

PROJECT MANAGEMENT AGREEMENT

THIS AGREEMENT (this “**Agreement**”) is made and entered into this **1st day of April, 2020** (the “**Execution Date**”), effective as of the **1st day of April, 2020** (the “**Effective Date**”), by and between the **ORGANIZED NEIGHBORS OF SUMMERHILL** (“**Owner**”); and **CARTER & ASSOCIATES COMMERCIAL SERVICES, L.L.C.**, a Georgia limited liability company (“**Project Manager**”).

BACKGROUND INFORMATION

Owner is currently embarking on a series of capital improvement projects to existing parks in the Summerhill neighborhood of Atlanta, Georgia. Communities implementing capital improvement projects in City of Atlanta parks must assign a qualified Project Manager to coordinate with the City of Atlanta and manage all aspects of project implementation including permitting and approvals. Owner desires to engage qualified Project Manager as the exclusive Project Manager for such project. Project Manager has agreed to accept such engagement. Owner and Project Manager desire to execute and enter into this Agreement for the purpose of setting forth their agreement with regard to the foregoing.

STATEMENT OF AGREEMENT

In consideration of the mutual covenants and agreements herein contained, the compensation to be paid to Project Manager hereunder, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE 1. DEFINITIONS.

In addition to any other terms which are defined in this Agreement, each of the following terms, when used in this Agreement with an initial capital letter, shall have the following meaning:

“**Approved Project Budget**” means the schedule of all costs and expenses which will be incurred by or on behalf of Owner in connection with the delivery of the project, as approved by Owner as, the Approved Project Budget.

“**Completion**” means the substantial completion of construction of the Improvements, which shall in any event be deemed to have occurred upon the occurrence of any of the following events: **(i)** the issuance by the Project architect of a certificate of substantial completion; **(ii)** the issuance by the appropriate governmental authority of a certificate of occupancy for the Project; or **(iii)** the commencement of beneficial occupancy of the Project by Owner or persons or entities claiming under Owner.

“**Completion Date**” means the date upon which the Completion has occurred.

“**Construction Manager**” means the Construction Manager at Risk, who is to be selected by the Owner, as who shall have the roles and responsibilities as defined in the Construction Manager Contract, to be executed by the Construction Manger and Owner pursuant to the selection process.

“**Expiration Date**” means the date **thirty (30) days** after the Completion Date.

“**Improvements**” means, collectively, all buildings, structures and other improvements (including all site development improvements and landscaping) to be developed on the Site, consisting of the rehabilitation of an existing building, an extension to the existing building, and an outdoor basketball court.

“**Project Management Fee**” means the fee to be paid by Owner to Project Manager pursuant to **Sections 8.1 and 8.2** of this Agreement.

“**Project**” means the Site and the Improvements.

“**Project Costs**” means the total of all costs and expenses incurred by or on behalf of Owner with respect to the Project, including all amounts to be paid under agreements entered into by Project Manager or Owner with third parties pursuant to this Agreement.

“**Site**” means that certain tract or parcel of land located in Fulton County, Georgia_ upon which the Improvements are to be developed and constructed, as contemplated by this Agreement.

ARTICLE 2. **ENGAGEMENT OF PROJECT MANAGER.**

2.1 **Engagement of Project Manager.** Owner hereby engages Project Manager to perform, and hereby grants to Project Manager the exclusive right to perform, the services specified in this Agreement, subject to and in accordance with the terms and provisions of this Agreement.

2.2 **Acceptance by Project Manager.** Project Manager hereby accepts its engagement by Owner, and agrees to perform the services specified in this Agreement for the benefit of and on behalf of Owner, subject to and in accordance with the terms and provisions of this Agreement.

ARTICLE 3. **NATURE OF ENGAGEMENT.**

3.1 **Status of Project Manager.** In the performance of its duties and obligations under this Agreement, Project Manager is, and shall at all times during the term of this Agreement be, an independent contractor, and not an employee of Owner. Project Manager shall act solely as the agent of Owner in the performance of its duties and obligations under this Agreement. All contracts and agreements executed or entered into by Project Manager in connection with the performance of its duties and obligations under this Agreement shall be contracts and agreements on behalf of, and for the account of, Owner.

3.2 No Partnership or Joint Venture. Nothing contained in this Agreement shall constitute or be deemed or construed to create a partnership or joint venture between Owner and Project Manager.

ARTICLE 4. TERM OF AGREEMENT.

4.1 Term. The term of this Agreement shall commence on the date hereof, and shall continue, unless sooner terminated as herein provided, until the Expiration Date.

4.2 Performance. Project Manager shall not be obligated to perform services under this Agreement after the Expiration Date.

ARTICLE 5. PROJECT MANAGEMENT SERVICES.

5.1 Description of Services. The Project Management services to be performed by Project Manager are set forth on **Exhibit "A"** attached hereto.

5.2 Nature of Project Manager's Services and Responsibilities. Owner acknowledges and agrees that Project Manager's responsibilities under this Agreement consist solely of advising and consulting with Owner in connection with certain matters pertaining to the Project and coordinating and monitoring the activities of the Architect and Construction Manager and other third parties, as appropriate, on behalf of Owner. Owner further acknowledges that Project Manager is not itself preparing any design or engineering plans or specifications or performing any of the construction or furnishing any of the materials required for the Project; and, accordingly, Owner acknowledges and agrees that Project Manager shall have no liability or responsibility of any kind or nature whatsoever for or with respect to any professional services rendered, plans, designs or specifications provided, construction work performed, or materials furnished, in connection with the Project. Owner further acknowledges and agrees that Project Manager shall have no liability or responsibility of any kind or nature whatsoever for or with respect to the cost of the Project or for the payment of any Project Costs, including, without limitation, the total Project Costs exceeding the Approved Project Budget. Owner further acknowledges that Project Manager is assisting Owner in its negotiations with Architect and Construction Manager and others solely in connection with Project Manager's responsibilities under this Agreement, but that Project Manager is not providing legal assistance or advice to Owner in connection with such negotiations or otherwise.

5.3 Project Manager's Services Not Exclusive. The services to be rendered by Project Manager to Owner are not exclusive and, during the term of this Agreement, Project Manager and its affiliates may render services similar or identical to those required of it hereunder to other owners of real property and may itself engage in the acquisition, development, management and operation of, or any other activities with respect to, real property for its own account or benefit or for others, without any accountability or liability whatsoever to Owner.

ARTICLE 6. **OWNER'S OBLIGATIONS.**

6.1 **Costs and Expenses.** Owner shall bear all costs and expenses of the Project, and all of the services performed by Project Manager under this Agreement shall be performed at the cost and expense of, and for the account of, Owner.

6.2 **Owner's Funds.** Owner covenants and agrees (without creating any third party beneficiary rights) to make available all funds necessary to pay all Project Costs.

6.3 **Owner's Cooperation.** In performing its functions hereunder, Owner shall act diligently and in good faith and shall cooperate fully with Project Manager in all matters relating to the Project. Owner shall act as expeditiously as possible on all requests by Project Manager for approval and execution of any contract, agreement or other document pertaining to the Project. In exercising its rights of approval, Owner shall act reasonably and in good faith.

ARTICLE 7. **BOOKS, RECORDS, REPORTS, FISCAL MATTERS.**

7.1 **Records.** Project Manager shall maintain, in a secure and safe manner, complete and identifiable records on all matters pertaining to Project Manager's activities under this Agreement on behalf of Owner with respect to the Project.

7.2 **Property of Owner.** All such records shall be and remain the property of Owner, and, upon the expiration or earlier termination of this Agreement, shall be turned over to Owner as provided in **Article 10** hereof. Such records shall thereafter be available to Project Manager at all reasonable times for inspection, examination and transcription for a period of **three (3) years** from the Expiration Date or earlier date of termination of this Agreement, upon reasonable prior notice to Owner and at the expense of Project Manager.

7.3 **No Duty of Project Manager to Provide Funds.** Under no circumstances shall Project Manager have any duty or obligation to advance any funds for the account of Owner, but if Project Manager does advance any of its own funds for the account of Owner, Owner shall promptly reimburse Project Manager therefor, with reasonable interest thereon.

ARTICLE 8. **COMPENSATION.**

8.1. **Project Management Fee.** As compensation for the services to be rendered by Project Manager pursuant to this Agreement, Owner shall pay to Project Manager a Project Management Fee in the amount of **twenty-thousand dollars (\$20,000.00)**. If the scope of the Project, the nature of the services required of Project Manager hereunder, or the time period for which services are required of Project Manager hereunder increase, then the Project Management Fee shall be equitably increased to reflect the same; **provided, however,** that the Project Management Fee shall not be increased based on any of the foregoing considerations without the express written agreement of Owner and Project Manager; and **provided further, however,** that Project Manager shall not be obligated to perform any increased scope of services or perform services for any period of time greater than that anticipated hereunder unless and until Owner shall have agreed to such equitable increase in the Project Management Fee.

8.2. Payment of Project Management Fee. Project Manager desires that the Project will be successful in benefiting the Summerhill neighborhood and for the neighborhood to maximize available funds on capital improvements. Therefore, the Project Manager has agreed to donate its Project Management Services as outlined in Exhibit A, attached hereto, in lieu of receiving the Project Management Fee.

8.3. Project Manager's Expenses. Owner shall reimburse Project Manager for all reasonable out-of-pocket costs and expenses paid or incurred by Project Manager in connection with its performance under this Agreement.

8.4 Time of Reimbursement. Project Manager shall be reimbursed for out-of-pocket costs and expenses on a calendar monthly basis, within **thirty (30) days** after submission to Owner of a statement therefore, together with such supporting material and detail as may be reasonably required by Owner.

ARTICLE 9. DEFAULT AND REMEDIES.

9.1 Default by Project Manager. Project Manager shall be in default under this Agreement if Project Manager fails to perform any of its duties and obligations under this Agreement and does not cure or remedy such failure to perform within **thirty (30) days** after receipt of written notice from Owner with respect thereto; **provided, however,** that, if such failure to perform shall necessitate longer to cure than such **thirty (30) day** period, then such cure period shall be extended for such period of time as is reasonably necessary to cure such failure to perform if Project Manager commences such cure within **thirty (30) days** after receipt of written notice from Owner and thereafter proceeds diligently and in good faith to cure.

9.2 Remedies of Owner. Upon the occurrence of a default by Project Manager under this Agreement, Owner may pursue any one or more of the following remedies, separately or concurrently or in any combination, without further notice or demand whatsoever:

9.2.1 Owner may terminate this Agreement by giving Project Manager written notice of such termination, in which event this Agreement shall be terminated at the time designated by Owner in its notice of termination to Project Manager.

9.2.2 With or without terminating this Agreement, Owner may bring an action against Project Manager to recover from Project Manager all damages, recoverable at law, suffered, incurred or sustained by Owner as a result of, by reason of or in connection with such default; **provided, however,** that in no event shall Project Manager be liable to Owner under this Agreement for any consequential, special, incidental or punitive damages, all rights to recover any such damages being hereby waived by Owner.

9.3 Default by Owner. Owner shall be in default under this Agreement if Owner fails to perform any of its duties and obligations under this Agreement and does not cure or remedy such failure to perform within **thirty (30) days** after receipt of written notice from Project Manager with respect thereto; **provided, however,** that, if such failure to perform shall

necessitate longer to cure than such **thirty (30) day** period, then such cure period shall be extended for such period of time as is reasonably necessary to cure such failure to perform if Owner commences such cure within **thirty (30) days** after receipt of written notice from Project Manager and thereafter proceeds diligently and in good faith to cure.

9.4 Remedies of Project Manager. Upon the occurrence of a default by Owner under this Agreement, Project Manager may pursue any one or more of the following remedies, separately or concurrently or in a combination, without further notice or demand whatsoever:

9.4.1 Project Manager may terminate this Agreement by giving Owner written notice of such termination, in which event this Agreement shall be terminated at the time designated by Project Manager in its notice of termination to Owner.

9.4.2 With or without terminating this Agreement, Project Manager may bring an action against Owner to recover from Owner all damages, recoverable at law, suffered, incurred or sustained by Project Manager as a result of, by reason of or in connection with such default; **provided, however,** that in no event shall Owner be liable to Project Manager under this Agreement for any consequential, special, incidental or punitive damages, all rights to recover any such damages being hereby waived by Project Manager.

9.5 Other Remedies. In the event of the occurrence of a default hereunder, the prevailing party shall, in addition to its other rights and remedies hereunder, have the right to recover from the party in default all reasonable costs and expenses incurred by the prevailing party in enforcing its rights and remedies hereunder, including reasonable attorneys' fees. The termination of this Agreement by either Project Manager or Owner by reason of default by the other party shall not relieve either party of any of its duties and obligations theretofore accrued under this Agreement prior to the effective date of such termination.

ARTICLE 10. EXPIRATION, TERMINATION.

10.1 Terminating Events. The engagement of Project Manager hereunder may be terminated upon the happening of any of the following events pursuant to the provisions described below:

10.1.1 Either Owner or Project Manager defaults under this Agreement and the non-defaulting party elects to terminate this Agreement as provided in **Article 9** hereof.

10.1.2 The giving of written notice from Owner in the event: **(i)** any receiver, trustee or custodian shall be appointed for all or any substantial part of the property or assets of Project Manager; **(ii)** Project Manager shall commence any voluntary proceeding under present or future federal bankruptcy laws or under any other bankruptcy, insolvency or other laws respecting debtor's rights; or **(iii)** an "order for relief" or other judgment or decree by any court of competent jurisdiction is entered against Project Manager in any involuntary proceeding against Project Manager under present or future federal bankruptcy laws or under any other bankruptcy, insolvency or other laws respecting debtor's rights, or

any such involuntary proceeding shall be commenced against Project Manager and shall continue for a period of **ninety (90) days** after commencement without dismissal.

10.1.3 The giving of written notice from Project Manager in the event: **(i)** any receiver, trustee or custodian shall be appointed for all or any substantial part of the property or assets of Owner; **(ii)** Owner shall commence any voluntary proceeding under present or future federal bankruptcy laws or under any other bankruptcy, insolvency or other laws respecting debtor's rights; or **(iii)** an "order for relief" or other judgment or decree by any court of competent jurisdiction is entered against Owner in any involuntary proceeding against Owner under present or future federal bankruptcy laws or under any other bankruptcy, insolvency or other laws respecting debtor's rights, or any such involuntary proceeding shall be commenced against Owner and shall continue for a period of **ninety (90) days** after commencement without dismissal.

10.2 Project Manager's Obligations. Upon the expiration or earlier termination of this Agreement, Project Manager shall promptly:

10.2.1 Subject to Project Manager's obtaining any consent of any third party required therefor, and upon request by Owner, deliver to Owner or such other person as Owner shall designate all materials, supplies, equipment, keys, contracts and documents, all books of account maintained pursuant to **Section 7.1** hereof, and all records maintained pursuant to **Section 7.2** hereof, pertaining to this Agreement and the Project.

10.2.2 Subject to Project Manager's obtaining any consent of any third party required therefor, assign all existing contracts relating to the Project to Owner or such other person or entity as Owner shall designate.

10.2.3 Furnish all such information, take all such other action, and cooperate with Owner as Owner shall reasonably require in order to effectuate an orderly and systematic termination of Project Manager's services, duties, obligations and activities hereunder.

10.3 Owner's Obligations. Upon the expiration or earlier termination of this Agreement, Owner shall promptly:

10.3.1 Assume any contracts which may have been entered into by Project Manager in its own name relating to the Project, and indemnify Project Manager against any liability by reason of anything done or required to be done under any such contract by Project Manager after the effective date of such expiration or termination.

10.3.2 Pay for and indemnify Project Manager against the cost of all services, materials and supplies, if any, which may have been ordered by Project Manager as a result of its obligations arising under this Agreement but which may not have been charged to or paid by Project Manager and reimbursed under this Agreement at the time of expiration or termination.

ARTICLE 11. **INSURANCE.**

11.1 Owner's Insurance Requirements. Throughout the term of this Agreement, Owner shall carry and maintain in force, or cause to be carried and maintained in force, the insurance described in **Subsections 11.1.1 through 11.1.3**, below, the premiums for all of which shall be the sole cost and expense of Owner.

11.1.1 Commercial General Liability Insurance (including protective liability coverage on operations of independent contractors engaged in construction, blanket contractual liability coverage, products liability coverage, and explosion, collapse and underground hazards coverage) for the benefit of Owner and Project Manager, as an additional insured using forms CG 20 10 (10/01) and CG 20 37 (10/01), against claims for personal injury, bodily injury and property damage, with a limit of not less than Ten Million Dollars (\$10,000,000) in the event of personal injury or bodily injury to any number of persons or of damage to property arising out of any one occurrence, and not less than \$10,000,000 in the aggregate applicable to the Project. Such insurance (which may be furnished under a primary policy or an "umbrella" policy or policies) shall also include coverage against liability for bodily injury or property damage arising out of use by or on behalf of Owner or Project Manager of any owned, non-owned or hired automotive equipment for a limit not less than that specified above. Such insurance shall include a cross-liability/severability of interest provision.

11.1.2 "All risk" builder's risk insurance, written on a completed value basis, in an amount not less than the total replacement cost of the Project under construction (excluding site preparation and grading, but specifically including paving, parking lots, foundations and other undersurface installations subject to collapse or damage by other insured perils), including, if applicable, the coverages available under the so-called "installation floater", which insurance Owner shall be required to maintain only during periods when Improvements are actually under construction; and "all risk" insurance covering any larger project of which the Project is a part, and any other adjacent or related property of Owner, in an amount not less than the total replacement cost thereof.

11.1.3 Such other insurance as is customarily carried by responsible and prudent owners of property similar in character, value and use to the Project.

Owner shall, upon Project Manager's request, furnish Project Manager with appropriate certificates evidencing the insurance required to be maintained by Owner hereunder. If Owner for any reason fails to obtain and/or maintain in force any of the insurance required under **Subsections 11.1.1 through 11.1.3**, above, then Owner shall, and Owner does hereby agree to, indemnify Project Manager against, and hold, save and defend Project Manager harmless from, any and all claims, demands, actions, causes of action, suits, liabilities, damages, losses, costs and expenses of any kind or nature whatsoever (including, without limitation, reasonable attorneys' fees and court costs incurred in enforcing this indemnity and otherwise) which Project Manager may suffer or incur, or which may be asserted against Project Manager, whether meritorious or not, against which Project Manager would or should have been insured under any required insurance which Owner does not for any reason obtain or maintain in force.

11.2 Project Manager's Insurance Requirements. Throughout the term of this Agreement, Project Manager shall carry and maintain in force the insurance described in **Subsections 11.2.1 through 11.2.3**, below.

11.2.1 Commercial General Liability Insurance (including protective liability coverage on operations of independent contractors engaged in construction, blanket contractual liability coverage, products liability coverage, and explosion, collapse and underground hazards coverage) for the benefit of Project Manager, against claims for personal injury, bodily injury and property damage, with a limit of not less than One Million Dollars (\$1,000,000) in the event of personal injury or bodily injury to any number of persons or of damage to property arising out of any one occurrence, and not less than \$1,000,000 in the aggregate. Such insurance (which may be furnished under a primary policy or an "umbrella" policy or policies) shall also include coverage against liability for bodily injury or property damage arising out of use by or on behalf of Project Manager of any owned, non-owned or hired automotive equipment for a limit not less than that specified above. Such insurance shall include a cross-liability/severability of interest provision.

11.2.2 Worker's compensation insurance covering all employees of Project Manager employed in, on or about the Project in order to provide statutory benefits as required by the laws of the State of Georgia.

11.2.3 Employee dishonesty insurance in an amount not less than One Hundred Thousand Dollars (\$100,000) covering all employees of Project Manager employed in, on or about the Project and handling any money of Owner with respect to the Project. The premium for such insurance shall be borne solely by Project Manager.

Project Manager shall, upon Owner's request, furnish Owner with appropriate certificates evidencing the insurance required to be maintained by Project Manager hereunder. If Project Manager for any reason fails to obtain and/or maintain in force any of the insurance required under **Subsections 11.2.1 through 11.2.3**, above, then Project Manager shall, and Project Manager does hereby agree to, indemnify Owner against, and hold, save, and defend Owner harmless from, any and all claims, demands, actions, causes of action, suits, liabilities, damages, losses, costs and expenses of any kind or nature whatsoever (including, without limitation, reasonable attorneys' fees and court costs incurred in enforcing this indemnity and otherwise) which Owner may suffer or incur, or which may be asserted against Owner, whether meritorious or not, against which Owner would or should have been insured under any required insurance which Project Manager does not for any reason obtain or maintain in force.

11.3 Owner's Insurance Primary Coverage. As between any insurance carried by Owner and any insurance carried by Project Manager, Owner's insurance shall for all purposes be considered the primary coverage, and no claim shall be made under or with respect to any insurance maintained by Project Manager except in the event that Owner's entire insurance is exhausted (without regard to whether the actual amount of Owner's insurance exceeds the amounts specified in this **Article 11**).

11.4 Waiver of Subrogation. Each insurance policy maintained by Owner or by Project Manager with respect to the Project shall contain a waiver of subrogation clause, or shall name both Owner and Project Manager as insured parties thereunder, so that no insurer shall have any claim over or against Owner or Project Manager, as the case may be, by way of subrogation or otherwise, with respect to any claims which are insured under any such policy. Owner and Project Manager each hereby waive any and all rights of recovery against the other and their respective agents and employees, to the full extent that indemnification is due under insurance coverage required by this Agreement.

ARTICLE 12. STANDARD OF CARE; LIABILITY; INDEMNITY.

12.1 Standard of Care. In the performance of its duties and obligations under this Agreement, Project Manager shall, subject to budgetary constraints and limitations, perform diligently and in good faith.

12.2 Limitations on Liability. Neither Project Manager nor any agent or employee of Project Manager shall have any liability to Owner or any other party for any mistakes or errors of judgment, for any mistakes of fact or of law, or for any act or omission believed by Project Manager in good faith to be within the scope of the authority conferred upon Project Manager by this Agreement; **provided, however,** that the foregoing shall not extend to losses, damages or expenses suffered or incurred by Owner if and to the extent the same are caused by any negligent act or willful misconduct of Project Manager or its agents or employees.

12.3 Indemnity of Project Manager. Owner shall, and Owner does hereby agree to, indemnify Project Manager against, and hold, save and defend Project Manager harmless from, any and all claims, demands, actions, causes of action, suits, liabilities, damages, losses, costs and expenses of any kind or nature whatsoever (including, without limitation, reasonable attorneys' fees and court costs incurred in enforcing this indemnity and otherwise) which Project Manager may suffer or incur, or which may be asserted against Project Manager, whether meritorious or not, and which arise in connection with the Project or the performance by Project Manager of any of its duties and obligations under this Agreement, which indemnity shall continue notwithstanding the expiration or earlier termination of this Agreement with respect to any occurrence preceding such expiration or termination, **provided, however,** that in no event shall the indemnity provided under this **Section 12.3** extend to a claim, demand, action, cause of action, suit, liability, damage, loss, cost or expense **(i)** if and to the extent the same is within the scope of the indemnity of Owner by Project Manager pursuant to **Section 12.4** of this Agreement, or **(ii)** if and to the extent the same is caused by any default, negligent act or willful misconduct of Project Manager or its agents or employees, or by any failure to comply with the standard of care set forth in **Section 12.1** of this Agreement.

12.4 Indemnity of Owner. Project Manager shall, and Project Manager does hereby agree to, indemnify Owner against, and hold, save and defend Owner harmless from, any and all claims, demands, actions, causes of action, suits, liabilities, damages, losses, costs and expenses of any kind or nature whatsoever (including, without limitation, reasonable attorneys' fees and court costs incurred in enforcing this indemnity and otherwise) which Owner may suffer

or incur, or which may be asserted against Owner, whether meritorious or not, if and to the extent the same arise by reason of injury to persons (including death) or damage to tangible property (other than the Project, any larger project of which the Project is a part, and any other adjacent or related property of Owner) caused by any negligent act or willful misconduct of Project Manager or its agents or employees.

12.5 Relationship to Insurance. In no event shall the indemnification provisions of **Sections 12.3 or 12.4**, above, diminish, affect, impede or impair, in any manner whatsoever, the benefits to which any party may be entitled under any insurance policy with respect to the Project required by this Agreement or otherwise, or under the terms of any waiver of any subrogation contained therein.

12.6 No Third-Party Beneficiaries. None of the duties and obligations of Project Manager under this Agreement shall in any way or in any manner be deemed to create any liability of Project Manager to, or any rights in, any person or entity other than Owner.

12.7 Independent Contractors. No person who shall be engaged as an independent contractor by either Owner or Project Manager, or both, shall be considered an employee, servant, agent or other person for whom either Owner or Project Manager (as the case may be) is responsible for the purposes of indemnifications in the foregoing Sections of this **Article 12**.

ARTICLE 13. REPRESENTATIONS AND WARRANTIES.

13.1 Of Owner. Owner represents and warrants to Project Manager that: **(i)** Owner is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Georgia, is qualified to transact business in the State of Georgia, and has the full and complete right, power and authority to enter into this Agreement and perform Owner's duties and obligations under this Agreement in accordance with the terms and conditions of this Agreement; and **(ii)** Owner is the true and lawful owner of the Project.

13.2 Of Project Manager. Project Manager represents and warrants to Owner that: **(i)** Project Manager is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Georgia, is qualified to transact business in the State of Georgia, and has the full and complete right, power and authority to enter into this Agreement and perform Project Manager's duties and obligations under this Agreement in accordance with the terms and conditions of this Agreement; and **(ii)** Project Manager has obtained or will obtain all necessary licenses and permits which are required for Project Manager to perform Project Manager's services pursuant to this Agreement.

ARTICLE 14. GENERAL PROVISIONS.

14.1 Relationship Between Parties. The relationship of the parties shall be limited to the Project. Nothing herein shall be deemed to authorize Project Manager to act as the general agent of Owner.

14.2 Notices. Whenever any notice, demand or request is required or permitted under this Agreement, such notice, demand or request shall be in writing and shall be delivered by hand, be sent by registered or certified mail, postage prepaid, return receipt requested, or be sent by nationally recognized commercial courier for next business day delivery, to the addresses set forth below or to such other addresses as are specified by written notice given in accordance herewith, or shall be transmitted by facsimile to the number for each party set forth below or to such other numbers as are specified by written notice given in accordance herewith:

OWNER: Organized Neighbors of Summerhill
PO Box 50281
Atlanta, Georgia 30302
Attention: ONS Board
Email: board@onsummerhill.org

**PROJECT
MANAGER:** Carter & Associates Commercial Services, L.L.C.
1440 Dutch Valley PL
Suite 1200
Atlanta, Georgia 30324
Attention: Mr. Bob Peterson
Email: bpetterson@carterusa.com

All notices, demands or requests delivered by hand shall be deemed given upon the date so delivered; those given by mailing as hereinabove provided shall be deemed given on the date of deposit in the United States Mail; those given by commercial courier as hereinabove provided shall be deemed given on the date of deposit with the commercial courier; and those given by email shall be deemed given on the date of email transmittal. Nonetheless, the time period, if any, in which a response to any notice, demand or request must be given shall commence to run from the date of receipt of the notice, demand or request by the addressee thereof. Any notice, demand or request not received because of changed address or changed email address of which no notice was given as hereinabove provided or because of refusal to accept delivery shall be deemed received by the party to whom addressed on the date of hand delivery, on the date of email transmittal, on the first calendar day after deposit with commercial courier, or on the third calendar day following deposit in the United States Mail, as the case may be.

14.3 Assignment; Binding Effect. The rights of the parties under this Agreement are personal to the parties and may not be assigned without the prior written consent of the other party; **provided, however,** that Project Manager may assign any or all of its rights under this Agreement to any affiliate of Project Manager or to any entity owned or controlled, directly or indirectly, by the following individuals: Robert E. Peterson and Scott Taylor. This Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, the parties hereto and their respective legal representatives, successors and permitted assigns.

14.4 Authorized Representatives. Any consent, approval, authorization or other action required or permitted to be given or taken under this Agreement by Owner or Project Manager, as the case may be, shall be given or taken by one or more of the authorized

representatives of each. For purposes of this Agreement: (i) the authorized representatives of Owner shall be any one or more of the following – President, Vice President, Treasurer, or Security of the Organized Neighbors of Summerhill; and (ii) the authorized representatives of Project Manager shall be any one or more of the following – Robert E. Peterson, Scott Taylor, Kendall Golightly, and Adam Parker. Any party hereto may from time to time designate other or replacement authorized representatives to the other party hereto. The written statements and representations of any authorized representative of Owner or Project Manager shall be binding upon the party for whom such person is an authorized representative, and the other party hereto shall have no obligation or duty whatsoever to inquire into the authority of any such representative to take any action which he proposes to take.

14.5 Headings. The use of headings, captions and numbers in this Agreement is solely for the convenience of identifying and indexing the various provisions in this Agreement and shall in no event be considered otherwise in construing or interpreting any provision in this Agreement.

14.6 Exhibits. Each and every exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

14.7 Defined Terms. Capitalized terms used in this Agreement shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.

14.8 Pronouns. Wherever appropriate in this Agreement, personal pronouns shall be deemed to include the other genders and the singular to include the plural.

14.9 Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Agreement or the application of such term, covenant, condition or provision to any other person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

14.10 Non-Waiver. Failure by either party to complain of any action, non-action or default of the other party shall not constitute a waiver of any aggrieved party's rights hereunder. Waiver by either party of any right arising from any default of the other party shall not constitute a waiver of any other right arising from a subsequent default of the same obligation or for any other default, past, present or future.

14.11 Rights Cumulative. All rights, remedies, powers and privileges conferred under this Agreement on the parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law.

14.12 Time of Essence. Time is of the essence of this Agreement. Anywhere a day certain is stated for payment or for performance of any obligation, the day certain so stated enters into and becomes a part of the consideration for this Agreement.

14.13 Applicable Law. This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Georgia.

14.14 Entire Agreement. This Agreement contains the entire agreement of Owner and Project Manager with respect to the engagement of Project Manager as the Project Manager for the Project, and all representations, warranties, inducements, promises or agreements, oral or otherwise, between the parties not embodied in this Agreement shall be of no force or effect.

14.15 Modifications. This Agreement shall not be modified or amended in any respect except by a written agreement executed by Owner and Project Manager in the same manner as this Agreement is executed.

14.16 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Owner and Project Manager have caused their respective duly authorized representatives to execute, seal and deliver this Agreement, all as of the day and year first above written.

OWNER:

**ORGANIZED NEIGHBORS OF
SUMMERHILL**

By: _____
Name: _____
Title: _____

PROJECT MANAGER:

**CARTER & ASSOCIATES COMMERCIAL
SERVICES, L.L.C., a Georgia limited liability
company**

By: Carter & Associates Enterprises, Inc., a
Georgia corporation, as Manager

By: _____
Name: _____
Title: _____

EXHIBIT “A”

Project Management Services

A. Administration

1. Working Relationships. With Owner, establish responsibilities for all team members and define primary and secondary lines of communication.
2. Communication. Determine Owner’s requirements for communication for each individual and each component of the Project.
3. Decision Making. Establish the Project review and approval process with Owner.
4. Guidelines. Determine/establish guidelines for communication/coordination with Design and Construction Team.
5. Meetings. Establish and conduct a regular schedule of meetings with Owner, consultants and the Project team and report outcome of same to appropriate parties.
6. Schedule. Coordinate with Contractor to develop an integrated master schedule for the Project, with particular regard to milestone events and necessary approvals by Owner, other governing agencies and constituency groups.

B. Information Gathering

1. Feasibility of Due Diligence. In coordination with Owner; assist in securing existing conditions data as required.
2. Site Analysis. Review site information with respect to its impact on the develop-ability of the site and assist in securing additional information as required.
3. Constituencies. With Owner, determine which constituencies within, and outside, the organization need to be involved in the Project, and their level of involvement at each stage of the Project.
4. Program. Understand the existing program, including all areas critical to the success of the project. Understand the programmatic objectives. Coordinate modification of the program as needed.
5. Objectives and Goals. Understand the underlying non-programmatic objectives and goals for the project. Evaluate and report throughout the course of the Project.

C. Budget

1. Project Budget. Coordinate with Contractor and Owner in development of the overall project budget.
2. Monitor budget, making recommendations throughout the project regarding value engineering and other cost saving measures as appropriate to manage overall project expenditures. Report same.
3. Coordinate with Contractor to maintain and manage “wish list” of items to be put into project as “value add” items as savings are realized.

E. Design and Pricing

1. Preliminary Program. Review and validate the preliminary program with Owner, the architect, the contractor, and others as required.
2. Detailed Program. Review the detailed program with constituency groups and recommend modifications as appropriate.
3. Schedule. Direct the team in the preparation of a detailed design and construction schedule, then integrate same into a master project schedule incorporating approvals and other requirements as appropriate.
4. Preliminary Design. Direct the architect in the preparation of preliminary project design, focusing on alternate solutions, consistency with the program and sustainability as required.
5. Analysis of Design. Analyze the capital cost, functional, and aesthetic implications of the project design, and make recommendations to Owner on alternatives.
6. Design Reviews. Review the schematic, design development, and construction drawings for conformance with the approved preliminary program, considering budget, and making value engineering and other suggestions for improvements.
7. Final Budget. Review the detailed final budget and coordinate with team as necessary. Secure approvals from Owner as required.
8. Assist Owner in execution of a GMP with the contractor or construction manager as appropriate.
9. Approvals. Coordinate with Owner and assist the architect and contractor in obtaining all requisite permits and approvals in support of construction start.

F. Construction

1. Job Meetings. Attend (with or without Owner, in the event they cannot attend) regularly scheduled job meetings and report the outcome of same to appropriate parties. Also manage and distribute action item list to team.
2. Decision Resolution. As required during the course of construction, analyze alternatives and make recommendations to Owner for resolution of issues impacting schedule or budget.
3. On-Site Visits. Provide on-site visits during the course of construction to observe construction progress in the field and coordinate with the Owner as needed. It is anticipated that on site visits will occur on a regular basis with frequency to be agreed upon by Owner and Project Manager.
4. Pay Requests. Coordinate with the Contractor to review invoices from architect/contractor/consultants, direct each group to make any necessary modifications, then submit the draw request to Owner for payment.
5. Change Order Request. Coordinate with the Contractor to review all change order requests and other proposed budget modifications and recommend disposition to Owner.
6. Budget and Schedule Monitoring. Coordinate with Contractor to monitor progress against the agreed upon budget and schedule and update Owner as appropriate.

G. Post Construction

1. Punch List. Represent Owner to the architect and contractor in reviewing punch lists.
2. Turnover. Coordinate turnover of as-built drawings, specifications, manuals and warranties to Owner.
3. Management Transition. Direct the contractor to provide proper systems training to the personnel who will be managing the completed building.
4. Final Close-Out. Coordinate with the Contractor to coordinate receipt of final close-out documents, including lien waivers, warranties, and project manuals. Review final project accounting and report any project savings to owner.