent may be given or withheld in the City's sole discretion in each instance, and provided such transferee agrees to comply with the terms of this Agreement.

Section 10.14 Force Majeure. Neither the City nor the Developer, nor any successor in interest to either of them shall be considered in breach of or in default of its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty or act of terrorism, strike, pandemics, widespread shortages of construction materials, governmental (including DHEC) delays, unusually adverse weather conditions such as, by way of illustration and not limitation, hurricanes, flooding, tornadoes or cyclones, unexpected environmental conditions and other material adverse events or conditions beyond the reasonable control of the Party affected which in fact delay such Party in discharging its obligations hereunder.

Section 10.15 Order of Precedence. Should there be any conflict between the provisions of this Agreement and the Indenture, the order of precedence shall be the Indenture and then this Agreement.

Section 10.16 No Third Party Beneficiary. This Agreement is for the sole and exclusive benefit of the City, the Developer and Developer Affiliates and their successors and assigns. No other person or entity is an intended third party beneficiary or shall have the right to enforce any of the provisions of this Agreement.

Section 10.17 Recovery of Attorney Fees. In the event of litigation or other legal action relating to enforcement of rights under this Agreement, the substantially prevailing Party shall be entitled to recover all litigation expenses, including attorneys' fees and court costs, from the non-prevailing Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first written above.

WITNESSES:

**CITY OF CHARLESTON, SOUTH
CAROLINA**

By: _____

John Tecklenburg, Mayor

Attested to:

Jennifer Cook, Clerk of Council

[SIGNATURE PAGE CONTINUE ON FOLLOWING PAGE]

[SIGNATURE PAGE CONTINUED FROM PREVIOUS PAGE]

WITNESSES:

DEVELOPER

By: _____
Its: _____

[SIGNATURE PAGE CONTINUE ON FOLLOWING PAGE]

EXHIBIT A

MORRISON DRIVE REDEVELOPMENT PROJECT AREA

TIF ORDINANCE

EXHIBIT B

PUBLIC INFRASTRUCTURE PROJECTS

1. Construction of bridges, boulevards, traffic circles, surrounding streets and internal streets located within and near the TIF District and engineering and design costs associated therewith.
2. Construction of parks, trails, recreational facilities and other public spaces (including pedestrian, bicycle and transit lanes and facilities) with the Improvement District and engineering and design costs associated therewith.
3. Construction and relocation of utilities, including but not limited to storm water and sewer management, including force mains and engineering and design costs associated therewith.
4. Acquisition of land for civic and public uses.
5. Demolition related to construction of bridges, roads, parks, buildings and other structures.
6. Other public improvements, including but not limited to environmental cleanup, parking decks, relocation of communication towers, community centers, etc. and engineering and design costs associated therewith.
7. Acquisition of land for and construction of Affordable Housing as defined in S. C. Code § 31-6-30(6) which may be publically or privately owned and engineering and design costs associated therewith.
8. Due to the existing geotechnical and environmental conditions of the property because of its prior use a solid waste landfill, the construction and installation of piles, piers and other foundation systems to support construction above the solid waste material and engineering and design costs associated therewith.
9. Construction management fees for major public infrastructure, including but not limited to bridges, parks and historic sites
10. Any other "redevelopment project" as defined by South Carolina's Tax Increment Financing Law, Chapter 6 of Title 31 of the Code of Laws of South Carolina.

EXHIBIT C
REDEVELOPMENT PLAN

EXHIBIT D

DESIGN PROFESSIONAL'S CERTIFICATE

Date: _____

City of Charleston ("City")

Project Name: _____

Permit # _____

Disbursement Request # _____

_____ is currently monitoring construction and has reviewed the enclosed pay request application # _____, dated _____. I, as a registered professional, state to the best of my information, knowledge and belief that the work included in the disbursement request for the above referenced project has been completed in general accordance with the approved plans and applicable requirements. This is based upon periodic observations of construction and an inspection for design compliance by me or a representative of my office who is under my supervision. We recommend a disbursement of \$_____ to _____.

We request that the City provide written approval for the above mentioned disbursement request as stated in the Public Infrastructure Improvements Agreement/Laurel Island.

Registered Professional: _____

Printed Name

Signature

S.C. Registration #: _____

Company Name: _____

Approved:

City of Charleston, South Carolina

By: _____

Title: _____

EXHIBIT E
EVIDENCE OF TITLE

FORM OF AFFIDAVIT REGARDING TITLE OR ACCESS

STATE OF SOUTH CAROLINA)	
)	DEVELOPER'S AFFIDAVIT
COUNTY OF CHARLESTON)	

Property:

THE UNDERSIGNED owner, by its authorized agent, after first being duly sworn, says under oath the following, to the best of its actual knowledge:

1. That the undersigned currently has title to or a valid easement over or other valid right to perform work on that certain real property as more particularly described in the attached Exhibit A subject to all matters of record.

OWNER:

By: _____
Name:
Title:

SWORN to and subscribed before me this ____
day of _____, 20__.

Notary Public for the State of _____
My commission expires: _____

EXHIBIT F
LAUREL ISLAND PHASING PLAN