

## **EXCELSIOR CLUB PRESERVATION INTERLOCAL AGREEMENT**

This Interlocal Agreement, made December 17, 2019 (“Agreement”), by and between the **CITY OF CHARLOTTE**, a municipal corporation organized under the laws of the State of North Carolina (the “City”) and **THE COUNTY OF MECKLENBURG**, a political subdivision of the State of North Carolina (the “County”).

### **WITNESSETH:**

**WHEREAS**, under Article 20 of Chapter 160A of the North Carolina General Statutes, as amended, cities and counties are authorized to enter into interlocal cooperation undertakings with other local governments for the joint exercise of any power, function, public enterprise, right, privilege, or immunity of local governments in North Carolina; (G.S. 160A-461); and

**WHEREAS**, the City has statutory authority to provide assistance for the restoration or preservation of older neighborhoods or properties, including direct repair, the making of grants or loans, the subsidization of interest payments on loans, and the guaranty of loan G.S. 160A-456); and

**WHEREAS**, the County and the City have established a joint historic preservation committee (the Charlotte-Mecklenburg Historic Landmarks Committee, or “HLC”), which committee has jurisdiction within the corporate limits of the City as well as within other areas of Mecklenburg County, and the City and County have designated the County as the local government responsible for funding and overseeing the activities of the HLC; and

**WHEREAS**, the Excelsior Club on Beatties Ford Road in Charlotte (the “Excelsior Club” or the “Property”), an historic landmark designated by the City and of immeasurable historic value to the City and the County, has fallen into disrepair and is for sale; and

**WHEREAS**, the City and County understand that Kenwood Investments or a related entity, a California based investment group (the “Buyer”), intends to purchase the Excelsior Club and surrounding parcels for redevelopment; and

**WHEREAS**, the City and County, along with two other community partners: the Knight Foundation and Foundation for the Carolinas (collectively the “Community Partners”), desire to facilitate the preservation, restoration or replication of the Excelsior Club’s historic façade so as not to lose all the character of the historically significant building as a result of redevelopment; and

**WHEREAS**, the Club is located in a designated and certified Opportunity Zone as authorized by the federal Tax Cuts and Jobs Act of December 22, 2017; and

**WHEREAS**, in consideration of the Buyer's commitment to maintain the character of the Excelsior Club façade and in order to provide assistance for the restoration, preservation or replication of the Excelsior Club façade, the City and the County each desire to offer financial assistance, the City in the form of a loan of \$50,000.00 to the Buyer (a "Loan"), and the County, as authorized by Part 3C of Chapter 160A (Historic Districts and Landmarks) financial assistance for the preservation of the façade of an historically designated structure \$50,000.00 from the Historic Landmark Commission revolving fund, for a total amount of \$100,000.00 (collectively "Financial Assistance") following the closing of purchase of the Excelsior Club by the Buyer which the parties anticipate will occur before the end of December 2019; and

**WHEREAS**, the parties hereto desire to set forth their agreement herein;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

## ARTICLE I

The City and the County are entering into this Agreement under the Interlocal Cooperation Article of Chapter 160A of the North Carolina General Statutes to cooperate in the preservation, restoration or replication of an historic property by making Financial Assistance available to the Buyer upon the terms and conditions contained in the City's Excelsior Club Agreement with the Buyer.

## ARTICLE II PAYMENT

The City will be responsible for making its Loan to the Buyer pursuant to the terms of an Excelsior Club Façade Restoration Agreement and providing the County's financial assistance to the Buyer, which the City may make in the form of a loan from the City (the "Excelsior Club Agreement"). Other than as provided in this Interlocal Agreement, the County will have no obligation to pay for the restoration or preservation of the Excelsior Club. The County shall make its Financial Assistance payment pursuant to this Agreement directly to the City and such payment shall not be made in whole or in part as a set off to other obligations of the City to the County or the County to the City.

## ARTICLE III CITY LOAN AGREEMENT TERMS AND CONDITIONS

3.1 *Historic Landmark Commission Approval.* Buyer's plan for the preservation, restoration or replication of the Excelsior Club façade must be approved by the HLC and such plan shall be enforceable by such reasonable measures as determined by the HLC and Buyer.

3.2 *Completion Date.* In the event the Buyer does not complete the preservation, restoration or replication of the Excelsior Club façade by December 31, 2024, such completion to be evidenced by the receipt of a certificate of occupancy for the overall redevelopment of the Property, Buyer shall be deemed in breach of the Excelsior Club Agreement and must immediately repay the City Loan and the County's Financial Assistance.

3.3 *Security.* As security for the Loan and the County's Financial Assistance, the City shall have and record a Deed of Trust on the Property containing the conditions set forth in the Excelsior Club Agreement and this Agreement.

#### ARTICLE IV LOAN CONTINGENCIES

4.1 *Closing Occurs.* The City shall have no obligation to enter into the Excelsior Club Agreement, and the County shall have no obligation to make its Financial Assistance payment to the City, if the Buyer does not purchase the Excelsior Club by February 28, 2020.

4.2 *Community Partner Contribution.* The City and the County shall have no obligation to make the payments in the event that the Community Partners do not provide the Buyer grants in the total amount of at least \$150,000.00 for the preservation, restoration or replication of the Excelsior Club façade.

#### ARTICLE V DURATION

This Agreement will terminate when the City's and County's obligations under the Excelsior Club Agreement are satisfied or said Excelsior Club Agreement is earlier terminated.

#### ARTICLE VI MISCELLANEOUS

6.1. *Amendment.* This Agreement may be amended through a supplement approved in writing by the City and the County.

6.2. *Severability.* If any section of this Agreement is deemed to be illegal or otherwise unenforceable, it is the intent of the parties hereto that all other provisions of this Agreement shall remain in full force and effect.

6.3. *Governing Law.* This Agreement is to be governed by and interpreted in accordance with the laws of the State of North Carolina.

6.4. *Time is of the essence.* Time is of the essence in this Agreement.

6.5. *Execution in Multiple Counterparts.* This Agreement may be executed in multiple counterparts, each of which constitutes a completed document.

6.6. *Effective Date.* This Agreement takes effect on its execution by the City and the County.

IN WITNESS WHEREOF, the City Manager of the City and the County Manager of the County have each executed this Interlocal Agreement to evidence the agreement of the parties hereto and the City Clerk and the Clerk of the Board of County Commissioners have affixed the seal of the City and the County, as applicable to this Interlocal Agreement.

**CITY OF CHARLOTTE**

**COUNTY OF MECKLENBURG**

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Attest:

Attest:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Clerk to Board of County Commissioners

(SEAL)

(SEAL)

This instrument has been pre-audited  
in the manner required by the “Local  
Government Budget and Fiscal  
Control Act.”

\_\_\_\_\_  
City Finance Director

\_\_\_\_\_  
County Finance Director

APPROVED AS TO FORM

\_\_\_\_\_  
County Attorney