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This Document was prepared by: Angela S. Beeker
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**STATE OF NORTH CAROLINA
HENDERSON COUNTY**

ANNEXATION AGREEMENT

THIS AGREEMENT made this 17th day of February, 2022 by and between the (i) City of Hendersonville, a North Carolina incorporated municipality (the "City") whose address is 160 6th Avenue East, Hendersonville, NC 28792 and (ii) Boyd L. Hyder, whose address is 163 Puncheon Camp Creek Road, Hendersonville, NC 28792 (the "Customer"):

WITNESSETH:

That Whereas, Customer is the owner of certain real property consisting of those lots identified as Tracts B, C, D and E, and a 1.00 acre lot identified as "1.00 AC (PROPOSED FILL AREA)", all of the foregoing lots being shown on the plat recorded in Plat Book 2003 Page 4768 of the Henderson County Registry, Customer having acquired said lots by those deeds recorded in Deed Book of Record 3180 at Page 55 and Book of Record 3419 at Page 447, both of the Henderson County Registry; and

Whereas, Customer has submitted a site plan review application dated 7/20/2021 for the development of Tract E and a portion of Tract D, for the project entitled "O'Reilly Auto Parts," both Tracts E and D being shown on said Plat Book 2003 at Page 4768, Tract E having a tax parcel identification number of 9670-92-5715, hereinafter "Tract E," and Tract D having a tax parcel identification number of 9670-92-3539, hereinafter "Tract D"; and

Whereas, Tract E and Tract D are not within the corporate limits of the City of Hendersonville, NC, and are not contiguous to the primary corporate limits of the City of Hendersonville; and

Whereas, the Customer has requested sewer service to Tract E for the purpose of developing Tract E and a portion of Tract D for the O'Reilly Auto Parts project; and

Whereas, it is the policy of the City of Hendersonville that real property outside of the City limits be required to irrevocably submit a petition for annexation into the corporate limits as a condition of receiving sewer service; and

Whereas, because Tract D and Tract E are part of that subdivision shown on that plat recorded in Plat Book 2003 at Page 4768 of the Henderson County Registry, but are not currently contiguous to the City municipal corporate boundaries, the City cannot annex Tract D and Tract E without annexing the entirety of said subdivision; and

Whereas, Customer has agreed to irrevocably petition the City of Hendersonville for the annexation of Tract D and Tract E if and when either of said tracts qualify for annexation by the City of Hendersonville as a contiguous annexation pursuant to N.C.G.S. § 160A-31;

Now therefore this Agreement, that in consideration of the covenants herein contained and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. The Whereas clauses are incorporated into this Agreement as an integral part hereof.
2. The City agrees to allow Customer to connect Tract D and Tract E to the City's sewerage system, and receive sewer service, provided Customer complies with all ordinances, codes, regulations and policies of the City with regards to application for and approval of such sewer service.
3. Within thirty (30) days of being notified by the City that Tract D or Tract E qualify for annexation into the City limits as a continuous annexation pursuant to NCGS 160A-31, or qualifies for annexation under any other statute or successor statute which qualifies Tract D or Tract E for annexation, Customer shall submit a petition for annexation of both Tract D and Tract E into the municipal corporate limits for the City of Hendersonville, using the City's standard application process and meeting all requirements for such annexation as are in place at the time of said application. Failure to comply shall be cause for immediate disconnection of the sewer service from both Tract D and Tract E by the City of Hendersonville.
4. Notwithstanding Customers obligations to apply for annexation pursuant to the terms of this Agreement, the Customer for itself and its heirs, successors, representatives and assigns does hereby irrevocably appoint the City Manager and the City Community Development Director, either of which may act independently of the other, as its agent for executing such documents as may be necessary to apply for voluntary annexation into the City in accordance with the terms of this Agreement.
5. Notwithstanding the City's allowing the Customer to receive sewer service for Tracts D and E under this Agreement, Customer's receipt of sewer service shall remain subject to all codes, ordinances, regulations and policies of the City of Hendersonville, and nothing herein shall be deemed to preclude or limit the City from enforcing the City's generally applicable codes, ordinances, regulations and policies regarding extensions of, connections into, or receipt of service from the City's sewer system, including but not limited to those codes, ordinances, regulations and policies regarding disconnection of such sewer service. By way of illustration and not of limitation, for example if Customer failed to timely pay Customer's sewer charges, Customer's sewer service would be subject to disconnection by the City of Hendersonville.
5. The obligations of and appointments and applications by the Customer hereunder are and shall remain continuous and ongoing until the entirety of Tract D and Tract E is incorporated into the City. No rejection of any application or failure to accept or process any application for annexation of the Property at any time shall change the ongoing nature of these obligations and appointments and any application, and the City shall retain all rights and the Customer and its heirs, successors, representatives and assigns shall remain under all obligations hereunder notwithstanding any such rejection or failure to act.
6. This Agreement shall be effective for a term of fifty (50) years, and shall be binding on the parties and on their respective heirs, successors, representatives and assigns. Customer shall obligate any purchaser of Tract D or Tract E to the terms of this Agreement in writing, in recordable form, and shall record such obligation in the Register of Deeds Office for the City of Hendersonville. Failure of Customer, or any successor in interest (whether an heir, successor representative or assign) of Customer, to comply with the terms of this Agreement shall be grounds for immediate disconnection of the sewer service from Tract E and Tract D.
7. This agreement is executed in the State of North Carolina, and shall be construed in accordance with the laws of the State of North Carolina. Both parties submit their persons to the jurisdiction of the Courts for North Carolina. Exclusive venue for any action brought in

connection with this agreement, its interpretation and breach shall be in the courts for Henderson County, North Carolina.

8. The parties intend that the obligations under this Agreement shall run with the land for both Tract D and Tract E.

Done in the place and on the date first above written.

CUSTOMER

CITY OF HENDERSONVILLE

Boyd L. Hyder (SEAL)
Boyd L. Hyder

by: John F. Connet (SEAL)
John F. Connet
City Manager

STATE OF North Carolina
COUNTY OF HENDERSON

I, Angela Reece, certify that Boyd L. Hyder personally came before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this 17th day of February 2022.

Angela Reece
Notary Public



My commission expires: July 28, 2025

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, Angela Reece, a Notary Public of the County and State aforesaid, certify that John F. Connet, in his capacity as City Manager of the City of Hendersonville, appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 17th day of February 2022.

My commission expires: July 28, 2025

Angela Reece
Notary Public

