



Richland County Council

SPECIAL CALLED MEETING

December 29, 2020

4:00 PM

Zoom Meeting

1. **CALL TO ORDER**

The Honorable Paul Livingston, Chair
Richland County Council

2. **ADOPTION OF AGENDA**

The Honorable Paul Livingston

PUBLIC HEARING

- a. Authorizing the expansion of the boundaries of the I-77 Corridor Regional Industrial Park jointly developed with Fairfield County to include certain property located in Richland County; the execution and delivery of an Infrastructure Credit Agreement to provide for Infrastructure Credits to Gable Oaks Housing Associates LP; and other related matters
- b. Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes and Incentive Agreement by and between Richland County, South Carolina and Project Cross to provide for payment of a fee-in-lieu of taxes; authorizing certain Infrastructure Credits; and other related matters

3. **THIRD READING**

- a. Authorizing the expansion of the boundaries of the I-77 Corridor Regional Industrial Park jointly developed with Fairfield County to include certain property located in Richland County; the execution and delivery of an Infrastructure Credit Agreement to provide for Infrastructure Credits to Gable Oaks Housing Associates LP; and other related matters

4. **ADJOURNMENT**

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. _____

AUTHORIZING THE EXPANSION OF THE BOUNDARIES OF THE I-77 CORRIDOR REGIONAL INDUSTRIAL PARK JOINTLY DEVELOPED WITH FAIRFIELD COUNTY TO INCLUDE CERTAIN PROPERTY LOCATED IN RICHLAND COUNTY; THE EXECUTION AND DELIVERY OF AN INFRASTRUCTURE CREDIT AGREEMENT TO PROVIDE FOR INFRASTRUCTURE CREDITS TO GABLE OAKS HOUSING ASSOCIATES LP; AND OTHER RELATED MATTERS.

WHEREAS, Richland County (“County”), acting by and through its County Council (“County Council”), is authorized pursuant to the provisions of Article VIII, Section 13(D) of the South Carolina Constitution and the provisions of Title 4, Chapter 1 of the Code of Laws of South Carolina, 1976, as amended (collectively, “Act”), to (i) develop a multicounty park with counties having contiguous borders with the County; and (ii) include property in the multicounty park which inclusion under the terms of the Act (A) makes such property exempt from *ad valorem* property taxes, and (B) changes the character of the annual receipts from such property to fees-in-lieu of *ad valorem* property taxes in an amount equal to the *ad valorem* taxes that would have been due and payable but for the location of the property in such multicounty park (“Fee Payments”);

WHEREAS, the County is further authorized by Section 4-1-175 of the Act, to grant credits against Fee Payments (“Infrastructure Credit”) to pay costs of designing, acquiring, constructing, improving or expanding (i) infrastructure serving a project or the County, and (ii) improved and unimproved real estate and personal property used in the operation of a manufacturing facility or commercial enterprise (collectively, “Infrastructure”);

WHEREAS, pursuant to the authority provided in the Act, the County has developed with Fairfield County, South Carolina, the I-77 Corridor Regional Industrial Park (“Park”) and executed the Amended and Restated Master Agreement Governing the I-77 Corridor Regional Industrial Park, dated September 1, 2018 (“Park Agreement”), which governs the operation of the Park;

WHEREAS, Gable Oaks Housing Associates LP (“Company”) desires to acquire and rehabilitate an affordable rental housing project within the County (“Project”), consisting of a total investment of greater than \$20,000,000 of which \$6,000,000 is expected to be expended to rehabilitate and improve the Project;

WHEREAS, at the Company’s request, the County desires to expand the boundaries of the Park and amend the Park Agreement to include the real and personal property relating to the Project, specifically including property located at 901 Colleton Avenue, Columbia, South Carolina (“Property”) in the Park; and

WHEREAS, the County further desires to enter into an Infrastructure Credit Agreement between the County and the Company, the substantially final form of which is attached as Exhibit A (“Agreement”), to provide Infrastructure Credits against certain of the Company’s Fee Payments with respect to the Project for the purpose of assisting in paying the costs of certain Infrastructure.

NOW THEREFORE, BE IT ORDAINED, by the County Council as follows::

Section 1. *Statutory Findings.* Based on representations made by the Company to the County, the County finds that the Project and the Infrastructure will enhance the economic development of the County.

Section 2. *Expansion of the Park Boundaries, Inclusion of Property.* The expansion of the Park boundaries and an amendment to the Park Agreement to include the Property in the Park is authorized. The Chair of County Council (“Chair”), is authorized to execute such documents and take such further actions as may be necessary to complete the expansion of the Park boundaries and the amendment to the Park Agreement. Pursuant to the terms of the Park Agreement, the expansion of the Park’s boundaries to include the Property is complete on the adoption of this Ordinance by County Council, receipt of the consent of the City of Columbia, the municipality in which the Property is located, as to the inclusion of the Property in the Park, and delivery of notice to Fairfield County of the inclusion of the Property in the Park.

Section 3. *Approval of Infrastructure Credit; Authorization to Execute and Deliver Agreement.* The Infrastructure Credits, as more particularly set forth in the Agreement, against the Company’s Fee Payments with respect to the Project are approved. The form, terms and provisions of the Agreement that is before this meeting are approved and all of the Agreement’s terms are incorporated in this Ordinance by reference as if the Agreement was set out in this Ordinance in its entirety. The Chair is authorized and directed to execute the Agreement in the name of and on behalf of the County, subject to the approval of any revisions or changes as are not materially adverse to the County by the County Administrator and counsel to the County, and the Clerk to County Council is hereby authorized and directed to attest the Agreement and to deliver the Agreement to the Company.

Section 4. *Further Assurances.* The County Council confirms the authority of the Chair, the County Administrator, the Director of Economic Development and the Clerk to County Council, and various other County officials and staff, acting at the direction of the Chair, the County Administrator, the Director of Economic Development or Clerk to County Council, as appropriate, to take whatever further action and to negotiate, execute and deliver whatever further documents as may be appropriate to effect the intent of this Ordinance and the incentives offered to the Company under this Ordinance and the Agreement.

Section 5. *Savings Clause.* The provisions of this Ordinance are separable. If any part of this Ordinance is, for any reason, unenforceable then the validity of the remainder of this Ordinance is unaffected.

Section 6. *General Repealer.* Any prior ordinance, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

Section 7. *Effectiveness.* This Ordinance is effective after its third reading and public hearing.

RICHLAND COUNTY, SOUTH CAROLINA

Chair, Richland County Council

(SEAL)
ATTEST:

Clerk of Council, Richland County Council

First Reading: November 10, 2020
Second Reading: November 17, 2020
Public Hearing: December 29, 2020
Third Reading: December 29, 2020

EXHIBIT A
FORM OF AGREEMENT

INFRASTRUCTURE CREDIT AGREEMENT

by and between

RICHLAND COUNTY, SOUTH CAROLINA

and

GABLE OAKS HOUSING ASSOCIATES LP
a South Carolina limited partnership

Effective as of: [], 2020

INFRASTRUCTURE CREDIT AGREEMENT

This INFRASTRUCTURE CREDIT AGREEMENT, effective as of [], 2020 (“Agreement”), is by and between RICHLAND COUNTY, SOUTH CAROLINA, a body politic and corporate, and a political subdivision of the State of South Carolina (“County”), and GABLE OAKS HOUSING ASSOCIATES LP, a South Carolina limited partnership (“Company” together with the County, “Parties,” each, a “Party”).

WITNESSETH:

WHEREAS, the County, acting by and through its County Council (“County Council”), is authorized and empowered under and pursuant to the provisions of Article VIII, Section 13(D) of the South Carolina Constitution and the provisions of Title 4, Chapter 1 of the Code of Laws of South Carolina, 1976, as amended (collectively, “Act”), to (i) develop multicounty parks with counties having contiguous borders with the County; and (ii) include property in the multicounty park, which inclusion under the terms of the Act (A) makes such property exempt from *ad valorem* property taxes, and (B) changes the character of the annual receipts from such property to fees-in-lieu of *ad valorem* property taxes in an amount equal to the *ad valorem* taxes that would have been due and payable but for the location of the property in such multicounty park (“Fee Payments”);

WHEREAS, the County is further authorized by Section 4-1-175 of the Act to grant credits against Fee Payments (“Infrastructure Credit”) to pay costs of designing, acquiring, constructing, improving or expanding (i) infrastructure serving a project or the County and (ii) improved and unimproved real estate and personal property used in the operation of a commercial enterprise or manufacturing facility (collectively, “Infrastructure”);

WHEREAS, pursuant to the authority provided in the Act, the County has developed with Fairfield County, South Carolina, the I-77 Corridor Regional Industrial Park (“Park”) and executed the “Amended and Restated Master Agreement Governing the I-77 Corridor Regional Industrial Park” dated September 1, 2018 (“Park Agreement”), which governs the operation of the Park;

WHEREAS, the Company has committed to acquire and substantially rehabilitate an affordable housing project in the County known as Gable Oaks Apartments a low-income rental housing project for families in the County (“Project”) on property more particularly identified by Exhibit A (“Land”), consisting of a total investment of greater than \$20,000,000, of which \$6,000,000 shall be expended to rehabilitate and improve the Project;

WHEREAS, the Project is encumbered by an Agreement as to Restrictive Covenants between the South Carolina State Housing Finance and Development Authority (“State Housing”) and the Company pursuant to which the Company will agree that least 40% of the dwelling units in the Project will be rented continuously, or exclusively available to be rented, to individuals or families whose total aggregate income at the time of initial occupancy does not exceed 60% of the area median gross income, adjusted for family size, as computed by HUD (“Bond Restrictive Covenants”); and

WHEREAS, once the rehabilitation of the Project is completed but no later than December 31, 2024, the Project will be encumbered by a superseding Agreement as to Restrictive Covenants between State Housing and the Company pursuant to which the Company, and its successors and assigns, agree that 100% of the dwelling units in the Project will be rented continuously, or exclusively available to be rented, to individuals or families whose total aggregate income at the time of initial occupancy does not exceed 60% of the area median gross income, adjusted for family size, as computed by HUD, at rents not in excess of the rents computed in compliance with the LIHTC Restrictive Covenants (“LIHTC

Restrictive Covenants") (the Bond Restrictive Covenants and LIHTC Restrictive Covenants are collectively referred to as "Low Income Rental Restrictions"); and

WHEREAS, by an ordinance enacted on [], 2020 ("Ordinance"), the County authorized the expansion of the boundaries of the Park and an amendment to the Park Agreement to include the Land and other real and personal property relating to the Project ("Property") in the Park; and

WHEREAS, pursuant to the Ordinance, the County further authorized the execution and delivery of this Agreement to provide Infrastructure Credits against the Company's Fee Payments with respect to the Project for the purpose of assisting in paying the costs of certain Infrastructure, subject to the terms and conditions below.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the County and the Company agree as follows:

ARTICLE I REPRESENTATIONS

Section 1.1. *Representations by the County.* The County represents to the Company as follows:

- (a) The County is a body politic and corporate and a political subdivision of the State of South Carolina;
- (b) The County is authorized and empowered by the provisions of the Act to enter into and carry out its obligations under this Agreement;
- (c) The County has duly authorized and approved the execution and delivery of this Agreement by adoption of the Ordinance in accordance with the procedural requirements of the Act and any other applicable state law;
- (d) The County is not in default of any of its obligations (contractual or otherwise) as a result of entering into and performing its obligations under this Agreement;
- (e) The County has approved the inclusion of the Property in the Park; and
- (f) Based on representations made by the Company to the County, the County has determined the Project and the Infrastructure will enhance the economic development of the County. Therefore, the County is entering into this Agreement for the purpose of promoting the development of decent, safe affordable housing, thereby contributing to the economic development of the County.

Section 1.2. *Representations by the Company.* The Company represents to the County as follows:

- (a) The Company is in good standing under the laws of the State of South Carolina, has power to conduct business in the State of South Carolina and enter into this Agreement, and by proper company action has authorized the officials signing this Agreement to execute and deliver it;
- (b) The Company will comply with the Low Income Rental Restrictions and will use commercially reasonable efforts to provide low-income housing at the Project for the balance of the units;
- (c) The Company will use commercially reasonable efforts to achieve the Company Commitment, as defined below; and

(c) The Company's execution and delivery of this Agreement, and its compliance with the provisions of this Agreement do not result in a default under any agreement or instrument to which the Company is now a party or by which it is bound.

ARTICLE II INFRASTRUCTURE CREDITS

Section 2.1. *Company Commitment.* The Company shall invest not less than \$20,000,000 in the Project, of which \$6,000,000 shall be expended to rehabilitate and improve the Project ("Company Commitment") by the Certification Date, as defined below. The Company shall certify to the County completion of the Project by no later than December 31, 2022 ("Certification Date"), by providing documentation to the County sufficient to reflect completion of the Project. If the Company fails to achieve and certify the Company Commitment by the Certification Date, the County may terminate this Agreement and, on termination, the Company is no longer entitled to any further benefits under this Agreement. The benefits provided under this Agreement are subject to the clawback requirements set forth in Section 2.3 below.

Section 2.2. *Infrastructure Credits.*

(a) To assist in paying for costs of Infrastructure, the County shall provide an Infrastructure Credit against certain of the Company's Fee Payments due with respect to the Project. The term, amount and calculation of the Infrastructure Credit is described in Exhibit B.

(b) For each property tax year in which the Company is entitled to an Infrastructure Credit ("Credit Term"), the County shall prepare and issue the Company's annual property tax bill with respect to the Project net of the Infrastructure Credit set forth in Section 2.2(a) ("Net Fee Payment"). Following receipt of the annual bill from the County (the "Annual Bill"), the Company shall timely remit the Net Fee Payment to the County in accordance with applicable law.

(c) THIS AGREEMENT AND THE INFRASTRUCTURE CREDITS PROVIDED BY THIS AGREEMENT ARE LIMITED OBLIGATIONS OF THE COUNTY. THE INFRASTRUCTURE CREDITS ARE DERIVED SOLELY FROM AND TO THE EXTENT OF THE FEE PAYMENTS MADE BY THE COMPANY TO THE COUNTY PURSUANT TO THE ACT AND THE PARK AGREEMENT. THE INFRASTRUCTURE CREDITS DO NOT AND SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY OR ANY MUNICIPALITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION AND DO NOT AND SHALL NOT CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR ANY MUNICIPALITY OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE COUNTY OR ANY MUNICIPALITY. THE FULL FAITH, CREDIT, AND TAXING POWER OF THE COUNTY OR ANY MUNICIPALITY ARE NOT PLEDGED FOR THE PROVISION OF THE INFRASTRUCTURE CREDITS.

Section 2.3. *Clawback.* (a) The County is offering the benefits provided under this Agreement based on the Company's commitments to (i) cause the Project to be in compliance with the Low Income Rental Restrictions and (ii) maintain the Project in a safe and secure condition for the residents during the term of this Agreement and promptly address any code violations ("Code Violations") communicated in writing to the Company by the City of Columbia, South Carolina ("City"). Failure to by the Company to meet these commitments will result in a loss of benefits and potential repayment of benefits as provided herein.

In the event of a default of the Company under the Low Income Rental Restrictions (after the expiration of any notice or remedial period contained thereunder) resulting from the Company's failure to satisfy the Low Income Rental Restrictions for any calendar year, the Company shall repay the Infrastructure Credits received for such year. The portion of the Infrastructure Credit to be repaid ("Repayment Amount") is based on the percentage of the dwelling units, measured on a month-by-month basis as of the end of each month for the tax year, in the Project which failed to satisfy the Low Income Rental Restrictions.

$$\text{Repayment Amount} = \text{Infrastructure Credits} \times \text{Clawback Rental Percentage}$$

$$\text{Clawback Rental Percentage} = \text{Unit Months Not in Compliance} \text{ divided by } \text{Annual Unit Months}$$

For purposes of the above formula, the following terms have the following meanings:

"Annual Unit Months" means, for a particular tax year, the number of dwelling units subject to the Low Income Rental Restrictions as of each month multiplied by 12.

"Unit Months Not in Compliance" means for a particular tax year, the annual cumulative total of dwelling units which failed to satisfy the Low Income Rental Restrictions as measured on a month-by-month basis as of the end of each month.

Sum of the number of dwelling units, measured on a month-by-month basis as of the end of each month (a unit-month"), which satisfy the Low Income Rental Restrictions divided by the cumulative total of dwelling units in the Project as of the end of each month for the tax year subject to the Low Income Rental Restrictions for the prior tax year.

For example, and by way of example only, if the Company had received \$100,000 in Infrastructure Credits for the calendar year, the Project contained 200 dwelling units subject to the Low Income Rental Restrictions in any year and a violation of the Low Income Rental Restrictions had occurred due to the failure of the Company to satisfy the Low Income Rental Restrictions as to 50 dwelling units for three months each in that calendar year, the Repayment Amount would be calculated as follows:

$$\text{Annual Unit Months} = 12 \times 200 \text{ units} = 2400$$

$$\text{Unit Months Not in Compliance} = 50 \text{ units} \times 3 \text{ unit-months} = 150 \text{ unit-months}$$

$$\text{Clawback Rental Percentage} = 150 \text{ unit-months} \text{ divided by } 2400 \text{ unit-months} = 6.25\%$$

$$\text{Repayment Amount} = \$100,000 \times 6.25\% = \$6,250$$

All percentages will be rounded to the nearest two decimal places.

(b) The Project shall be maintained to ensure there are no significant physical conditions of the Project that are known to threaten the safety or security of the residents. In addition, all Code

Violations identified by the City and communicated in writing to the Company must be promptly addressed. The Company's failure to meet each of these conditions and provide the annual certifications required in the Credit Certificate (as defined below) shall cause the Company to forego and have no entitlement to the annual Infrastructure Credit due in that particular tax year.

(c) The Company shall, within 60 days of its receipt of the Annual Bill, prepare and return the Credit Certificate, attached hereto as Exhibit C ("Credit Certificate") certifying that (i) the Company satisfied the Low Income Rental Restrictions or certifying that a violation occurred under the Low Income Rental Restrictions, (ii) there are no conditions known to be present at the Project that are known to threaten the safety and security of the residents that are not in the process of being addressed in a timely manner, and (iii) all Code Violations have been addressed (which shall be supported by documentation from the City) or there are no Code Violations that are not in the process of being addressed or are being contested in good faith. The Credit Certificate shall calculate and set forth the Repayment Amount for the prior calendar year, if any, and the Company shall remit the Repayment Amount along with the Credit Certificate. If not timely paid, the Repayment Amount is subject to the minimum amount of interest that South Carolina law may permit with respect to delinquent *ad valorem* tax payments. The repayment obligation arising under this Section survives termination of this Agreement.

Section 2.4. Filings. To assist the County in administering the Infrastructure Credits, the Company shall, for the Credit Term, prepare and file a separate schedule to the SCDOR PT-100, PT-300 with respect to the Property.

Section 2.5 Cumulative Infrastructure Credit. The cumulative dollar amount expended by the Company on Infrastructure shall equal or exceed the cumulative dollar amount of all the Infrastructure Credits received by the Company.

Section 2.6. Termination Upon Receipt of Statutory Exemption. If the South Carolina law provides that the Project qualifies for a full exemption under South Carolina law, the Company shall be required to diligently pursue such exemption. This Agreement shall automatically terminate if the Project is determined to be exempt from ad valorem property taxes under South Carolina law. The effective date of the termination shall be the date the Property is deemed to be exempt from ad valorem taxes and no longer faces any ad valorem tax liability under South Carolina law.

ARTICLE III DEFAULTS AND REMEDIES

Section 3.1. Events of Default. The following are "Events of Default" under this Fee Agreement:

(a) Failure by the Company to make a Net Fee Payment, which failure has not been cured within 30 days following receipt of written notice from the County specifying the delinquency in payment and requesting that it be remedied;

(b) An abandonment or closure of the Project; For purposes of this Agreement, "abandonment or closure of the Project" means that less than 50% of the Project is leased to the public for a 12 month period;

(c) A representation or warranty made by the Company which is deemed materially incorrect when deemed made;

(d) Failure by the Company to perform any of the terms, conditions, obligations, or covenants under this Agreement (other than those described in Section 2.1 under (a) above), which failure has not been cured

within 30 days after written notice from the County to the Company specifying such failure and requesting that it be remedied, unless (1) the Company has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the Company is diligently pursuing corrective action, or (2) the Company is contesting in good faith the matter specified by the County.

(e) If there shall be two successive years in which the Company fails to certify in the Credit Certificate that (i) it has fully complied with the Low Income Rental Restrictions, (ii) there are no conditions known to be present at the Project that are known to threaten the safety and security of the residents that are not in the process of being addressed and (iii) all Code Violations have been addressed (which shall be supported by documentation from the City) or there are no Code Violations that are not in the process of being addressed or are being contested in good faith.

(f) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure has not been cured within 30 days after written notice from the Company to the County specifying such failure and requesting that it be remedied, unless the County has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the County is diligently pursuing corrective action.

Section 3.2. Remedies on Default.

(a) If an Event of Default by the Company has occurred and is continuing, then the County may take any one or more of the following remedial actions:

(i) terminate the Agreement; or

(ii) take whatever action at law or in equity may appear necessary or desirable to collect amounts due or otherwise remedy the Event of Default or recover its damages.

(b) If an Event of Default by the County has occurred and is continuing, the Company may take one or more of the following actions:

(i) bring an action for specific enforcement;

(ii) terminate the Agreement; or

(iii) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 3.3. Reimbursement of Legal Fees and Other Expenses. On the occurrence of an Event of Default, if a Party is required to employ attorneys or incur other reasonable expenses for the collection of payments due under this Agreement or for the enforcement of performance or observance of any obligation or agreement, the prevailing Party is entitled to seek reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section 3.4. Remedies Not Exclusive. No remedy described in this Agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy is cumulative and in addition to every other remedy given under this Agreement or existing at law or in equity or by statute.

Section 3.5. *Nonwaiver.* A delay or omission by the Company or County to exercise any right or power accruing on an Event of Default does not waive such right or power and is not deemed to be a waiver or acquiescence of the Event of Default. Every power and remedy given to the Company or County by this Agreement may be exercised from time to time and as often as may be deemed expedient.

ARTICLE IV MISCELLANEOUS

Section 4.1. *Examination of Records; Confidentiality.*

(a) The County and its authorized agents, at any reasonable time on prior notice, may enter and examine the Project and have access to and examine the Company's books and records relating to the Project for the purposes of (i) identifying the Project; (ii) confirming achievement of the Investment Commitment; and (iii) permitting the County to carry out its duties and obligations in its sovereign capacity (such as, without limitation, for such routine health and safety purposes as would be applied to any other manufacturing or commercial facility in the County).

(b) The County acknowledges that the Company may utilize confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques ("Confidential Information") and that disclosure of the Confidential Information could result in substantial economic harm to the Company. The Company may clearly label any Confidential Information delivered to the County pursuant to this Agreement as "Confidential Information." Except as required by law, the County, or any employee, agent, or contractor of the County, shall not disclose or otherwise divulge any labeled Confidential Information to any other person, firm, governmental body or agency. The Company acknowledges that the County is subject to the South Carolina Freedom of Information Act, and, as a result, must disclose certain documents and information on request, absent an exemption. If the County is required to disclose any Confidential Information to a third party, the County will use its best efforts to provide the Company with as much advance notice as is reasonably possible of such disclosure requirement prior to making such disclosure and to cooperate reasonably with any attempts by the Company to obtain judicial or other relief from such disclosure requirement.

Section 4.2. *Assignment.* The Company may assign or otherwise transfer any of its rights and interest in this Agreement on prior written consent of the County, which may be given by resolution, and which consent will not be unreasonably withheld.

Section 4.3. *Provisions of Agreement for Sole Benefit of County and Company.* Except as otherwise specifically provided in this Agreement, nothing in this Agreement expressed or implied confers on any person or entity other than the County and the Company any right, remedy, or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the County and the Company.

Section 4.4. *Severability.* If any provision of this Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions of this Agreement are unimpaired, and the Parties shall reform such illegal, invalid, or unenforceable provision to effectuate most closely the legal, valid, and enforceable intent of this Agreement.

Section 4.5. *Limitation of Liability.*

(a) The County is not liable to the Company, any of its lenders or its investors for any costs, expenses, losses, damages, claims or actions in connection with this Agreement, except from amounts received by the County from the Company under this Agreement.

(b) All covenants, stipulations, promises, agreements and obligations of the County contained in this Agreement are binding on members of the County Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys or performance of any of the covenants and agreements under this Agreement or for any claims based on this Agreement may be had against any member of County Council or any elected official, officer, agent, servant or employee of the County except solely in their official capacity.

Section 4.6. Indemnification Covenant.

(a) Except as provided in paragraph (d) below, the Company shall indemnify and save the County, its employees, elected officials, officers and agents (each, an “Indemnified Party”) harmless against and from all liability or claims arising from the County’s execution of this Agreement, performance of the County’s obligations under this Agreement or the administration of its duties pursuant to this Agreement, or otherwise by virtue of the County having entered into this Agreement.

(b) The County is entitled to use counsel of its choice and the Company shall reimburse the County for all of its costs, including attorneys’ fees, incurred in connection with the response to or defense against such liability or claims as described in paragraph (a) above. The County shall provide a statement of the costs incurred in the response or defense, and the Company shall pay the County within 30 days of receipt of the statement. The Company may request reasonable documentation evidencing the costs shown on the statement. However, the County is not required to provide any documentation which may be privileged or confidential to evidence the costs.

(c) The County may request the Company to resist or defend against any claim on behalf of an Indemnified Party. On such request, the Company shall resist or defend against such claim on behalf of the Indemnified Party, at the Company’s expense. The Company is entitled to use counsel of its choice, manage and control the defense of or response to such claim for the Indemnified Party; provided the Company is not entitled to settle any such claim without the consent of that Indemnified Party.

(d) Notwithstanding anything herein to the contrary, the Company is not required to indemnify any Indemnified Party against or reimburse the County for costs arising from any claim or liability (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Agreement, performance of the County’s obligations under this Agreement, or the administration of its duties under this Agreement, or otherwise by virtue of the County having entered into this Agreement; or (ii) resulting from that Indemnified Party’s own negligence, bad faith, fraud, deceit, or willful misconduct.

(e) An Indemnified Party may not avail itself of the indemnification or reimbursement of costs provided in this Section unless it provides the Company with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Company notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

Section 4.7. Notices. All notices, certificates, requests, or other communications under this Agreement are sufficiently given and are deemed given, unless otherwise required by this Agreement, when (i) delivered and confirmed by United States first-class, registered mail, postage prepaid or (ii) sent by facsimile, and addressed as follows:

if to the County:

Richland County, South Carolina
Attn: Director of Economic Development

2020 Hampton Street
Columbia, South Carolina 29204
Phone: 803.576.2043
Fax: 803.576.2137

with a copy to
(does not constitute notice):

Parker Poe Adams & Bernstein LLP
Attn: Ray E. Jones and Emily S. Luther
1221 Main Street, Suite 1100 (29201)
Post Office Box 1509
Columbia, South Carolina 29202
Phone: 803.255.8000
Fax: 803.255.8017

if to the Company:

with a copy to
(does not constitute notice):

with a copy to
(does not constitute notice):

The County and the Company may, by notice given under this Section, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

Section 4.8. Administrative Fees. The Company will reimburse, or cause reimbursement to, the County for the Administration Expenses in the amount of \$7,500. The Company will reimburse the County for its Administration Expenses on receipt of a written request from the County or at the County's direction, which request shall include a statement of the amount and nature of the Administration Expense. The Company shall pay the Administration Expenses as set forth in the written request no later than 60 days following receipt of the written request from the County. For purposes of this Section, "Administration Expenses" means the reasonable expenses incurred by the County in the negotiation, approval and implementation of the terms and provisions of this Agreement, including reasonable attorneys' fees. Administration Expenses do not include any costs, expenses, including attorneys' fees, incurred by the County (i) in defending challenges to the Fee Payments or Infrastructure Credits brought by third parties or the Company or its affiliates and related entities, or (ii) in connection with matters arising at the request of the Company outside of the immediate scope of this Agreement, including amendments to the terms of this Agreement. The payment by the Company of the County's Administration Expenses shall not be construed as prohibiting the County from engaging, at its discretion, the counsel of the County's choice.

Section 4.9. Entire Agreement. This Agreement expresses the entire understanding and all agreements of the Parties with each other, and neither Party is bound by any agreement or any representation to the other Party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery of this Agreement.

Section 4.10 Agreement to Sign Other Documents. From time to time, and at the expense of the Company, to the extent any expense is incurred, the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and this Agreement to effectuate the purposes of this Agreement.

Section 4.11. *Agreement's Construction.* Each Party and its counsel have reviewed this Agreement and any rule of construction to the effect that ambiguities are to be resolved against a drafting party does not apply in the interpretation of this Agreement or any amendments or exhibits to this Agreement.

Section 4.12. *Applicable Law.* South Carolina law, exclusive of its conflicts of law provisions that would refer the governance of this Agreement to the laws of another jurisdiction, governs this Agreement and all documents executed in connection with this Agreement.

Section 4.13. *Counterparts.* This Agreement may be executed in any number of counterparts, and all of the counterparts together constitute one and the same instrument.

Section 4.14. *Amendments.* This Agreement may be amended only by written agreement of the Parties.

Section 4.15. *Waiver.* Either Party may waive compliance by the other Party with any term or condition of this Agreement but the waiver is valid only if it is in a writing signed by the waiving Party.

Section 4.16. *Termination.* Unless first terminated under any other provision of this Agreement, this Agreement terminates on the expiration of the Credit Term and payment by the Company of any outstanding Net Fee Payment due on the Project pursuant to the terms of this Agreement.

Section 4.17. *Business Day.* If any action, payment, or notice is, by the terms of this Agreement, required to be taken, made, or given on any Saturday, Sunday, or legal holiday in the jurisdiction in which the Party obligated to act is situated, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if taken, made or given as required under this Agreement, and no interest will accrue in the interim.

*[TWO SIGNATURE PAGES FOLLOW]
[REMAINDER OF PAGE INTENTIONALLY BLANK]*

IN WITNESS WHEREOF, Richland County, South Carolina, has caused this Agreement to be executed by the appropriate officials of the County and its corporate seal to be affixed and attested, effective the day and year first above written.

RICHLAND COUNTY, SOUTH CAROLINA

Chair, Richland County Council

(SEAL)
ATTEST:

Clerk to Council, Richland County Council

[SIGNATURE PAGE 1 TO INFRASTRUCTURE CREDIT AGREEMENT]

IN WITNESS WHEREOF, Company has caused this Agreement to be executed by its authorized officer(s), effective the day and year first above written.

GABLE OAKS HOUSING ASSOCIATES LP

□

By: _____

Name: □

Its: □

[SIGNATURE PAGE 2 TO INFRASTRUCTURE CREDIT AGREEMENT]

EXHIBIT A

LAND DESCRIPTION

PARCEL A

ALL THAT CERTAIN PIECE, PARCEL OR LOT LAND, WITH IMPROVEMENTS THEREON, LYING AND BEING IN RICHLAND COUNTY, STATE OF SOUTH CAROLINA, AND BEING MORE FULLY SHOWN AND DESIGNATED ON THAT CERTAIN SURVEY OF PARCEL A AND PARCEL B, PREPARED FOR SUNTRUST BANK, ATLANTA, ASHLEY II LIMITED PARTNERSHIP, AND FIRST AMERICAN TITLE INSURANCE COMPANY BY W.K. DICKSON DATED MARCH 10, 1999, AND RECORDED IN THE OFFICE OF THE REGISTER OF DEED FOR RICHLAND COUNTY, IN RECORD BOOK 287, AT PAGE 2165; DESIGNATED AS PARCEL "A" CONTAINING 232,218 SQ. FT., OR 5.33 ACRES, MORE OR LESS, SUCH PARCEL HAVING SUCH BOUNDARY AND MEASUREMENTS AS SHOWN ON THE DESCRIBED SURVEY, WHICH IS SPECIFICALLY INCORPORATED HEREIN BY REFERENCE.

BEGINNING AT A #5 REBAR IPF AT THE INTERSECTION OF SOUTHLY MARGIN OF THE RIGHT-OF-WAY OF RANDALL AVNUE AND THE WESTERLY MARGIN OF THE RIGHT-OF-WAY OF COLLETON AVENUE, SAID POINT BEING THE POINT OF BEGINNING; THENCE WITH SAID WESTERLY MARGIN SOUTH 34°57'58" EAST, A DISTANCE OF 249.70 FEET TO A #5 REBAR IPF; THENCE DEPARTING SAID WESTERLY MARGIN AND PROCEEDING WITH THE COMMON LINE WITH THE LANDS OF KATHLYN L. SCHAFFER SOUTH 54°54'39" WEST, A DISTANCE OF 139.87 FEET TO A ½" PIPE IPF; THENCE WITH SAID COMMON LINE SOUTH 32°26'31" EAST, A DISTANCE OF 49.54 FEET TO A 1" PIPE IPF AT THE INTERSECTION OF SAID COMMON LINE WITH THE COMMON LINE OF COLLEGE PLACE SUBDIVISION; THENCE WITH SAID COMMON LINE THE FOLLOWING SEVVEN COURSES AND DISTANCES:

SOUTH 65°28'02" WEST, A DISTANCE OF 17.14 FEET TO A 1" PIPE IPF;
SOUTH 65°22'40" WEST, A DISTANCE OF 300.02 FEET TO A 1" PIPE IPF;
SOUTH 65°23'21" WEST, A DISTANCE OF 244.89 FEET TO A #5 REBAR IPF;
SOUTH 65°06'13" WEST, A DISTANCE OF 104.17 FEET TO A ½" REBAR IPF;
SOUTH 65°44'50" WEST, A DISTANCE OF 49.85 FEET TO A ½" ROD IPF;
SOUTH 65°24'07" WEST, A DISTANCE OF 99.72 FEE TO A ¾" PIPE IPF;
SOUTH 64°43'34" WEST, A DISTANCE OF 120.02 FEET TO A #5 REBAR IPF AT THE INTERSECTION OF SAID COMMON LINE WITH THE EASTERLY MARGIN OF THE RIGHT-OF-WAY OF ASHLEY STREET; THENCE WITH SAID EASTERLY MARGIN NORTH 26°53'11" WEST, A DISTANCE OF 133.07 FEET TO A #5 REBAR IPF AT THE INTERSECTION OF SAID EASTERLY MARGIN WITH THE SOUTHERLY MARGIN OF THE RIGHT-OF-WAY OF RANDALL AVENUE; THENCE WITH SAID RIGHT-OF-WAY NORTH 54°58'20" EAST, A DISTANCE OF 1,044.18 FEET TO A #5 REBAR, BEING THE POINT OF BEGINNING.

PARCEL B

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, WITH IMPROVEMENTS THEREON, LYING AND BEING IN RICHLAND COUNTY, STATE OF SOUTH CAROLINA, AND BEING MORE FULLY SHOWN AND DESIGNATED ON THAT CERTAIN SURVEY OF PARCEL A AND PARCEL B, PREPARED FOR SUNTRUST BANK, ATLANTA, ASHLEY II LIMITED PARTNERSHIP, AND FIRST AMERICAN TITLE INSURANCE COMPANY BY W.K. DICKSON DATED MARCH 10, 1999 AND RECORDED IN THE OFFICE OF THE REGISTER OF DEED FOR RICHLAND COUNTY IN RECORD BOOK 287, AT PAGE 2165; DESIGNATED AS PARCEL "B" CONTAINING 260,021 SQUARE FEET OR 5.97 ACRES, MORE OR LESS, SUCH PARCEL HAVING SUCH BOUNDARY {10247-04 / 00084228 / V}

AND MEASUREMENTS AS SHOWN ON THE DESCRIBED SURVEY, WHICH IS SPECIFICALLY INCORPORATED HEREIN BY REFERENCE.

BEGINNING AT A #5 REBAR IPF AT THE INTERSECTION OF THE WESTERLY MARGIN OF THE RIGHT-OF-WAY OF COLLETON AVENUE AND THE NORTHERLY MARGIN OF THE RIGHT-OF-WAY OF RANDALL AVENUE, SAID POINT BEING THE POINT OF BEGINNING; THENCE WITH SAID NORTHERLY MARGIN SOUTH 54°58'58" WEST, A DISTANCE OF 490.05 FEET TO A #5 REBAR IPF AT THE INTERSECTION OF SAID NORTHERLY MARGIN AND THE EASTERLY MARGIN OF THE RIGHT-OF-WAY OF CARTERET STREET; THENCE WITH SAID EASTERLY MARGIN NORTH 35°01'19" WEST, A DISTANCE OF 524.95 FEET TO A 1" PINCH TOP IPF; THENCE DEPARTING SAID EASTERLY MARGIN AND PROCEEDING WITH THE COMMON LINE WITH THE LANDS OF BELMONT SUBDIVISION NORTH 54°58'41" EAST, A DISTANCE OF 499.85 FEET TO A 1-1/2" PIPE IPF AT THE INTERSECTION WITH THE WESTERLY MARGIN OF THE RIGHT-OF-WAY OF COLLETON AVENUE; THENCE WITH SAID WESTERLY MARGIN THE FOLLOWING THREE COURSES AND DISTANCES:

SOUTH 35°03'14" EAST, A DISTANCE OF 279.98 FEET TO A #5 REBAR IPF;
SOUTH 55°02'58" WEST, A DISTANCE OF 10.00 FEET TO A #5 REBAR IPF;
SOUTH 35°01'58" EAST, A DISTANCE OF 245.02 FEET TO A #5 REBAR BEING THE POINT OF BEGINNING.

Address: 901 Colleton Street, Columbia SC 29203

TMS Nos: 11706-11-03; 11705-03-01

EXHIBIT B

DESCRIPTION OF INFRASTRUCTURE CREDIT

The Company is entitled to an Infrastructure Credit equal to 90% of the annual Fee Payment due with respect to the Project for a period of 45 years commencing with the first Fee Payment due with respect to the Project.

EXHIBIT C

FORM OF CREDIT CERTIFICATE

Reference is made to that certain Infrastructure Credit Agreement effective as of _____, 2020 (“*Credit Agreement*”), by and among Richland County, South Carolina (“*County*”), and Gable Oaks Housing Associates LP (“*Company*”). Each capitalized term not defined herein has the meaning ascribed thereto in the Credit Agreement. Company shall in each respective tax year, submit this Certification to County. The Company has received from the County the Annual Bill for tax year [YEAR].

In accordance with the terms of the Credit Agreement, the undersigned authorized agent of the Company certifies as follows for the tax year [YEAR]:

1. The Project contains [] Annual Unit Months that are subject to the Low Income Rental Restrictions. The Project had [] Unit Months Not in Compliance with the Low Income Rental Restrictions.
2. There are no conditions known to be present at the Project that are known to threaten the safety and security of the residents that are not in the process of being addressed in a timely manner.
3. All Code Violations have been addressed (see attached supporting documentation from the City) except those that are in the process of being addressed or are being contested in good faith.

Note: If the Company is unable to certify as to BOTH 2 and 3, the Company shall not be entitled to any Infrastructure Credits for tax year [YEAR].

4. Because the Company fully complied with the Low Income Rental Restrictions, it is entitled to receive \$ _____ in Infrastructure Credits, which is the amount equal to 90% of the Company's fee in lieu of tax liability in tax year [YEAR] of \$ _____.

or

5. Because the Company did not comply with the Low Income Rental Restrictions, it shall pay the Repayment Amount which is calculated as follows pursuant to Section 2.3(a) of the Credit Agreement:

Clawback Rental Percentage = Unit Months Not in Compliance ÷ Annual Unit Months
Repayment Amount = Infrastructure Credits x Clawback Rental Percentage = \$ _____

6. For tax year [YEAR], the Company is remitting the Repayment Amount equal to \$ ___ along with this Credit Certificate.

Should the County have a genuine dispute as to the validity or accuracy of the Repayment Amount calculations set forth in this Credit Certificate, the Company agrees to pay County's costs and fees, including its attorneys' fees and costs, associated with the certification, calculation, or adjustment of the Instructure Credits.

Submitted this __ day of _____.

By: _____
Its: _____