

**State of North Carolina
County of Henderson**

PAYOFF AND SATISFACTION AGREEMENT

THIS AGREEMENT, made and entered into this the _____ day of _____, 2025, by and between the City of Hendersonville, a North Carolina municipal corporation, the "City," and Grey Mill Ventures, LLC, a North Carolina limited liability company, "Developer,"

WITNESSETH

THAT WHEREAS, Developer is the owner of that real property, purchased from the City, said property consisting of the Grey Hosiery Mill Property and certain appurtenant tracts, all of the foregoing being more particularly described in the deeds from the City to the Developer recorded in Book 3148 at Page 347 and Book 3307 at page 261 of the Henderson County Registry, collectively hereinafter the "Real Property," and

WHEREAS, Developer financed the purchase of the Real Property by the execution of a purchase money Promissory Note, dated December 29, 2017, having a maturity date of December 29, 2027, the "Purchase Money Note," as amended by that First Amended and Restated Promissory Note dated March 8, 2019, having a maturity date of December 29, 2027, the "Amended Purchase Money Note," resulting in an original indebtedness to the City of \$200,000 for the purchase of the Real Property, the "Purchase Price"; and

WHEREAS, the Purchase Money Note was secured by that Deed of Trust recorded in Book 3148 at page 349, the "Purchase Money Deed of Trust," and the Amended Purchase Money Note was secured by that Deed of Trust recorded in Book 3307 at Page 444, the "Amended Purchase Money Deed of Trust," both being recorded in the Henderson County Registry; and

WHEREAS, the City obtained a Community Development Block Grant from the North Carolina Department of Commerce, Rural Economic Development Division in the amount of \$500,000, the "CDBG Grant," and provided the CDBG Grant proceeds to the Developer in the form of a loan evidenced by a promissory note in face amount of \$500,000 dated March 8, 2019, the "CDBG Note," and

WHEREAS, the CDBG Note was secured by a Deed of Trust recorded in Book 3307 at page 450 of the Henderson County Registry, the "CDBG Deed of Trust," and

WHEREAS, as part of the CDBG Grant requirements, Developer was required to set aside 20% of the residential apartment units being developed within the Grey Mill building (resulting in a set aside of 7 units) for rental to persons income qualifying at 80% or less of the area median income for a period of _____ years, the “Affordability Requirement,”; and

WHEREAS, Developer has secured a buyer for the Real Property and has negotiated with the City to pay off the balance owed to the City under the Amended Purchase Money Note and the CDBG Note, and to pay a premium to the City for an early release from the Affordability Requirement;

NOW THEREFORE THIS AGREEMENT, that for and in consideration of the mutual terms and conditions contained hereinbelow, the sufficiency of which is acknowledged by the parties hereto, the parties agree as follows:

1. The WHEREAS, clauses are incorporated herein and made a part of this Agreement.
2. The Developer shall be permitted to pre-pay the Amended Purchase Money Note and the CDBG Note by paying to the City the entire principal balance owed and all accrued by unpaid interest in full satisfaction of the indebtedness owed to the City pursuant to the Amended Purchase Money Note and the CDBG Note.
3. The Developer shall pay to the City a premium payment in the amount of \$50,000 in exchange for an amended Affordability Requirement. In consideration for the payment of the \$50,000 premium payment and the Developer’s agreement to indemnify the City in paragraph ____ below, the City agrees that the Affordability Requirement shall be as follows from and after the date of Closing:
 - a. Developer shall retain the Affordability Requirement for each of the 7 LMI Units for a minimum of 1 year from the date of Closing, or for each unit individually, until the current LMI tenant(s) vacate the unit either voluntarily or are evicted for breach of their current lease agreement, whichever occurs first. Once an LMI unit is vacated, the Affordability Requirement shall no longer apply to the individual LMI unit. The amendment to the Affordability Requirement shall be referred to as the “Amended Affordability Requirement.” The terms of this paragraph shall survive Closing or any termination of this Agreement.

- b. Upon receipt of payment in full for the entire indebtedness owed under the Amended Purchase Money Note, the “Amended Purchase Money Note Payoff,” the City shall record a satisfaction of the Amended Purchase Money Deed of Trust within the time frame required by N.C.G.S. § 45-36.9. The terms of this paragraph shall survive Closing or any termination of this Agreement.
4. Upon receipt of both (1) payment in full for the entire indebtedness owed under the CDBG Note, the “CDBG Note Payoff,” and (2) payment in full of the CDBG Premium, the City shall record an amendment to the CDBG Deed of Trust to reflect a zero balance owed under the CDBG Deed of Trust, and to reflect the terms of the Amended Affordability Requirement. Upon demonstration by Developer that the Amended Affordability Requirement has been met, the City shall record a satisfaction of the Amended CDBG Deed of Trust (including its amendment per this paragraph) within the time frame required by N.C.G.S. § 45-36.9. City agrees to subordinate the Amended CDBG Deed of Trust (including its amendment per this paragraph) to the Developer’s Buyer’s Deed(s) of Trust for the purchase of the Real Property, if any. The terms of this paragraph shall survive Closing or any termination of this Agreement.
5. **Closing Date.** The Developer shall give the City ten (10) days advance notice in writing, notifying the City of the date that the Developer will deliver the Amended Purchase Money Note Payoff, the CDBG Note Payoff, and the CDBG Premium, the “Closing Notice,” all to be paid in certified funds, said date hereinafter referred to as the “Closing Date.” Closing shall occur at City Hall at a time on the Closing Date agreed to by the City and the Developer. **THIS AGREEMENT SHALL BE NULL AND VOID AND OF NO FORCE AND EFFECT IF THE CITY HAS NOT RECEIVED A CLOSING NOTICE FROM DEVELOPER BY OCTOBER 31, 2025.**
6. **Payoff Amount.** Within five (5) days of receipt of the Closing Notice, the City shall provide to the Developer a written payoff letter, indicating the sums due to pay in full the Amended Promissory Note Payoff, the CDBG Note Payoff, and the CDBG Premium.
7. **Entire Agreement.** This agreement constitutes and represents the complete and entire agreement between the City and Developer and supersedes all previous communications, either written or verbal with respect to the subject matter of this Agreement

8. **Changes, Additions, Deletions.** This Agreement may be amended only by written agreement, duly approved and executed by both parties thereto.
9. **Indemnification.** It is understood and agreed that the City has agreed to the Amended Affordability Requirement in order to accommodate the Developer's sale of the Real Property, while preserving a benefit to LMI households by securing the CDBG Premium to be used by the City for the benefit of LMI households. Therefore, in consideration of the City's agreement to the Amended Affordability Requirement, Developer agrees that to the greatest extent allowed by the law the Developer shall indemnify and hold harmless the City, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, penalties, recapture or clawback of CDBG grant funds from the federal or state government, and including reasonable litigation costs and attorneys fees ("Claims") incurred by the City or assessed against the City, associated in any manner with the Amended Affordability Requirement. With their signatures below, Kenneth Reiter and Matthew Springer agree to guarantee this indemnification requirement on behalf of the Developer. The terms of this paragraph shall survive closing or any termination of this Agreement.

10. Release of City.

- a. Upon the City's receipt of the Amended Purchase Money Note Payoff and recording of the satisfaction of the Amended Purchase Money Deed of Trust to Developer, Developer hereby releases and forever discharges the City, its officers, directors, employees, agents, successors, and assigns from any and all claims, demands, actions, causes of action, suits, damages, liabilities, and obligations of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which Developer may have or may hereafter acquire against City arising out of or in connection with the Amended Purchase Money Note, or the Amended Purchase Money Deed of Trust. The terms of this paragraph shall survive closing or any termination of this Agreement.
- b. Upon the City's receipt of the CDBG Note Payoff and the CDBG Premium and recording of the Satisfaction of the CDBG Deed of Trust to Developer (when the Amended Affordability Requirement has been met by Developer), Developer hereby releases and forever discharges the City, its officers, directors, employees, agents, successors, and assigns from any and all claims, demands, actions, causes of action, suits, damages,

liabilities, and obligations of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which Developer may have or may hereafter acquire against City arising out of or in connection with the Amended Purchase Money Note, or the Amended Purchase Money Deed of Trust, or any of the other Loan Documents. The terms of this paragraph shall survive closing or any termination of this Agreement.

11. **RECORDING COSTS.** The City shall be responsible for the cost of recording the Satisfactions in the Office of the Register of Deeds of Henderson County, North Carolina.
12. **Applicable Laws and Courts.** This Contract shall be governed in all respects by the laws of the State of North Carolina. Exclusive venue shall be in a court of competent jurisdiction for Henderson County, North Carolina. The terms of this paragraph shall survive closing or any termination of this Agreement.
13. **Assignment.** Developer may not assign, pledge, or in any manner encumber the Developer's rights under this Contract, or delegate the performance of any of its obligations hereunder, without the City's prior, express written consent. The terms of this paragraph shall survive closing or any termination of this Agreement.
14. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The terms of this paragraph shall survive closing or any termination of this Agreement.
15. **No Third Party Beneficiaries.** There shall be no intended nor incidental third party beneficiaries of this Contract. The Developer shall include in all contracts, subcontracts or other agreements relating to the Contract an acknowledgment by the contracting parties that the Contract creates no third party beneficiaries. The terms of this paragraph shall survive closing or any termination of this Agreement.
16. **Severability.** If any provision of this Contract is found to be invalid or unlawful, then remainder of this Agreement shall not be affected thereby, and each remaining provision shall be valid and enforced to the fullest extent permitted by law. The terms of this paragraph shall survive closing or any termination of this Agreement.

17. **WAIVER OF JURY TRIAL.** CITY AND DEVELOPER EACH HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR DEVELOPER AND CITY TO ENTER INTO THIS AGREEMENT. The terms of this paragraph shall survive closing or any termination of this Agreement.

18. **Costs:** Each party will be responsible for bearing its own costs associated with the performance of this Agreement. Each party will be responsible for its own attorney's fees. The terms of this paragraph shall survive closing or any termination of this Agreement.

19. **Notice.** 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 (UPS, FedEx, etc.) for next business day delivery, to the addresses set forth below.

To the Developer:

To the CITY:

CITY OF HENDERSONVILLE
Attn: John Connet, City Manager
160 6th Avenue East
Hendersonville NC 28792
jconnet@hvlnc.gov

With copy to:

Angela Beeker, City Attorney
160 6th Avenue East
Hendersonville NC 28792
abeeker@hvlnc.gov

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. 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 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 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. Notices may be sent by email or facsimile for convenience, but must be followed up by one of the means above, which will be the official notice.

The terms of this paragraph shall survive closing or any termination of this Agreement.

20. **Counsel.** Each party hereto warrants and represents that each party has been afforded the opportunity to be represented by counsel of its choice in connection with the execution of this Agreement and has had ample opportunity to read, review, and understand the provisions of this Agreement.
21. **No Construction Against Preparer.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision.