

**RESOLUTION NO. 2023-\_\_\_**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BARTONVILLE, TEXAS, APPROVING A THIRD AMENDED AND RESTATED PERFORMANCE AGREEMENT BY AND BETWEEN THE BARTONVILLE COMMUNITY DEVELOPMENT CORPORATION, AND CLOUD 9 MANAGEMENT, LLC, A TEXAS LIMITED LIABILITY COMPANY, TO PROVIDE A FINANCIAL INCENTIVE FOR ECONOMIC DEVELOPMENT PURPOSES, AUTHORIZED PURSUANT TO SECTIONS 501.103 AND 505.158 OF THE TEXAS LOCAL GOVERNMENT CODE; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.**

**WHEREAS**, the Bartonville Community Development Corporation (hereinafter referred to as the “BCDC”) is a Type B Community development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and

**WHEREAS**, Section 501.103 of the Texas Local Government Code, in pertinent part, defines the term “project” to mean “expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to: (1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; (2) telecommunications and Internet improvements . . .”; and

**WHEREAS**, Section 505.158 of the Texas Local Government Code provides that “[f]or a Type B corporation authorized to be created by a municipality with a population of 20,000 or less, “project” also includes the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the corporation’s board of directors to promote new or expanded business development.” Further, the statute provides that “[a] Type B corporation may not undertake a project authorized by this section that requires an expenditure of more than \$10,000 until the governing body of the corporation’s authorizing municipality adopts a resolution authorizing the project after giving the resolution at least two separate readings”; and

**WHEREAS**, on or about April 16, 2019, the Developer and BCDC approved and executed an original Performance Agreement concerning financial assistance for the construction of Qualified Expenditures (as defined herein) to be made to the Property generally located at 2660 F.M. 407, Town of Bartonville, Texas; and

**WHEREAS**, on or about December 9, 2020, the Developer and BCDC approved and executed an Amended Performance Agreement concerning financial assistance for the construction of Qualified Expenditures (as defined herein) to be made to the Property generally located at 2660 F.M. 407, Town of Bartonville, Texas; and

**WHEREAS**, on or about November 17, 2021, the Developer and BCDC approved and executed a Second Amended Performance Agreement concerning financial assistance for the

construction of Qualified Expenditures (as defined herein) to be made to the Property generally located at 2660 F.M. 407, Town of Bartonville, Texas; and

**WHEREAS**, the parties desire to amend the original Performance Agreement with this Third Amended and Restated Performance Agreement to amend certain dates within the Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BARTONVILLE, TEXAS, AS FOLLOWS:**

**Section 1.** That the foregoing recitals are hereby found to be true and correct findings of the Town of Bartonville, Texas, and are fully incorporated into the body of this Resolution.

**Section 2.** That the Town Council of the Town of Bartonville, Texas, finds and determines that the Third Amended and Restated Performance Agreement, attached hereto as *Exhibit A*, will promote new and expanded business development, and is otherwise consistent with Sections 501.103 and 505.158 of the Texas Local Government Code.

**Section 3.** That the Town Council of the Town of Bartonville, Texas, approves the Third Amended and Restated Performance Agreement, attached hereto as *Exhibit A*, and authorize the Mayor to execute this Resolution.

**Section 4.** That this Resolution shall become effective from and after its passage.

**DULY RESOLVED** by the Town Council of the Town of Bartonville, Texas, on this the 21<sup>st</sup> day of February 2023.

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Jaclyn Carrington, Mayor  
Town of Bartonville, Texas

**ATTEST:**

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Tammy Dixon, Town Secretary  
Town of Bartonville, Texas