
FINANCING AGREEMENT

Between

THE GREENS OF ROCK HILL, LLC,

and

CITY OF ROCK HILL, SOUTH CAROLINA

Dated as of

September 1, 2009

FINANCING AGREEMENT

THIS FINANCING AGREEMENT (“Agreement”) is entered into as of the 1st day of September, 2009 by and between The Greens of Rock Hill, LLC, a South Carolina limited liability company (the “Developer”) and the City of Rock Hill, South Carolina, a body politic and corporate, and a political subdivision of the State of South Carolina (the “City”).

SECTION 1. DEFINITIONS

The terms defined in this Article I shall for all purposes of this Agreement have the meanings specified herein. The term:

“Agreement” shall mean this Financing Agreement between the City and the Developer.

“Assessments” shall mean the assessments described in Section 3 hereof to be imposed on the current and future parcels which comprise the Property pursuant to the MID Act.

“Assessment Documents” shall mean the Assessment Report, in substantially the form attached hereto as Exhibit A, and the Assessment Roll (including the Rate and Method of Apportionment of Assessment attached thereto as Appendix A), in substantially the form attached hereto as Exhibit B.

“Bonds” shall mean, collectively, the TIF/MID Bonds, the Permanent MID Bonds and the Paydown MID Bonds.

“City” shall mean the City of Rock Hill, South Carolina.

“Developer” shall mean The Greens of Rock Hill, LLC, a South Carolina limited liability company.

“District” shall mean the Riverwalk Municipal Improvement District designated by the City pursuant to the MID Act and Ordinance No. 2009-29 enacted by the City Council of the City on August 10, 2009.

“Improvement Plan” shall mean the Improvement Plan for the Riverwalk Municipal Improvement District attached hereto as Exhibit C.

“MID Act” shall mean Title 5, Chapter 37 of the Code of Laws of South Carolina 1976, as amended.

“Paydown MID Bonds” shall mean the bonds described in Section 4(C) hereof.

“Permanent MID Bonds” shall mean the bonds described in Section 4(B) hereof.

“Property” shall mean the approximately 1,008 acre property currently identified as York County Tax Map Numbers 665-00-00-003 and 663-00-00-001 located in the City. A depiction of the Property is attached to this Agreement as Exhibit D.

“Public Improvements” shall mean the publicly-owned improvements to be acquired or constructed in connection with the Project.

“Project” shall mean the development of the Property as a mixed-use project, including the construction of residential, retail, office, hospitality and industrial improvements thereon in accordance with the Riverwalk Development Agreement.

“TIF Act” shall mean Title 31, Chapter 6 of the Code of Laws of South Carolina 1976, as amended.

“TIF District” shall mean the Red River Redevelopment Project Area, as amended which was established by the City as a “redevelopment project area” under the TIF Act pursuant to the “Red River Area Redevelopment Plan” dated August 1991, which was approved by an ordinance of the City enacted on September 23, 1991; as amended by an “Amended Red River Redevelopment Plan” dated June 16, 2008, which was approved by an ordinance of the City enacted on August 25, 2008; and as further amended by a “Seconded Amended Red River Redevelopment Plan” dated September, 2008, which was approved by an ordinance of the City enacted on December 15, 2008

“TIF/MID Bonds” shall mean the bonds described in Section 4(A) hereof.

“TIF Revenues” shall mean the incremental real property tax revenues attributable to millage levied by the City and collected in the TIF District.

SECTION 2. FINDINGS

WHEREAS, the Developer is currently the sole owner of the Property and has expressed to the City its intent to develop the Project on the Property; and

WHEREAS, the City has previously established the TIF District in accordance with the provisions of the TIF Law; and

WHEREAS, the Property is located in a portion of the TIF District; and

WHEREAS, the City has approved the Improvement Plan and designated the Property as an “Improvement District” (to be identified as the “Riverwalk Municipal Improvement District”) in accordance with the provisions of the MID Act; and

WHEREAS, the Improvement Plan provides for, and the Developer has agreed to, the imposition of Assessments on the current and future parcels that comprise the Property pursuant to the MID Act in order to finance or pay for all or a portion of the cost of certain Public Improvements in connection with the Project; and

WHEREAS, the Assessments will be imposed on the current and future parcels that comprise the Property in accordance with the Assessment Documents; and

WHEREAS, the Assessments have been calculated, and the Assessment Documents have been prepared, based on the projections set forth in the Riverwalk – Rock Hill, South Carolina Bond Projection No. 3 and the Riverwalk – Rock Hill, South Carolina Pay Down Bond Financing Projection No. 9, each prepared by MuniCap, Inc., and attached hereto as Exhibit E; and

WHEREAS, in connection with the undertaking of the Project, the Developer has requested that the City assist in the financing of the Public Improvements through the imposition of the Assessments and the issuance of Bonds from time to time in one or more series; and

WHEREAS, contemporaneously herewith, the City and the Developer have entered into the Riverwalk Development Agreement relating to the development of the Project.

NOW, THEREFORE, in consideration of the mutual agreements between the parties as set forth herein and other good and valuable consideration, the parties hereto do agree as follows.

SECTION 3. CREATION OF MUNICIPAL IMPROVEMENT DISTRICT AND IMPOSITION OF ASSESSMENTS

A. The City has undertaken the procedural and legislative actions required in order to designate the Property as an “Improvement District” pursuant to the provisions of the MID Act. The Developer hereby consents to such designation by the City, and will provide any further consents or agreements as requested by the City in connection with the designation of the Property as an “Improvement District” under the MID Act.

B. The Developer will consent to the imposition of Assessments on the Property. Assessments shall be calculated and imposed in the in accordance with the procedures set forth in the Assessment Documents.

C. The Assessment Documents shall provide that Assessments shall be imposed on the current and future parcels that comprise the Property in such a manner that the Assessments shall be sufficient to pay:

(1) debt service on any TIF/MID Bonds, Permanent MID Bonds, or Paydown MID Bonds issued by the City in connection with the Public Improvements; and

(2) administrative expenses incurred by the City related to the District, the Bonds and the calculation, imposition, modification, monitoring, enforcement, collection or any other activities in connection with the Assessments

SECTION 4. BONDS

Subject to the conditions set forth below, the City may issue TIF/MID Bonds, Permanent MID Bonds and Paydown MID Bonds in order to defray all or a portion of the cost of acquisition or construction of the Public Improvements.

A. TIF/MID Bonds:

- (1) The City may issue TIF/MID Bonds, in one or more series, secured by a pledge of one or more of the following:
 - (a) TIF Revenues
 - (b) The Assessments; and
 - (c) To the extent permitted by law, revenues from one or more supplemental sources of the City, to be determined by the City (the "Supplemental Revenues").
- (2) The initial TIF/MID Bond ("Initial TIF/MID Bond") may be issued under the following parameters:
 - (a) Principal amount: approximately \$10,000,000.
 - (b) Secured by: TIF Revenues from the TIF District and Supplemental Revenues. As noted below in (g), Assessments will be imposed and paid to the City in the amount necessary pay debt service on the Initial TIF/MID Bond (less TIF Revenues attributable to the Property, plus \$30,000 a year), even though the Initial TIF/MID Bond may not be secured by such Assessments. The Assessments will effectively reimburse the City for its use of other TIF Revenues from the entire TIF District (and the use of any Supplemental Revenues) to pay debt service on the Initial TIF/MID Bond.
 - (c) Maturity: Not later than 12/31/2033. After any interest only period (anticipated to not exceed 2 years from date of issuance), the Initial TIF/MID Bond will amortize over the remaining term with approximately equal annual payments of principal and interest.
 - (d) Capitalized interest: none expected.
 - (e) Debt Service Reserve Fund: A debt service reserve fund ("DSRF") will be funded from proceeds of the Initial TIF/MID Bond. The DSRF will have the following characteristics:

- (i) Approximate amount of \$900,000. Developer will maintain the DSRF at such amount until the maturity of the Initial TIF/MID Bond, unless earlier discharged as provided in item (iv) below.
- (ii) Anticipated to be held by a bank as trustee.
- (iii) Withdrawals to be made to make debt service payments on the Initial TIF/MID Bond to the extent that TIF Revenues attributable to the Property and Assessments are insufficient therefor.
- (iv) Amounts in the DSRF may be withdrawn and used to fund other Public Improvements or redeem a portion of the Initial TIF/MID Bond (at the City's discretion) once TIF Revenues (attributable only to the Property) increase to a level of 120% of maximum annual debt service on the Initial TIF/MID Bond.
- (f) Anticipated to be privately placed with a bank or financial institution, but may also be publicly offered.
- (g) Although the Initial TIF/MID Bond will be payable from TIF Revenues from the entire Red River TIF District, the Assessment Documents shall provide for Assessments to be imposed on the Property in an amount sufficient to pay debt service on the Initial TIF/MID Bond. Only those TIF Revenues attributable to the Property (and not TIF Revenues of the entire TIF District) plus \$30,000 a year shall be credited annually against the Assessments necessary to make debt service payments on the Initial TIF/MID Bond.
- (h) Proceeds of the Initial TIF/MID Bond shall be used to pay all or a portion of the costs of the following Public Improvements:

<u>Improvement Description</u>	<u>Estimate of Probable Cost</u>
Riverwalk Trail	\$1,776,783
Bicycle Track and/or Other Cycling Facilities	\$3,000,000
Eden Terrace to US 21 Phase I	\$2,569,906
River District Roads Phase I	\$2,424,853
Cherry Road Streetscaping	\$720,000
Celriver Road Design & Right of Way Acquisition	\$680,000
Main Street Phase I	<u>\$1,875,636</u>
TOTAL ESTIMATED COST	\$13,047,178

Subject to prior approval by the City Manager, proceeds of the Initial TIF/MID Bond may also be used to pay for all or a portion of the costs of the Public Improvements identified below for the Subsequent TIF/MID Bonds.

The Developer shall contribute private capital towards the construction of the above-referenced Public Improvements (or, if approved by the City Manager pursuant to the foregoing paragraph, Public Improvements identified below for the Subsequent TIF/MID Bonds) in the same amount as the sum of proceeds of the Initial TIF/MID Bond that are used to fund the DSRF.

Subject to subsequent approval by the City prior to December 31, 2010, in its discretion, the City may construct facilities for competitive bicycle events and related training activities (“Bicycle Track and/or Other Cycling Facilities”) as described in the table above. These facilities may include, at the discretion of the City, a bicycle track (velodrome) built to standards for international competition and a Super Cross BMX track designed for international competition or other eligible cycling facilities. The City’s commitments will be conditioned, in the City’s discretion, on private funding commitments by the Developer and other private parties. The cost of construction of the Bicycle Track and/or Other Cycling Facilities may be defrayed with proceeds from the Initial TIF/MID Bond, borrowings to be repaid from the City’s hospitality tax, other sources, or a combination of one or more of the foregoing. As noted in Section 6.E of this Agreement, the City may provide supplemental funding from hospitality taxes to support the Riverwalk Trail and the Bicycle Track and/or Other Cycling Facilities.

- (3) Subsequent TIF/MID Bonds (“Subsequent TIF/MID Bonds”) may be issued, in one or more series, under the following parameters:
 - (a) Principal amount: Approximately \$5,000,000 for the first series. Principal amount of subsequent series, if any, shall be subject to various considerations by the City, in its sole discretion, including available TIF Revenues and gap funding analysis.
 - (b) Secured by: TIF Revenues from the TIF District, but only to the extent such TIF Revenues are attributable to the Property, and Assessments.
 - (c) Maturity: After any interest only period, Subsequent TIF/MID Bonds shall amortize over the term of the Bond. Subsequent TIF/MID Bonds shall mature no later than 12/31/2033.

- (d) Capitalized interest: To be determined. If so, no longer than 36 months following the date of issuance.
- (e) Debt Service Reserve Fund: To be determined. If so, to be provided either from bond proceeds or from the Developer.
- (f) Interest only payments: To be determined. If so, no longer than 5 years following the date of issuance.
- (g) May be privately placed or publicly offered.
- (h) Assessments shall be imposed on the Property in an amount sufficient to pay debt service on Subsequent TIF/MID Bonds, but shall be credited to the extent that TIF Revenues attributable only to the Property (and not TIF Revenues of the entire TIF District) are available to pay debt service on such bonds.
- (i) The pledge of TIF Revenues (attributable only to the Property) for payment of Subsequent TIF/MID Bonds will be junior to the pledge thereof for payment of the Initial TIF Bond.
- (j) Proceeds of the Subsequent TIF/MID Bond shall be used to pay all or a portion of the costs of the following Public Improvements:

<u>Improvement Description</u>	<u>Estimate of Probable Cost</u>
Main Street Phase II	\$1,875,636
Industrial Park Access Road Phase II	\$3,367,157
Industrial Park Access Road Phase III	\$3,369,130
Duke Energy Utility Relocation	\$550,000
General Utility Relocation & R/W	<u>\$363,868</u>
TOTAL ESTIMATED COST	\$9,525,791

- (4) Annual TIF Revenues in excess of debt service on any TIF/MID Bonds may be used by the City for any purposes permitted under the TIF Act, including redevelopment project costs unrelated to the Project.
- (5) If at any time the appraised fair market value of the Property is less than the outstanding principal amount of the TIF/MID Bonds, additional security from the Developer may be required by the City at its discretion. In connection therewith, Developer shall provide updated appraisals of the fair market value of the Property prior to the issuance of the Initial TIF/MID Bond, and, unless waived by the City, every three years thereafter until the final maturity of any TIF/MID Bonds.

B. Permanent MID Bonds

- (1) The City may issue Permanent MID Bonds, in one or more series, secured solely by a pledge of the Assessments.
- (2) Permanent MID Bonds may be issued under the following parameters:
 - (a) Maturity: After any interest only period, Permanent MID Bonds shall amortize over the term of the Bond. Final maturity shall be no later than 30 years after the date of issuance.
 - (b) Capitalized interest: To be determined. If so, no longer than 36 months following the date of issuance.
 - (c) Debt Service Reserve Fund: To be determined. If so, to be provided from bond proceeds.
 - (d) Interest only payments: To be determined. If so, no longer than 5 years following the date of issuance.
 - (e) May be privately placed or publicly offered.
 - (f) Assessments shall be imposed on the Property in an amount sufficient to pay debt service on the Permanent MID Bonds.
 - (g) May be issued as un-rated bonds.
 - (h) No alternate security source or pledge, or credit enhancement, to be provided by the City.
 - (i) Principal amount of initial series of Permanent MID Bonds is anticipated to be approximately \$4,500,000.
- (3) Proceeds of the Permanent MID Bonds will be used to pay for all or a portion of the costs of the following Public Improvements:

<u>Improvement Description</u>	<u>Estimate of Probable Cost</u>
Parks and Recreation Facilities	\$5,075,000
Publicly Owned Recreation and Wellness Facilities	\$3,500,000
Eden Terrace to US 21 Phase II	\$3,768,700
Main Street Phase II	\$250,000
River District Phase II	<u>\$250,000</u>
TOTAL ESTIMATED COST	\$12,843,700

Use of proceeds to reimburse Developer for any capital expenditures undertaken prior to the issuance of Permanent MID Bonds will be subject to the City's approval in its sole discretion.

C. Paydown MID Bonds

- (1) The City may issue Paydown MID Bonds, in one or more series, secured solely by a pledge of the Assessments.
- (2) Paydown MID Bonds may be issued under the following parameters:
 - (a) Maturity: Bonds shall be redeemed as Assessments are paid. Final maturity shall be no later than 30 years following date of issuance.
 - (b) Capitalized interest: To be determined. If so, no longer than 36 months following the date of issuance.
 - (c) Debt Service Reserve Fund: To be determined. If so, to be provided from bond proceeds.
 - (d) Interest only payments shall be made on the Paydown MID Bonds until maturity or prior redemption.
 - (e) May be privately placed or publicly offered.
 - (f) Assessments shall be imposed on the Property in an amount sufficient to pay interest on, and redeem outstanding principal of, the Paydown MID Bonds.
 - (g) May be issued as un-rated bonds.
 - (h) No alternate security source or pledge, or credit enhancement, to be provided by the City.
 - (i) Principal amount of initial series of Paydown MID Bonds anticipated to be approximately \$7,000,000.
- (3) Proceeds of the Paydown MID Bonds will be used to pay for all or a portion of the costs of the following Public Improvements:

<u>Improvement Description</u>	<u>Estimate of Probable Cost</u>
Residential Infrastructure	\$15,517,000
Parks and Recreation Facilities	<u>\$649,130</u>
TOTAL ESTIMATED COST	\$16,166,130

Use of proceeds to reimburse Developer for any capital expenditures undertaken prior to the issuance of Paydown MID Bonds will be subject to the City's approval in its sole discretion.

- D. TIF/MID Bonds, Permanent MID Bonds and Paydown MID Bonds may be issued in such principal amounts as determined at the time of issuance thereof, provided:
- (1) The original principal amount of the Initial TIF/MID Bond shall be approximately \$10,000,000; and
 - (2) The cost of acquisition and construction of the Public Improvements (exclusive of capitalized interest, debt service reserve funds and costs of issuance) to be funded from proceeds of the Bonds shall not exceed \$48,432,800.
- E. Conditions for the Issuance of Bonds. The issuance of any series of Bonds by the City shall be subject to the following.
- (1) Approval by subsequent ordinances to be enacted by the City Council of the City, in its sole discretion;
 - (2) Further agreements to be entered into between the City and the Developer, if any;
 - (3) Favorable financing terms, as determined by the City in its sole discretion;
 - (4) Written assurance that the Developer has obtained adequate financing or equity to undertake sufficient private development in connection with the Project to justify the City's financing of an acceptable amount of Public Improvements;
 - (5) With respect to the TIF/MID Bonds, verification under the City's gap funding analysis that financing of Public Improvements appears necessary for the Project to be economically feasible and are appropriate, as determined by the City in its sole discretion;
 - (6) Upon request by the City, provision by the Developer of pro-formas, accountant-prepared financial statements, and other data to the City or its designee. Prior to the issuance of the Initial TIF/MID Bond, Developer shall provide accountant-prepared financial statements for year-end 2008, and interim statements for 2009. Until all Bonds have matured, and unless such requirement is waived by the City, Developer shall provide year-end accountant-prepared financial statements to the City no later than 120 days following Developer's fiscal year end;
 - (7) Approval by the City, in its sole discretion, of such pro-formas, accountant-prepared financial statements, and other data provided by the Developer;

- (8) With respect to the TIF/MID Bonds, approval of a complete sources and uses budget and schedule for the Public Improvements to be funded in whole or in part through such TIF/MID Bonds; and
 - (9) With respect to the TIF/MID Bonds, approval of a sources and uses budget and schedule for other planning, engineering and construction activities that may take place on the Property simultaneously with the Public Improvements funded with such TIF/MID Bonds. Such budget shall provide for (i) contingencies for unexpected costs, and (ii) the separate accounting for TIF/MID Bond-funded projects and projects funded from other sources.
- F. Bonds or other obligations to be issued by the City hereunder shall only be issued on a federal tax-exempt basis to the extent that the issuance of such Bonds or other obligations complies with all laws, regulations, rulings and judicial decisions relating to federal tax exemption. To the extent that any of the Bonds are issued on a federal tax-exempt basis, or are issued as Build America Bonds (“BABs”) or Recovery Zone Economic Development Bonds (“RZEDBs”) under the American Recovery and Reinvestment Tax Act of 2009, the Developer and the City shall covenant to comply with federal tax rules and regulations relating thereto. The Bonds shall be issued as BABs or RZEDBs only upon agreement by both the City and the Developer. To the extent that any of the Bonds are issued on a federal tax-exempt basis, the City and the Developer shall each covenant that it will not take, or permit to be taken on its behalf, or omit to take any action which would cause the interest on the Bonds to be includable in the gross income of the holders of the Bonds for purposes of federal income taxation, and that it will take, or require to be taken, such actions as may from time to time be required under applicable laws, regulations, rulings and judicial decisions as existing and in effect on the date of issue to the purchasers thereof to continue to exclude from gross income for federal income tax purposes the interest on the Bonds.
- G. The Developer will timely provide such information as may be reasonably requested from time to time by the City and any other parties involved with the issuance and sale of the Bonds.

SECTION 5. USE OF BOND PROCEEDS

- A. If the Bonds are issued and if the costs of the Public Improvements (the “Improvement Costs”) which are eligible for payment or reimbursement under the MID Act or the TIF Act, as applicable, are less than the proceeds of the respective series of Bonds issued therefor (less any amounts attributable to reserve funds, capitalized interest and costs of issuance), then the City shall only be required to pay to third parties or reimburse the Developer for such lesser amount of eligible Improvement Costs. Excess proceeds of the Bonds may, in the discretion of the

City, be used to pay for additional Public Improvements related to the Project, to the extent permitted by law and to the extent permitted by the documents and agreements related to such Bond issue. If the Improvement Costs of any Public Improvements which are located on the Property exceed the proceeds of the respective series of Bonds issued therefor (less any amounts attributable to reserve funds, capitalized interest and costs of issuance) Developer shall complete the construction of the related Public Improvements utilizing its own funds. The Developer shall be obligated to complete the Public Improvements identified in Exhibit F attached hereto (except for work related to Celriver Road) regardless of whether proceeds of the TIF/MID Bonds are sufficient therefor.

- B. The Developer may make periodic Bond proceeds disbursement requests to the City or its designee for payment of Improvement Costs directly to third parties, or as reimbursement to the Developer for such Improvement Costs. Disbursement of funds shall be in accordance with the terms of future documents relating to the issuance of the Bonds. Bond proceeds shall be disbursed to the Developer at the time specific Public Improvements are completed and accepted by the City.
- C. As part of any disbursement request to the City, the Developer or third parties shall deliver to the City or its designee: (1) a description of those specific Public Improvements for which the Developer is seeking disbursement (either directly to a third party, or as reimbursement to the Developer); (2) evidence that the Developer has paid the costs for which reimbursement is being sought, or that third parties are due the amounts requested (e.g., invoices); (3) if applicable, certificates showing the absence of material, mechanics' and other liens with respect to such costs; and (4) if applicable, certificates from the architect or engineer of record that the work included in the disbursement request is consistent with the plans and specifications and governmental permits and approvals for the work (collectively, the "Cost Documentation").
- D. Each Public Improvement shall be built to the standard of the City's engineering design specifications or to such other construction practices which the City has for the type of Public Improvements which are to be owned and operated by the City.
- E. All Public Improvements shall be publicly-owned. To the extent any Public Improvements are not initially acquired or constructed directly by the City, such Public Improvements shall be dedicated to the City by the Developer. Within 30 days of the date on which a Public Improvement is completed and payment or reimbursement of all Improvement Costs applicable thereto has been paid (the "Notice Period"), the Developer shall provide written notice to the City or other appropriate governmental entity of its intention to dedicate or convey such Public Improvement to the City or other appropriate governmental entity by deed, lease, easement or bill of sale. In the event the Developer fails or refuses to provide such notice during the Notice Period, the City shall have the option, but not the obligation, to purchase such Public Improvements for \$1.00 for a period of 90 days following the end of the Notice Period.

- F. Within 30 days after receipt of notice from the Developer of its intention to convey or dedicate a Public Improvement, the City shall give written notice to the Developer if the City determines that the Developer has failed to construct a Public Improvement in accordance with applicable plans and specifications, the governmental permits and approvals or City standards. Such notice shall provide specific, itemized descriptions of how the Public Improvement does not comply with the aforementioned standards. If, within such 30 day period, the City does not give written notice to the Developer of such non-compliance, the City shall be deemed to have approved the conveyance or dedication of such Public Improvement. The Developer shall have a period of 90 days to pursue and complete the cure of such defects; provided, however, if such cure requires a longer period, the City and the Developer may agree on such longer period.
- G. If the Developer starts but fails to complete a Public Improvement within a reasonable time period after commencement of construction (except delays due to force majeure), the City shall have, in addition to any other rights and remedies which may be available at law, the right to draw on the Bond proceeds to complete the Public Improvement and reduce the amount of Bond proceeds to which the Developer is entitled in the amount necessary to complete the applicable Public Improvement. If the City exercises its rights to remedy or complete a Public Improvement, the Developer agrees that it shall make any further assignments to the City of any construction contracts, professional services contracts (e.g., architectural, engineer or prime contractors) and rights to use plans, drawings and specifications, and any governmental permits or approvals for such Public Improvement as may be necessary for the City to complete such Public Improvement.
- H. Prior to commencement of an individual Public Improvement, the Developer shall obtain all necessary governmental approvals and permits for such Public Improvement.
- I. After issuance of any series of Bonds, the Developer shall commence construction of the Public Improvements to be constructed with the proceeds of such series of Bonds and diligently pursue completion thereof provided: (a) the Developer has received all necessary governmental permits and approvals for the applicable portion of the Public Improvements; and (b) the Developer has procured all necessary easements or property rights for the applicable Public Improvements.
- J. To the extent any of the Public Improvements are to be operated and maintained by the Developer after dedication or conveyance of such Public Improvements to the City, the City and the Developer shall negotiate one or more subsequent agreements relating to such operation and maintenance. Any such agreements relating to operation and maintenance must be structured to satisfy the safe harbors for management and service contracts contained in the Internal Revenue Service Revenue Procedure 97-13, as amended, and any other successor administrative pronouncements.

- K. To the extent that any of the Public Improvements are designed and constructed by the Developer, reimbursement or payment to the Developer shall be subject to and limited by the following:
- (1) Labor Rates: actual labor rate plus burden (FICA, FUTA, workers compensation, unemployment, health insurance, physicals, uniforms, and other benefits).
 - (2) Equipment Rates: the then-current version of the U.S. Army Corps of Engineers "*Construction Equipment Ownership and Operating Expense Schedule*". Rented equipment to be invoiced at market rental rates.
 - (3) Overhead, Construction Interest, Fees and Profit: to be based on market standards as determined by item (8) below, and other published industry standards as the parties may agree to.
 - (4) Professional Services: engineering rates comparable to market rates for the Charlotte regional market, to be verified by surveys of local engineering firms.
 - (5) Subcontractors and Materials: subcontracted work and materials to be competitively bid where possible.
 - (6) Escalation: price escalation not to exceed annually by the increase in the Consumer Price Index from the prior year.
 - (7) Cost Tracking: costs will be tracked utilizing daily and weekly time and material reports. The Developer will employ manifest billing or other cost accounting systems acceptable to the City for all work performed. Project costs will be tracked by the hour or other measurable unit as agreed to by the City and the Developer. Actual costs will be summarized on a monthly billing report and invoiced in accordance with a schedule of values.
 - (8) Verification: payment of costs shall be subject to verification by the City or its designee that the costs of self-performance by the Developer reflect fair market values for the services provided.
 - (9) Audit: the City shall have the right to audit Project at any time in connection with payment requests submitted by the Developer.
 - (10) Costs: the City's expense for cost verification or audits may be paid from the construction fund, at the City's sole discretion.
- L. Construction Fund: if actual costs charged to a construction fund established in connection with any TIF/MID Bonds are determined by the City to be less than the City-approved costs charged to such construction fund, the City shall retain

the savings in the construction fund to be used on or around the Property for eligible activities in connection with the TIF District.

- M Proceeds of the TIF/MID Bonds may not be used for Public Improvements otherwise required of the Developer as part of any agreements with the former owner of the Property or as part of any legally required or voluntary environmental remediation process.
- N. All contracts and agreements to be funded from proceeds of the TIF/MID Bonds shall be subject to review, audit and approval by the City. Such contracts and agreements shall provide a definite scope and fees for all work to be performed.

SECTION 6. FURTHER AGREEMENTS

- A. The Developer shall dedicate land to the City at no cost for the uses listed below. Exhibit G provides preliminary locations for these dedications. The conditions and timing of the dedications will vary and will be negotiated in the future.
 - (1) Cycling and Outdoor Center of the Carolinas, including a site for a possible velodrome and BMX Super cross course;
 - (2) Rights of ways required for public roads;
 - (3) Riverwalk trail related public amenities;
 - (4) Electric substation;
 - (5) Athletic fields on former landfills; and
 - (6) Other green space to be used for public recreational activities including buffers and wetlands may be dedicated via a conservation easement.
- B. The City will consider making investments in the public amenities listed below on land dedicated to the City by the Developer. The conditions and timing associated with the possible construction of the public amenities is outlined in the Public Amenities Plan for Riverwalk attached hereto as Exhibit H.
 - (1) Velodrome and other cycling facilities; and
 - (2) Athletic fields; and
 - (3) Riverwalk trail and certain connecting trails that are deemed to be part of the City's public trail system; and
 - (4) Other public parks as may be approved by the City.

- C. The City and the Developer will cooperate on other matters affecting the Riverwalk development including:
- (1) Seeking federal, state and local funding for improvements to Celriver Road and for other offsite transportation improvements identified in the Traffic Impact Analysis for the Riverwalk development. These needed improvements are shown, with cost estimates, on Exhibit I and Exhibit J.
 - (2) Seeking special financing and incentives that may assist the Project including:
 - a. New Markets Tax Credits; and
 - b. SC Textile Communities Revitalization Act credits.
- D. Funding by the City for future phases of the Project, if any, will be determined by the City Council in the future, in its sole discretion, based on, among other things, gap analysis and the ability of the Project to repay the TIF/MID Bonds and potential future bonds through TIF Revenues.
- E. In its discretion, the City may provide up to \$3,000,000 to defray the cost of construction of certain tourism-related amenities, including the Riverwalk Trail, and the Bicycle Track and/or Other Cycling Facilities. Such funding may be provided from proceeds of the Initial TIF/MID Bond, borrowings to be repaid from the City's hospitality tax, other sources, or a combination of one or more of the foregoing. Such funding, and the timing and use of the proceeds thereof, are subject to future approval by the City Council of the City, in its sole discretion.

SECTION 7. MISCELLANEOUS

A. **Default.** Any failure by either party hereto on any obligation under this Agreement, or under the Riverwalk Development Agreement, shall constitute a "Default" under this Agreement. Upon the occurrence of a Default, any aggrieved party shall notify the defaulting party that it has thirty (30) days after receipt of notice of Default within which to cure the Default to the satisfaction of the aggrieved party providing such notice. Upon failure to remedy such Default, any aggrieved party shall have the right to any remedy provided in law, equity or provided elsewhere in this Agreement. Failure to remedy a Default by the Developer under this Agreement shall cancel all rights and privileges granted to the Developer under this Agreement.

B. **No Joint Venture.** The parties hereby agree that nothing in this Agreement shall be deemed to place the City and the Developer in the relationship of employer/employee, partners, or joint venturers. No party shall have the right to obligate or bind the other in any manner. Each party agrees and acknowledges that it will not hold itself out as an authorized agent with the power to bind the other party in any manner.

C. Indemnification. The Developer agrees to and shall indemnify and hold the City harmless from and against its actual loss, damages or injury, and all costs and expenses (including attorneys' fees and costs of any suit related thereto), suffered or incurred by the City, arising from or related to this Agreement or Developer's performance hereunder. This section shall survive the termination of this Agreement.

D. Covenant to Sign Other Documents. The parties acknowledge that consummation of the transaction contemplated hereby may require the execution prior hereto, contemporaneously herewith and/or sometime hereafter of certain documents in addition to this Agreement which all of them, by their signatures herein below, covenants, represents and warrants that they will promptly do so.

E. Warranty of Authority. The parties agree that the terms of this Agreement are contractual and not a mere recital, and all signatory parties hereto represent and warrant that they have the full and complete authority to execute and enter into this Agreement.

F. Compliance with Legal Requirements. In connection with its obligations under this Agreement, each party shall comply with all applicable federal, state and local laws, regulations and ordinances and shall obtain all applicable permits and licenses.

G. Compliance with Insurance Requirements. The Developer shall purchase, maintain and be responsible for the maintenance of all appropriate insurance, including but not limited to: liability insurance, premises liability insurance, and worker's compensation insurance in such amounts that no judgment shall lie against the Property.

H. Force-Majeure Provision. Neither party hereto shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by (i) Acts of God, (ii) acts of a Public Enemy or terrorist, (iii) orders of the State and Federal Governments and State and Federal Regulatory Agencies and (iv) causes beyond a party's reasonable control and expressly occurring without its fault or negligence, including, by way of illustration and not limitation, failure to obtain ordinance(s) approval, failure to obtain voter approval, failure to obtain required bond approval or issuance and thereafter failing to substantially meet its performance obligations under this Agreement, provided that, as a condition to the claim of force-majeure, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon. Reasonable dates by which performance obligations were scheduled to be met, may be extended for the same period of time equal to the time directly lost by force-majeure, due to any delay so caused.

I. Time is of the Essence. Time is of the essence with respect to the performance of the duties and obligations arising under or relating to this Agreement.

J. Applicable Law. This Agreement has been entered into in the State of South Carolina and shall be governed by, and construed in accordance with South Carolina law.

K. Binding Effect of Agreement. This Agreement represents binding and enforceable commitments between the parties.

L. Complete Agreement. Except as otherwise incorporated into this Agreement, this Agreement constitutes the entire agreement between the parties and supersedes all agreements, representations, warranties, statements, promises and understandings, whether oral or written, with respect to the subject matter hereof, and no party hereto shall be bound by any oral or written agreements, statements, promises, or understandings not specifically set forth in this Agreement.

M. Amendments. Amendments to this Agreement shall be made with the same formalities as this Agreement.

N. Counterpart Execution. This Agreement may be executed in multiple counterparts.

O. Successors and Assigns. All rights and privileges, obligations and liabilities created by this Agreement shall inure to the benefit of, and be binding upon the heirs, designees, administrators, executors, successors and assigns of the parties hereto; provided, however, the rights and privileges, obligations and liabilities of the Developer under this Agreement may not be sold, assigned, transferred, or inure to any assignee of or successor to the Developer without the prior written consent of the City, which shall not be unreasonably withheld.

P. Headings. Headings are for the convenience of the parties hereto and are not controlling.

Q. Word Meanings Herein. The meaning of words herein shall be defined as broadly as such words may be defined and are intended to be inclusive.

R. Drafting of Agreement. This Document was jointly drafted by the parties hereto and may not be construed one against the other.

S. No Personal Liability. No obligation or agreement contained herein shall be deemed to be a personal obligation or agreement of any present or future member, officer, agent or employee of the City or the Developer. No member, officer, agent or employee of the City or the Developer shall be personally liable under this Agreement or be subject to any personal liability or accountability by reason of the obligations or agreements of the City or the Developer contained in this Agreement.

[Execution Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates indicated below.

CITY OF ROCK HILL, SOUTH CAROLINA

Date: _____

By: _____
Mayor

By: _____
City Manager

THE GREENS OF ROCK HILL, LLC

Date: _____

By: _____
Its: _____

Exhibit A
Assessment Report