

# TOWN COUNCIL



**STAFF REPORT**  
**Department of Administration**

<b>MEETING DATE:</b>	January 13, 2016
<b>PROJECT:</b>	<ol style="list-style-type: none"> <li>1. An Ordinance Authorizing the Sale of Certain Real Property Owned by the Town of Bluffton to eviCore healthcare Consisting of an Approximately 3.13 Acre Portion of Parcels R610 022 000 1099 0000, R610 030 000 1848 0000 and R620 030 000 1772 0000, the Transfer of General Commercial Development Rights, and the Establishment of a CareCore Drive Temporary Access Easement – Final Reading; and</li> <li>2. An Ordinance Authorizing a Shared Parking Easement for Certain Real Property Owned by the Town of Bluffton consisting of Parcels R610 022 000 1099 0000, R610 030 000 1848 0000 and R610 030 000 1649 0000 in Favor of eviCore healthcare – Final Reading.</li> </ol>
<b>PROJECT MANAGER:</b>	Shawn Leininger, Assistant Town Manager & Executive Director of the Bluffton Public Development Corporation

**REQUEST:** Town Council approve Final Reading to adopt two Ordinances related to the sale of Town owned property within Buckwalter Place to eviCore healthcare:

1. An Ordinance Authorizing the Sale of Certain Real Property Owned by the Town of Bluffton to eviCore healthcare Consisting of an Approximately 3.13 Acre Portion of Parcels R610 022 000 1099 0000, R610 030 000 1848 0000 and R620 030 000 1772 0000, the Transfer of General Commercial Development Rights, and the Establishment of a CareCore Drive Temporary Access Easement; and
2. An Ordinance Authorizing a Shared Parking Easement for Certain Real Property Owned by the Town of Bluffton consisting of Parcels R610 022 000 1099 0000, R610 030 000 1848 0000 and R610 030 000 1649 0000 in Favor of eviCore healthcare.

**BACKGROUND:** The Town currently owns a total of eighteen point seven four (18.74) upland acres within Buckwalter Place. Currently, four point seven four (4.74) acres have been built upon leaving fourteen (14) acres undeveloped. Acquisition of this property occurred over several transactions as described below.

The Town acquired six point six two (6.62) upland acres of the Town owned property through a Real Estate Exchange Agreement on August 11, 2005. Portions of the property are built upon and include the Town of Bluffton Law Enforcement Center, Progressive Drive, and CareCore Drive.

The Town also acquired seven point one two (7.12) upland acres of the Town owned property, as well as 10 acres of General Commercial development rights, on March 25, 2013 from Parcel 6, LLC for \$735,000. This equates to \$103,230 per acre. Funding for the purchase was provided through Utility Tax Credit contributions from Hargray Communications, Inc. and Palmetto Electric Cooperative, Inc. The property is currently undeveloped. eviCore's purchase proposal includes acquisition of two point three five (2.35) acres of this undeveloped property.

The Town then acquired five (5) upland acres of the Town owned property on October 22, 2013 from Beaufort County for \$450,000. This equates to \$90,000 per acre. Funding for this purchase was provided through Multi-County Industrial/Business Park revenue and a Utility Tax Credit contribution from Palmetto Electric Cooperative, Inc. The property is currently undeveloped.

In accordance with Sections 5-7-40 and 5-7-260 of the South Carolina Code of Laws and Sections 2-13(a)(8) and 2-13(a)(4) of the Code of Ordinances for the Town of Bluffton requires that Town Council act by Ordinance to convey, lease, or authorize the conveyance or lease of any Town owned lands as well as easements and public rights-of-way.

Further, per the guidance provided in the SC Attorney General Opinion dated July, 8, 2013 there are no statutes in state law requiring an appraisal or public bidding for the sale of municipal property. However, it does caution that the Town should receive some consideration of reasonable equivalent value.

**INTRODUCTION:** eviCore Healthcare (eviCore) submitted a Letter of Intent to the Town outlining their proposed purchase of an estimated three point one three (3.13) upland acres of Town owned property within Buckwalter Place for \$275,000. The acreage consists of two point three five (2.35) acres of undeveloped property as well as point seven eight (0.78) acres of adjacent right-of-way (CareCore Drive) constructed by the Town at an estimated cost of \$181,400.

eviCore desires to create a corporate campus for the benefit of their employees. Currently, employees only have a small patio in the rear of Building 1 to utilize for meals, breaks, and company functions. Upon purchase of the property, eviCore intends to create a park area on the undeveloped property for corporate functions and recreational activities. The right-of-way (once Progressive Street and Innovation Drive are extended to provide alternate access to the Law Enforcement Center) will provide a pedestrian thoroughfare between buildings and the above referenced land. eviCore indicates future use of the undeveloped property may include office buildings.

Town Council approved the "Motion to authorize the Town Manager to enter into negotiations for the sale of Town owned property within Buckwalter Place." by majority vote on October 13, 2015. The Town Manager then executed the Letter of Intent on October 14, 2015, which includes a rendering of the property acquisition area, which is provided as Attachment 1.

On December 8, 2015, the Town of Bluffton Town Council approved First Reading of the two Ordinances related to the sale of Town owned property within Buckwalter

Place to eviCore healthcare. Since the First Reading of the Ordinances, eviCore and the Town have finalized Agreement for Purchase and Sale, which was executed on December 16, 2015, outlining specific details of the property transfer such as the purchase price, property description, due diligence period, and closing. Further, the Agreement, provided as Attachment 2, also includes several Exhibits for specific provisions of the sale including:

1. **Partial Assignment and Assumption of Rights and Obligations Under Development Agreement.** This document transfers a total eight point seven nine (8.79) acres of General Commercial development rights to eviCore for the two point three five (2.35) acre undeveloped portion of the property purchase as well as for eviCore's existing Building 1 and 2 sites which did not receive an assignment of development rights as part of previous transactions with the Town. The distribution of these development rights are as follows:
  - a. *eviCore Purchase Undeveloped Property.* Two point three five (2.35) acres of General Commercial development rights.
  - b. *eviCore Building 1 located on Parcel 2.* Four point seven eight (4.78) acres of General Commercial development rights. Development of this parcel has already taken place utilizing the Four point seven eight (4.78) acres of General Commercial development rights transferred through this Partial Assignment. Therefore, these development rights are not assignable to a third party.
  - c. *eviCore Building 2 located on Parcel 1B-1.* One point six six (1.66) acres of General Commercial development rights. Development of this parcel has already taken place utilizing the One point six six (1.66) acres of General Commercial development rights transferred through this Partial Assignment. Therefore, these development rights are not assignable to a third party.
2. **Right of First Refusal Agreement.** This document provides that the Town has a first right of refusal should eviCore decide to sell the purchased property within a 10 year time-frame to another individual/company who intends to use the property for purposes other than office space or similar commerce tech park type uses as determined by eviCore. If the Town acts upon the Purchase Option, the Town's purchase cost shall be equal to the sales price of Two Hundred Seventy-Five Thousand and No/100 (\$275,000.00) Dollars plus the market value of any improvements made by eviCore to the property.
3. **Permanent Cross Access, Utilities & Drainage Easements Agreement and Confirmation of Perpetual Access Easement Agreement for CareCore Drive Right-of-Way.** This document provides the Town with an access easement for the continued use of CareCore Drive until Progressive Street and Innovation Drive are complete. Further, the agreement provides that once Progressive Street and Innovation Drive are open, the Town will consent to the termination and/or abandonment of the CareCore Drive right-of-way.

4. **Easement Agreement (Shared Parking).** This document provides for a shared parking easement over Town owned property in the event eviCore constructs new office building(s) on the purchased property. Specifically, the Town grants eviCore the use of the parking areas adjacent to the Law Enforcement Center with the exception of parking spaces/areas reserved by the Town.

**NEXT STEPS:** Upon Final Reading adopting both Ordinances by Town Council, the following next steps will be implemented:

1. eviCore to complete due diligence activities.
2. Recording of Subdivision Plat as approved by the Town of Bluffton.
3. Preparation of Deed incorporating any terms and/or restrictions from the adopted Town Council Ordinance as necessary.
4. Closing.

**ATTACHMENTS:**

1. eviCore healthcare Letter of Intent dated September 30, 2015.
2. Executed Agreement for Purchase and Sale between the Town of Bluffton and eviCore healthcare.
3. An Ordinance Authorizing the Sale of Certain Real Property Owned by the Town of Bluffton to eviCore healthcare Consisting of an Approximately 3.13 Acre Portion of Parcels R610 022 000 1099 0000, R610 030 000 1848 0000 and R620 030 000 1772 0000, the Transfer of General Commercial Development Rights, and the Establishment of a CareCore Drive Temporary Access Easement.
  - a. Exhibit A – Property Description.
  - b. Exhibit B – Partial Assignment and Assumption of Rights and Obligations Under Development Agreement.
  - c. Exhibit C – Permanent Cross Access, Utilities & Drainage Easements Agreement and Confirmation of Perpetual Access Easement Agreement for CareCore Drive Right-of-Way.
4. An Ordinance Authorizing a Shared Parking Easement for Certain Real Property Owned by the Town of Bluffton consisting of Parcels R610 022 000 1099 0000, R610 030 000 1848 0000 and R610 030 000 1649 0000 in Favor of eviCore healthcare.
  - a. Exhibit A – Buckwalter Place Master Plan.
  - b. Exhibit B – Easement Agreement (Shared Parking).



September 30, 2015

Marc Orlando, Town Manager  
 Town of Bluffton  
 200 Bridge Street  
 Bluffton, SC 29910

RE: Letter of Intent

Dear Mr. Orlando:

CareCore National, LLC d/b/a eviCore healthcare (“eviCore”) has an interest in purchasing certain real property (as more fully described in Section 1 herein, the “Property”) owned by the Town of Bluffton (“Bluffton”). With Bluffton’s consent, eviCore shall perform due diligence with respect to the Property and the parties shall engage in good faith negotiations concerning a definitive agreement for its purchase (the “Purchase Agreement”). This non-binding Letter of Intent (“LOI”) sets forth the proposed terms of such purchase, in addition to general aspects of the due diligence and negotiation process.

1. Property Description. The Property subject to this LOI consists of all of Bluffton’s right, title, and interest in and to a portion of an unimproved parcel and road adjacent to eviCore’s current facilities (respectively, the “Land” and “Road”). The Land and Road, as more fully described in Sections 1(a) and (b) below, comprise the “Property.”

a. The Land includes a *portion* of that parcel located within the Town of Bluffton, Beaufort County, South Carolina conveyed to Bluffton by deed from Parcel 6, LLC dated March 19, 2013 and recorded in Book 3225 at Page 1673, Beaufort County Records. The Land consists of approximately 2.4 acres that are generally identified on the plat attached hereto as Exhibit A.

b. The Road is identified as “CareCore Drive” located in the Town of Bluffton, Beaufort County, South Carolina, which runs north from Buckwalter Place Boulevard and terminates at Progressive Street. For illustration purposes, the Road is identified on the plat attached hereto as Exhibit A. eviCore would grant an easement to Bluffton allowing Bluffton and its public service agencies use of the Road in order to access Progressive Street; provided, however, that such easement would terminate upon completion of an additional road allowing alternate access to Progressive Street.

2. Bluffton Parking Facilities. In the event eviCore elects (at its sole option) to construct office space or other buildings on the Land, Bluffton agrees that eviCore shall have the right to use parking spaces located on Bluffton’s property north of (and adjacent to) the Bluffton Police Department facilities.

3. Purchase Price. In consideration for the Property, eviCore shall pay to Bluffton Two Hundred Seventy-Five Thousand Dollars (\$275,000.00) (the “Purchase Price”) in addition to granting the easement set forth in Section 1(b).

4. Due Diligence. For a period of ninety (90) days from Bluffton’s acceptance of this LOI, eviCore shall have the right to study the feasibility of eviCore’s acquisition of the Property (the “Due Diligence Period”). During the Due Diligence Period, eviCore may elect to perform or may have performed, at



eviCore’s sole cost and expense, all studies, investigations, or surveys of the Property as eviCore deems desirable, including, but not limited to, zoning, title examinations of the Property, surveys and soil tests of the Property, and investigations of the engineering, topographic, and structural aspects of the Property.

5. Purchase Agreement. Upon acceptance of this LOI by Bluffton, the parties shall engage in good faith negotiations to execute and deliver a Purchase Agreement satisfactory to both parties. The Purchase Agreement will contain all such terms, conditions, representations, and warranties customary in transactions of this nature, including, without limitation, representations related to marketable title, easements, and environmental matters.

- a. Without limiting the generality of the foregoing, the Purchase Agreement shall grant Bluffton a limited right of first refusal and first option to purchase the Property from eviCore (as set forth below, the “Purchase Option”). The Purchase Option shall be effective in the event of a proposed sale of the Property by eviCore to third party only under the following conditions:
  - i. eviCore has not constructed any office buildings on the Property; and
  - ii. the prospective third party purchaser has indicated its intent to use the Property for uses *other than* office space or similar commerce tech park type uses (as such intent may be determined in eviCore’s reasonable discretion).
- b. The Purchase Option must be exercised by Bluffton with thirty (30) days after notification by eviCore of a proposed sale to a third party meeting the criteria in Section 5(a). In the event Bluffton elects to exercise the Purchase Option, Bluffton shall pay to eviCore an amount equal to the Purchase Price plus the market value of any improvements (e.g., infrastructure) made by eviCore to the Property. For clarity, eviCore shall have no obligation to provide notice to Bluffton of any actual or contemplated sale of the Property that does not meet the criteria in Section 5(a).
- c. The Purchase Option shall expire ten (10) years after the effective date of the Purchase Agreement.

6. Exclusive Period. Bluffton agrees that for a period of ninety (90) days from its acceptance of this LOI (the “Negotiating Period”), eviCore shall have the exclusive right to purchase the Property. Bluffton shall not sell, offer to sell, or negotiate to sell the Property to any party other than eviCore during the Negotiation Period.

7. Confidentiality. To the fullest extent permitted by law, each of eviCore and Bluffton agree that the existence and terms of this LOI shall be kept strictly confidential and shall only be disclosed to the parties’ employees, agents, directors, council members, and legal or financial advisors who have a “need-to-know” in order to facilitate the transaction contemplated herein. It is agreed that, in the event of an actual or threatened breach of this Section 7, the non-breaching party shall be entitled to seek injunctive relief to enforce the provisions hereof, in addition to any other legal remedies that may be available to such party.

8. Non-Binding Effect. This LOI is non-binding and neither eviCore nor Bluffton shall have any obligations with respect to the matters contained herein unless and until the parties execute a Purchase Agreement. Notwithstanding the foregoing, the provisions of Sections 6 and 7 shall be binding until



expiration of the Negotiating Period. The terms of this LOI shall be superseded by the terms of any executed Purchase Agreement between the parties.

Thank you for your consideration of the matters contained in this LOI. eviCore truly appreciates our partnership with the Town of Bluffton and looks forward to this opportunity. Please indicate Bluffton's consent to and acceptance of this LOI by signing it below and returning one (1) copy to eviCore.

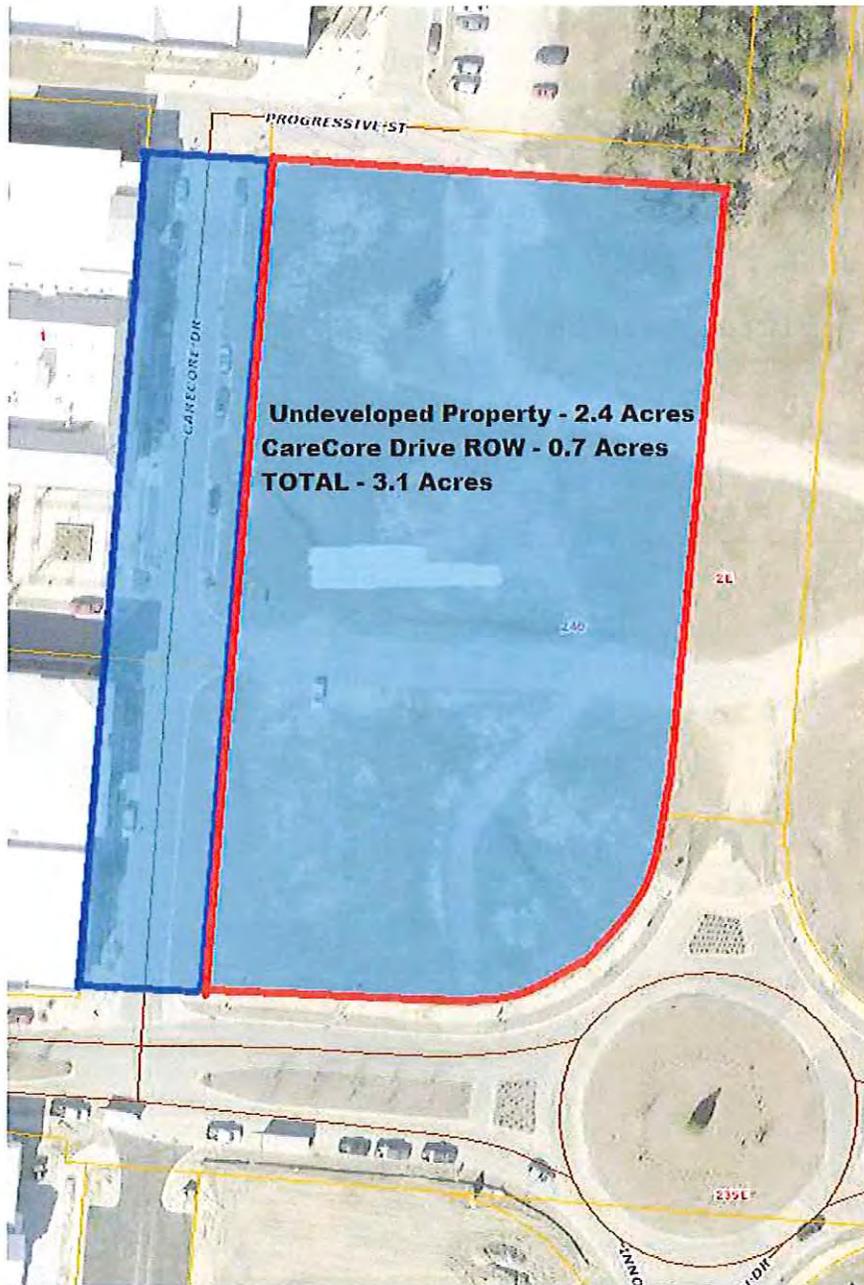
Sincerely,  


Elias Wahesh  
EVP, Corporate Operations  
eviCore healthcare

Agreed to and accepted for the Town of Bluffton:

By:   
Name: Marc Orlando  
Title: Town Manager  
Date: 10.14.15

Exhibit "A"



## AGREEMENT FOR PURCHASE AND SALE

THIS AGREEMENT FOR PURCHASE AND SALE (herein, the “*Agreement*”) is entered into this 16<sup>th</sup> day of December, 2015, by and between **CareCore National, LLC d/b/a eviCore healthcare**, a New York limited liability company, whose address is 400 Buckwalter Place Boulevard, Bluffton, South Carolina 29910 (herein, the “*Purchaser*” or “*eviCore*”) and the **Town of Bluffton**, a South Carolina municipal corporation, whose address is 20 Bridge Street, Bluffton, South Carolina 29910 (herein, the “*Seller*” or “*Town*”). Seller and Purchaser are sometimes severally referred to in this Agreement as a “party”, or jointly referred to as the “parties.”

IN CONSIDERATION OF the mutual benefits to the parties, the premises herein contained and other valuable consideration, the receipt and adequacy of such consideration being acknowledged by the undersigned, the parties agree as follows:

### 1. CONVEYANCE

The Seller agrees to sell and the Purchaser agrees to purchase AS IS, WHERE IS that certain property comprising approximately three and one tenth (3.1) acres located in Buckwalter Place in the Buckwalter PUD, Town of Bluffton, such property being more particularly described on Exhibit “**A**” attached hereto and incorporated herein (the “*Property*”). A draft of the plat of the Property is attached for preliminary description purposes.

Purchaser acknowledges that the Seller has not yet created the parcel through the subdivision and that the appropriate governing bod(ies) have not approved a plat for recording. The Property will be conveyed pursuant to a boundary survey of the Property in recordable form as approved by the Town of Bluffton, and prepared by a licensed South Carolina surveyor with Purchaser being responsible for the cost of such survey. Purchaser shall cause to be finalized a Boundary Plat of the Property (the “*Plat*”) and shall be responsible for obtaining the Town approval of the Plat. A copy of the Plat will be delivered by Purchaser to Seller within sixty (60) days of signing of contract. Seller is responsible for recording the Plat.

THIS SALE AND CONVEYANCE OF THE PROPERTY SHALL BE SUBJECT TO ALL PERMITTED EXCEPTIONS (AS DEFINED BELOW).

### 2. PURCHASE PRICE AND PAYMENT

(a) Purchase Price for Property. The purchase price of the Property (“*Purchase Price*”) is **Two Hundred Seventy-Five Thousand and No/100 (\$275,000.00) Dollars.**

(b) Payment of Purchase Price. Purchaser shall pay the Purchase Price at Closing (as hereinafter defined), subject to such other credits, pro-rations and adjustments as are set forth hereinafter, by bank wire transfer of immediately available federal funds to such account as shall be designated by Seller. No Earnest Money is required.

### 3. INSPECTION OF PROPERTY

(a) Inspection Period. Purchaser shall have until the date which is 60 days from the date of this Agreement to examine title to the Property, inspect the Property, and to do all such

investigation as deemed necessary or advisable by Purchaser, including to analyze financial or market feasibility of its intended project (such period being herein referred to as the “*Inspection Period*”). Seller shall reasonably cooperate with Purchaser to facilitate the inspections.

(b) Inspection and Indemnification. From and after the Effective Date (as hereinafter defined) until the final Closing or the earlier termination of this Agreement, Purchaser, its agents and representatives, shall have the right to enter upon the Property at any time. Purchaser hereby indemnifies and holds Seller harmless from and against any damages to property or injury to persons, or any other liability, cost or expense, including attorneys' fees, incurred by Seller as a result of Purchaser's activities and/or the activities of its agents on the Property. This indemnity shall survive the Closing hereunder and the termination of this Agreement. The results of all inspections, surveys, tests and studies shall be treated by Purchaser as confidential, and shall not be disclosed to any third party or other governmental entity unless expressly approved by Seller or required or authorized by law; provided, however, that such results may be disclosed to Purchaser's consultants, investors, attorneys and lenders, provided such parties agree to similarly treat such results as strictly confidential. At Seller's request, Purchaser shall disclose to Seller the results of all inspections, surveys, tests and studies, and shall deliver a copy of all reports and test results to Seller for information purposes only and without any representation or warranty of any kind.

(c) Purchaser's Right to Terminate. During the Inspection Period, if Purchaser is not satisfied with Purchaser's examination of the Property for any reason in Purchaser's sole and absolute discretion, the Purchaser may terminate this Agreement by delivering written notice to Seller prior to 5:00 p.m. Eastern Standard Time on the date of the expiration of the Inspection Period. Upon such termination, Purchaser agrees to convey to Seller for One Dollar (\$1.00) all of Purchaser's right, title and interest in and to any survey of the Property and any environmental tests and/or soil tests relating to the Property on a quitclaim basis without representation or warranty. If Purchaser does not terminate this Agreement in a timely manner, Closing shall occur in accordance with this Agreement.

(d) Seller Deliverables. Seller shall deliver to Purchaser, within five (5) days after the date of this Agreement, the following items to the extent in Seller's possession or control or otherwise known to Seller:

- (i) All environmental, soils or other studies or reports with respect to the environmental condition of the Property;
- (ii) A schedule of improvements made to the Property in the past three (3) years, if any;
- (iii) A list of insurance claims and losses with respect to the Property for the past three (3) years, if any;
- (iv) Copies of any contracts affecting the Property;
- (v) Existing ALTA/ACSM land title survey and existing title insurance policy, if any;

- (vi) A zoning certification and compliance letter; and
- (vii) Copies of all tax bills for the Property for the past three (3) years.

#### 4. CLOSING

(a) Closing Date. The Closing (“**Closing**”) of the Purchase and Sale of the Property shall be held on or before ninety (90) days after the completion of the Inspection Period during normal business hours on the date designated in writing by Purchaser at the offices of Purchaser’s attorney.

(b) At Closing.

(i) Purchaser shall pay to Seller, subject to the adjustments and prorations hereinafter provided for, the balance of the Purchase Price in good U.S. funds.

(ii) Seller shall execute and deliver to Purchaser a limited warranty deed conveying in accordance with all applicable laws and ordinances, fee simple and marketable title to the Property using a legal description derived from the Plat, free and clear of all liens, special assessments, easements, reservations, restrictions, encumbrances whatsoever except for the Permitted Exceptions (as defined herein) and those agreed to by Purchaser in writing during the inspection period. Seller shall also deliver (i) a non-foreign person certification and affidavit of Seller’s residency; (ii) a South Carolina residency certification; (iii) an owner’s affidavit, in the form reasonably acceptable to the title company; (iv) a completed 1099-S request for taxpayer identification number and certification; and (v) a transferor affidavit pursuant to SC Code Section 12-54-124. Further Seller shall deliver the *Partial Assignment and Assumption of Rights and Obligations and Development Agreement* to be executed by Seller, Purchaser and the Town of Bluffton in substantially the form attached hereto as Exhibit “**B**” pursuant to which Purchaser shall be assigned Eight and Eighty-Four Hundredths (8.84) Acres of General Commercial density to be allocated to the Property and adjoining property to which the General Commercial density has not been previously assigned to the Purchaser.

(iii) Real property ad valorem taxes applicable to the property for the calendar year in which the Closing occurs shall be prorated as of the date of the Closing between the Seller and the Purchaser and said proration shall be based upon the most recently available tax information and evaluation with respect to the Property or upon the actual tax bill if they have been prepared and issued, as further described in Article VI. Purchaser and Seller shall make adjustments between themselves post Closing if necessary based on the actual tax bill for the Property to correct the proration of taxes at Closing.

(iv) Seller shall pay the State of South Carolina the statutory recording fee (formerly documentary stamps) due and required to be paid in connection with the recording of the limited warranty deed from Seller to Purchaser and Purchaser shall pay the cost of the recording fees incurred in connection with recording the deed from Seller. Each party shall bear its own attorney’s fees and expenses of Closing.

## 5. TITLE

At Closing, Seller shall convey to Purchaser good, marketable and insurable title to the Property by a limited warranty deed which shall expressly be made subject only to: (a) matters as shown on the Plat; (b) matters approved or waived by Purchaser as provided below and matters otherwise specifically authorized by this Agreement; (c) ad valorem property taxes not due prior to Closing; (d) general utility and right-of-way easements affecting the Property; (e) notice of agreement with Palmetto Electric Cooperative recorded in the Office of the Register of Deeds for Beaufort County, SC in Book 1699 at page 797; and (f) the terms and conditions of the Initial Master Plan for Buckwalter Place as approved by the Town of Bluffton (collectively, the “*Permitted Exceptions*”).

Within 10 days prior to the date of Closing, Purchaser, at Purchaser’s expense, may obtain either a title opinion or a title insurance commitment for an ALTA owner’s title insurance policy. If Purchaser objects to title exceptions or defects (other than those permitted above) or matters as shown on the Plat, such objection shall be specified in writing and shall be delivered to Seller prior to the expiration of the Inspection Period. If Purchaser fails to so notify Seller, Purchaser shall be deemed to have waived its right to object to any title exceptions or defects reflected on such title opinion or commitment, as applicable, and/or the Plat and all such exceptions reflected thereon shall be Permitted Exceptions. Upon timely receipt of written notice from Purchaser objecting to matters shown on the title opinion or commitment, as applicable, or the Plat, Seller may elect to cure such defects or Seller may elect to not cure such defects. If Seller elects to cure such defects, Seller shall have a period not to exceed fourteen (14) days following the receipt of such notice from Purchaser to cure any such defects and the Inspection Period will be extended for such period of time; provided, however, under no circumstance shall Seller be obligated to cure any such defects except for an encumbrance in the nature of a monetary lien. If Seller is unable or is unwilling to cure any such defects within the 14-day period, Purchaser may either terminate this Agreement or Purchaser may elect to take title to the Property at the applicable Closing, subject to such defects not cured by Seller, without any deduction or adjustment in the Purchase Price. Notwithstanding the foregoing, the Seller must pay on or before the Closing all debt affecting the Property and other encumbrances in the nature of a monetary lien on the Property.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, IT IS UNDERSTOOD AND AGREED THAT SELLER HAS NOT MADE AND IS NOT MAKING, AND HEREBY SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE WHATSOEVER, EXPRESS OR IMPLIED (OR ARISING BY OPERATION OF LAW), WITH RESPECT TO OR IN ANY WAY RELATED TO OR CONCERNING THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO MATTERS OF TITLE (OTHER THAN SELLER’S LIMITED WARRANTY OF TITLE SET FORTH IN THE LIMITED WARRANTY DEED TO BE DELIVERED AT CLOSING), OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS, THE COMPLIANCE OF THE PROPERTY WITH ANY LAWS, RULES, CODES, ORDINANCES OR REGULATIONS, THE SUITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, HABITABILITY OR

FITNESS OF THE PROPERTY FOR ANY PARTICULAR USE OR PURPOSE, OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY (HEREINAFTER COLLECTIVELY REFERRED TO AS THE “**DISCLAIMED MATTERS**”). THE TERMS AND CONDITIONS OF THIS ARTICLE V SHALL EXPRESSLY SURVIVE CLOSING, THE DELIVERY OF THE DEED AND THE PAYMENT OF THE PURCHASE PRICE, WITHOUT REGARD TO ANY LIMITATIONS UPON SURVIVAL SET FORTH IN THIS AGREEMENT.

## **6. APPORTIONMENT OF TAXES AND ASSESSMENTS**

(a) Taxes. All real estate ad valorem taxes for the calendar year of Closing shall be prorated as of the date of Closing. If Closing shall occur before the tax rate is fixed for the then-current year, the apportionment of the taxes shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation, but any difference in actual ad valorem taxes for the year of sale shall be adjusted between the parties upon receipt of the actual tax bill. Purchaser acknowledges that as of Closing, the Property might not have been assessed as a separately described parcel of real estate and that real property taxes for the year of sale might be assessed under a tax bill in the name of Seller which covers additional property. If that is the case, Purchaser and Seller agree that the current tax for the Property shall be determined by multiplying the total tax bill (based on the previous year applied to the latest assessed valuation if the tax bill for the current year is not yet available) by a fraction, the numerator of which shall be the acreage of the Property and the denominator of which shall be the total acreage of all property covered by the tax bill, and then prorating the product of such multiplication as of the date of Closing. If such apportionment shall be incorrect based on the actual tax bill when issued, the party receiving the excess proration shall promptly reimburse the other to correct the incorrect apportionment. Purchaser at Closing shall assume all unpaid assessments applicable to the Property that are not yet due and payable. This paragraph shall survive Closing.

Purchaser shall pay 100% of the amount of any rollback taxes, if any, applicable to the Property when such rollback taxes become due and payable.

## **7. ASSIGNMENT**

Except for an assignment to an entity owned or controlled by Purchaser, Purchaser may not assign its rights under this Agreement to any other entity without the prior written consent of the Seller. Any approved assignment shall not relieve Purchaser of its obligations under this Agreement. In all instances of a permitted assignment, Purchaser shall (i) notify Seller of the name, address, telephone and facsimile number of the assignee and the name of the contact person(s) for the assignee and (ii) provide to Seller a signed copy of such assignment, which assignment shall be in a form reasonably acceptable to the Seller.

## **8. BROKERAGE COMMISSION**

Seller and Purchaser represent and warrant to each other that no outside broker or agent is entitled to a real estate commission. Purchaser shall hereby indemnify and hold Seller harmless from and against any and all losses, costs, damages and expenses (including reasonable attorney's

fees), incurred or paid as a result of any such claim arising out of the actions of Purchaser, as the case may be should a claim for a commission be made through each of them. The representations, warranties and indemnifications contained in this paragraph shall survive the Closing and delivery of the deed and any rescission, cancellation or termination of this Agreement.

## 9. NOTICES

(a) Addresses and Procedures. Whenever notice is required or permitted under the terms of this Agreement, it shall be in writing and personally delivered or sent postage or delivery charges prepaid by either (a) United States mail, certified, return receipt requested, in which case notice shall be deemed given on the certified date of delivery or rejection of delivery, or (b) by any national express delivery service which provides evidence of delivery. All notices shall be addressed to the following address (or at such other address as may hereafter be substituted by notice in writing thereof):

Purchaser: CareCore National, LLC d/b/a eviCore healthcare  
400 Buckwalter Place Boulevard  
Bluffton, South Carolina 29910  
Attn: William Goodman, Corporate Counsel  
Email: wgoodman2@evicore.com

With Copy to: Nelson Mullins Riley & Scarborough, LLP  
104 South Main Street, Suite 900  
Greenville, SC 29601  
Attn: Eric J. Smith  
Email: eric.smith@nelsonmullins.com

Seller: Town of Bluffton  
Attn: Marc Orlando, Town Manager  
20 Bridge St.  
Bluffton, SC 29910

With a copy to: Terry A. Finger, Esq.  
Finger, Melnick & Brooks, P.A.  
P.O. Box 24005  
Hilton Head Island, SC 29925

(b) Time Periods and Changes. The time period in which a response to any notice must be given, if any, shall commence on the date of receipt of the notice by the addressee thereof, except as otherwise provided herein. Rejection or failure to claim delivery of any such notice, or the inability to deliver because of changed address of which no prior written notice was given as required hereinafter, shall be deemed received in such instances as of the date of attempted delivery or two (2) business days from the date of deposit in the United States Mail, whichever is applicable. A party may change its address by giving at least three (3) business day's prior written notice thereof. Notices sent by U.S. Certified Mail, return receipt requested, postage prepaid for which no return receipt is received from the U.S. Post Office or is returned undelivered or unsigned for shall

be deemed given two (2) business days from the date deposited in the U. S. mail.

## 10. SPECIFIC PROVISIONS

(a) Bluffton Parking Facilities. Seller hereby acknowledges and agrees that Purchaser shall have the right, subject to the Permitted Exceptions, to construct site improvements on the Property. In the event that Purchaser elects to construct office space or other building(s) on the Property, Seller, upon the successful completion of the construction, shall grant to Purchaser, its successors and assigns, and Purchaser shall accept an Access Easement and Shared Parking Agreement on that portion of the Seller's property located to the north of the Town of Bluffton Law Enforcement Center (see Exhibit "C" – "***Shared Parking Easement***"). The Seller may, in its reasonable discretion, reserve portions of the parking area for Town of Bluffton use only (e.g., Law Enforcement Center staff, Town staff and visitors).

(b) Limited Right of First Refusal and Purchase Option. At Closing, Purchaser will grant to Seller a limited right of first refusal and option to purchase the Property or any portion of the Property from Purchaser (the "***Purchase Option***") in the event of a proposed sale of the Property by Purchaser to a third party, provided that Purchaser has not constructed any office buildings on the Property and the prospective third party purchaser has indicated its intent to use the Property for purposes other than office space or similar commerce tech park type uses as determined in Purchaser's reasonable discretion. The terms of this Purchase Option are more specifically set forth on the attached Exhibit "D". The Purchase Option shall be executed at Closing.

(c) Non-Exclusive Easement and Right-of-Way Agreement. Purchaser acknowledges that a portion of the Property to be conveyed is a sixty-six (66') foot right-of-way identified as CareCore Drive on Exhibit "A". The Purchaser further acknowledges that the Buckwalter Place Master Plan includes the extension of Innovation Drive and Progressive Street, as set forth in Exhibit "E". The Purchaser further acknowledges that CareCore Drive is an essential vehicular access for certain property owned by the Seller including the Bluffton Law Enforcement Center, adjacent undeveloped property, and right-of-way for the existing and proposed extensions of Innovation Drive and Progressive Street and agrees to grant the Seller, its successors and assigns, an access easement for CareCore Drive until the extensions of Innovation Drive and Progressive Street are constructed and open for use. Purchaser further acknowledges that Seller is under no obligation to construct the extension of Innovation Drive or Progressive Street as shown on Exhibit "E". The parties acknowledge that upon the completion of the two roads, Seller, upon written request of the Purchaser, shall consent to the termination and/or abandonment of CareCore Drive. The terms of this Non-Exclusive Easement and Right-of-Way Agreement are more specifically set forth on the attached Exhibit "F". The Non-Exclusive Easement and Right-of-Way Agreement shall be executed at Closing.

## 11. REPRESENTATIONS

(a) Representations. Except as is herein specifically set forth, Seller has not made, does not make and has not authorized anyone else to make, any representations as to: (i) the location of the Property or any portion thereof within any flood plain, flood-prone area, water shed or the

designation of any portion thereof as “wetlands” or (ii) the present or future physical condition or suitability of the Property for any purpose. Purchaser acknowledges that in entering into this Agreement, Purchaser has not relied and does not rely on any representations other than those expressly set forth in this Agreement. Purchaser shall take the Property in its “as is” condition on the date of Closing.

(b) Authority to Act. Each of the parties represents to the other party that (i) it is duly organized and in good standing under the laws of the state of its formation or incorporation; (ii) the execution and delivery of this Agreement by signatories and the performance of this Agreement by the parties hereto (including the execution and delivery of any documents at the Closing) have been or will be duly authorized by their respective company, corporate boards or governing councils, (iii) this Agreement is binding and enforceable against the parties hereto in accordance with the terms hereof, and (iv) neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will result in a breach of or default under any agreement to which the representing party is a party or by which the representing party is bound, or violate any law, rule, regulation, restriction, court order, or agreement to which the representing party is subject. The representations made in this Agreement by the parties shall be continuing and shall be deemed remade by each party as of the date of Closing with the same force and effect as if remade at that time.

(c) Evidence of Authority. Following a request from either party, the other party shall furnish evidence of that party’s authority to execute this Agreement and to consummate the transactions contemplated herein. Such evidence shall be in form and substance reasonably acceptable to the requesting party, and shall be delivered within fourteen (14) days after the request or prior to each Closing, whichever shall occur first in time.

(d) Seller’s Warranties And Representations.  
Seller hereby represents and warrants to Purchaser that:

(i) Seller has good, indefeasible, marketable and insurable title to the Property and has the full power and authority to execute, deliver and perform this Agreement and all agreements and documents referred to in this Agreement.

(ii) At the time of execution of this Agreement, there is no action, suit or proceeding pending or threatened against Seller or affecting the Property or relating to or arising out of the ownership or development of the Property, including without limitation, condemnation or eminent domain actions or proceedings.

(iii) Neither the entering into of this Agreement, the consummation of the sale, nor the conveyance of the Property to Purchaser, has or will constitute a violation or breach of any of the terms of any contract or other instrument to which Seller is a party or to which Seller is subject.

(iv) To the best of Seller’s actual knowledge, no portion of the Property contains petroleum or any substance which may be classified as a hazardous, toxic, chemical or radioactive substance, or a contaminant or pollutant (collectively “*Hazardous*

*Substances*”) under any applicable federal, state or local law, ordinance, rule or regulation (“*Applicable Laws*”) or which may require any cleanup, remediation or other corrective action pursuant to such Applicable Laws and no portion of the Property has been used by Seller for the use, disposal or storage of Hazardous Substances. Further, Seller has no actual knowledge of underground storage tanks located on the Property.

(v) No notice by any governmental or other public authority has been served upon Seller relating to violations of any applicable safety, fire or other ordinances or any of the Applicable Laws.

## 12. DEFAULT

(a) Default by Purchaser. If Purchaser defaults in its obligation to close on the Property hereunder, Seller’s remedy shall be to terminate this Agreement or seek any other remedy at law or in equity.

(b) Default by Seller. If Seller defaults in its obligations hereunder, Purchaser’s remedy shall be to terminate this Agreement or seek any other remedy at law or in equity, including the right to specifically enforce performance of this Agreement.

(c) Costs of Litigation. In any action to enforce any provision of this Agreement, the prevailing party shall be entitled to recover all costs of such action, including reasonable attorneys’ fees and expenses through any final appeal.

## 13. MISCELLANEOUS

(a) Sole Agreement. This Agreement contains all of the terms and conditions agreed to between the parties and supersedes all prior agreements, and there are no oral agreements relating to the transaction covered hereby. This Agreement cannot be altered, amended, changed or modified unless each such alteration, amendment, change or modification shall have been set forth in writing in its entirety and signed and delivered by each party.

(b) Waiver. No provision, condition or covenant of this Agreement shall be waived by either party hereto except by a written instrument delivered to the other party and signed by the party consenting thereto.

(c) Successors and Assigns Bound. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(d) Other Documents. The parties hereto shall execute and deliver such other instruments and documents as reasonably may be necessary to implement and effectuate the terms of this Agreement.

(e) Good Faith. All parties shall act in good faith in performing and discharging their respective duties and obligations hereunder. Any provision requiring the approval of Seller shall

require that Seller's approval not be unreasonably withheld.

(f) Applicable Law. This Agreement has been made in the State of South Carolina, and shall be interpreted in accordance with South Carolina law, and any enforcement of this Agreement shall be brought in the State of South Carolina.

(g) Interpretation. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both Seller and Purchaser have contributed substantially and materially in the preparation of this Agreement.

(h) Time of the Essence. Time is of the essence of this Agreement unless additional time is needed by Seller to receive first and second reading approval of the required resolutions and/or ordinances.

(i) Survival of Agreements. All agreements, undertakings, hold harmless, representations, warranties, and indemnifications contained in this Agreement shall expressly survive the Closing of the Property and delivery of the applicable Deed and such agreements, undertakings, hold harmless, representations, warranties, and indemnifications shall not be merged therein.

(j) Effective Date. The Effective Date of this Agreement shall be the latest date on which both parties have executed this Agreement as shown on the signature page.

(k) Electrical Provider. Purchaser acknowledges and agrees to use Palmetto Electric Cooperative, Inc. ("**Palmetto**") for the supply of electrical power to the buildings on the Property and acknowledges that Palmetto has the exclusive right to provide electrical power to the Property under an agreement between Palmetto and Winding River B.T. S. 1, LLC and RRZ, LLC dated June 21, 2001, a copy which has been provided to the Purchaser.

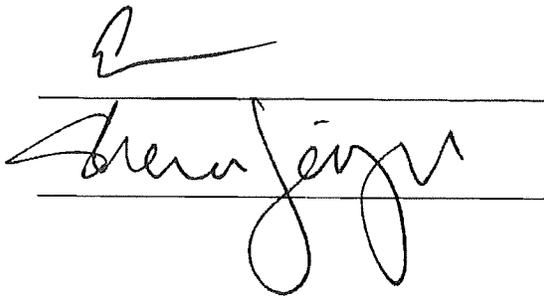
(l) Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, then this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

(m) Convenience Store. Under no circumstances shall a convenience store or gasoline tank or pump for the sale of gas products to the public be placed on the Property.

**Intentionally left blank, signatures on next page**

IN WITNESS WHEREOF, the parties hereto have set their respective hands the day and year indicated below.

**WITNESSES:**

  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SELLER:**

**TOWN OF BLUFFTON**

By:   
Name: Marc Orlando  
Its: Town Manager

Date Signed: December 15, 2015

**PURCHASER:**

**CARECORE NATIONAL, LLC, d/b/a  
EVICORE HEALTHCARE**

By: \_\_\_\_\_  
Name: John J. Arlotta  
Its: Chairman and Chief Executive Officer

Date Signed: December \_\_\_\_\_, 2015

IN WITNESS WHEREOF, the parties hereto have set their respective hands the day and year indicated below.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

**SELLER:**

**TOWN OF BLUFFTON**

By: \_\_\_\_\_  
Name: Marc Orlando  
Its: Town Manager

Date Signed: December \_\_\_\_\_, 2015

**PURCHASER:**

**CARECORE NATIONAL, LLC, d/b/a  
EVICORE HEALTHCARE**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: John J. Arlotta  
Its: Chairman and Chief Executive Officer

Date Signed: December 16, 2015

Exhibit "A"

Legal Description

**Final legal description will be determined once the subdivision plat is complete**

Portion of that certain piece, parcel or tract of land, situate, lying and being within the Buckwalter Planned Unit Development, Town of Bluffton Beaufort County, South Carolina, containing 7.12 acres, more or less, on a plat entitled "ALTA/ASCAM Land Title Survey of 7.12 acres, A Portion of Parcel 6A and Parcel 6B, A Section of Buckwalter Place, Prepared for the Town of Bluffton", prepared by Surveying Consultants, Terry G. Hatchell, SCRLS #11059, dated March 11, 2013 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 136 at Page 106. Said portion contains approximately three point one (3.1) upland acres within Buckwalter Place and consisting of approximately two point four (2.4) acres of undeveloped property and point seven (0.7) acres of adjacent right-of-way known as CareCore Drive, which is bounded on the north by the right-of way known as Progressive Street, to the south by Buckwalter Place Boulevard, to the east by property owned by BC Buckwalter, LLC, and to the west by Parcels 1B-1 and Parcel 2 owned by CareCore National, LLC d/b/a eviCore healthcare as shown in the reference drawing below the final acreage of which shall be determined by the final approved subdivision plat.





and Assumption of Rights and Obligations Under Development Agreement dated the 25th day of November, 2005 and recorded in the Office of the Register of Deeds for Beaufort County in Official Record Book 2278 at Page 1288; and,

WHEREAS, Parcel 6 acquired from Buckwalter, certain property and was partially assigned certain rights with respect to such property pursuant to a Partial Assignment and Assumption of Rights and Obligations Under Development Agreement dated November 23, 2005 and recorded in the Office of the Register of Deeds for Beaufort County in Official Record Book 2317 at Page 825; and

WHEREAS, Assignor acquired from Parcel 6 certain property and was partially assigned certain rights with respect to such property pursuant to a Partial Assignment and Assumption of Rights and Obligations Under Development Agreement dated March 19, 2013 and recorded in the Office of the Register of Deeds for Beaufort County in Official Record Book 3225 at Page 1678; and

WHEREAS, Assignor entered into an Agreement for Purchase and Sale with Assignee dated \_\_\_\_\_, 2015 providing for the sale by Assignor and the purchase by Assignee of the property as more particularly described on Exhibit A attached hereto and incorporated by this reference (the "**Property**"); and

WHEREAS, as an integral part of the conveyance of the Property by Assignor to Assignee, it is the desire and intention of Assignor to assign to Assignee, and it is the desire and intention of Assignee to assume, certain rights, privileges, and obligations under the Development Agreement applicable to the Property, thus necessitating the preparation and execution of the within Partial Assignment; and

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy whereof is herewith acknowledged, parties hereby agree as follows, to wit:

1. Partial Assignment and Assumption of Rights, Privileges and Obligations Applicable to the Property Pursuant to The Development Agreement and Buckwalter PUD Concept Plan. Assignor does hereby transfer, assign, convey and deliver unto Assignee, its successors and assigns a total of [8.84] acres of General Commercial as an allowed land use per the following allocation:

a. Property (Exhibit A) – [2.40] acres of General Commercial development rights.

b. Parcel 1B-1 (Exhibit B) – 1.66 acres of General Commercial development rights. Development of this parcel has already taken place utilizing the 1.66 acres of General Commercial development rights transferred through this Partial Assignment. Therefore, these development rights are not assignable to a third party.

c. Parcel 2 (Exhibit C) shall receive an allocation of 4.78 acres of General Commercial development rights. Development of this parcel has already taken place utilizing

the 4.78 acres of General Commercial development rights transferred through this Partial Assignment. Therefore, these development rights are not assignable to a third party.

Assignee shall be entitled to all of the rights, privileges, and obligations, including all alternate land uses, as described in the Development Agreement and the Buckwalter PUD Concept Plan ("**Concept Plan**") applicable or available to the Property except for those certain excluded obligations, rights and privileges ("**Excluded Obligations**") identified herein below. Assignee hereby assumes and agrees to perform all of Assignor's rights, privileges and obligations as described in the Development Agreement applicable to the Property, except for the Excluded Obligations. Assignee acknowledges the prior receipt of the Development Agreement and all Exhibits thereto and agrees to be bound by the terms thereof, and to develop the Property in accordance with such terms. The rights and obligations hereby assigned and assumed shall be covenants running with the land, binding upon the parties hereto and their successors and assigns.

2. Excluded Obligations, Rights and Privileges. The following are hereby excluded from Assignor's assignment and Assignee's assumption herein:

a. the terms of Article XII.A and B of the Development Agreement concerning the government facilities, park or playground site; and

b. the terms of Article XII.C of the Development Agreement concerning the payment of administrative charges.

Provided, however, Assignee assumes the obligation to pay any fees identified in Article XII.D and Article XII.E of the Development Agreement as they relate to the Property.

3. Estoppel Certificate. Pursuant to Article XIX of the Development Agreement, the Town and Assignor hereby certify the following, to wit:

a. that the Development Agreement, as amended, is in full force and effect,

b. that the Development Agreement through the First Amendment dated June 21, 2002, Second Amendment dated February 4, 2003, Third Amendment dated October 10, 2005, Fourth Amendment dated October 10, 2005, Fifth Amendment dated November 2, 2005, Sixth Amendment dated May 10, 2006, Seventh Amendment dated January 7, 2008, Eighth Amendment dated November 6, 2007, Ninth Amendment dated February 25, 2008, Tenth Amendment dated February 10, 2012, and Eleventh Amendment dated April 10, 2013 has not been further amended or modified,

c. that to the best knowledge of Town and Assignor, all parties to the Development Agreement are in full compliance with all obligations thereunder as of the date hereof, save and except Indian Hill Associates, LLC,

d. that to the best knowledge of Town and Assignor, no event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute an event of default under the terms of the Development Agreement, save and except

clearing of property in violation of the Development Agreement by Indian Hill Associates, LLC, which default shall not affect the rights and obligations of Assignee hereunder,

e. that by its execution hereof, the Town confirms that the within instrument shall serve as the requisite notice under the provisions of Article V, Paragraph 2 of the Development Agreement of transfer of the Property and hereby consents to the terms of this Partial Assignment, and agrees that with respect to any obligations assigned by Assignor to Assignee and assumed by Assignee hereunder, the Town shall look solely to Assignee, not to Assignor, for performance of such obligations, and enforcement thereof by the Town.

4. Default and Enforcement of Provisions. As provided in Paragraph XV of the Development Agreement, and, as herein provided, upon the failure of Assignor or Assignee to comply with the terms of the Development Agreement and the within Partial Assignment incident to the Property beyond any notice and/or cure periods, one or more of the non-defaulting parties may pursue any and all legal or equitable remedies, including a specific performance, against the defaulting party.

5. Notices. Any notice, demand, request, consent, approval, or communication among any of the parties hereto or the Town shall be in writing and shall be delivered or addressed as provided under Paragraph XVII of the Development Agreement and shall be addressed as follows:

Assignee: CareCore National, LLC d/b/a eviCore healthcare  
400 Buckwalter Place Boulevard  
Bluffton, South Carolina 29910  
Attn: William Goodman, Corporate Counsel

With Copy to: Nelson Mullins Riley & Scarborough, LLP  
104 South Main Street, Suite 900  
Greenville, SC 29601  
Attn: Eric J. Smith

Assignor: Town of Bluffton  
Attn: Marc Orlando, Town Manager  
20 Bridge St.  
Bluffton, SC 29910

With a copy to: Terry A. Finger, Esq.  
Finger, Melnick & Brooks, P.A.  
P.O. Box 24005  
Hilton Head Island, SC 29925

6. Binding Effect. This Partial Assignment shall inure to the benefit of and be binding upon the respective parties hereto, their successors and assigns.

7. Governing Law. The within Partial Assignment shall be interpreted and constructed and conform to the laws of the state of South Carolina.

8. Reaffirmation of Terms. All other terms, conditions, rights and privileges contained in the Development Agreement not specifically referenced herein shall remain in full force and effect and binding upon the parties hereto and their successors and assigns.

**Intentionally left blank, signatures on next page**







EXHIBIT "A"

**Insert Legal Description when complete**

## EXHIBIT "B"

ALL that certain piece, parcel and tract of land situate, lying and being in the Bluffton Tech Park, Town of Bluffton Beaufort County, South Carolina, containing 1.66 acres, more or less, shown and designated as Parcel 1B-1 on a plat entitled "A 1.66 Acre Parcel Being a Portion of Bluffton Tech Park," said plat being dated June 9, 2009, prepared by Thomas & Hutton Engineering Co., certified by Boyce L. Young, S.C.R.L.S. #11079, and being recorded in the Register of Deeds for Beaufort County, South Carolina, in Plat Book 128 at Page 171. For a more detailed description reference should be made to said Plat of record.

Further, the development of this parcel has already taken place utilizing the 1.66 acres of General Commercial development rights transferred through this Assignment of Rights and Obligations Under Development Agreement. Therefore, these development rights are not assignable to a third party.

## EXHIBIT "C"

All that certain piece, parcel or tract of land, situate, lying and being within the Buckwalter Planned Unit Development, Town of Bluffton Beaufort County, South Carolina, containing 4.78 acres, more or less, and being shown and designated as Parcel 2, on a plat entitled "A Subdivision Plat of 23.05 Acres, Buckwalter Parkway (Bluffton Tech Park)", prepared by Ward Edwards, Inc., Michael Jim Gardner, SCRLS #12239, dated May 30, 2007 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 123 at Page 133, to which reference is hereby craved for specific metes and bounds; be all measurements a little more or less.

This property is subject to all applicable covenants, conditions, restrictions, easements and rights-of-way filed of record in the Office of the Register of Deeds for Beaufort County, South Carolina.

This being a portion of the property conveyed to Town of Bluffton by Deed of Buckwalter Commercial, Inc., dated August 9, 2005 and recorded August 11, 2005 in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 2206 at Page 1928 and by Deed of BHR Acquisition Co., LLC, dated August 9, 2005 and recorded August 11, 2005 in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 2206 at Page 1936.

Further, the development of this parcel has already taken place utilizing the 4.78 acres of General Commercial development rights transferred through this Assignment of Rights and Obligations Under Development Agreement. Therefore, these development rights are not assignable to a third party.

Exhibit "C"

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

**EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT (this "*Agreement*"), is made effective as of \_\_\_\_\_, 201\_ (the "*Effective Date*"), by and between **CareCore National, LLC d/b/a eviCore healthcare**, a New York limited liability company, whose address is 400 Buckwalter Place Boulevard, Bluffton, South Carolina 29910 ("*eviCore*"), and the **Town of Bluffton**, a South Carolina municipal corporation, whose address is 20 Bridge Street, Bluffton, South Carolina 29910 ("*Town*").

**WITNESSETH:**

**WHEREAS**, substantially contemporaneously with the execution of this Agreement, pursuant to that certain Agreement for Purchase and Sale dated December \_\_\_\_, 2015 by and between eviCore and the Town, eviCore has purchased and the Town has sold approximately 3.1 acres of real property in and adjacent to the Bluffton Technology Park, as more particularly described in Exhibit "A" attached hereto and made a part hereof (the "*eviCore Property*"), and as set forth in that certain plat prepared by \_\_\_\_\_, S.C.R.L.S. No. \_\_\_\_\_, entitled, "*A Subdivision Survey of 15.63 Acres of the Town of Bluffton and the Bluffton Technology Park*," dated \_\_\_\_\_, recorded in the Office of the Beaufort County Register of Deeds in Plat Book \_\_\_\_ at Page \_\_\_\_, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference (the "*Plat*"); and,

**WHEREAS**, the Town is the fee simple owner of various parcels of real property adjacent to the eviCore Property, as shown on the Plat (the "*Town Property*") and more particularly described on Exhibit "C" attached hereto and made a part hereof (with eviCore Property, collectively referred to herein as, the "*Parcels*", and individually as a "*Parcel*");

**WHEREAS**, the Parties hereby acknowledge and agree that eviCore intends, but is not obligated, to construct office buildings or other buildings on the eviCore Property; and,

**WHEREAS**, the Parties further acknowledge and agree that the Town has constructed and intends, but is not obligated, to construct certain additional access and parking infrastructure improvements on portions of the Town Property, as shown in the Buckwalter Place Master Plan provided as Exhibit "D" attached hereto and incorporated herein by reference (the "*Master Plan*");

**WHEREAS**, the Parties further acknowledge and agree that upon eviCore's, or its successors or assigns, completion of the construction of office buildings or other buildings on the eviCore Property that eviCore shall have certain easements over, across and under those portions

of the Town Property upon which parking and related infrastructure improvements have been constructed, if any;

**WHEREAS**, the Parties, by and through this Agreement, subject to the terms and conditions provided herein and the completion of the construction of office space or other building(s) on the eviCore Property intend to create and grant to eviCore such easements over the Town Property, for the purposes herein contained and, further, to otherwise impose upon, and create in favor of, their respective Parcels, those certain rights and obligations herein provided.

**NOW, THEREFORE**, for good and valuable consideration in hand paid, the receipt and sufficiency of which is hereby acknowledged, and the mutual covenants, terms and conditions set forth herein, the parties hereby agree as follows:

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated herein as if restated fully and hereby are made an integral part hereof so that their contents are a substantive part of this Agreement.

2. Grant and Use of eviCore Easement. Upon the completion of the construction of office buildings or other buildings upon the eviCore Property, the Town shall grant and hereby grants and conveys to eviCore, its heirs, legal representatives, tenants, employees, agents, invitees, customers, successors and assigns, any future owner of the eviCore Property and any other persons whomsoever claiming under or through said parties (collectively, the “*eviCore Parties*”), subject to the terms and conditions enumerated herein, a perpetual, irrevocable, non-exclusive, ingress, egress, regress, pedestrian and vehicular access and parking easement (the “*eviCore Easement*”) in, under, upon, about, over, across and through the access, parking, and utility improvements now existing or hereafter constructed on the Town Property (the “*eviCore Easement Area*”), for the benefit of the eviCore Property. eviCore may use the eviCore Easement for: (i) ingress, egress, regress and access to and from the eviCore Property and the eviCore Easement Area; (ii) the perpetual, non-exclusive and irrevocable right to use the parking facilities now existing or hereafter constructed on the Town Property for the purposes of parking vehicles (the “*Parking Easement Area*”); and (iii) all other purposes reasonably necessary for eviCore’s use and enjoyment of the eviCore Easement; provided, however, the Town may, in its reasonable discretion, reserve portions of the eviCore Easement Area existing on the Town Property as of the Effective Date for Town of Bluffton use only (e.g., Law Enforcement Center staff, Town staff and visitors). In the event eviCore commences construction of office buildings or other buildings upon the eviCore Property and the Town has not yet constructed parking facilities sufficient for eviCore’s proposed operations on the eviCore Property in accordance with applicable zoning laws, building codes, and other applicable laws, rules, regulations and ordinances, the Town agrees to grant eviCore such additional rights and easements as are reasonably necessary for the construction and installation of a driveway, parking spaces, and other construction purposes reasonably related to the construction of additional parking facilities (“*Improvements*”) in a location on the Town Property to be reasonably agreed to between the Town and eviCore as necessary for eviCore’s use and enjoyment of the eviCore Property. eviCore shall bear all costs and expenses of construction and maintenance of the Improvements; provided, however, that the layout and design of the Improvements must be approved by the Town.

3. Improvements. Except for those improvements illustrated on the Master Plan or in substantial conformity therewith, neither eviCore nor Town shall construct any improvements over, under, in, along, across or upon the Easement Area which may unreasonably interfere with eviCore's use and enjoyment of its Easements.

4. Maintenance and Repair. For so long as this Agreement shall remain in effect (a) Town, at its sole cost and expense, agrees to maintain the parking facilities existing on the Town Property as of the Effective Date in a neat and orderly manner, free of debris, and repair, replace, repave and restripe such facilities when reasonable necessary, and (b) eviCore, at its sole cost and expense, agrees to maintain the Improvements on the Town Property, if any, in a neat and orderly manner, free of debris, and repair, replace, repave and restripe such facilities when reasonable necessary. eviCore and Town shall each maintain and repair any other property they own on which the Easements are located in the same or better condition as existed on the Effective Date of this Agreement.

5. Representations and Warranties. Each party hereby represents and warrants to the other that: (a) it has the full right, power, title and interest to make the within grants of Easements and accept the obligations herein imposed; (b) such grants of Easements and any rights granted under this Agreement may be fully and thoroughly enjoyed and utilized by the other pursuant to the terms hereof; and (c) the rights hereunder granted and obligations hereunder imposed shall not be defeased, impaired and adversely affected by superior title.

6. Relocation. Town shall not relocate the eviCore Easement Area, the Temporary Easement Area, or the Improvements without the prior written consent of eviCore, which consent may not be unreasonably withheld. Town shall bear all costs and expenses associated therewith.

7. Transferability. The parties to this Agreement hereby acknowledge and agree that the Easements and other rights conferred by, and obligations imposed by, this Agreement are commercial easements and are intended to, and do, constitute covenants that run with the land and shall inure to the benefit of and be binding upon the parties and their respective grantees, heirs, successors and assigns.

8. Default and Remedies. In the event of a default by either party hereto, the non-defaulting party may seek any and all remedies permitted by law or available in equity. For avoidance of confusion, such remedies shall include the right of self-help (if a party shall continue to fail, after notice and a reasonable period of time has elapsed, to perform any necessary maintenance required of it hereunder) and set-off.

9. Limitation on Liability. In no event shall either party be liable for any damage to, or loss of personal property or equipment sustained by the other within the Easement Area except to the extent such loss is caused by the negligence or intentional acts of that party or its employees, agents, invitees, or licensees.

10. Indemnification. eviCore (the "**Indemnitor**") shall indemnify, defend and hold the Town (the "**Indemnitee**") harmless from and against any and all losses, costs, damages, liens, claims, liabilities or expenses (including, but not limited to, actual and reasonable attorneys'

fees, court costs and disbursements) incurred by Indemnitee and arising from or by reason of Indemnitor's access to, use or misuse of the Easement Area, but only to the extent same shall not arise from the actions or omissions of Indemnitee or its employees, agents, invitees, or licensees.

11. Attorneys' Fees. In the event of any dispute between the parties regarding the enforcement or effect of this Agreement, the non-prevailing party in any such dispute shall pay the prevailing party's actual and reasonable attorneys' fees and costs incurred. In the event that neither party wholly prevails, the court may apportion the costs or fees as the court deems appropriate.

12. Notice. Each party shall deliver all notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "**Notice**") in writing and addressed to the other party at its address first set out above (or to any other address that the receiving party may designate from time to time in accordance with this Section 12). Each party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only: (a) upon receipt by the receiving party and (b) if the party giving the Notice has complied with the requirements of this Section 12.

13. Amendment. This Agreement may not be modified, amended or terminated except in a writing signed by each party hereto.

14. Time of the Essence. Both parties agree that time is of the essence and that time specifications contained herein shall be strictly construed.

15. Governing Law. THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF SOUTH CAROLINA. EACH PARTY HERETO AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE TRIED AND LITIGATED IN STATE OR FEDERAL COURTS LOCATED IN THE COUNTY OF BEAUFORT, STATE OF SOUTH CAROLINA, WITHOUT A JURY. THE PARTIES HERETO, TO THE GREATEST EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY AND INTELLIGENTLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY FOR ANY DISPUTE BETWEEN THEM ARISING HEREUNDER.

16. Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original for all purposes, and all such counterparts shall together constitute but one and the same instrument.

17. Authority. Both parties represent and warrant that they have the authority to execute this Agreement and each individual signing on behalf of a party to this Agreement states that he or she is the duly authorized representative of the signing party and that his or her signature on this Agreement has been duly authorized by, and creates the binding and enforceable obligation of, the party on whose behalf the representative is signing.

18. Further Cooperation. Each of the parties to this Agreement agree to execute such other documents and to perform such other acts as may be reasonably necessary or desirable to further the expressed and intended purpose of this Agreement.

*[SIGNATURE PAGES FOLLOW.]*





**EXHIBIT "A"**

**Legal Description of the eviCore Property**

**EXHIBIT "B"**

**Plat**

**EXHIBIT "C"**

**Legal Description of the Town Property**

**EXHIBIT "D"**

**Master Plan**

Exhibit "D"

**RIGHT OF FIRST REFUSAL**  
**AGREEMENT**

**THIS RIGHT OF FIRST REFUSAL AGREEMENT** (this "**Agreement**") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 201\_ (the "**Effective Date**"), by and between **CareCore National, LLC d/b/a eviCore healthcare**, a New York limited liability company ("**Owner**"), and the **Town of Bluffton**, a South Carolina municipal corporation ("**Purchaser**").

**RECITALS:**

A. Owner is the owner of certain real property located in the Town of Bluffton, Beaufort County, South Carolina, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference, including the improvements located thereon (the "**Property**").

B. Purchaser recently conveyed the Property to Owner (the "**Sale**").

C. In connection with the Sale, Owner desires to grant to Purchaser a right of first refusal relative to the Property upon and subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the above premises and the right of first refusal hereinbelow granted, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Owner and Purchaser hereby covenant and agree as follows:

1. Property Description. Owner does hereby grant and convey to Purchaser a right of first refusal (the "**Refusal Right**") to purchase from Owner, upon the terms and conditions hereinafter set forth, Owner's interest in the Property, together with all improvements thereon (subject to Section 5(iii)) and appurtenances thereto.

2. Right of First Refusal.

(a) In the event Owner desires during the term of this Agreement to enter into a contract to sell and convey Owner's entire interest in the Property to a prospective purchaser (other than Purchaser) pursuant to an offer or proposal to purchase by said prospective purchaser, and the prospective purchaser has indicated its intent to use the Property for purposes other than office space or similar commerce tech park type uses as determined by Owner in Owner's reasonable discretion pursuant to Section 2(e) below, Owner shall first offer in writing to sell the Property (the Property, or such interest therein, being hereinafter referred to as the "**Refusal Property**") to Purchaser. As used in this Agreement, the term "**offer**" or "**proposal**" means a written offer or proposal (which may be in the form of a non-binding "letter of intent," "term sheet," "purchase agreement" or similar document) generated by either Owner or a prospective purchaser made in good faith and which identifies the Refusal Property encompassed by the offer

or proposal and specifies the proposed purchase price, the closing date and other terms and conditions relating to the contemplated transaction. Owner shall notify Purchaser in writing of receipt of such offer or proposal and shall provide Purchaser with a copy of the prospective purchaser's written offer or proposal containing the above-described information.

(b) Purchaser shall have thirty (30) days after receipt of a copy of such offer or proposal within which to notify Owner of Purchaser's election to purchase the Refusal Property on the terms and conditions set forth herein. Any such acceptance or rejection by Purchaser of Owner's offer to sell the Refusal Property shall be in writing; and if Purchaser fails to notify Owner in writing of Purchaser's decision to purchase the Refusal Property within the said thirty (30) day period, then the offer shall be deemed conclusively rejected by Purchaser. If Purchaser elects to purchase the Refusal Property, Owner and Purchaser shall proceed diligently and in good faith to finalize and execute an agreement for purchase and sale relative to such transaction within fourteen (14) days after the expiration of the foregoing thirty (30) day period. In such case, the purchase price for the Refusal Property shall be equal to Two Hundred Seventy-Five Thousand and No/100 (\$275,000.00) Dollars plus the market value of any improvements made by Owner to the Property (subject to Section 5(iii)). The closing date (unless Purchaser and Owner mutually agree otherwise) and all other material economic terms and conditions of the transaction shall be substantially identical to those set forth in the offer or proposal received from the prospective purchaser.

(c) If Owner's offer to sell the Refusal Property to Purchaser is not accepted by Purchaser during said thirty (30) day period, Purchaser's Refusal Right under this Agreement shall abate and become unenforceable (i) for so long as Owner's negotiations with the prospective purchaser are viable and on-going, and (ii) if Owner enters into a contract with the prospective purchaser, for so long as the contract between Owner and the prospective purchaser is a validly existing contract (*i.e.*, so long as such contract has not been terminated or has not expired) and contains substantially the same terms and conditions set forth in the offer or proposal presented to Purchaser. If the terms of the contract between Owner and the prospective purchaser change in any material way from the terms and conditions in the offer or proposal presented to Purchaser, as determined by Owner in its reasonable discretion, or if the contract between Owner and the prospective purchaser is terminated or expires, then Purchaser's Refusal Right under this Agreement shall be automatically and immediately reinstated as to the Refusal Property and the pending sale or transfer (in the case of a material modification) or any subsequent sale or transfer of the Refusal Property (in the case of a termination or expiration) shall again be subject to Purchaser's Refusal Right. Notwithstanding the foregoing, any change in the closing date, or any change in the purchase price of the contract, offer or proposal not exceeding ten percent (10%) shall not be considered a material change to the contract, offer or proposal and the Refusal Right will not be reinstated.

(d) Any proposed purchaser of all or any portion of the Property subject to the Refusal Right may rely on a written certification by Purchaser that the Refusal Right has not been exercised by Purchaser within the time provided. Purchaser agrees that, if it does not exercise its right to purchase the Refusal Property or enter into a contract pursuant to the terms of this Agreement, Purchaser will execute such a written certification upon demand by Owner. If Purchaser fails or refuses to execute such a certification within ten (10) days after demand by Owner, then Owner may execute such certification and such purchaser may rely on such

certification by Owner. Any purchaser relying on any such certification by Purchaser or Owner as set forth herein shall take title to the Property free and clear of any claims by any party under the Refusal Right, but Owner shall not be relieved of any liability to Purchaser if it has filed a false certification.

(e) The Refusal Right shall not apply to any offer, proposal, or sale unless the prospective purchaser has indicated its intent to use the Property for purposes other than office space or similar commerce tech park type uses as determined by Owner in Owner's reasonable discretion. In making such determination, Owner shall be permitted to rely on any statement by the prospective purchaser regarding said prospective purchaser's intended use of the Property. Purchaser agrees that, if Owner determines that the Refusal Right does not apply to any offer, proposal, or sale, Owner may notify Purchaser of such determination in writing, and Purchaser will execute upon demand by Owner a written certification that the Refusal Right does not apply to the offer, proposal, or sale. Any proposed purchaser of the Property may rely on a written certification by Purchaser that the Refusal Right does not apply pursuant to Owner's determination. If Purchaser fails or refuses to execute such a certification within ten (10) days after demand by Owner, then Owner may execute such certification and any proposed purchaser may rely on such certification by Owner. Any purchaser relying on any such certification by Purchaser or Owner as set forth herein shall take title to the Property free and clear of any claims by any party under the Refusal Right, but Owner shall not be relieved of any liability to Purchaser if it has filed a false certification. Purchaser agrees, however, that Owner shall have no obligation to provide notice to Purchaser of any actual or contemplated offer, proposal, or sale of the Property to which Owner determines that the Refusal Right does not apply.

### 3. Definitions:

(a) As used in this Agreement, the words "*sale*" or "*sell*" shall be deemed to include any transfer, conveyance, assignment or other disposition of the entire Property to a person or entity that is not an Affiliate of Owner; provided, however, that the Refusal Right shall not apply with respect to: (i) any financing arrangement in which Owner is the primary obligor and which is secured by the Property; (ii) the foreclosure of any deed of trust or mortgage on the Property; or (iii) the voluntary or involuntary sale, conveyance or transfer of Owner's ownership interests (or the ownership interests of any entity directly or indirectly controlling Owner by operation of law or otherwise) or the creation or issuance of new ownership interests which, in either case, results in a change in the control or majority ownership of Owner; provided, however, the Property shall continue to be subject to the Refusal Right following any of the events described in the preceding items (i), (ii) and (iii) herein.

(b) The term "*Affiliate*" shall mean any entity in which Owner holds a majority of the ownership interests and which is controlled by Owner. The Refusal Right shall not apply to a sale of all or any portion of the Property to an Affiliate of Owner; provided, however, the Refusal Right shall survive such sale to an Affiliate of Owner, and the Property shall continue to be subject to the Refusal Right after conveyance to such Affiliate. Specifically, the Refusal Right will not apply to a transfer by the Owner of its interest in the Property to a limited liability company or corporation in which Owner owns at least 51% of the managing and beneficial interests, and which entity is controlled by Owner, but following such transfer, the Property shall continue to be subject to the Refusal Right.

(c) As used in this Agreement, the phrase “*office space or similar commerce tech park type use*” shall mean a use that offers quality employment opportunities beyond those opportunities offered by a typical retail center. Examples of such qualifying uses include general office use, corporate or regional headquarters, research and technical facilities, and other uses in the Business Park designation of the Buckwalter Concept Plan which provide such non-retail, non-restaurant, and non-commercial service opportunities.

4. Notices. Notice required or permitted to be given hereunder shall be in writing and shall be hand-delivered, delivered by overnight courier, sent by electronic mail transmission (e-mail), or mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto at their respective addresses set forth below, or at such other addresses of which either party shall notify the other party in accordance with the provisions hereof, and shall be deemed given (i) if hand delivered, upon actual receipt by the addressee, (ii) if sent by overnight courier, upon the earlier of delivery evidenced by such courier or on the next business day following the day such notice is delivered to the courier service, (iii) if sent by e-mail, upon transmission evidenced by electronic confirmation or otherwise, and (iv) if mailed, on the earlier of actual receipt or the third business day after same is delivered to the U.S. Postal Service, properly addressed and with proper postage thereon. Notices may be furnished by legal counsel (in-house or outside counsel) for either party. If notice is to be given hereunder by counsel, such counsel may communicate directly in writing with all principals, as required to comply with the foregoing notice provisions.

If to Owner: CareCore National, LLC d/b/a eviCore healthcare  
400 Buckwalter Place Boulevard  
Bluffton, South Carolina 29910  
Attn: William Goodman, Corporate Counsel  
Email: wgoodman2@evicore.com

with a copy to: Nelson Mullins Riley & Scarborough, LLP  
104 South Main Street, Suite 900  
Greenville, SC 29601  
Attn: Eric J. Smith  
Email: eric.smith@nelsonmullins.com

If to Purchaser: Town of Bluffton  
Attn: Marc Orlando, Town Manager  
20 Bridge St.  
Bluffton, SC 29910  
Email: morlando@townofbluffton.com

with a copy to: Terry A. Finger, Esq.  
Finger, Melnick & Brooks, P.A.  
P.O. Box 24005  
Hilton Head Island, SC 29925  
Email: tfinger@Fingerlaw.com

5. Termination. This Agreement shall automatically and immediately become null and void and terminate and expire upon the occurrence of any of the following events: (i) Owner and a prospective purchaser close a transaction involving the acquisition by such prospective purchaser of all or a part of the Property, in which case this Agreement shall terminate in full as to all of the Property as of the date of closing; (ii) Purchaser has elected to exercise the Refusal Right, entered into a contract and then terminates the contract prior to the end of the due diligence period, in which case this Agreement shall terminate in full as to all of the Property on the date of the contract termination; (iii) Owner commences construction of any building(s) on the Property for office, commerce tech park, or similar uses as determined by Owner in Owner's reasonable discretion; or (iv) on ***[insert date which is 10 years after the date of the Agreement for Purchase and Sale]***. At any time after the termination and expiration of this Agreement, Owner may (but shall not be required to) deliver to Purchaser an instrument in recordable form evidencing the termination and expiration of this Agreement and all rights of Purchaser hereunder; and in such case, Purchaser shall promptly execute and return such instrument to Owner for recordation in the Office of the Register of Deeds for Beaufort County, South Carolina. If Purchaser fails or refuses to execute such termination instrument within ten (10) days after demand by Owner, then Purchaser hereby specifically authorizes Owner to execute any such termination instrument and any purchaser may rely on such termination instrument executed by Owner.

6. Assignment; Binding Effect. The Refusal Right is personal to Purchaser, shall not be deemed to run with any land owned by Purchaser, and may not be assigned or otherwise transferred by Purchaser without the prior written consent of Owner, which may be granted, withheld or conditioned in the sole and absolute discretion of Owner.

7. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, and any controversy with respect to any of the terms of this Agreement shall be litigated under the jurisdiction of the Court of Common Pleas for Beaufort County, South Carolina. If either party institutes a legal action against the other relating to this Agreement or any default hereunder, the unsuccessful party to such action shall reimburse the successful party for the reasonable expenses of prosecuting or defending such action, including, without limitation, reasonable attorneys' fees and disbursement of court costs.

8. Authority. Each party hereto represents and warrants to the other party that its execution and delivery of this Agreement has been properly and duly authorized, that no approvals (other than approvals that have been obtained as of the Effective Date) are required to be secured from any third party in order to make this Agreement binding on such party, and the individual signing this Agreement on behalf of such party is authorized to sign and deliver this Agreement on its behalf.

9. Entire Agreement. This Agreement contains the entire understanding and agreement between the parties concerning the subject matter addressed herein, and all prior or contemporaneous oral or written agreements or instruments are merged herein. No amendment to this Agreement shall be effective unless the same is in writing and signed by both parties. There are no representations, warranties or undertakings given or made by either party hereto, except as set forth herein or in any agreement delivered pursuant hereto.

10. Captions and Headings; Interpretation. The captions and headings throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to define, limit or add to the interpretation, construction or meaning of any provision of this Agreement. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that the Agreement may have been prepared primarily by counsel for one of the parties.

11. Counterpart Originals. This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but which, when taken together, shall constitute but one instrument and shall become effective as of the Effective Date when copies hereof, which, when taken together, bearing the signatures of each of the parties hereto, shall have been signed. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or email shall be as effective as delivery of a manually executed counterpart of this Agreement.

12. Time of Essence. Time is of the essence of this Agreement.

13. Estoppels and Releases. Upon request of Owner from time to time, Purchaser shall promptly execute and deliver an estoppel certificate, affidavit, or release (in recordable form, if requested), confirming, if such be true, that Owner may accept an offer, enter into a contract of sale, or consummate a sale, without violating any rights that Purchaser may have under this Agreement.

14. Calculation of Time. For purposes of this Agreement, the term “business day” shall mean any day excluding Saturday, Sunday and any other day that is a legal holiday under the laws of the State of South Carolina or is a day on which banking institutions located in such state are closed. If any date upon which some action, notice or response is required of any party hereunder falls on a day other than a business day, such action, notice or response shall not be required until the next succeeding business day.

15. Recordation. This Agreement shall not be recorded in the Office of the Register of Deeds for Beaufort County, South Carolina or otherwise in any public venue or records. However, upon request of Purchaser, Owner shall promptly execute and deliver a memorandum of this Agreement in recordable form, which instrument Purchaser may, at its expense, record in such recording office.

16. Contingency. This Agreement is specifically contingent upon execution by all parties of the Agreement for Purchase and Sale for the Property. If the Agreement for Purchase and Sale is not executed or is terminated following a default by the Purchaser, this Agreement shall be null and void.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and effective as of the Effective Date.

**OWNER:**

**CareCore National, LLC d/b/a eviCore healthcare,**  
a New York limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PURCHASER:**

**TOWN OF BLUFFTON**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_

## EXHIBIT A

### Legal Description of Property

#### **Final legal description will be determined once the subdivision plat is complete**

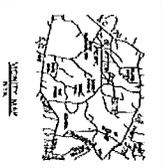
Portion of that certain piece, parcel or tract of land, situate, lying and being within the Buckwalter Planned Unit Development, Town of Bluffton Beaufort County, South Carolina, containing 7.12 acres, more or less, on a plat entitled "ALTA/ASCAM Land Title Survey of 7.12 acres, A Portion of Parcel 6A and Parcel 6B, A Section of Buckwalter Place, Prepared for the Town of Bluffton", prepared by Surveying Consultants, Terry G. Hatchell, SCRLS #11059, dated March 11, 2013 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 136 at Page 106. Said portion contains approximately three point one (3.1) upland acres within Buckwalter Place and consisting of approximately two point four (2.4) acres of undeveloped property and point seven (0.7) acres of adjacent right-of-way known as CareCore Drive, which is bounded on the north by the right-of way known as Progressive Street, to the south by Buckwalter Place Boulevard, to the east by property owned by BC Buckwalter, LLC, and to the west by Parcels 1B-1 and Parcel 2 owned by CareCore National, LLC d/b/a eviCore healthcare as shown in the reference drawing below the final acreage of which shall be determined by the final approved subdivision plat.



Exhibit "E"

Extension of Innovation Drive and Progressive Street

[see attached]



NO.	DESCRIPTION	ACRES
1	Parcel 1A	1.23
2	Parcel 1B	1.23
3	Parcel 1C	1.23
4	Parcel 1D	1.23
5	Parcel 1E	1.23
6	Parcel 1F	1.23
7	Parcel 1G	1.23
8	Parcel 1H	1.23
9	Parcel 1I	1.23
10	Parcel 1J	1.23
11	Parcel 1K	1.23
12	Parcel 1L	1.23
13	Parcel 1M	1.23
14	Parcel 1N	1.23
15	Parcel 1O	1.23
16	Parcel 1P	1.23
17	Parcel 1Q	1.23
18	Parcel 1R	1.23
19	Parcel 1S	1.23
20	Parcel 1T	1.23
21	Parcel 1U	1.23
22	Parcel 1V	1.23
23	Parcel 1W	1.23
24	Parcel 1X	1.23
25	Parcel 1Y	1.23
26	Parcel 1Z	1.23
27	Parcel 1AA	1.23
28	Parcel 1AB	1.23
29	Parcel 1AC	1.23
30	Parcel 1AD	1.23
31	Parcel 1AE	1.23
32	Parcel 1AF	1.23
33	Parcel 1AG	1.23
34	Parcel 1AH	1.23
35	Parcel 1AI	1.23
36	Parcel 1AJ	1.23
37	Parcel 1AK	1.23
38	Parcel 1AL	1.23
39	Parcel 1AM	1.23
40	Parcel 1AN	1.23
41	Parcel 1AO	1.23
42	Parcel 1AP	1.23
43	Parcel 1AQ	1.23
44	Parcel 1AR	1.23
45	Parcel 1AS	1.23
46	Parcel 1AT	1.23
47	Parcel 1AU	1.23
48	Parcel 1AV	1.23
49	Parcel 1AW	1.23
50	Parcel 1AX	1.23
51	Parcel 1AY	1.23
52	Parcel 1AZ	1.23
53	Parcel 1BA	1.23
54	Parcel 1BB	1.23
55	Parcel 1BC	1.23
56	Parcel 1BD	1.23
57	Parcel 1BE	1.23
58	Parcel 1BF	1.23
59	Parcel 1BG	1.23
60	Parcel 1BH	1.23
61	Parcel 1BI	1.23
62	Parcel 1BJ	1.23
63	Parcel 1BK	1.23
64	Parcel 1BL	1.23
65	Parcel 1BM	1.23
66	Parcel 1BN	1.23
67	Parcel 1BO	1.23
68	Parcel 1BP	1.23
69	Parcel 1BQ	1.23
70	Parcel 1BR	1.23
71	Parcel 1BS	1.23
72	Parcel 1BT	1.23
73	Parcel 1BU	1.23
74	Parcel 1BV	1.23
75	Parcel 1BW	1.23
76	Parcel 1BX	1.23
77	Parcel 1BY	1.23
78	Parcel 1BZ	1.23
79	Parcel 1CA	1.23
80	Parcel 1CB	1.23
81	Parcel 1CC	1.23
82	Parcel 1CD	1.23
83	Parcel 1CE	1.23
84	Parcel 1CF	1.23
85	Parcel 1CG	1.23
86	Parcel 1CH	1.23
87	Parcel 1CI	1.23
88	Parcel 1CJ	1.23
89	Parcel 1CK	1.23
90	Parcel 1CL	1.23
91	Parcel 1CM	1.23
92	Parcel 1CN	1.23
93	Parcel 1CO	1.23
94	Parcel 1CP	1.23
95	Parcel 1CQ	1.23
96	Parcel 1CR	1.23
97	Parcel 1CS	1.23
98	Parcel 1CT	1.23
99	Parcel 1CU	1.23
100	Parcel 1CV	1.23
101	Parcel 1CW	1.23
102	Parcel 1CX	1.23
103	Parcel 1CY	1.23
104	Parcel 1CZ	1.23
105	Parcel 1DA	1.23
106	Parcel 1DB	1.23
107	Parcel 1DC	1.23
108	Parcel 1DD	1.23
109	Parcel 1DE	1.23
110	Parcel 1DF	1.23
111	Parcel 1DG	1.23
112	Parcel 1DH	1.23
113	Parcel 1DI	1.23
114	Parcel 1DJ	1.23
115	Parcel 1DK	1.23
116	Parcel 1DL	1.23
117	Parcel 1DM	1.23
118	Parcel 1DN	1.23
119	Parcel 1DO	1.23
120	Parcel 1DP	1.23
121	Parcel 1DQ	1.23
122	Parcel 1DR	1.23
123	Parcel 1DS	1.23
124	Parcel 1DT	1.23
125	Parcel 1DU	1.23
126	Parcel 1DV	1.23
127	Parcel 1DW	1.23
128	Parcel 1DX	1.23
129	Parcel 1DY	1.23
130	Parcel 1DZ	1.23
131	Parcel 1EA	1.23
132	Parcel 1EB	1.23
133	Parcel 1EC	1.23
134	Parcel 1ED	1.23
135	Parcel 1EE	1.23
136	Parcel 1EF	1.23
137	Parcel 1EG	1.23
138	Parcel 1EH	1.23
139	Parcel 1EI	1.23
140	Parcel 1EJ	1.23
141	Parcel 1EK	1.23
142	Parcel 1EL	1.23
143	Parcel 1EM	1.23
144	Parcel 1EN	1.23
145	Parcel 1EO	1.23
146	Parcel 1EP	1.23
147	Parcel 1EQ	1.23
148	Parcel 1ER	1.23
149	Parcel 1ES	1.23
150	Parcel 1ET	1.23
151	Parcel 1EU	1.23
152	Parcel 1EV	1.23
153	Parcel 1EW	1.23
154	Parcel 1EX	1.23
155	Parcel 1EY	1.23
156	Parcel 1EZ	1.23
157	Parcel 1FA	1.23
158	Parcel 1FB	1.23
159	Parcel 1FC	1.23
160	Parcel 1FD	1.23
161	Parcel 1FE	1.23
162	Parcel 1FF	1.23
163	Parcel 1FG	1.23
164	Parcel 1FH	1.23
165	Parcel 1FI	1.23
166	Parcel 1FJ	1.23
167	Parcel 1FK	1.23
168	Parcel 1FL	1.23
169	Parcel 1FM	1.23
170	Parcel 1FN	1.23
171	Parcel 1FO	1.23
172	Parcel 1FP	1.23
173	Parcel 1FQ	1.23
174	Parcel 1FR	1.23
175	Parcel 1FS	1.23
176	Parcel 1FT	1.23
177	Parcel 1FU	1.23
178	Parcel 1FV	1.23
179	Parcel 1FW	1.23
180	Parcel 1FX	1.23
181	Parcel 1FY	1.23
182	Parcel 1FZ	1.23
183	Parcel 1GA	1.23
184	Parcel 1GB	1.23
185	Parcel 1GC	1.23
186	Parcel 1GD	1.23
187	Parcel 1GE	1.23
188	Parcel 1GF	1.23
189	Parcel 1GG	1.23
190	Parcel 1GH	1.23
191	Parcel 1GI	1.23
192	Parcel 1GJ	1.23
193	Parcel 1GK	1.23
194	Parcel 1GL	1.23
195	Parcel 1GM	1.23
196	Parcel 1GN	1.23
197	Parcel 1GO	1.23
198	Parcel 1GP	1.23
199	Parcel 1GQ	1.23
200	Parcel 1GR	1.23
201	Parcel 1GS	1.23
202	Parcel 1GT	1.23
203	Parcel 1GU	1.23
204	Parcel 1GV	1.23
205	Parcel 1GW	1.23
206	Parcel 1GX	1.23
207	Parcel 1GY	1.23
208	Parcel 1GZ	1.23
209	Parcel 1HA	1.23
210	Parcel 1HB	1.23
211	Parcel 1HC	1.23
212	Parcel 1HD	1.23
213	Parcel 1HE	1.23
214	Parcel 1HF	1.23
215	Parcel 1HG	1.23
216	Parcel 1HH	1.23
217	Parcel 1HI	1.23
218	Parcel 1HJ	1.23
219	Parcel 1HK	1.23
220	Parcel 1HL	1.23
221	Parcel 1HM	1.23
222	Parcel 1HN	1.23
223	Parcel 1HO	1.23
224	Parcel 1HP	1.23
225	Parcel 1HQ	1.23
226	Parcel 1HR	1.23
227	Parcel 1HS	1.23
228	Parcel 1HT	1.23
229	Parcel 1HU	1.23
230	Parcel 1HV	1.23
231	Parcel 1HW	1.23
232	Parcel 1HX	1.23
233	Parcel 1HY	1.23
234	Parcel 1HZ	1.23
235	Parcel 1IA	1.23
236	Parcel 1IB	1.23
237	Parcel 1IC	1.23
238	Parcel 1ID	1.23
239	Parcel 1IE	1.23
240	Parcel 1IF	1.23
241	Parcel 1IG	1.23
242	Parcel 1IH	1.23
243	Parcel 1II	1.23
244	Parcel 1IJ	1.23
245	Parcel 1IK	1.23
246	Parcel 1IL	1.23
247	Parcel 1IM	1.23
248	Parcel 1IN	1.23
249	Parcel 1IO	1.23
250	Parcel 1IP	1.23
251	Parcel 1IQ	1.23
252	Parcel 1IR	1.23
253	Parcel 1IS	1.23
254	Parcel 1IT	1.23
255	Parcel 1IU	1.23
256	Parcel 1IV	1.23
257	Parcel 1IW	1.23
258	Parcel 1IX	1.23
259	Parcel 1IY	1.23
260	Parcel 1IZ	1.23
261	Parcel 1JA	1.23
262	Parcel 1JB	1.23
263	Parcel 1JC	1.23
264	Parcel 1JD	1.23
265	Parcel 1JE	1.23
266	Parcel 1JF	1.23
267	Parcel 1JG	1.23
268	Parcel 1JH	1.23
269	Parcel 1JI	1.23
270	Parcel 1JJ	1.23
271	Parcel 1JK	1.23
272	Parcel 1JL	1.23
273	Parcel 1JM	1.23
274	Parcel 1JN	1.23
275	Parcel 1JO	1.23
276	Parcel 1JP	1.23
277	Parcel 1JQ	1.23
278	Parcel 1JR	1.23
279	Parcel 1JS	1.23
280	Parcel 1JT	1.23
281	Parcel 1JU	1.23
282	Parcel 1JV	1.23
283	Parcel 1JW	1.23
284	Parcel 1JX	1.23
285	Parcel 1JY	1.23
286	Parcel 1JZ	1.23
287	Parcel 1KA	1.23
288	Parcel 1KB	1.23
289	Parcel 1KC	1.23
290	Parcel 1KD	1.23
291	Parcel 1KE	1.23
292	Parcel 1KF	1.23
293	Parcel 1KG	1.23
294	Parcel 1KH	1.23
295	Parcel 1KI	1.23
296	Parcel 1KJ	1.23
297	Parcel 1KK	1.23
298	Parcel 1KL	1.23
299	Parcel 1KM	1.23
300	Parcel 1KN	1.23
301	Parcel 1KO	1.23
302	Parcel 1KP	1.23
303	Parcel 1KQ	1.23
304	Parcel 1KR	1.23
305	Parcel 1KS	1.23
306	Parcel 1KT	1.23
307	Parcel 1KU	1.23
308	Parcel 1KV	1.23
309	Parcel 1KW	1.23
310	Parcel 1KX	1.23
311	Parcel 1KY	1.23
312	Parcel 1KZ	1.23
313	Parcel 1LA	1.23
314	Parcel 1LB	1.23
315	Parcel 1LC	1.23
316	Parcel 1LD	1.23
317	Parcel 1LE	1.23
318	Parcel 1LF	1.23
319	Parcel 1LG	1.23
320	Parcel 1LH	1.23
321	Parcel 1LI	1.23
322	Parcel 1LJ	1.23
323	Parcel 1LK	1.23
324	Parcel 1LL	1.23
325	Parcel 1LM	1.23
326	Parcel 1LN	1.23
327	Parcel 1LO	1.23
328	Parcel 1LP	1.23
329	Parcel 1LQ	1.23
330	Parcel 1LR	1.23
331	Parcel 1LS	1.23
332	Parcel 1LT	1.23
333	Parcel 1LU	1.23
334	Parcel 1LV	1.23
335	Parcel 1LW	1.23
336	Parcel 1LX	1.23
337	Parcel 1LY	1.23
338	Parcel 1LZ	1.23
339	Parcel 1MA	1.23
340	Parcel 1MB	1.23
341	Parcel 1MC	1.23
342	Parcel 1MD	1.23
343	Parcel	



that certain plat prepared by Boyce L. Young, Thomas & Hutton Engineering Co., recorded with the Register of Deeds in Plat Book 128 at Page 171 (herein, "*the Plat of Parcel 1B-1*"), to CARECORE PROPERTIES, LLC, a South Carolina limited liability company (herein, "*CareCore*"), as recorded in Record Book 2889 at Page 2015; and,

WHEREAS, the Town retained ownership of that certain 0.444 acre easement area in Parcel 1B lying to the east of Parcel 1B-1, commonly known as a portion of CareCore Drive and identified as "Easement #1" on the Plat of Parcel 1B-1 (herein "*Easement No. 1*"); and,

WHEREAS, on or about September 15, 2009, the Town and CareCore entered into the Access Easement; and,

WHEREAS, on or about August 5, 2010, Parcel 6, LLC conveyed certain real property collectively containing 0.08 acres, more or less, being show and described as "0.04 ac. To Be Conveyed to Parcel 1B Previously a Portion of TMS R610-022-000-0579-0000", "0.01 ac. To Be Conveyed to Par 1B Previously a Portion of TMS R610-029-000-0786-0000", and "0.03 ac. To Be Conveyed to R/W Previously a Portion of TMS R610-029-000-0786-0000", on that certain plat prepared by Michael Jim Gardner, SCPLS Number 12239 of Ward Edwards, Inc. recorded with the Register of Deeds in Plat Book 120 at Page 177, to the Town, which deed was recorded in Record Book 2979 at Page 317; and,

WHEREAS, on or about May 2, 2011, the Town conveyed a certain 4.78 acre parcel located within the Bluffton Tech Park, as shown and identified as Parcel 2 (herein, "*Parcel 2*") on that certain plat of Michael Jim Gardner, Ward Edwards, Inc., recorded with the Register of Deeds in Plat Book 123 at Page 133 (herein, the "*Plat of Parcel 2*"), to CareCore, as recorded in Record Book 3058 at Page 716; and,

WHEREAS, on or about March 19, 2013, Parcel 6, LLC, conveyed a 7.12 acre parcel located adjacent to the Bluffton Tech Park, as shown and set forth on that certain plat prepared by Terry G. Hatchell, Surveying Consultants, recorded with the Register of Deeds in Plat Book 136 at Page 106, to the Town, which deed was recorded in Record Book 3225 at Page 1673; and,

WHEREAS, on or about November 1, 2013, Beaufort County conveyed Parcel A-1A back to the Town, as evidenced by that Limited Warranty Deed recorded with the Register of Deeds in Record Book 3286 at Page 1428, which terminated the County Easement by merger; and,

WHEREAS, on or about \_\_\_\_\_, 2015, the Town and eviCore entered into an Agreement whereby eviCore would purchase and the Town would sell approximately 3.1 acres of real property in and adjacent to the Bluffton Tech Park (herein, the "*Agreement*"), as set forth in that certain plat prepared by \_\_\_\_\_, S.C.R.L.S. No. \_\_\_\_\_, entitled, "*A Subdivision Survey of 15.63 Acres of the Town of Bluffton and the Bluffton Technology Park,*" dated \_\_\_\_\_, recorded in the Register of Deeds in Plat Book \_\_\_\_\_ at Page \_\_\_\_\_, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (the "*Plat*"); and,

WHEREAS, the Parties hereby acknowledge and agree that the use of the access easement identified as CareCore Drive on the Plat (herein, "*CareCore Drive*") is essential to the Town as it serves as the sole means of access to certain property owned by the Town, including but not limited to the remainder Parcel 1B, Parcel A-1A, the Bluffton Law Enforcement Center, adjacent undeveloped property, and rights-of-way identified for the existing and proposed extensions of Innovation Drive and Progressive Street as set forth in the Buckwalter Place Master Plan described herein (the "*Town Property*"); and

WHEREAS, the Parties further acknowledge and agree that the Town intends, but is not obligated, to construct extensions of certain roadways including Innovation Drive and Progressive Street, as shown in the Buckwalter Place Master Plan provided as Exhibit "**B**" attached hereto, and upon the completion of construction, such rights-of-way will provide alternate means of access to the Town Property; and,

WHEREAS, the Parties further acknowledge and agree that upon the Town's, or its successors or assigns, completion of the construction of the extensions of Innovation Drive and Progressive Street, that the Town's easement and right to and over CareCore Drive will no longer be the sole means of access to the Town Property, and, upon the written request of eviCore, the Town will consent to the termination and/or abandonment of the right-of-way known as CareCore Drive.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the receipt and legal sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Incorporation of Recitals.** The above recitals are hereby incorporated herein as if restated fully and are hereby made an integral part hereof so that their contents are a substantive part of this Amendment.

2. **Easement Over CareCore Drive.** eviCore has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the Town, its successors and assigns, subject to the terms enumerated and set forth below, a permanent, perpetual, non-exclusive, assignable, transmissible and commercial easement for pedestrian and vehicular ingress, egress and regress on, over and across that certain strip or parcel of land shown and designated as "CARECORE DRIVE" on the Plat. It is expressly agreed by eviCore that the easement over Care Core Drive hereinabove granted is commercial in nature, and is expressly made and granted to and for the use and benefit of the Town, its successors, assigns, tenants, contractors, invitees, agents, servants, employees, staff, guests and customers, and further, that the easement shall both now and for the entire duration of the easement provide the right of non-exclusive public travel, access, utilities and drainage, along with the various related appurtenances thereto, for the Town and any and all officers, directors, employees, agents, contractors, customers, guests, visitors, invitees, licensees, assignees, tenants or concessionaires of the Town that desire access to parcels adjacent to CareCore Drive in order to promote orderly traffic interconnectivity within the Bluffton Tech Park and Buckwalter Place.

3. **Term.** This easement and all of the terms contained herein shall be permanent and perpetual; however, upon the Town's completion of those rights-of-way identified on the Plat as "Innovation Drive" and "Progressive Street," in accordance with the Buckwalter Place Master Plan and any and all relevant local, state or federal standards for public roads, the Town, its successors and assigns, upon the written request of eviCore, shall consent to the cancellation, termination and/or abandonment of any easements and rights that the Town, its successors, assigns, tenants, contractors, invitees, agents, servants, employees, staff, officers, directors, visitors, licensees, assignees, concessionaires, guests and customers may hold over CareCore Drive under this Amendment.

4. **Easement to Run with the Land.** This easement and all of the terms and covenants contained herein shall run with the land and shall be recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, and shall pertain to the all of the properties benefitted by this Amendment, including but not limited to the Town Property, and burdened by this Amendment.

5. **Subordination/Joinder.** Unless otherwise agreed to by the Town, eviCore shall make commercially reasonable efforts to subordinate all liens, mortgages and other encumbrances not satisfied or released of record to the terms of this Amendment.

6. **Modifications.** The terms of this Amendment may not be changed, modified, waived, discharged or terminated orally, but only by an instrument in writing, signed by each party.

7. **Construction of Amendment.** Each party acknowledges that it has participated in the negotiation and drafting of this Amendment. No provision of this Amendment shall be construed against or interpreted to the disadvantage of any party hereto or thereto by any court by reason of such party having or being deemed to have structured, dictated, or drafted any provision in the Amendment.

8. **Successors and Assigns.** All provisions of this Amendment shall run with the land and bind and inure to the benefit of each party and each party's respective heirs, executors, legal representatives, successors, successors in title and assigns.

9. **Merger Provision.** This Amendment contains the entire agreement between the parties with respect to the issues set forth herein. All other discussions, proposals, agreements or offers are merged into this Amendment.

10. **Conflicts.** To the extent any portion of this Amendment conflicts with or directly contradicts the terms of the Access Easement, the terms of this Amendment shall prevail.

*[Remainder of Page Intentionally Omitted. Signature Page(s) and Exhibit(s) to Follow.]*





Exhibit "A"

Plat

Exhibit "B"

Buckwalter Place Master Plan

**ORDINANCE NO. 2015-\_\_**

**TOWN OF BLUFFTON, SOUTH CAROLINA**

**AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN REAL PROPERTY OWNED BY THE TOWN OF BLUFFTON TO EVICORE HEALTHCARE CONSISTING OF AN APPROXIMATELY 3.13 ACRE PORTION OF PARCELS R610 022 000 1099 0000, R610 030 000 1848 0000 AND R620 030 000 1772 0000, THE TRANSFER OF GENERAL COMMERCIAL DEVELOPMENT RIGHTS, AND THE ESTABLISHMENT OF A CARECORE DRIVE TEMPORARY ACCESS EASEMENT.**

**WHEREAS**, the Town of Bluffton, South Carolina, (the "Town") presently owns a total of eighteen point seven four (18.74) upland acres within the Buckwalter Place Development ("Town Owned Property"); and,

**WHEREAS**, CareCore National, LLC d/b/a eviCore Healthcare ("eviCore") submitted a Letter of Intent to the Town outlining its proposed purchase of approximately three point one three (3.13) upland acres, consisting of two point three five (2.35) acres of undeveloped property as well as point seven eight (0.78) acres of adjacent right-of-way, known as CareCore Drive, of the Town Owned Property within Buckwalter Place for \$275,000; and,

**WHEREAS**, on October 13, 2015, the Town of Bluffton Town Council (the "Town Council"), by majority vote, authorized the Town Manager to enter into negotiations for the sale of the Property Acquisition Area to eviCore; and,

**WHEREAS**, as part of the sale of Town Owned Property to eviCore, the Town desires to transfer a total eight point seven nine (8.79) acres of General Commercial development rights for the two point four (2.35) acre undeveloped portion of the property purchase as well as for eviCore's existing Building 1 and 2 sites which did not receive an assignment of development rights as part of previous transactions with the Town; and,

**WHEREAS**, the sale of the Property Acquisition Area to eviCore includes the conveyance of CareCore Drive which is currently a public right-of-way which provides vehicular access to several adjacent properties; and

**WHEREAS**, to address the current need for access as well as eviCore's possible future use of the property, the parties desire to enter into an easement agreement whereby eviCore agrees to the Town's continued use of CareCore Drive until such time as the future extensions of Progressive Street and Innovation Drive ("Alternate R/Ws") are complete and open to vehicular travel and upon the Alternate R/Ws completion, the Town will consent to the abandonment/termination of CareCore Drive; and

**WHEREAS,** Sections 5-7-40 and 5-7-260 of the South Carolina Code of Laws and Sections 2-13(a)(8) and 2-13(a)(4) of the Code of Ordinances for the Town of Bluffton requires that Town Council act by Ordinance to convey, lease, or authorize the conveyance or lease of any Town owned lands as well as easements and public rights-of-way.

**NOW, THEREFORE, BE IT ENACTED BY THE TOWN COUNCIL OF THE TOWN OF BLUFFTON, SOUTH CAROLINA:**

**SECTION 1. Sale of Town Owned Property.** Approval of the sale of approximately 3.13 acres consisting of portion of Parcels R610 022 000 1099 0000, R610 030 000 1848 0000 and R620 030 000 1772 0000 to eviCore healthcare, as detailed in the *Property Description* provided as Exhibit A, which is attached and incorporated herein, for a purchase price of Two Hundred Seventy-Five Thousand and No/100 (\$275,000.00) Dollars.

**SECTION 2. Transfer of General Commercial Development Rights.** Approval of the transfer of approximately 8.79 acres of General Commercial development rights to eviCore healthcare as detailed in the *Partial Assignment and Assumption of Rights and Obligations Under Development Agreement* provided as Exhibit B, which is attached and incorporated herein.

**SECTION 3. Establishment of a CareCore Drive Temporary Access Easement.** Approval of the establishment of a temporary access easement for the continued use of CareCore Drive and future abandonment/termination as detailed in the *Permanent Cross Access, Utilities & Drainage Easements Agreement and Confirmation of Perpetual Access Easement Agreement for CareCore Drive R-O-W* provided as Exhibit C, which is attached and incorporated herein.

**SECTION 4.** This ordinance shall become effective upon its final adoption.

DONE, RATIFIED AND ENACTED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

This Ordinance was read and passed at First Reading on December 8, 2015.

\_\_\_\_\_  
Lisa Sulka, Mayor  
Town of Bluffton, South Carolina

\_\_\_\_\_  
Sandra Lunceford

Clerk, Town of Bluffton, South Carolina

This Ordinance was passed at Second and Final Reading held  
on \_\_\_\_\_, 2016.

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Lisa Sulka, Mayor  
Town of Bluffton, South Carolina

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Sandra Lunceford  
Clerk, Town of Bluffton, South Carolina

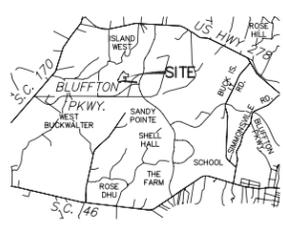
## Exhibit A

### Legal Description

#### **Final legal description will be determined once the subdivision plat is complete**

Portion of that certain piece, parcel or tract of land, situate, lying and being within the Buckwalter Planned Unit Development, Town of Bluffton Beaufort County, South Carolina, containing 7.12 acres, more or less, on a plat entitled "ALTA/ASCAM Land Title Survey of 7.12 acres, A Portion of Parcel 6A and Parcel 6B, A Section of Buckwalter Place, Prepared for the Town of Bluffton", prepared by Surveying Consultants, Terry G. Hatchell, SCRLS #11059, dated March 11, 2013 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 136 at Page 106. Said portion contains approximately three point one three (3.13) upland acres within Buckwalter Place and consisting of approximately two point three five (2.35) acres of undeveloped property and point seven eight (0.78) acres of adjacent right-of-way known as CareCore Drive, which is bounded on the north by the right-of way easement known as Progressive Street, to the south by Buckwalter Place Boulevard, to the east by property owned by BC Buckwalter, LLC, and to the west by Parcels 1B-1 and Parcel 2 owned by CareCore National, LLC d/b/a eviCore healthcare as shown in the reference drawing on the following page, the final acreage of which shall be determined by the final subdivision plat approved by the Town of Bluffton.

# Overview of Town of Bluffton Property at Buckwalter Place Subdivision Mock-Up and Notes



VICINITY MAP  
N.T.S.

CURVE TABLE						
CURVE	LENGTH	RADIUS	TANGENT	DELTA ANGLE	CHORD	CHORD BEARING
C1	340.38'	550.00'	175.84'	35°27'30"	334.97'	N 70°36'02" W
C2	238.87'	550.00'	121.35'	24°53'03"	237.00'	N 40°26'45" W
C3	172.82'	110.00'	110.03'	90°00'59"	155.59'	S 49°30'43" W

LINE TABLE		
LINE	LENGTH	BEARING
L1	53.22'	N 88°19'47" W
L2	76.12'	S 75°11'10" E
L3	77.27'	N 51°01'30" E
L4	44.28'	N 81°29'48" E
L5	80.12'	N 65°30'04" E
L6	84.52'	N 49°23'01" E
L7	64.80'	N 57°58'28" E
L8	43.11'	N 52°18'24" E
L9	66.00'	S 85°09'27" E
L10	66.00'	N 85°25'31" W

LEGEND:	LEGEND:
N.T.S.	NOT TO SCALE
R/W	RIGHT-OF-WAY
Ac.	ACRES
I.O.	IRON PIN, OLD (FOUND)
I.N.	IRON PIN, NEW (SET)
TFR	TRANSFORMER
WV	WATER VALVE
FH	FIRE HYDRANT
WM	WATER METER
LP	LAMP POST
PP	POWER POLE
SSMH	SANITARY SEWER MANHOLE
CB	CATCH BASIN
CI	CURB INLET
RCP	REINFORCED CONCRETE PIPE
PVC	POLYVINYL CHLORIDE PIPE
HDPE	HIGH DENSITY POLYETHYLENE
SMH	STORM DRAIN MANHOLE
GV	GAS VALVE

REFERENCE PLATS:

- 1) A PLAT OF PARCEL 6A, A PORTION OF BUCKWALTER COMMERCIAL, INC., DATED: 7/1/05, LAST REVISED: 8/22/05, BY: BOYCE L. YOUNG, S.C.R.L.S. NO. 11079, RECORDED: P.B. 109, PG. 186, 11/17/2005.
- 2) A PLAT OF PARCEL 6B, A PORTION OF BHR ACQUISITION CO., LLC PROPERTY, DATED: 7/1/05, LAST REVISED: 8/22/05, BY: BOYCE L. YOUNG, S.C.R.L.S. NO. 11079, RECORDED: P.B. 109, PG. 187, 11/17/2005.
- 3) A SUBDIVISION PLAT OF A 23.05 ACRES, BUCKWALTER PARKWAY (BLUFFTON TECH PARK), DATED: 5/30/07, LAST REVISED: 1/14/08, BY: MICHAEL JIM GARDNER, S.C.R.L.S. NO. 12239, RECORDED: P.B. 123, PG. 133, 1/24/08.
- 4) EASEMENT PLAT, EASEMENTS 5-6, A PORTION OF BLUFFTON TECH PARK PARCELS 1B & 6A, DATED: 4/01/10, BY: STUART W. SPENCER, S.C.R.L.S. NO. 27743, RECORDED: P.B. 131, PG. 31, 08/05/2010.
- 5) EASEMENT PLAT, EASEMENTS 7-9, EASEMENT RELOCATION, A PORTION OF BLUFFTON TECH PARK PARCEL 1B, DATED: 4/01/10, BY: STUART W. SPENCER, S.C.R.L.S. NO. 27743, RECORDED: P.B. 131, PG. 32, 08/05/2010.
- 6) A SUBDIVISION PLAT OF A 23.05 ACRES, BUCKWALTER PARKWAY (BLUFFTON TECH PARK), DATED: 5/30/07, REVISED: 7/18/07, BY: MICHAEL JIM GARDNER, S.C.R.L.S. NO. 12239, RECORDED: P.B. 120, PG. 177, 7/18/07.
- 7) A PLAT OF A 1.66 ACRE PARCEL, BEING A PORTION OF BLUFFTON TECH PARK, DATED: 6/09/09, REVISED: 9/2/09, BY: BOYCE L. YOUNG, S.C.R.L.S. NO. 11079, RECORDED: P.B. 128, PG. 171, 9/17/09.

NOTES

- 1) I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO OBVIOUS, APPARENT OR VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.
- 2) AS OF THE DATE OF THIS SURVEY THIS PROPERTY IS LOCATED IN ZONE C, NOT A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY H.U.D. PANEL 85-D, COMMUNITY NO. 450025, MAP DATED 9/29/86, BASE ELEVATION 11.5.
- 3) STATE PLANE COORDINATES SHOWN WERE ESTABLISHED FROM REFERENCE PLAT #7.
- 4) THE SUBJECT PARCEL IS ZONED PUD: PLANNED UNIT DEVELOPMENT.
- 5) TO THE BEST OF THIS SURVEYOR'S KNOWLEDGE, THERE ARE NO WETLANDS ON THE SUBJECT PARCEL.
- 6) THERE IS NO OBVIOUS EVIDENCE OF CURRENT EARTH MOVING WORK, BUILDING CONSTRUCTION OR BUILDING ADDITIONS ON THE SUBJECT PARCEL.
- 7) THERE IS NO OBVIOUS EVIDENCE OF THE SUBJECT PARCEL BEING USED AS A SOLID WASTE DUMP, SUMP OR SANITARY LANDFILL.

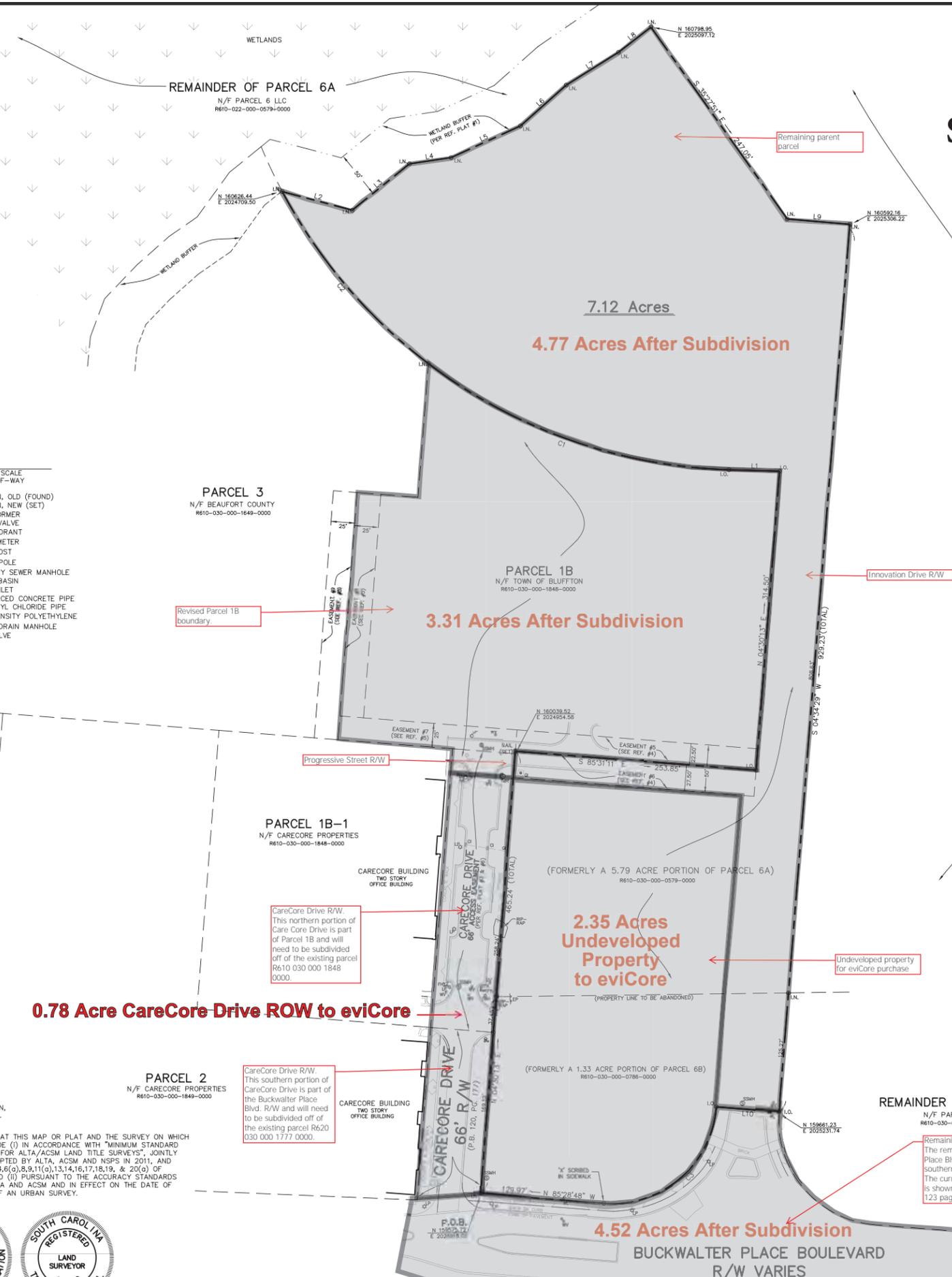
TO: THE TOWN OF BLUFFTON,  
FINGER & FRASER, P.A.

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE (I) IN ACCORDANCE WITH "MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS", JOINTLY ESTABLISHED AND ADOPTED BY ALTA, ACSM AND NSPS IN 2011, AND INCLUDES ITEMS 1,2,3,4,6(c),8,9,11(c),13,14,16,17,18,19, & 20(a) OF TABLE A THEREOF, AND (II) PURSUANT TO THE ACCURACY STANDARDS (AS ADOPTED BY ALTA AND ACSM AND IN EFFECT ON THE DATE OF THIS CERTIFICATION) OF AN URBAN SURVEY.



PREPARED FOR: TOWN OF BLUFFTON

ADDRESS: BUCKWALTER PLACE BOULEVARD  
PARCEL TAX PARCEL I.D. NO. R610-022-000-0579-0000 & R610-030-000-0786-0000



LEGAL DESCRIPTION

Being all that 7.12 acre piece or parcel of land lying and being the Town of Bluffton, Beaufort County, South Carolina and being more particularly described as follows:

Beginning at an iron pin at the northeastern intersection of the rights-of-way of Buckwalter Place Boulevard and CareCore Drive, said iron pin also being the southwestern corner of Parcel 6B as shown on a plat entitled "A SUBDIVISION PLAT OF 23.05 ACRES, BUCKWALTER PLACE, (BLUFFTON TECH PARK)", dated May 30, 2007, last revised on January 14, 2008 by Michael Jim Gardner PLS and recorded in Plat Book 123 at Page 133 in the Beaufort County Register of Deeds; said iron pin also having South Carolina State Plane Coordinates of North 159575.72 and East 2024918.08; thence running from said Point of Beginning with eastern right-of-way of CareCore Drive (66' R/W and 66' Access Easement) N 04°30'13" E for a distance of 465.24 feet to a nail set; thence with lands of now or formerly the Town of Bluffton the following four courses and distances to-wit: S 85°31'11" E for a distance of 253.85 feet to an iron pin found; thence N 04°30'31" E for a distance of 314.50 feet to an iron pin found; thence N 88°19'47" W for a distance of 53.22 feet to an iron pin found; thence a curve to the right having an arc length of 340.38 feet and a radius of 550.00 feet with a chord bearing of N 70°36'02" W and a chord distance of 237.00 feet to iron pin set; thence turning and running with lands of now or formerly PARCEL 6 LLC the following ten course and distances to-wit: S 75°11'10" E for a distance of 76.12 feet to an iron pin set; thence N 51°01'30" E for a distance of 77.27 feet to an iron pin set; thence N 81°29'48" E for a distance of 44.28 feet to an iron pin set; thence N 65°30'04" E for a distance of 80.12 feet to an iron pin set; thence N 49°23'01" E for a distance of 84.52 feet to an iron pin set; thence S 57°58'28" E for a distance of 64.80 feet to an iron pin set; thence N 52°18'24" E for a distance of 43.11 feet to an iron pin set; thence N 85°09'27" E for a distance of 66.00 feet to an iron pin set; thence S 04°34'29" W for a distance of 929.23 feet to an iron pin found on the northern right-of-way of Buckwalter Place Boulevard; thence running with the northern right-of-way of said Buckwalter Place Boulevard the following three course and distances to-wit: N 85°25'31" W for a distance of 66.00 feet to an iron pin found; thence a curve to the right having an arc length of 172.22 feet and a radius of 110.00 feet with a chord bearing of S 49°30'43" W and a chord distance of 155.59 feet to an "X" scribed in concrete sidewalk; thence N 85°28'48" W for a distance of 129.97 feet to an iron pin which is the Point of Beginning;

Contains 7.12 acres more or less.

ALTA/ACSM LAND TITLE SURVEY  
OF  
7.12 ACRES  
A PORTION OF  
PARCEL 6A & PARCEL 6B  
A SECTION OF  
BUCKWALTER PLACE  
PREPARED FOR  
TOWN OF BLUFFTON  
TOWN OF BLUFFTON, BEAUFORT COUNTY, SOUTH CAROLINA  
SCALE: 1" = 60' DATE: 03/11/2013 JOB NO: SC130018

SHEET 1 OF 2  
SEE SHEET 2 FOR TITLE NOTES  
GRAPHIC SCALE  
0 60 120 180

SC SURVEYING CONSULTANTS  
17 Sherington Drive, Suite C, Bluffton, SC 29910  
SC Telephone: (843) 815-3304 FAX: (843) 815-3305  
CA Telephone: (912) 828-2775  
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WHEREAS, Parcel 6, LLC (“*Parcel 6*”) acquired from BHR certain property and was partially assigned certain rights with respect to such property pursuant to a Partial Assignment and Assumption of Rights and Obligations Under Development Agreement dated the 25th day of November, 2005 and recorded in the Office of the Register of Deeds for Beaufort County in Official Record Book 2278 at Page 1288; and,

WHEREAS, Parcel 6 acquired from Buckwalter, certain property and was partially assigned certain rights with respect to such property pursuant to a Partial Assignment and Assumption of Rights and Obligations Under Development Agreement dated November 23, 2005 and recorded in the Office of the Register of Deeds for Beaufort County in Official Record Book 2317 at Page 825; and

WHEREAS, Assignor acquired from Parcel 6 certain property and was partially assigned certain rights with respect to such property pursuant to a Partial Assignment and Assumption of Rights and Obligations Under Development Agreement dated March 19, 2013 and recorded in the Office of the Register of Deeds for Beaufort County in Official Record Book 3225 at Page 1678; and

WHEREAS, Assignor entered into an Agreement for Purchase and Sale with Assignee dated December 16, 2015 providing for the sale by Assignor and the purchase by Assignee of the property as more particularly described on Exhibit A attached hereto and incorporated by this reference (the “*Property*”); and

WHEREAS, as an integral part of the conveyance of the Property by Assignor to Assignee, it is the desire and intention of Assignor to assign to Assignee, and it is the desire and intention of Assignee to assume, certain rights, privileges, and obligations under the Development Agreement applicable to the Property, thus necessitating the preparation and execution of the within Partial Assignment; and

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy whereof is herewith acknowledged, parties hereby agree as follows, to wit:

1. Partial Assignment and Assumption of Rights, Privileges and Obligations Applicable to the Property Pursuant to The Development Agreement and Buckwalter PUD Concept Plan. Assignor does hereby transfer, assign, convey and deliver unto Assignee, its successors and assigns a total of [8.79] acres of General Commercial as an allowed land use per the following allocation:

a. Property (Exhibit A) – [2.35] acres of General Commercial development rights.

b. Parcel 1B-1 (Exhibit B) – 1.66 acres of General Commercial development rights. Development of this parcel has already taken place utilizing the 1.66 acres of General Commercial development rights transferred through this Partial Assignment. Therefore, these development rights are not assignable to a third party.

c. Parcel 2 (Exhibit C) shall receive an allocation of 4.78 acres of General Commercial development rights. Development of this parcel has already taken place utilizing the 4.78 acres of General Commercial development rights transferred through this Partial Assignment. Therefore, these development rights are not assignable to a third party.

Assignee shall be entitled to all of the rights, privileges, and obligations, including all alternate land uses, as described in the Development Agreement and the Buckwalter PUD Concept Plan (“*Concept Plan*”) applicable or available to the Property except for those certain excluded obligations, rights and privileges (“*Excluded Obligations*”) identified herein below. Assignee hereby assumes and agrees to perform all of Assignor’s rights, privileges and obligations as described in the Development Agreement applicable to the Property, except for the Excluded Obligations. Assignee acknowledges the prior receipt of the Development Agreement and all Exhibits thereto and agrees to be bound by the terms thereof, and to develop the Property in accordance with such terms. The rights and obligations hereby assigned and assumed shall be covenants running with the land, binding upon the parties hereto and their successors and assigns.

2. Excluded Obligations, Rights and Privileges. The following are hereby excluded from Assignor’s assignment and Assignee’s assumption herein:

a. the terms of Article XII.A and B of the Development Agreement concerning the government facilities, park or playground site; and

b. the terms of Article XII.C of the Development Agreement concerning the payment of administrative charges.

Provided, however, Assignee assumes the obligation to pay any fees identified in Article XII.D and Article XII.E of the Development Agreement as they relate to the Property.

3. Estoppel Certificate. Pursuant to Article XIX of the Development Agreement, the Town and Assignor hereby certify the following, to wit:

a. that the Development Agreement, as amended, is in full force and effect,

b. that the Development Agreement through the First Amendment dated June 21, 2002, Second Amendment dated February 4, 2003, Third Amendment dated October 10, 2005, Fourth Amendment dated October 10, 2005, Fifth Amendment dated November 2, 2005, Sixth Amendment dated May 10, 2006, Seventh Amendment dated January 7, 2008, Eighth Amendment dated November 6, 2007, Ninth Amendment dated February 25, 2008, Tenth Amendment dated February 10, 2012, and Eleventh Amendment dated April 10, 2013 has not been further amended or modified,

c. that to the best knowledge of Town and Assignor, all parties to the Development Agreement are in full compliance with all obligations thereunder as of the date hereof, save and except Indian Hill Associates, LLC,

d. that to the best knowledge of Town and Assignor, no event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute an event of default under the terms of the Development Agreement, save and except clearing of property in violation of the Development Agreement by Indian Hill Associates, LLC, which default shall not affect the rights and obligations of Assignee hereunder,

e. that by its execution hereof, the Town confirms that the within instrument shall serve as the requisite notice under the provisions of Article V, Paragraph 2 of the Development Agreement of transfer of the Property and hereby consents to the terms of this Partial Assignment, and agrees that with respect to any obligations assigned by Assignor to Assignee and assumed by Assignee hereunder, the Town shall look solely to Assignee, not to Assignor, for performance of such obligations, and enforcement thereof by the Town.

4. Default and Enforcement of Provisions. As provided in Paragraph XV of the Development Agreement, and, as herein provided, upon the failure of Assignor or Assignee to comply with the terms of the Development Agreement and the within Partial Assignment incident to the Property beyond any notice and/or cure periods, one or more of the non-defaulting parties may pursue any and all legal or equitable remedies, including a specific performance, against the defaulting party.

5. Notices. Any notice, demand, request, consent, approval, or communication among any of the parties hereto or the Town shall be in writing and shall be delivered or addressed as provided under Paragraph XVII of the Development Agreement and shall be addressed as follows:

Assignee: CareCore National, LLC d/b/a eviCore healthcare  
400 Buckwalter Place Boulevard  
Bluffton, South Carolina 29910  
Attn: William Goodman, Corporate Counsel

With Copy to: Nelson Mullins Riley & Scarborough, LLP  
104 South Main Street, Suite 900  
Greenville, SC 29601  
Attn: Eric J. Smith

Assignor: Town of Bluffton  
Attn: Marc Orlando, Town Manager  
20 Bridge St.  
Bluffton, SC 29910

With a copy to: Terry A. Finger, Esq.  
Finger, Melnick & Brooks, P.A.  
P.O. Box 24005  
Hilton Head Island, SC 29925

6. Binding Effect. This Partial Assignment shall inure to the benefit of and be binding upon the respective parties hereto, their successors and assigns.

7. Governing Law. The within Partial Assignment shall be interpreted and constructed and conform to the laws of the state of South Carolina.

8. Reaffirmation of Terms. All other terms, conditions, rights and privileges contained in the Development Agreement not specifically referenced herein shall remain in full force and effect and binding upon the parties hereto and their successors and assigns.

**Intentionally left blank, signatures on next page**







EXHIBIT "A"

**Insert Legal Description when complete**

## EXHIBIT "B"

ALL that certain piece, parcel and tract of land situate, lying and being in the Bluffton Tech Park, Town of Bluffton Beaufort County, South Carolina, containing 1.66 acres, more or less, shown and designated as Parcel 1B-1 on a plat entitled "A 1.66 Acre Parcel Being a Portion of Bluffton Tech Park," said plat being dated June 9, 2009, prepared by Thomas & Hutton Engineering Co., certified by Boyce L. Young, S.C.R.L.S. #11079, and being recorded in the Register of Deeds for Beaufort County, South Carolina, in Plat Book 128 at Page 171. For a more detailed description reference should be made to said Plat of record.

Further, the development of this parcel has already taken place utilizing the 1.66 acres of General Commercial development rights transferred through this Assignment of Rights and Obligations Under Development Agreement. Therefore, these development rights are not assignable to a third party.

## EXHIBIT "C"

All that certain piece, parcel or tract of land, situate, lying and being within the Buckwalter Planned Unit Development, Town of Bluffton Beaufort County, South Carolina, containing 4.78 acres, more or less, and being shown and designated as Parcel 2, on a plat entitled "A Subdivision Plat of 23.05 Acres, Buckwalter Parkway (Bluffton Tech Park)", prepared by Ward Edwards, Inc., Michael Jim Gardner, SCRLS #12239, dated May 30, 2007 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 123 at Page 133, to which reference is hereby craved for specific metes and bounds; be all measurements a little more or less.

This property is subject to all applicable covenants, conditions, restrictions, easements and rights-of-way filed of record in the Office of the Register of Deeds for Beaufort County, South Carolina.

This being a portion of the property conveyed to Town of Bluffton by Deed of Buckwalter Commercial, Inc., dated August 9, 2005 and recorded August 11, 2005 in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 2206 at Page 1928 and by Deed of BHR Acquisition Co., LLC, dated August 9, 2005 and recorded August 11, 2005 in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 2206 at Page 1936.

Further, the development of this parcel has already taken place utilizing the 4.78 acres of General Commercial development rights transferred through this Assignment of Rights and Obligations Under Development Agreement. Therefore, these development rights are not assignable to a third party.

## EXHIBIT C

STATE OF SOUTH CAROLINA	)	FIRST AMENDMENT TO
	)	PERMANENT CROSS ACCESS,
	)	UTILITIES & DRAINAGE EASEMENTS
	)	AGREEMENT and CONFIRMATION
	)	OF PERPETUAL ACCESS
COUNTY OF BEAUFORT	)	EASEMENT AGREEMENT FOR
	)	CARECORE DRIVE R-O-W

THIS FIRST AMENDMENT TO PERMANENT CROSS ACCESS, UTILITIES & DRAINAGE EASEMENTS AGREEMENT and CONFIRMATION OF TEMPORARY CROSS ACCESS EASEMENTS AGREEMENT FOR CARECORE DRIVE R-O-W (herein, the “*Amendment*”) is entered into and effective on this \_\_\_\_ day of \_\_\_\_\_, 2016 (herein, the “*Effective Date*”), by and between **Town of Bluffton**, a South Carolina municipal corporation, whose address is 20 Bridge Street, Bluffton, South Carolina 29910 (herein, the “*Town*”) and **CareCore National, LLC d/b/a eviCore healthcare**, a New York limited liability company, whose address is 400 Buckwalter Place Boulevard, Bluffton, South Carolina 29910 (herein, “*eviCore*”) to amend certain provisions of that “Permanent Cross Access, Utilities & Drainage Easements Agreement,” dated September 15, 2009, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina (herein, the “*Register of Deeds*”), in Record Book 2889 at Page 2019 (herein, the “*Access Easement*”), and to confirm a permanent and perpetual easement over CareCore Drive in favor of the Town.

WHEREAS, on or about August 9, 2005, BHR Acquisition Co., LLC, and Buckwalter Commercial, Inc., conveyed approximately 22.41 acres of real property located within the Buckwalter Development (herein, the “*Bluffton Tech Park*”), to the Town, which deeds were recorded in the Register of Deeds in Record Book 2206 at Page 1936 and Page 1928, respectively; and,

WHEREAS, on or about February 8, 2006, the Town conveyed an approximately five (5) acre parcel of real property located within the Bluffton Tech Park, identified as Parcel A-1A on that certain plat prepared by Donald R. Cook, Jr., Ward Edwards, Inc., recorded in the Register of Deeds in Plat Book 111 at Page 117 (herein, “*Parcel A-1A*”) to Beaufort County, as well as an easement for ingress and egress over the sixty-six (66.00’) foot easement shown on the above-referenced plat (herein, the “*County Easement*”); and,

WHEREAS, on or about August 13, 2007, the Town and County entered into an “Abandonment of Easement Agreement” whereby a portion of the County Easement was moved

to accommodate development with the Bluffton Tech Park, which agreement was recorded with the Register of Deeds in Record Book 2613 at Page 901; and,

WHEREAS, on or about September 15, 2009, the Town conveyed a certain 1.66 acre portion of Bluffton Tech Park, as shown and identified as Parcel 1B-1 (herein, "**Parcel 1B-1**") on that certain plat prepared by Boyce L. Young, Thomas & Hutton Engineering Co., recorded with the Register of Deeds in Plat Book 128 at Page 171 (herein, "**the Plat of Parcel 1B-1**"), to CARECORE PROPERTIES, LLC, the predecessor in merger to eviCore (herein, "**CareCore**"), as recorded in Record Book 2889 at Page 2015; and,

WHEREAS, the Town retained ownership of that certain 0.444 acre easement area in Parcel 1B lying to the east of Parcel 1B-1, commonly known as a portion of CareCore Drive and identified as "Easement #1" on the Plat of Parcel 1B-1 (herein "**Easement No. 1**"); and,

WHEREAS, on or about September 15, 2009, the Town and CareCore entered into that certain "Permanent Cross Access, Utilities & Drainage Easements Agreement," which, among other things, conveyed a permanent easement across Easement No. 1 in favor of CareCore, and which easement agreement was recorded in the Register of Deeds in Record Book 2889 at Page 2019; and,

WHEREAS, on or about August 5, 2010, Parcel 6, LLC conveyed certain real property collectively containing 0.08 acres, more or less, being show and described as "0.04 ac. To Be Conveyed to Parcel 1B Previously a Portion of TMS R610-022-000-0579-0000", "0.01 ac. To Be Conveyed to Par 1B Previously a Portion of TMS R610-029-000-0786-0000", and "0.03 ac. To Be Conveyed to R/W Previously a Portion of TMS R610-029-000-0786-0000", on that certain plat prepared by Michael Jim Gardner, SCPLS Number 12239 of Ward Edwards, Inc. recorded with the Register of Deeds in Plat Book 120 at Page 177, to the Town, which deed was recorded in Record Book 2979 at Page 317; and,

WHEREAS, on or about May 2, 2011, the Town conveyed a certain 4.78 acre parcel located within the Bluffton Tech Park, as shown and identified as Parcel 2 (herein, "**Parcel 2**") on that certain plat of Michael Jim Gardner, Ward Edwards, Inc., recorded with the Register of Deeds in Plat Book 123 at Page 133 (herein, the "**Plat of Parcel 2**"), to CareCore, as recorded in Record Book 3058 at Page 716; and,

WHEREAS, on or about March 19, 2013, Parcel 6, LLC, conveyed a 7.12 acre parcel located adjacent to the Bluffton Tech Park, as shown and set forth on that certain plat prepared by Terry G. Hatchell, Surveying Consultants, recorded with the Register of Deeds in Plat Book 136 at Page 106, to the Town, which deed was recorded in Record Book 3225 at Page 1673; and,

WHEREAS, on or about November 1, 2013, Beaufort County conveyed Parcel A-1A back to the Town, as evidenced by that Limited Warranty Deed recorded with the Register of Deeds in Record Book 3286 at Page 1428, which terminated the County Easement by merger; and,

WHEREAS, on or about December 16, 2015, the Town and eviCore entered into an Agreement whereby eviCore would purchase and the Town would sell approximately 3.13 acres of real property in and adjacent to the Bluffton Technology Park (herein, the "**Agreement**"), as set forth in that certain plat prepared by \_\_\_\_\_, S.C.R.L.S. No. \_\_\_\_\_, entitled, "A *Subdivision Survey of 15.63 Acres of the Town of Bluffton and the Bluffton Technology Park*," dated \_\_\_\_\_, recorded in the Register of Deeds in Plat Book \_\_\_ at Page \_\_\_, a copy of which is attached hereto as Exhibit "**A**" and incorporated herein by reference (the "**Plat**"); and,

WHEREAS, the Parties hereby acknowledge and agree that the use of the access easement identified as CareCore Drive on the Plat (herein, "**CareCore Drive**") is essential to the Town as it serves as the sole means of access to certain property owned by the Town, including but not limited to the remainder Parcel 1B, Parcel A-1A, the Bluffton Law Enforcement Center, adjacent undeveloped property, and rights-of-way identified for the existing and proposed extensions of Innovation Drive and Progressive Street as set forth in the Buckwalter Place Master Plan described herein (the "**Town Property**"); and

WHEREAS, the Parties further acknowledge and agree that the Town intends, but is not obligated, to construct extensions of certain roadways including Innovation Drive and Progressive Street, as shown in the Buckwalter Place Master Plan provided as Exhibit "**B**" attached hereto, and upon the completion of construction, such rights-of-way will provide alternate means of access to the Town Property; and,

WHEREAS, the Parties further acknowledge and agree that upon the Town's, or its successors or assigns, completion of the construction of the extensions of Innovation Drive and Progressive Street, that the Town's easement and right to and over CareCore Drive will no longer be the sole means of access to the Town Property, and, upon the written request of eviCore, the Town will consent to the termination and/or abandonment of the right-of-way known as CareCore Drive.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the receipt and legal sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Incorporation of Recitals.** The above recitals are hereby incorporated herein as if restated fully and are hereby made an integral part hereof so that their contents are a substantive part of this Amendment.

2. **Easement Over CareCore Drive.** eviCore has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the Town, its successors and assigns, subject to the terms enumerated and set forth below, a permanent, perpetual, non-exclusive, assignable, transmissible and commercial easement for pedestrian and vehicular ingress, egress and regress on, over and across that certain strip or parcel of land shown and designated as "CARECORE DRIVE" on the Plat. It is expressly agreed by eviCore that the easement over Care Core Drive hereinabove granted is commercial in nature, and is expressly made and granted to and for the use and benefit of the Town, its successors, assigns, tenants,

contractors, invitees, agents, servants, employees, staff, guests and customers, and further, that the easement shall both now and for the entire duration of the easement provide the right of non-exclusive public travel, access, utilities and drainage, along with the various related appurtenances thereto, for the Town and any and all officers, directors, employees, agents, contractors, customers, guests, visitors, invitees, licensees, assignees, tenants or concessionaires of the Town that desire access to parcels adjacent to CareCore Drive in order to promote orderly traffic interconnectivity within the Bluffton Tech Park and Buckwalter Place.

3. **Term.** This easement and all of the terms contained herein shall be permanent and perpetual; however, upon the Town's completion of those rights-of-way identified on the Plat as "Innovation Drive" and "Progressive Street," in accordance with the Buckwalter Place Master Plan and any and all relevant local, state or federal standards for public roads, the Town shall, upon the written request of eviCore, shall consent to the cancellation, termination and/or abandonment of any easements and rights that the Town may hold over CareCore Drive under this Amendment.

4. **Easement to Run with the Land.** This easement and all of the terms and covenants contained herein shall run with the land and shall be recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, and shall pertain to the all of the properties benefitted by this Amendment, including but not limited to the Town Property, and burdened by this Amendment.

5. **Subordination/Joinder.** Unless otherwise agreed to by the Town, all liens, mortgages and other encumbrances not satisfied or released or record, must be subordinated to the terms of this Amendment.

6. **Modifications.** The terms of this Amendment may not be changed, modified, waived, discharged or terminated orally, but only by an instrument in writing, signed by each party.

7. **Construction of Amendment.** Each party acknowledges that it has participated in the negotiation and drafting of this Amendment. No provision of this Amendment shall be construed against or interpreted to the disadvantage of any party hereto or thereto by any court by reason of such party having or being deemed to have structured, dictated, or drafted any provision in the Amendment.

8. **Successors and Assigns.** All provisions of this Amendment shall run with the land and bind and inure to the benefit of each party and each party's respective heirs, executors, legal representatives, successors, successors in title and assigns.

9. **Merger Provision.** This Amendment contains the entire agreement between the parties with respect to the issues set forth herein. All other discussions, proposals, agreements or offers are merged into this Amendment.

10. **Conflicts.** To the extent any portion of this First Amendment conflicts with or directly contradicts the terms of the Access Easement, the terms of this First Amendment shall prevail.

*[Remainder of Page Intentionally Omitted. Signature Page(s) and Exhibit(s) to Follow.]*





**ORDINANCE NO. 2015-\_\_**

**TOWN OF BLUFFTON, SOUTH CAROLINA**

**AN ORDINANCE AUTHORIZING A SHARED PARKING EASEMENT FOR CERTAIN REAL PROPERTY OWNED BY THE TOWN OF BLUFFTON CONSISTING OF PARCELS R610 022 000 1099 0000, R610 030 000 1848 0000 AND R610 030 000 1649 0000 AND IN FAVOR OF EVICORE HEALTHCARE**

**WHEREAS**, the Town of Bluffton, South Carolina, (the "Town") presently owns a total of eighteen point seven four (18.74) upland acres within the Buckwalter Place Development ("Town Owned Property"), which includes certain parking and related infrastructure improvements; and,

**WHEREAS**, CareCore National, LLC d/b/a eviCore Healthcare ("eviCore") submitted a Letter of Intent to the Town outlining its proposed purchase of approximately three point one three (3.13) upland acres, consisting of two point three five (2.35) acres of undeveloped property as well as point seven eight (0.78) acres of adjacent right-of-way, known as CareCore Drive, of the Town Owned Property within Buckwalter Place for \$275,000 (the "Property Acquisition Area"); and,

**WHEREAS**, on October 13, 2015, the Town of Bluffton Town Council (the "Town Council"), by majority vote, authorized the Town Manager to enter into negotiations for the sale of the Property Acquisition Area to eviCore; and,

**WHEREAS**, eviCore has informed the Town that it intends to construct office buildings or other buildings on the Property Acquisition Area, which would potentially increase parking demands within Buckwalter Place; and,

**WHEREAS**, the Town has previously constructed and intends, but is not obligated, to construct certain additional access, parking and utility improvements on portions of the Town Owned Property, as illustrated on the Buckwalter Place Master Plan provided as Exhibit "**A**" attached hereto (the "Infrastructure Improvements"); and,

**WHEREAS**, as part of the sale of the Property Acquisition Area, eviCore has requested and the Town desires to grant eviCore a non-exclusive easement allowing eviCore, its employees, agents and customers, the use of the parking located on the Town Owned Properties, provided that eviCore constructs a new office building or other building on the Property Acquisition Area, and subject to certain reservations; and,

**WHEREAS**, Sections 5-7-40 and 5-7-260 of the South Carolina Code of Laws and Sections 2-13(a)(8) and 2-13(a)(4) of the Code of Ordinances for the Town of Bluffton requires that Town Council act by Ordinance to convey, lease, or

authorize the conveyance or lease of any Town owned lands as well as easements and public rights-of-way.

**NOW, THEREFORE, BE IT ENACTED BY THE TOWN COUNCIL OF THE TOWN OF BLUFFTON, SOUTH CAROLINA:**

**SECTION 1. Establishment of an Easement Agreement.** Approval authorizing a an easement agreement over certain real property owned by the Town of Bluffton consisting of parcels R610 022 000 1099 0000, R610 030 000 1848 0000 and R610 030 000 1649 0000 in favor of eviCore healthcare as detailed in the *Access Easement* provided as Exhibit "**B**", which is attached and incorporated herein.

**SECTION 2.** This ordinance shall become effective upon its final adoption.

DONE, RATIFIED AND ENACTED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

This Ordinance was read and passed at First Reading on \_\_\_\_\_, 2015.

\_\_\_\_\_  
Lisa Sulka, Mayor  
Town of Bluffton, South Carolina

\_\_\_\_\_  
Sandra Lunceford  
Clerk, Town of Bluffton, South Carolina

This Ordinance was passed at Second and Final Reading held on \_\_\_\_\_, 2015.

\_\_\_\_\_  
Lisa Sulka, Mayor  
Town of Bluffton, South Carolina

\_\_\_\_\_  
Sandra Lunceford  
Clerk, Town of Bluffton, South Carolina

# Exhibit A



**DEVELOPMENT LEGEND**

<b>BLANDCHARD &amp; CALHOUN</b>
(A) KROGER
(B) RETAIL / RESTAURANTS
(C) RETAIL w/ APARTMENTS ABOVE
<b>TOWN OF BLUFFTON</b>
(D) OFFICE BUILDING
(E) BLUFFTON LAW ENFORCEMENT CENTER
(F) BLUFFTON LAW ENFORCEMENT EXPANSION
<b>DEVELOPMENT BY OTHERS</b>
(G) PUBlix
(H) REGENCY SHOPS
(I) STATION 300
(J) CARE CORE I
(K) CARE CORE II
(L) BREWERY
(M) McDONALD'S
(N) BLUEWATER CONVENIENCE
(O) FUEL STATION
(P) ST. JOE'S
(Q) ACE HARDWARE
(R) RETAIL / OFFICE / RESTAURANT

## Exhibit B

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

### EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "**Agreement**"), is made effective as of \_\_\_\_\_, 201\_ (the "**Effective Date**"), by and between **CareCore National, LLC d/b/a eviCore healthcare**, a New York limited liability company, whose address is 400 Buckwalter Place Boulevard, Bluffton, South Carolina 29910 ("**eviCore**"), and the **Town of Bluffton**, a South Carolina municipal corporation, whose address is 20 Bridge Street, Bluffton, South Carolina 29910 ("**Town**").

### WITNESSETH:

**WHEREAS**, substantially contemporaneously with the execution of this Agreement, pursuant to that certain Agreement for Purchase and Sale dated December 16, 2015 by and between eviCore and the Town, eviCore has purchased and the Town has sold approximately 3.13 acres of real property in and adjacent to the Bluffton Technology Park, as more particularly described in Exhibit "A" attached hereto and made a part hereof (the "**eviCore Property**"), and as set forth in that certain plat prepared by \_\_\_\_\_, S.C.R.L.S. No. \_\_\_\_\_, entitled, "*A Subdivision Survey of 15.63 Acres of the Town of Bluffton and the Bluffton Technology Park,*" dated \_\_\_\_\_, recorded in the Office of the Beaufort County Register of Deeds in Plat Book \_\_\_\_ at Page \_\_\_\_, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference (the "**Plat**"); and,

**WHEREAS**, the Town is the fee simple owner of various parcels of real property adjacent to the eviCore Property, as shown on the Plat (the "**Town Property**") and more particularly described on Exhibit "C" attached hereto and made a part hereof (with eviCore Property, collectively referred to herein as, the "**Parcels**", and individually as a "**Parcel**");

**WHEREAS**, the Parties hereby acknowledge and agree that eviCore intends, but is not obligated, to construct office buildings or other buildings on the eviCore Property; and,

**WHEREAS**, the Parties further acknowledge and agree that the Town has constructed and intends, but is not obligated, to construct certain additional access and parking infrastructure improvements on portions of the Town Property, as shown in the Buckwalter Place Master Plan provided as Exhibit "D" attached hereto and incorporated herein by reference (the "**Master Plan**");

**WHEREAS**, the Parties further acknowledge and agree that upon eviCore's, or its successors or assigns, completion of the construction of office buildings or other buildings on the eviCore Property that eviCore shall have certain easements over, across and under those portions

of the Town Property upon which parking and related infrastructure improvements have been constructed, if any;

**WHEREAS**, the Parties, by and through this Agreement, subject to the terms and conditions provided herein and the completion of the construction of office space or other building(s) on the eviCore Property intend to create and grant to eviCore such easements over the Town Property, for the purposes herein contained and, further, to otherwise impose upon, and create in favor of, their respective Parcels, those certain rights and obligations herein provided.

**NOW, THEREFORE**, for good and valuable consideration in hand paid, the receipt and sufficiency of which is hereby acknowledged, and the mutual covenants, terms and conditions set forth herein, the parties hereby agree as follows:

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated herein as if restated fully and hereby are made an integral part hereof so that their contents are a substantive part of this Agreement.

2. Grant and Use of eviCore Easement. Upon the completion of the construction of office buildings or other buildings upon the eviCore Property, the Town shall grant and hereby grants and conveys to eviCore, its heirs, legal representatives, tenants, employees, agents, invitees, customers, successors and assigns, any future owner of the eviCore Property and any other persons whomsoever claiming under or through said parties (collectively, the “*eviCore Parties*”), subject to the terms and conditions enumerated herein, a perpetual, irrevocable, non-exclusive, ingress, egress, regress, pedestrian and vehicular access and parking easement (the “*eviCore Easement*”) in, under, upon, about, over, across and through the access, parking, and utility improvements now existing or hereafter constructed on the Town Property (the “*eviCore Easement Area*”), for the benefit of the eviCore Property. eviCore may use the eviCore Easement for: (i) ingress, egress, regress and access to and from the eviCore Property and the eviCore Easement Area; (ii) the perpetual, non-exclusive and irrevocable right to use the parking facilities now existing or hereafter constructed on the Town Property for the purposes of parking vehicles (the “*Parking Easement Area*”); and (ii) all other purposes reasonably necessary for eviCore’s use and enjoyment of the eviCore Easement; provided, however, the Town may, in its reasonable discretion, reserve portions of the eviCore Easement Area existing on the Town Property as of the Effective Date for Town of Bluffton use only (e.g., Law Enforcement Center staff, Town staff and visitors). In the event eviCore commences construction of office buildings or other buildings upon the eviCore Property and the Town has not yet constructed parking facilities sufficient for eviCore’s proposed operations on the eviCore Property in accordance with applicable zoning laws, building codes, and other applicable laws, rules, regulations and ordinances, the Town agrees to grant eviCore such additional rights and easements as are reasonably necessary for the construction and installation of a driveway, parking spaces, and other construction purposes reasonably related to the construction of additional parking facilities (“*Improvements*”) in a location on the Town Property to be reasonably agreed to between the Town and eviCore as necessary for eviCore’s use and enjoyment of the eviCore Property. eviCore shall bear all costs and expenses of construction and maintenance of the Improvements.

3. Improvements. Except for those improvements illustrated on the Master Plan or in substantial conformity therewith, neither eviCore nor Town shall construct any improvements

over, under, in, along, across or upon the Easement Area which may unreasonably interfere with eviCore's use and enjoyment of its Easements.

4. Maintenance and Repair. For so long as this Agreement shall remain in effect (a) Town, at its sole cost and expense, agrees to maintain the parking facilities existing on the Town Property as of the Effective Date in a neat and orderly manner, free of debris, and repair, replace, repave and restripe such facilities when reasonable necessary, and (b) eviCore, at its sole cost and expense, agrees to maintain the Improvements on the Town Property, if any, in a neat and orderly manner, free of debris, and repair, replace, repave and restripe such facilities when reasonable necessary. eviCore and Town shall each maintain and repair any other property they own on which the Easements are located in the same or better condition as existed on the Effective Date of this Agreement.

5. Representations and Warranties. Each party hereby represents and warrants to the other that: (a) it has the full right, power, title and interest to make the within grants of Easements and accept the obligations herein imposed; (b) such grants of Easements and any rights granted under this Agreement may be fully and thoroughly enjoyed and utilized by the other pursuant to the terms hereof; and (c) the rights hereunder granted and obligations hereunder imposed shall not be defeased, impaired and adversely affected by superior title.

6. Relocation. Town shall not relocate the eviCore Easement Area, the Temporary Easement Area, or the Improvements without the prior written consent of eviCore, which consent may not be unreasonably withheld. Town shall bear all costs and expenses associated therewith.

7. Transferability. The parties to this Agreement hereby acknowledge and agree that the Easements and other rights conferred by, and obligations imposed by, this Agreement are commercial easements and are intended to, and do, constitute covenants that run with the land and shall inure to the benefit of and be binding upon the parties and their respective grantees, heirs, successors and assigns.

8. Default and Remedies. In the event of a default by either party hereto, the non-defaulting party may seek any and all remedies permitted by law or available in equity. For avoidance of confusion, such remedies shall include the right of self-help (if a party shall continue to fail, after notice and a reasonable period of time has elapsed, to perform any necessary maintenance required of it hereunder) and set-off.

9. Limitation on Liability. In no event shall either party be liable for any damage to, or loss of personal property or equipment sustained by the other within the Easement Area except to the extent such loss is caused by the negligence or intentional acts of that party or its employees, agents, invitees, or licensees.

10. Indemnification. eviCore (the "**Indemnitor**") shall indemnify, defend and hold the Town (the "**Indemnitee**") harmless from and against any and all losses, costs, damages, liens, claims, liabilities or expenses (including, but not limited to, actual and reasonable attorneys' fees, court costs and disbursements) incurred by Indemnitee and arising from or by reason of

Indemnitor's access to, use or misuse of the Easement Area, but only to the extent same shall not arise from the actions or omissions of Indemnitee or its employees, agents, invitees, or licensees.

11. Attorneys' Fees. In the event of any dispute between the parties regarding the enforcement or effect of this Agreement, the non-prevailing party in any such dispute shall pay the prevailing party's actual and reasonable attorneys' fees and costs incurred. In the event that neither party wholly prevails, the court may apportion the costs or fees as the court deems appropriate.

12. Notice. Each party shall deliver all notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "**Notice**") in writing and addressed to the other party at its address first set out above (or to any other address that the receiving party may designate from time to time in accordance with this Section 12). Each party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only: (a) upon receipt by the receiving party and (b) if the party giving the Notice has complied with the requirements of this Section 12.

13. Amendment. This Agreement may not be modified, amended or terminated except in a writing signed by each party hereto.

14. Time of the Essence. Both parties agree that time is of the essence and that time specifications contained herein shall be strictly construed.

15. Governing Law. THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF SOUTH CAROLINA. EACH PARTY HERETO AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE TRIED AND LITIGATED IN STATE OR FEDERAL COURTS LOCATED IN THE COUNTY OF BEAUFORT, STATE OF SOUTH CAROLINA, WITHOUT A JURY. THE PARTIES HERETO, TO THE GREATEST EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY AND INTELLIGENTLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY FOR ANY DISPUTE BETWEEN THEM ARISING HEREUNDER.

16. Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original for all purposes, and all such counterparts shall together constitute but one and the same instrument.

17. Authority. Both parties represent and warrant that they have the authority to execute this Agreement and each individual signing on behalf of a party to this Agreement states that he or she is the duly authorized representative of the signing party and that his or her signature on this Agreement has been duly authorized by, and creates the binding and enforceable obligation of, the party on whose behalf the representative is signing.

18. Further Cooperation. Each of the parties to this Agreement agree to execute such other documents and to perform such other acts as may be reasonably necessary or desirable to further the expressed and intended purpose of this Agreement.

*[SIGNATURE PAGES FOLLOW.]*





**EXHIBIT “A”**

**Legal Description of the eviCore Property**

**EXHIBIT "B"**

**Plat**

**EXHIBIT "C"**

**Legal Description of the Town Property**

**EXHIBIT “D”**

**Master Plan**