

## **AMENDMENT TO AGREEMENT**

This Amendment to an Agreement to Contribute to Certain Infrastructure Improvements (this “Amendment”) is entered into this 30th day of January 2020 (the “Effective Date”) by and between the City of Hartsville, South Carolina (the “City”), a municipal corporation of the State of South Carolina (the “State”), and Industrial Properties, Inc. (the “Developer”), a South Carolina corporation (each a “Party” and collectively the “Parties”), as an amendment to an Amendment to Contribute Certain Infrastructure Improvements, dated January 30, 2015 (the “Agreement”) by and between the City and the Developer. Capitalized terms contained herein and not otherwise defined shall be given the meaning ascribed to such term in the Agreement.

In witness whereof, and for and in consideration of the exchange of mutual promises, covenants, representations and agreements hereinafter contained, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties hereto agree to amend the Agreement as follows:

### **Article I - Findings.**

**Section 1.01. Recitals.** The Parties hereto hereby acknowledge the following findings to be true and accurate:

(a) The City and the Developer entered the Agreement, pursuant to which (i) the Developer agreed to (1) annex the Development into the City, (2) install the Wastewater Infrastructure within the Development and dedicate the Wastewater Improvements to the City, and (3) secure the repayment of the Amount Advanced through the execution and delivery of the Note and the Personal Guarantee of the Guarantors, and (ii) the City agreed to (1) advance the Amount Advanced to the Developer as a contribution to the cost of certain Wastewater Improvements to serve the Development, and (2) accept dedication of the Wastewater Improvements upon completion in accordance with Plans and the City’s standards.

(b) The City and the Developer further agreed that the City would forgive the Amount Advanced and the Note as set forth in Section 4.05 of the Agreement, pursuant to which, (1) the City was to forgive one-half (1/2) of the then-outstanding principal amount of the Amount Advanced upon final approval of the subdivision of all lots within the Development and the completion of the installation or construction, to the satisfaction, as applicable, of the City, Darlington County or the State, of any and all infrastructure required for the Development, and (2) the City was to forgive the remaining one-half (1/2) of the then-outstanding principal amount of the Amount Advanced, including any accrued interest thereon, at such time as Certificates of Occupancy have been issued for ten (10) residences constructed on lots within the Development.

(c) The Note, subject to any amounts forgiven by the City pursuant to Section 4.05 of the Agreement, is payable as a single payment, to include all principal and accrued interest thereon, on January 30, 2020 (the “Original Maturity Date”).

(d) The Wastewater Improvements and all other infrastructure required for the Development been completed by the Developer and, accordingly one-half (1/2) of the Amount Advanced has

been forgiven by the City. As of the Effective Date, the Developer has not yet completed, and Certificates of Occupancy have not yet been issued, for ten (10) residences constructed on lots within the Development; therefore, the remaining one-half (1/2) of the Amount Advanced has not been forgiven.

(e) Pursuant to Section 4.05(c) of the Agreement, the Note, regardless of the forgiveness of a portion of the Amount Advanced, shall continue to bear interest as to the entire Amount Advanced until such time as all conditions subsequent to the forgiveness of the Amount Advanced have occurred. On the basis of the foregoing, upon the Original Payment Date, the amount due on the Note, which includes one-half (1/2) of the Amount Advanced and all accrued interest on the entire sum of the amount advanced, equals the sum of \$95,482.63 (the “New Amount Advanced”).

(g) The Developer has requested, and the City has agreed, to re-amortize the New Amount Advanced and execute an amended promissory note (the “Amended Note”) under the terms of this Amendment.

(h) The City reaffirms its support of residential development in appropriate areas of the City in order to further expand the System, to increase property values to generate additional property tax revenue and provide affordable, quality housing within the City. The City further reaffirms that through providing monetary support to offset certain costs of the Wastewater Improvements, the City’s support of the Project continues to promote a valid public purpose and that the benefits to the City of the completion of the Development are greater than the cost of any necessary economic development incentives being provided by the City, and that by re-amortizing the New Amount Advanced, the City is promoting the completion of the Development at an earlier date than would otherwise be the case.

(i) The City hereby finds that the revised information provided by the Developer regarding the Project is reasonable and, given these benchmarks, it is likely that the City’s investment in Wastewater Improvements will be fully recouped by the City in the form of tap-fees, wastewater charges and additional property taxes within the five (5) year term of the Amended Note.

## Article II – Amended and Supplemented Provisions.

**Section 2.01. Certain Defined Terms.** References to the following terms of the Agreement shall hereafter be construed as follows: (i) references to the Amount Advanced shall be construed as the New Amount Advanced, (ii) references to the Note shall be construed as the Amended Note, (iii) references to the Personal Guarantee(s) shall be construed as the Amended Personal Guarantee(s), (iv) references to the Agreement shall be construed as the Agreement as amended by this Amendment, and (v) references to Wastewater Infrastructure shall be construed as Wastewater Improvements.

**Section 2.02. Amended Sections.** Pursuant and consistent with Section 5.09 of the Agreement, the following sections of the Agreement shall be amended and restated in their entirety as follows below. All other sections and provisions of the Agreement shall be unaffected and shall remain in full force and effect.

**Section 4.03. Security; Terms of Note.** *As security for the New Amount Advanced, the Developer shall execute an amended promissory note (the “Amended Note”), in the form of the Amended Note attached hereto as Exhibit C, payable to the City, in the amount of the New Amount Advanced. The Amended Note shall bear interest at a rate of 5.0% per annum (calculated on a basis of a 360-day year consisting of twelve 30-day months). Subject to any applicable forgiveness of the Note pursuant to Section 4.05 hereof, the Developer shall make annual payments on the Amended Note, commencing on January 30, 2021 and occurring each January 30 thereafter (each a “Payment Date”), in the amount of any interest accrued thereon as of each Payment Date, until the final Payment Date on January 30, 2025, when, the Developer shall pay the full amount of the outstanding principal amount of the Note and any remaining interest accrued thereon. The Developer shall also execute such additional documents, instruments, certifications and opinions as the City may require in order to properly record the Amended Note or this Agreement.*

**Section 4.04. Personal Guarantee.** *In addition to the Amended Note, the principals of the Developer, to wit: Mr. Gosnold G. Segars Jr. and Ms. Helen P. Segars (collectively, the “Guarantors”), shall each execute amended personal guarantees (the “Amended Personal Guarantee(s)”) in favor of the City, in the form of the Amended Personal Guarantee Agreement attached hereto as Exhibit D, for the payment of any outstanding portion of the Amended Note and the New Amount Advanced, to include any outstanding principal and any accrued interest thereon, less any amounts forgiven by the City pursuant to Section 4.05 hereof. Each of the Guarantors shall be jointly and severally liable for the repayment of the New Amount Advanced and all additional costs as described above. The City may exercise such Amended Personal Guarantees upon the occurrence of one or more of the events as described in Section 4.06 herein.*

**Section 4.05. Forgiveness of the Note.** *The City shall forgive the New Amount Advanced, including any accrued interest thereon, at such time as Certificates of Occupancy have been issued for ten (10) residences constructed on lots within the Development. Upon the issuance of the tenth Certificate of Occupancy, the Developer shall provide written notice to the City of such occurrence, along with any documentation necessary to verify the happening of such occurrence. The City may, in its reasonable discretion, request additional documentation that it deems necessary for verification purposes. The City’s approval of any such notice shall not be unreasonably withheld.*

[Remainder of Page Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be signed in their names by their duly authorized officers as of the date first written above.

CITY OF HARTSVILLE, SOUTH CAROLINA

By: \_\_\_\_\_  
Carl M. (Mel) Pennington IV, Mayor

[SEAL]

ATTEST:

\_\_\_\_\_  
Sherron L. Skipper, City Clerk  
City of Hartsville

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be signed in their names by their duly authorized officers as of the date first written above.

INDUSTRIAL PROPERTIES, INC.

By: \_\_\_\_\_  
Mr. Gosnold G. Segars Jr.

Its: \_\_\_\_\_

By: \_\_\_\_\_  
Ms. Helen P. Segars

Its: \_\_\_\_\_

Witness:

SIGN: \_\_\_\_\_

NAME: \_\_\_\_\_

DATE: \_\_\_\_\_

EXHIBIT C

FORM OF THE AMENDED NOTE

EXHIBIT D

FORM OF AMENDED PERSONAL GUARANTEE