

AN ORDINANCE OF THE CITY OF EASLEY, SOUTH CAROLINA, APPROVING THE EXECUTION AND DELIVERY OF A DEVELOPMENT AGREEMENT WITH PROJECT SILO

WHEREAS, South Carolina law authorizes municipalities to take actions not inconsistent with the Constitution and general laws of the State, regarding any subject the municipality finds necessary and proper for the general welfare and convenience of the municipality, including to execute and deliver contracts, to assist in redeveloping blighted areas, and to expend public funds for economic development;

WHEREAS, Project Silo (“Developer”) owns, or intends to lease/purchase, real property (the “Property”) in the City of Easley, South Carolina (the “City”) and to develop the Property;

WHEREAS, on the Property, Developer intends (a) to invest near one-million dollars (\$1,000,000) to purchase, design, and renovate the property to establish multiple businesses that will create at least twenty (20) and upwards of sixty (60) jobs, and (b) to design and construct various commercial/retail facilities, (collectively, the “Development”);

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EASLEY, SOUTH CAROLINA, AS FOLLOWS:

1. The City hereby authorizes the Mayor or the City Administrator to make minor corrections, execute, and deliver such documents as may be necessary or useful to affect the implementation of the Economic Development Agreement attached to this ordinance.

2. The Project Agreement, with whatever changes are (a) not materially adverse to the City and (b) approved by the Mayor or the City Administrator (after advice of City’s counsel), is approved and is incorporated by reference in this Ordinance as if set forth fully in the Ordinance’s body. The Mayor’s or City Administrator’s execution of the final Project Agreement shall be conclusive evidence of the City’s approval thereof.

3. The Mayor and the City Administrator are, each acting alone or in concert, authorized to take whatever actions and execute and deliver whatever documents (including the Project Agreement) as either of them deems appropriate to affect this Ordinance’s intent.

THIS ORDINANCE SHALL BE EFFECTIVE IMMEDIATELY UPON SECOND READING.

CITY OF EASLEY, SOUTH CAROLINA

Mayor

Attest:

City Clerk

First Reading: _____

Second Reading: _____

EXHIBIT A

DEVELOPMENT AGREEMENT

(SEE ATTACHED)

AN ORDINANCE TO APPROVE A LEASE AGREEMENT BETWEEN THE CITY OF EASLEY AND PROJECT SILO FOR PROPERTY LOCATED AT 122 FOLGER AVENUE.

WHEREAS, the City of Easley owns property located at 122 Folger Avenue; and

WHEREAS, the City of Easley is drafting an Economic Development Agreement with Project Silo related to their development of commercial establishments and job creation on this property; and

WHEREAS, the City of Easley has negotiated lease terms with Project Silo for 122 Folger Avenue; and

WHEREAS, the term of this lease agreement is \$2,000 per month to be paid in 40 equal installments as outlined with all details, guidelines, and stipulations in the attached Lease Agreement;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EASLEY, SOUTH CAROLINA, AS FOLLOWS:

1. The City hereby authorizes the Mayor or the City Administrator to make minor corrections, execute, and deliver such documents as may be necessary or useful to affect the implementation of the Lease Agreement attached to this Ordinance.
2. The Project Agreement, with whatever changes are (a) not materially adverse to the City and (b) approved by the Mayor or the City Administrator (after advice of City’s counsel), is approved and is incorporated by reference in this Ordinance as if set forth fully in the Ordinance’s body. The Mayor’s or City Administrator’s execution of the final Lease Agreement shall be conclusive evidence of the City’s approval thereof.
3. The Mayor and the City Administrator are, each acting alone or in concert, authorized to take whatever actions and execute and deliver whatever documents (including the Lease Agreement) as either of them deems appropriate to affect this Ordinance’s intent.

THIS ORDINANCE SHALL BE EFFECTIVE IMMEDIATELY UPON SECOND READING.

CITY OF EASLEY, SOUTH CAROLINA

(SEAL)

Mayor

Attest:

City Clerk

First Reading: _____

Second Reading: _____

EXHIBIT A

LEASE AGREEMENT

(SEE ATTACHED)

**No Title Examination Conducted and
No Title Opinion Rendered**

THE STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS

)

)

**LEASE AGREEMENT
WITH OPTION TO PURCHASE**

THIS AGREEMENT entered into this date, _____, 2019, by and between **City of Easley, South Carolina**, hereinafter collectively called "Landlord," and **Project Silos**, hereinafter collectively called "Tenant."

WITNESS:

Landlord leases to tenant and tenant leases from landlord property generally referred to as 122 Folger Avenue, Easley, SC 29640, hereinafter referred to as the "leased property".

The parties agree as follows:

SECTION 1. *Term and Amount.* At the commencement of the term, the Tenant shall accept land and any improvements on or to the leased property in their existing condition. No representation, statement, or warranty, express or implied, has been made by or on behalf of the Landlord as to such condition, or as to the use that may be made of such property. The term of this lease shall commence on this date and shall end, unless sooner termination in accordance with the contained provisions, **forty (40) months** later on _____, both dates inclusive. In the event that the Tenant holds over for more than one (1) day after expiration of the term of this lease without the written consent of the Landlord, the Landlord, at its option, may deem such holdover a renewal of the lease for an additional term of one (1) month as a month-to-month tenancy under the terms, covenants, and conditions thereof, or the Landlord may take such steps as may be required to remove the Tenant from the leased property, provided, however, that the Tenant shall have the option to purchase the leased property as provided below.

Subject to the abatement terms below, during the initial term of the lease, the Tenant shall pay to the Landlord the monthly rent of **\$2,000.00**, payable in lawful money of the United States in consecutive, equal installments on the first (1st) day of each month beginning _____, and continuing on the first day of each month thereafter throughout the term of this lease. Rent not received so deposit can be made on the 5th day of the month will be subject to a \$50.00 late fee. Tenant agrees to pay the landlord during the term, at **City of Easley, P.O. Box 466, Easley, SC 29641**. The Tenant shall pay and indemnify the Landlord against all legal costs and charges, including attorney's fees, lawfully and reasonably incurred in obtaining possession of the leased property after default of the Tenant or after the Tenant's default in surrendering possession upon the expiration or earlier termination of this lease or enforcing any covenant of the Tenant herein contained.

The parties agree that the Tenant's monthly rent to the Landlord shall be abated (not become due and payable) at the rate of \$2,000.00 per month if the Tenant timely meets its obligations under the Economic Development Ordinance. The minimum timeframes to be in compliance for abatement or forgiveness of the rent are:

Page 1 of 7;
Landlord's(s') Initials _____
Tenant's(s') Initials _____

- i. Submittal of single Site Plans by 3/31/2020
- ii. Renovations started per site plan by 6/30/2020
- iii. Continued progress quarterly on 9/30/2020 and 12/30/2020
- iv. Substantial completion by 3/30/2021
- v. Certificate of Single Occupancy and Open to Public by 6/30/2021
- vi. Continued Occupancy and open to the Public monthly until the 40-month period ends. Construction may continue past the above timeline.

SECTION 2. *Nonrefundable deposit.* At the commencement of this lease, the Tenant agrees to pay the Landlord a nonrefundable deposit of Zero Dollars (\$0.00).

SECTION 3. *Use.* The Tenant, upon payment of the rent herein reserved and the deposits contained herein and upon the performance of all of the terms of this lease, shall quietly have and enjoy the leased property during the term of this lease, without hindrance or molestation by anyone claiming by or through the Landlord. The Tenant may use the leased property for any lawful commercial and permitted purpose, but not for residential or other purposes. Tenant further agrees that it shall not use or occupy the leased property in violation of any law, ordinance, regulation, or of any violation of the terms and provisions of any applicable restrictions to which the leased property is subject. The Tenant shall promptly at the discovery of any such unlawful business, disreputable or extra hazardous use, take all necessary steps, legal and equitable, to compel the discontinuance of such use and to oust and remove any occupants or other persons guilty of such unlawful, disreputable or extra hazardous use. The Tenant shall indemnify the Landlord against all costs, expenses, liabilities, losses, damages, injunctions, suits, fines, penalties, claims and demands, including reasonable attorney's fees, arising out of any violation of or default in these covenants by the Tenant. The Tenant shall keep the leased property in a neat, well-groomed, and clean manner, and shall remove any and all trash from the leased property. The Tenant shall not cause any water or drainage problems upon the leased property due to landscaping, grading, paving, or construction. At the expiration of the term of this lease or its earlier termination, the Tenant shall remove any of the Tenant's personal property from the leased property at the Tenant's sole expense, and repair or replace any damage occasioned by the Tenant or any of her guests. At time of lease agreement, the building is currently in disrepair and not code compliant.

SECTION 4. *Alterations.* No alterations, additions, or improvements may be made to the leased property by Tenant without the prior written consent of the Landlord or approved through plan submittal for renovations or permitting. Any alterations, additions, or improvements made by the Tenant after consent shall have been given, and any fixtures installed as a part, shall at the Landlord's option become the property of the Landlord on the termination of this lease; provided, however, that the Landlord shall have the right to require the Tenant to remove fixtures at Tenant's costs on the termination of this lease.

SECTION 5. *Repairs.* Tenant shall, at its own expense, make all repairs, maintenance and replacements to the leased property which would ordinarily and necessarily be done by a property owner. Further, the Tenant shall keep the leased property clean, maintaining suitable receptacles for trash and refuse, and removing from the leased property all accumulations of trash and refuse. Tenant covenants that it will not commit, or permit to be committed, any waste on the leased property. Tenant shall also be responsible, at its sole expense, to keep the interior and the exterior of the leased property in good order and to comply with all local fire, sanitation, environmental and other similar rules and regulations of any federal, state or local authority. In short, the Landlord shall not be responsible for any repairs, replacement or

maintenance of the leased property. If it should become necessary for the Landlord to make any repairs, replacements or maintenance, the Tenant agrees to reimburse the Landlord for all costs and expenses within five (5) days of presentation of same. The Tenant shall comply with the requirements of all policies of public liability, fire and other types of insurance at any time in force in respect the leased property and any other improvements thereon.

SECTION 6. *Surrender.* Unless Tenant takes title as provided herein, the Tenant shall on the last day of the term, or upon the sooner termination of the term, peaceably and quietly surrender the leased property to the Landlord in a clean condition, including all buildings, alterations, rebuildings, and replacements thereon in as good condition and repair as at the commencement of the term.

SECTION 7. *Casualty.* Either party shall have the option to terminate this lease by written notice to the other in the event that the leased property are totally destroyed or to the point of being not reasonably habitable or in the event that the leased property cannot be restored within ninety (90) days of the date of damage. If the leased property is damaged in a manner than can be reasonably repaired within ninety (90) days and the Landlord so elects and commits to undertake and complete repairs in the time frame, and the rent shall be abated and proportioned as to the portion of the leased property which is unusable by Tenant until the repairs to the leased property are completed. In the event that the leased property is totally destroyed, then the parties agree that the Landlord shall retain any insurance proceeds. Tenant will maintain his/her own insurance for his/her personal property and personal liability.

SECTION 8. *Utilities.* Tenant shall be responsible for the payment of all utilities, including but not limited to electricity, water, sewer, telephone, cable television, natural gas, and other services consumed or used in or about the leased property, or supplied to the leased property. In no event shall the Landlord be liable for any interruption or failure in the supply of utilities to the leased property. The Tenant further agrees to protect, save harmless and indemnify the Landlord against any claim or liability on such account.

SECTION 9. *Failure to Pay Rents or Deposits.* If the leased property is vacated or deserted, or if there shall be a default in the payment of the rent for than **forty-five (45) days after the due date of a payment**, or if there shall be a substantial default in the performance of any other covenant, agreement, condition, rule or regulation herein contained, this lease, if the Landlord so elects, shall thereupon become null and void, and the Landlord shall have the right to re-enter or repossess the leased property either by force, summary proceedings, surrender or otherwise and dispossess and remove therefrom the Tenant or other occupants thereof and their effects without being liable to any prosecution therefor. In such case, the Landlord may, at its option, relet the leased property or any part thereof as agent of the Tenant, and the Tenant shall pay the Landlord the difference between the rent hereby served and agreed to be paid by the Tenant for the portion of the term remaining at the time of the re-entry or repossession, and that amount, if any, received or to be received under such reletting, for a reasonable period of time. If the Tenant defaults, deserts, or vacates the leased property, the Tenant hereby expressly waives the service of notice of intention to re-enter or of instituting legal proceedings to that end; and waives or will waive the right to trial by jury in any summary proceeding hereafter instituted by the Landlord against the Tenant in respect to the leased property. The parties expressly incorporate §27-40-710(B) of the Code of Laws of South Carolina which provides the following:

Page 3 of 7;
Landlord's(s') Initials _____
Tenant's(s') Initials _____

(B) If rent is unpaid when due and the tenant fails to pay rent within five days from the date due or the tenant is in violation of Section 27-40-540, the landlord may terminate the rental agreement provided the landlord has given the tenant written notice of nonpayment and his intention to terminate the rental agreement if the rent is not paid within that period. The landlord's obligation to provide notice under this section is satisfied for any lease term after the landlord has given one such notice to the tenant or if the notice is contained in conspicuous language in a written rental agreement. The written notice requirement upon the landlord under this subsection shall be considered to have been complied with if the rental agreement contains the following or a substantially equivalent provision:

"IF YOU DO NOT PAY YOUR RENT ON TIME

This is your notice. If you do not pay your rent within five days of the due date, the landlord can start to have you evicted. You will get no other notice as long as you live in this rental unit."

The presence of this provision in the rental agreement fully satisfies the "written notice" requirement under this subsection and applies to a month-to-month tenancy following the specified lease term in the original rental agreement. If the rental agreement contains the provision set forth in this subsection, the landlord is not required to furnish any separate or additional written notice to the tenant in order to commence eviction proceedings for nonpayment of rent even after the original term of the rental agreement has expired.

SECTION 10. *Landlord's Access.* After giving reasonable and proper notice of at least five (5) days to the Tenant the Landlord or his agents may enter the leased property at any reasonable time during regular working hours for the purpose of inspecting the leased property and performing any work which the Landlord elects to undertake. The Landlord may enter at other times in the event of any emergency.

SECTION 11. *Notice.* Any notice required or permitted to be given shall be in writing and may be given by personal delivery or by US certified mail, postage prepaid and return receipt requested, or by express commercial carrier address to the Tenant or the Landlord at the address set forth above. Either party may by notice to the other party specify a different address for notice purposes except that initially on the Tenant's taking possession of the leased property, the leased property shall constitute the Tenant's address for notice purposes.

SECTION 12. *Headings.* The section headings are inserted for convenience only and are in no way intended to describe, interpret, define or limit the scope or content of this lease or any provision.

SECTION 13. *Landlord's Nonliability.* The Landlord shall not be liable for any personal injury to the Tenant, its sublessees, or to its guests, or to any other occupant of any part of the leased property, or for any damages to any property of the Tenant. The Tenant agrees to protect save harmless and indemnify the Landlord from any claim for personal injury or property damage to the Tenant, its invitees, guests, sublessees, or of any other occupant of any part of the leased property. Tenant shall maintain a general liability insurance policy with policy limits of \$1,000,000 and shall annually furnish a copy of said declarations page and a paid receipt to the Landlord.

SECTION 14. *No Waiver.* No delay or failure by either party to exercise any right or remedy under this lease, and no partial or single exercise, shall constitute a waiver of that or any other right or remedy, unless otherwise expressly provided in writing. Further, the waiver by the Landlord of any breach of any provision of this lease shall not constitute a continuing waiver of any subsequent breach of the same or of a different provision. No provision of this lease shall be deemed to have been abrogated or waived by reason of failure to enforce the same, regardless of the number of violations or breaches which may have occurred.

SECTION 15. *Tenant's Option to Purchase.*

OPTION TO PURCHASE

The Landlord hereby grants to the Tenant that immediately after forty (40) months from the commencement of this lease, if the Tenant meets all of the conditions of the Economic Development Ordinance, then the Landlord shall transfer title by general warranty deed to the Tenant. Upon the transfer of title, the Landlord shall pay for preparation of the deed, deed stamps, and satisfaction of its mortgage. The Tenant shall pay for all loan associated fees, including escrow accounts, legal fees, and any other fees associated with the closing. If, by no fault of the Landlord, the sale cannot take place within thirty (30) days after expiration of this lease, the Tenant shall pay unto the Landlord rent equal to that stated above. If the Tenant vacates the leased property or substantially defaults under the provisions of this lease, the option terminates.

SECTION 16. *Insurance; proceeds thereof.* Any hazard or homeowner's insurance maintained by the Landlord shall be paid to the Landlord or its assignee. In the event that the leased property is totally destroyed or to the point of being not reasonably habitable or in the event that the leased property cannot be restored within ninety (90) days of the date of damage, the any proceeds shall be used for the benefit of the Landlord. The Tenant shall have the right to insure the property and if he/she so elects.

SECTION 17. *Death of Tenant.* In the event of the Tenant's death prior to the Tenant exercising an option to purchase, all amounts paid are nonrefundable. Alternatively, the Tenant's personal representative shall have the right for sixty (60) days of the date of Tenant's death to exercise the option to purchase or continue with the terms of this lease. If the Tenant's personal representative so elects, they/he/she shall give the Landlord written notice within sixty (60) days of the Tenant's death and shall pay for the rental incurred between the Tenant's death and their/his/her election.

SECTION 18. *Notice.* The Landlord's address for notice under this lease shall be P.O. Box 466, Easley, SC 29641. The Tenant's address for notice under this lease shall be 122 Folger Avenue, Easley, SC 29640.

SECTION 19. *Gender.* All nouns and pronouns used herein shall be deemed to include the masculine, feminine, and the neuter, and the singular shall include the plural and vice versa, whenever the context requires or permits. The terms "Landlord" and "Tenant" as used shall include the plural as well as the singular, the neuter shall include the masculine and feminine genders and, if there be more than one tenant, the obligations in this lease imposed on the Tenant shall be joint and several.

Page 5 of 7;
Landlord's(s') Initials _____
Tenant's(s') Initials _____

SECTION 20. *Time is of the Essence.* Time is expressly declared to be of the essence.

SECTION 21. *Governing Law.* This Agreement shall be construed and governed in accordance with the laws of the State of South Carolina. Each party further agrees to submit to the jurisdiction of the State of South Carolina in the County of Pickens.

SECTION 22. *Read and reviewed.* Each party has read the entire lease; each party has had an opportunity to have this lease read by counsel of its own choice, whether exercised or not; each party has not relied upon the other party; and, each party believes this lease to be fair and equitable.

SECTION 23. *Partial Invalidity.* If any provision of this lease or the application of the provision to any person or circumstances shall to any extent be held void, unenforceable, or invalid, then the remainder of this lease or the application of the provision to person or circumstances other than those to which it is held void, unenforceable or invalid shall not be affected, and each provision of this lease shall be valid and enforced to the fullest extent permitted by law.

SECTION 24. *Enforcement Expense.* If either party is required to institute litigation against the other party to enforce its rights under this lease and if the party obtains a valid judgment against party, the non-prevailing party shall be required to pay all reasonable costs, expenses and reasonable attorney's fees of the prevailing party.

SECTION 25. *Entire Agreement; Amendment.* This lease constitutes the entire agreement between the parties with respect to the present subject matter, and no prior agreement or understanding with regard to any subject matter shall be effective for any purpose. No provision of this lease may be amended or added to except by an agreement in writing signed by the parties or their respective successors in interest.

IN WITNESS WHEREOF the parties have hereunto placed their hands and seals this date, _____, 2019.

The Landlord understands that this is a lease with the option to purchase **NOT** a purchase/sale or deed or a bond for title. _____ [Landlord's(s') Initials]

WITNESS: LANDLORD

City of Easley:

Larry Bagwell

Its:
Mayor

The Tenant understands that this is a lease with the option to purchase **NOT** a purchase/sale or deed or a bond for title. _____ [Tenant's(s') Initials]

TENANT(S):

Signature

Signature

Sworn to before me this date, _____, 2019.

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: _____