

WHEREAS, given that the Project is located in a key location within the City, the Project will greatly enhance the immediate vicinity, will increase the tax base, and is anticipated to act as a catalyst for higher-quality development within the surrounding area, all of which will be to the benefit of the City and its citizens; and

WHEREAS, the purpose of this Agreement is to confirm that the procedures under which those public improvements were designed, approved, constructed and carried out pursuant to the Original Agreement have been satisfied, and establish the procedures under which the City will reimburse the New Owner for approved expenditures associated with those public improvements upon and after its acquisition of the Property and the Project from the Initial Owner.

NOW THEREFORE, for good and valuable consideration, including the mutual exchange of promises set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties covenant with one another to perform as follows:

1. *Owner Commitments:*

- (a) *Development.* The Initial Owner, its agents or assigns, has been responsible for the design and construction of the Project located on the Property and which has been constructed in substantial conformity with the “Cotton Mill Place ID Phase II Final Development Plan” as revised May 19, 2017 and given final approval by the Simpsonville City Council on June 12, 2017, a copy of which is attached hereto as Exhibit A (the “PD Plan”) and with the construction plans referenced in the plan approval letter from the City attached hereto as Exhibit B.
- (b) *Public Improvements.* In addition to the Project, the Initial Owner has been responsible for remediation of environmental contamination of the property in accordance with requirements of the South Carolina Department of Health and Environmental Control (SCDHEC) as set forth in the Non-responsible Party Voluntary Cleanup Contract more particularly described in Exhibit C attached hereto; the design and construction of public utility, roadway and streetscape improvements in and along South Street, Green Street and Woodside Circle, including, but not limited to: roadway widening and parking spaces; streetlights; concrete sidewalks; landscaping, including street trees; and installation and/or improvement of water, sanitary sewer and storm drainage lines and facilities, all as listed in Exhibit D attached hereto (the “Public Improvements”). The Initial Owner and the City acknowledge that the Public Improvements conform substantially to the ID Plan attached as Exhibit A, the construction plans referenced in Exhibit B, and the NRVCC described in Exhibit C.
- (c) *Investment Required.* The Initial Owner covenants and the City acknowledges that an investment (the “Owner Investment”) of not less than Fifteen Million and No/100ths Dollars (\$15,000,000.00) has been made as of the Effective Date in design, development and construction of the Project (exclusive of land acquisition costs) including the actual cost of the Public Improvements, as described in Paragraph 1(b).
- (d) *Implementation of Investment.* The City acknowledges that the Initial Owner has substantially completed the Public Improvements, as described in Paragraph 1(b) as of the Effective Date as evidenced by written confirmation by the City’s Public Works Department to the effect that the Public Improvements were carried out and

constructed based on plans approved by the City, in accordance with this Agreement and in accordance with all applicable laws and regulations. The parties recognize that the substantial completion of the investment commitments identified in Paragraph 1(c) are material inducements for the City's financial participation in the Project set forth in Paragraph 2(a) and Paragraph 2(d).

(e) *Public Works Confirmation.* The City Public Works Department has made the written confirmation required by Paragraph 1(d) after receipt from the Initial Owner of such documentation as the City required, including, but not be limited to:

(i) A copy of each progress report submitted to SCDHEC pursuant to the NRVCC.

(ii) A copy of all documentation submitted to SCDHEC in connection with the Owner's request for a Certificate of Completion.

(iii) A copy of SCDHEC's Certificate of Completion.

(f) *Insurance.* The New Owner shall continuously maintain General Liability insurance in commercially reasonable amounts, but in no event less than One Million Dollars and No/100 (\$1,000,000.00) per occurrence, Two Million Dollars and No/100 (\$2,000,000.00) aggregate insuring against any claim or loss (including attorney's fees) arising out of, or related in any related manner to the design or construction of the Public Improvements. Certificates showing proof of such insurance shall be submitted to the City's risk manager prior to commencement of construction of the Public Improvements. It shall be an affirmative obligation upon the New Owner to advise the City's risk manager by fax at no. 864-967-9526 or by e-mail plong@simpsonville.com, or by mail or hand delivery at 118 N.E. Main Street, Simpsonville, SC 29680, within two days of the cancellation or substantive change of any insurance policy set out herein, and failure to do so shall be construed to be a breach of this Agreement. The General Liability policy is to contain or be endorsed to name City, its officers, officials, agents and employees as additional insureds as respects the liability arising out of the activities performed under this Agreement. Such coverage shall be primary and shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII and licensed to do business in the State of South Carolina, unless otherwise approved by the City; and the New Owner shall not self-insure in satisfaction of the insurance requirements set out herein without the express written consent of City.

(g) *Reserved.*

(h) *Pedestrian Lights and Streetlights.* The Initial Owner has coordinated with Duke Energy Carolinas ("Duke") for the installation of streetlights and electrical equipment to be located on public property and/or portions of the Property directly adjacent to public property along South Street, Green Street and Woodside Circle ("Lighting Improvements"). Coordination included, but has not been limited to, maintaining communication with Duke throughout the duration of the Project; scheduling and ensuring installation of the Lighting Improvements; and overseeing coordination with Initial Owner's contractors. The Lighting Improvements have been installed within

twenty four (24) months following the Effective Date of the Original Agreement, such that the New Owner does not need to reimburse the City for any sums paid by the City to Duke as set forth below in Paragraph 2(d). The Initial Owner has provided and the New Owner agrees to continue to provide Duke with a permanent easement for the installation, maintenance and operation of any Lighting Improvements located on the Property directly adjacent to public property along South Street, Green Street and Woodside Circle. The New Owner agrees to provide Duke with an executed easement agreement prior to the New Owner receiving reimbursement from the City pursuant to Paragraphs 2(a) and 2(b) below.

2. *City Contributions and Commitments:*

- (a) *Project Participation.* Subject to annual appropriation and Paragraphs 2(b) and 2(c) below, the City will reimburse the New Owner for the design and construction of the Public Improvements in an amount up to, but not to exceed One Million Five Hundred Thousand Dollars and No/100 (\$1,500,000.00). The City acknowledges that the Public Improvements meet all requirements and conditions otherwise set forth in this Agreement and the Original Agreement (including written acceptance by the City) and that the Project has met the standards of quality in design and construction described in the ID Plan.
- (b) *Reimbursement Formula and Procedure.* The City's \$1,500,000.00 reimbursement to the New Owner called for in Paragraph 2(a) shall be payable solely from the City's portion of ad valorem tax revenues which are received by the City from the real property comprising the Project to the extent said tax revenues, based upon new private investment, exceed ad valorem tax revenues received by the City on the Property in the fiscal year in which the Original Agreement was executed by the City ("Increment"). Reimbursement shall be based upon the following formula: the first Two Thousand Six Hundred and No/100ths Dollars (\$2,600.00) of each tax year's Increment shall be retained by the City and one hundred percent (100%) of the remainder of the Increment for each tax year (each such payment a "Reimbursement Payment" and collectively the "Reimbursement Payments") shall be paid to the New Owner.

The first Reimbursement Payment shall not commence until (i) the New Owner provides the City with a written request to begin the Reimbursement Payment or (ii) two years after the date of completion of the Public Improvements, whichever date is earlier. Upon commencement, each Reimbursement Payment will be paid to the New Owner on or before June 30 each year, subject to annual appropriations, until such time as: (i) the certified sum of actual costs incurred by Initial Owner for the Public Improvements is reimbursed to the New Owner in full with total Reimbursement Payments not exceeding \$1,500,000.00 or (ii) fifteen annual Reimbursement Payments are made by the City, whichever date is earlier. For the avoidance of doubt and assuming completion and acceptance of the Public Improvements, the parties acknowledge the first Reimbursement Payment shall commence on or before June 30 of the year following the calendar year in which the New Owner provides the City with a written request to begin the Reimbursement Payment or a period of two years has passed since the date of completion of the Public Improvements (whichever date is earlier) and shall continue annually thereafter until such time as: (i) the Reimbursement Payments total the lesser of the actual cost of the Public Improvements or \$1,500,000.00 or (ii) for fourteen (14) additional consecutive years,

whichever date is earlier. The City shall have no further financial obligation under this Agreement in the event fifteen Reimbursement Payments have been made and the total of the Reimbursement Payments fails to reach the lesser of the actual cost of the Public Improvements or \$1,500,000.00.

- (c) *Reimbursement Contingencies.* The City acknowledges receipt of detailed substantiation of the actual costs incurred for the design and construction of the Public Improvements from the Initial Owner, and the City acknowledges that the Public Improvements have been completed and accepted in writing by the City. The City may make reasonable requests for additional substantiation in establishing compliance with the Agreement. Actual costs do not include any of the following actual or allocated costs of the Initial Owner: personnel costs, overhead costs, interest expense, costs associated with right-of-way or easement acquisition. The submitted substantiation of costs shall solely be for those Public Improvements set forth in Paragraph 1(b) above and approved by the City pursuant to Paragraph 2(a) above. No other improvements shall be subject to reimbursement without the written authorization of the City Administrator upon his providing a written finding that the improvement complies with the provisions of the Agreement. All Reimbursement Payments shall be made pursuant to the reimbursement formula and procedure set out in Paragraph 2(b) above.
- (d) *No Defaults.* To the City's knowledge, the Initial Owner has performed all of its obligations under the Original Agreement and this Agreement, and no uncured default, or event that with the passage of time or the giving of notice, or both, would constitute a default, exists under the Original Agreement or this Agreement on the part of the Initial Owner or the New Owner.
- (e) *City Maintenance Obligations.* The City shall maintain that portion of the Public Improvements that have been dedicated to the use of the public and ownership of which has been transferred to and accepted by the City.

Notwithstanding any other provision of this Agreement to the contrary, the parties specifically understand and agree that while the remediation of environmental contamination on the Property as described in this Agreement is a public improvement, (i) the City is not responsible for any of the environmental remediation and the reimbursement to New Owner as provided in Paragraph 2(b) hereof for such remediation shall not be deemed to result in any duties, obligations or liability on the part of the City for such remediation; (ii) the City shall have no current or future obligation or responsibility for any environmental remediation on the Property; and (iii) the City will not own or maintain the Public Improvements related to the environmental remediation.

3. *Reimbursements Subject to Standard of Reasonableness.* Those costs which are to be reimbursed or paid as consideration by the City must be reasonably incurred and substantiated and the procurement practices shall adhere to principles of fairness, efficiency, and value for the use of public funds, and must provide for competitiveness, even though bids may not be necessary.

4. *Compliance with Law.* Construction and operation of the Project and Public Improvements shall be performed in a good, safe and workmanlike manner and in accordance with all applicable laws, rules, orders, ordinances, regulations and legal requirements of all governmental entities, agencies or instrumentalities relating to the development, use or condition of the Property and

any improvements constructed thereon including, without limitation, all building code and zoning requirements then in effect.

5. *Assignment.* The New Owner is not authorized to assign its rights and obligations under the Agreement to third parties without first having received from the City a written consent, which consent shall not be unreasonably withheld, executed with the same formality of the Agreement; provided, however, the New Owner shall be entitled to assign its rights and obligations under the Agreement without further consent to one or more Affiliates of New Owner. For purposes of this Agreement, "Affiliate" shall mean an entity that: (a) controls the New Owner; (b) is under common control with the New Owner; or (c) is controlled by the New Owner or is under the common control of the New Owner and New Owner's joint venture partner. The New Owner shall provide written notification to the City of any such assignment to an Affiliate and, further shall supply reasonable documentation of Affiliate status.

6. *Modification.* No modification, amendment or waiver of any provision of the Agreement shall be binding upon the parties unless the same is first reduced to writing in a document having the same formality as the Agreement and executed by the duly authorized officer for each party.

7. *Merger of Negotiations.* This Agreement constitutes the entire agreement between the parties. All prior negotiations and representations of both parties are merged into the Agreement, and no prior statement, whether written or oral, shall be binding upon either party unless reduced to writing and contained in the Agreement.

8. *Applicable Law.* The Agreement shall be subject to, and interpreted under, the laws of the State of South Carolina. Any dispute arising out of, or related in any manner to the Agreement or the Project must be brought in the Greenville County Court of Common Pleas following the exhaustion of any and all available administrative remedies.

9. *Execution Required.* This Agreement shall be null and void if not executed by the New Owner and presented to the City within ninety (90) days of passage of the adopting ordinance.

10. *No Joint Venture.* The parties acknowledge the City is acting solely in a governmental capacity in expanding/enhancing the City's public infrastructure and spaces, in approving the Agreement and in providing any other approvals related to the Project. Accordingly, the parties further acknowledge that no joint venture is intended or created between the New Owner (or Affiliate of the New Owner) and the City, and the parties expressly disclaim the same.

11. *Indemnification.* The New Owner shall indemnify, defend and hold harmless the City, as well as its officers, officials and employees, from and against all claims of any nature whatsoever, at law or in equity, arising out of, or related in any manner to the Agreement or the Project, excluding only those claims resulting from the gross negligence or willful misconduct of the City, its officers, officials and/or employees. This provision shall survive termination of the Agreement.

12. *Notice.* All notices and communications hereunder shall be in writing and shall be delivered personally or sent by certified mail, return receipt requested, addressed to the parties as follows:

CITY:
City of Simpsonville
Attention: City Administrator

118 N. E. Main Street
Simpsonville, SC 29681

With a copy to:

David W. Holmes, Esq.
City Attorney
712 N. Main Street
Greenville, SC 29609

NEW OWNER:

Orencel Cotton Mill, LLC
9801 Collins Ave., Apt. 19-A
Bal Harbour, FL 33154
Attention: Roberto Slimak

With a copy to:

Nelson Mullins Riley & Scarborough LLP
2 W. Washington Street, Suite 400
Greenville, SC 29601
Attention: Eric J. Smith

13. *Miscellaneous.* If any part or provision of this Agreement is held invalid or unenforceable under applicable law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining parts and provisions of this Agreement. The waiver of a breach of this Agreement by either party shall not operate as a waiver of any subsequent breach, and no delay in acting with regard to any breach of this Agreement shall be construed to be a waiver of the breach. Headings are inserted for convenience only and shall not be considered for any other purpose. All exhibits referenced above (including all attachments thereto) are attached hereto and incorporated herein as part of the Agreement.

(signatures on following page)

WHEREFORE, in consideration of the foregoing, the parties do bind themselves by terms and conditions of the Agreement by providing below the signature of their authorized officers.

WITNESSES:

CITY OF SIMPSONVILLE

BY: _____

ITS: _____
Mayor

STATE OF SOUTH CAROLINA

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ACKNOWLEDGEMENT

)

COUNTY OF GREENVILLE

)

The forgoing instrument was acknowledged before me this ____ day of _____, 2020, by _____ as _____ of City of Simpsonville.

Notary Public for South Carolina
My Commission Expires: _____

Printed Name of Notary

WITNESSES:

ORENCEL COTTON MILL, LLC

BY: _____

ITS: _____

STATE OF _____

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ACKNOWLEDGEMENT

)

COUNTY OF _____

)

The forgoing instrument was acknowledged before me this ____ day of _____, 2020, by _____ as _____ of Orencel Cotton Mill, LLC.

Notary Public for _____
My Commission Expires: _____

Printed Name of Notary

WITNESSES:

GRAYBUL COTTON MILL, LP

BY: _____

ITS: _____

STATE OF _____)

)

ACKNOWLEDGEMENT

COUNTY OF _____)

)

The forgoing instrument was acknowledged before me this ____ day of _____, 2020, by _____ as _____ of Graybul Cotton Mill, LP.

Notary Public for _____
My Commission Expires: _____

Printed Name of Notary

SCHEDULE OF EXHIBITS

- A. ID Plan
- B. Construction Plans Approval Letter
- C. NRVCC Information
- D. Public Improvements

EXHIBIT A

ID PLAN

(see attached)

EXHIBIT B

CONSTRUCTION PLANS APPROVAL LETTER

(to be attached upon issuance of final permits)

EXHIBIT C
NRVCC INFORMATION
(see attached)

EXHIBIT D
PUBLIC IMPROVEMENTS
(see attached)