

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into as of the 21st day of April, 2025, between **SWANN MEADOWS SC LLC**, a South Carolina limited liability company ("**Company**"), **FITCH IRICK SC LLC**, a South Carolina limited liability company ("**Fitch**") is collectively, the ("**Developer**").

RECITALS:

WHEREAS, the Company was formed to develop, construct, own, maintain and operate a 56 unit residential rental property to be known as Swann Meadows Apartments, and located in Greenwood, South Carolina; and intended for rental to low and moderate income tenants (the "**Project**") and to qualify for low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986, as amended (the "**Code**"), and

WHEREAS, the Company desires to appoint the Developer to provide certain services for the Company with respect to overseeing the development of the Project until all development work is completed.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. Appointment. The Company hereby appoints the Developer to render services to the Company, and confirms and ratifies the appointment of the Developer with respect to services rendered for the Company to date, in supervising and overseeing the development of the Project as herein contemplated.

2. Authority. The Developer shall have the authority and the obligation to perform the services described in Paragraphs 3, 4, 5 and 6 below. Developer's services shall be performed in the name of and on behalf of the Company.

3. Determination of Project Size, Structure and Composition. The Developer shall perform all of the following services:

- (a) Conduct a preliminary market study.
- (b) Negotiate with, select, and hire a housing marketing analyst to conduct an independent market study for the proposed development, if required by the Company.
- (c) Determine the number of units in the Project and their size.
- (d) Determine the appropriate unit mix and amenities.
- (e) Identify potential sources of construction financing.
- (f) Analyze competitiveness of Project against others in the market area.
- (g) Make preliminary estimates of Project costs and determine Project feasibility.

4. **Pre-Construction.** The Developer shall perform all of the following services:

- (a) Prepare or obtain an environmental impact assessment of the proposed development.
- (b) Choose the products and materials necessary to equip the Project in a manner consistent with its intended use.
- (c) If appropriate, prepare pre-qualification criteria for bidders interested in the Project, establish bidding schedules and conduct pre-bid conferences to familiarize bidders with the bidding documents and management techniques with any special systems, materials or methods.
- (d) Assist the Company in dealing with local organizations, adjoining landowners and other parties interested in the development of the Project.
- (e) Secure all necessary land use approvals.
- (f) Select the architect ("***Architect***") and other professional advisors.
- (g) Negotiate and cause to be executed in the name of the Company, agreements for architectural, engineering, testing or consulting services for the Project.
- (h) Negotiate and determine the terms of construction financing.
- (i) Prepare a preliminary critical path schedule.

5. **Plans and Specifications.** The Developer shall perform the following services:

- (a) Coordinate the preparation of the plans and specifications (the "***Plans and Specs***") and recommend alternative solutions whenever design details affect construction feasibility or schedules.
- (b) Ensure that the Plans and Specs are in compliance with all applicable codes, laws, ordinances, rules and regulations.
- (c) In collaboration with the Architect, establish and implement procedures for expediting the processing and approval of shop drawings and samples.

6. **Construction Services.** The Developer shall perform the following services:

- (a) Establish and implement appropriate administrative and financial controls for the construction of the Project, including, but not limited to:
 - (i) Coordination and administration of the Architect or engineer, the general contractor and other contractors, professionals and consultants employed in connection with the construction or rehabilitation of the Project;
 - (ii) Administration of any construction contracts on behalf of the Company;

(iii) Participation in conferences and the rendering of such advice and assistance as will aid in developing economical, efficient and desirable design and construction procedures;

(iv) The rendering of advice and recommendations as to the selection procedures for and selection of subcontractors and suppliers;

(v) The submission of any suggestions or requests for changes which could in any reasonable manner improve the design, efficiency or cost of the Project;

(vi) Applying for and maintaining in full force and effect any and all governmental permits and approvals required for the lawful construction of the Project;

(vii) Compliance with all terms and conditions applicable to Company or the Project contained in any governmental permit or approval required or obtained for the lawful construction of the Project, or in any insurance policy affecting or covering the Project, or in any surety bond obtained in connection with the Project;

(viii) Furnishing such consultation and advice relating to the Project as may be reasonably required;

(ix) Keeping the Company fully informed on a regular basis of the progress of the design and construction of the Project, including the preparation of such reports as are provided for herein or as may reasonably be requested; and

(x) Giving or making Company's instructions, requirements, approvals and payments provided for in the agreements with the Architect, general contractor, and other contractors, professionals and consultants retained for the Project.

(xi) Cause construction of the Project to be performed in a diligent and efficient manner including:

(xii) Obtain required building permits;

(xiii) Ensuring all construction is consistent with the Plans and Specs, including any required off-site work;

(xiv) General administration and supervision of construction of the Project, including but not limited to activities of subcontractors and their employees and agents, and others employed by the Project in a manner which complies in all respects with the Plans and Specs;

(xv) Compliance with any and all zoning regulations, county ordinances, including health, fire and safety regulations, and any other requirements of federal, state and local laws, rules, regulations and ordinances applicable to construction of the Project; and

(xvi) Insuring that the Project is constructed free and clear of all mechanics' and materialmen's liens.

(b) Receive bids, prepare bid analysis and make recommendations to the Company for award of contracts or rejection of bids.

(c) Investigate and recommend a schedule for purchase by the Company of all materials and equipment requiring long lead time procurement.

(d) Coordinate schedule with Architect and expedite and coordinate delivery of purchases.

(e) Develop and implement a procedure for the review and processing of applications by subcontractors for progress and final payments and monitor disbursement and payment of amounts owed Architects and the subcontractors.

(f) Record the progress of the Project and submitting written progress reports to the Company and Architect, including the percentage of completion and the number and amounts of change orders.

(g) Keep, or cause to be kept, accounts and cost records as to the construction of the Project; assemble and retain all contracts, agreements and other records and data as may be necessary to carry out Developer's functions hereunder.

(h) Make available to the Company, during normal business hours and upon the Company's written request, copies of all material contracts and subcontracts.

(i) Provide, and periodically update, Project construction time schedule which coordinates and integrates Architect's services with construction schedules.

(j) Coordinate the work of Architect to complete the Project in accordance with the objectives as to cost, time and quality, and provide sufficient personnel at the Project with authority to achieve such objectives.

(k) Provide a detailed schedule of realistic activity sequences and durations, allocation of labor and materials and processing of shop drawings and samples.

(l) Provide regular monitoring of the schedule as construction progresses, identify potential variances between scheduled and probable completion dates, review the schedule for work not started or incomplete, recommend to the Company adjustments in the schedule to meet the probable completion date, provide summary reports of such monitoring, and document all changes in the schedule.

(m) Recommend courses of action to the Company when requirements of subcontracts are not being fulfilled.

(n) Revise and refine the approved estimate of construction cost, incorporate changes as they occur, and develop cash flow reports and forecasts as needed.

(o) Provide regular monitoring of the approved estimate of construction costs, show actual costs for activities in process and estimates for uncompleted tasks, identify variances between actual and budgeted or estimated costs and advise the Company whenever projected costs exceed budgets or estimates.

(p) Develop and implement a system for review and processing of change orders as to construction of the Project.

(q) Deliver to the Company a dimensioned as-built survey of the real property (locating only buildings) and as-built drawings of the Project construction.

(r) Obtain an Architect's certificate that the work on the Project is substantially complete, and inspect the Architect's work.

(s) Obtain certificates of occupancy for all of the Residential Units of the Project.

(t) Take all other actions necessary to provide the Company with a facility ready for lease to tenants.

(u) Maintain, or cause to be maintained, at its expense, all office and accounting facilities and equipment necessary to adequately perform the foregoing functions.

7. **Excluded Services.** The Developer shall not be required to perform any of the following services pursuant to this Agreement and, if any such services are performed with the consent of the Company, shall be separately compensated therefore as the parties may mutually agree:

(a) Locate, evaluate the suitability of, negotiate the purchase or lease of, or arrange the financing for the land on which the Project is to be located.

(b) Arrange, or negotiate the terms and conditions of, the permanent financing.

(c) Arrange, or negotiate the terms and conditions of, the capital contributions of an investor member in the Company.

(d) Perform or assist in the marketing or leasing of units in the Project.

Notwithstanding the foregoing, the Developer shall be obligated to provide information to the Company (in the form requested by the Company) regarding budgets, cost estimates, the status of the construction and the accomplishment of its duties hereunder, and any other information to the extent necessary or helpful to assist the Company or a person retained by it in performing such excluded services.

8. **Development Fee.** For services provided and to be performed under this Agreement the Company agrees to pay the developer a fee (the "***Development Fee***") in the aggregate amount of \$ 990,000 _____, as provided in this Paragraph 8.

(a) Ten percent (10%) of the Development Fee shall be earned as the services described in Paragraph 3 are performed. In the event that at the end of any billing or fiscal period, a significant portion (but not all) of such services have been performed, a proportionate amount of such portion of the Development Fee shall be deemed earned.

(b) Ten percent (10%) of the Development Fee shall be earned as the services described in Paragraph 4 are performed. In the event that at the end of any billing or fiscal period, a significant portion (but not all) of such services have been performed, a proportionate amount of such portion of the Development Fee shall be deemed earned.

(c) Five percent (5%) of the Development Fee shall be earned as the services described in Paragraph 5 are performed. In the event that at the end of any billing or fiscal period, a significant portion (but not all) of such services have been performed, a proportionate amount of such portion of the Development Fee shall be deemed earned.

(d) Seventy-five percent (75%) of the Development Fee shall be earned as the services described in Paragraph 6 are performed. The Development Fee shall be payable at a mutually agreeable time; provided that (i) any portion of the Development Fee not treated as a Deferred Development Fee shall be payable on or before the date of the final capital contribution of the investor member in the Company; and (ii) any Deferred Development Fee shall be payable when and as funds are available to the Company to pay such fee, but in all events immediately after the close of the credit period (the "**Credit Period**" as that term is defined in Section 42(f)(1) of the Code) with respect to the Project. The Developer agrees that it shall recognize the entire fee is taxable income not later than the year following the end of the Credit Period. A Deferred Development Fee shall mean any portion of the Development Fee so treated as provided in the Operating Agreement. Any Deferred Development Fee shall be evidenced by a note in the form attached hereto as Exhibit A.

9. **Reimbursement of Company Expenses.** In addition to the Development Fee payable herein, the Developer shall receive reimbursement from the Company for any costs, fees or expenses paid to third parties and incurred in connection with the construction and development of the Project, including, without limitation of the generality of the foregoing, payments to any third party constructor for construction, engineering, appraisal market study, surveying or similar services and payments of any cash escrows or letters of credit, attorneys fees, accountants fees, or other consulting fees incurred in connection with the Project.

10. **Allocation of Fee.** At the request of the Company, the Developer will prepare a schedule allocating its Development Fee among the services performed by it (including, for example, an allocation between items that are or are not includable in eligible basis determined for purposes of Section 42 of the Code). The Developer will retain and provide to the Company books and records substantiating its allocation of the Development Fee.

11. **Fee Unconditional.** It is expressly understood and agreed by the parties hereto that the Development Fee and the reimbursement of costs incurred by the Developer in connection with the development of the Project shall be payable without regard to the income or profits of the Company.

12. **Withholding of Fee Payments.** In the event that (i) the Developer shall not have substantially complied with any material provisions under this Agreement, or (ii) any construction financing commitment, or any agreement entered into by the Company for construction financing related to the Project shall have terminated prior to its respective termination date(s), or (iii) foreclosure proceedings shall have been commenced against the Project by a construction lender, then the Developer shall be in default of this Agreement, and the Company shall withhold payment of any installment of the fee not yet earned by the Developer. All amounts so withheld by the Company shall be promptly released to the Developer only after cures of the default justifying the withholding, as demonstrated by evidence reasonably acceptable to the Company.

13. **Right of Offset.** The Company shall have the right to offset amounts owed hereunder to the Developer against any obligation of the Developer to the Company or its members, whether such obligation is incurred in its capacity as Developer, member manager, guarantor or otherwise.

14. **Assignment of Fees.** Without the consent of the Company, the Developer shall not assign, pledge or otherwise encumber, for security or otherwise, the Development Fee, or any portion(s) thereof or any right(s) of the Developer thereto. Any such assignment, pledge or encumbrance shall be null and void.

15. **Successors and Assigns, Termination.** This Agreement shall be binding on the parties hereto and their heirs, successors, and assigns. However, this Agreement may not be assigned by any party hereto without the consent of all of the members of the Company, nor may it be terminated without the consent of all of the members of the Company (except in the case of a material breach hereunder by the Developer); such consent shall not be unreasonably withheld.

16. **Defined Terms.** Capitalized terms used in this Agreement and not specifically defined herein shall have the same meanings assigned to them in the operating agreement of the Company, as such agreement may be amended from time to time.

17. **Severability.** If any one or more of the provisions of this Agreement shall for any reason be held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain unimpaired and shall continue in full force and effect.

18. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

19. **No Continuing Waiver.** The waiver by any party or any breach of this Agreement shall not operate or be construed to be a waiver at any subsequent breach.

20. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter as of the date hereof and supersedes all prior understandings, representations, proposals, discussions and negotiations whatsoever, whether oral or written, between the parties hereto.

21. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina.

[signature page follows]

IN WITNESS WHEREOF, the parties have caused this Development Agreement to be duly executed as of the date first written above.

DEVELOPER:

Fitch Irick SC LLC,
a South Carolina limited liability company

By: 
James M. Bernstein, Managing Member

COMPANY:

Swann Meadows SC LLC,
a South Carolina limited liability company

By: Swann Meadows GP LLC,
a South Carolina limited liability company
Its: Managing Member

By: Fitch Irick SC LLC,
a South Carolina limited liability company,
Its: Managing Member

By: 
James M. Bernstein, Managing Member