FIRST AMENDED AND RESTATED INTERLOCAL AGREEMENT

A FIRST AMENDED AND RESTATED INTERLOCAL AGREEMENT TO PROVIDE FOR THE DEVELOPMENT OF THE GARRISON INDUSTRIAL PARK PROPERTY BETWEEN THE COUNTY OF HENDERSON AND THE CITY OF HENDERSONVILLE MADE PURSUANT TO N.C. GEN. STAT. §160-460 *et seq.*

This First Amended and Restated Interlocal Agreement (the "***Restated Agreement***") is made this the ______________________, by and among the following parties:

1. The County of Henderson, a body corporate and politic of the State of North Carolina (the "***County***"), whose address is 1 Historic Courthouse Square, Suite 5, Hendersonville, North Carolina 28792.

2. The City of Hendersonville, a North Carolina municipal corporation (the "***City***"), whose address is 160 Sixth Avenue East, Hendersonville, North Carolina 28792.

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WHEREAS, the ***County*** and the ***City*** entered into an interlocal agreement dated November 18, 2020 to provide for the development of Garrison Industrial Park (the "***Original Agreement"***); and

WHEREAS, Garrison Industrial Park was in fact developed off Upward Road in Henderson County, North Carolina, was annexed into the municipal limits for the ***City*** of Hendersonville, and is more particularly described as follows (the "***Original Park Property***"):

> Being all of that certain property described as Tract 1 containing 13.47 acres, Tract 3 containing 18.65 acres, Tract 4 containing 5.30 acres, the open space area designated as "OS" containing 1.91 acres, and the Revised Private 60' Drive Easement and cul de sacs associated therewith extending from Commercial Boulevard (SR 1970) to Crest Road (SR 1803), all as shown on a survey captioned "*Plat of Survey for Proposed Garrison Industrial Park of Economic Investment Fund of Henderson County*" recorded in Plat Book 2021, Slide 13013, in the Office of the Register of Deeds of Henderson County, North Carolina, reference to which is made and incorporated herein for a more particular description of said property.

WHEREAS, the parties wish to amend the ***Original Agreement*** in order to provide for the addition of property to the ***Original Park Property*** and to make certain other revisions;

Now therefore, in consideration of the mutual terms and conditions, the adequacy of which is acknowledge by all parties, the parties agree as follows:

<u>Purpose and Background</u>.

3. The ***Original Agreement*** was to provide for the financing of the purchase, and for the marketing, development and sale to industries meeting the ***City***'s and the ***County***'s economic development policy incentive guidelines, in a manner consistent with the land development ordinances of the ***City*** and the ***County***, of the ***Original Park Property***".

4. The Economic Investment Fund of Henderson County, Inc., a North Carolina nonprofit corporation, has approached the ***City*** and the ***County*** and requested that certain property be added to the ***Original Park Property,*** the real property to be added being more particularly described as follows (the "***Additional Property***"):

> Being all of that real property shown and identified as Lot 2 consisting of +/- 7.23 acres on that plat recorded in Plat Book 2021 at Page 13013 of the Henderson County Registry.

The ***Original Park Property*** together with the ***Additional Property*** will collectively be referred to hereinafter as the ***Garrison Park Property***.

5. The ***Fund*** purchased the ***Original Park Property***, and received a loan from the ***City*** and ***County*** in the amount $2,346,668.56 (the "***Loan Amount***"), with half being owed to each the ***City*** and the ***County***. On or about February 5, 2021, the ***Fund*** paid $712,850.50 to each the ***City*** and the ***County***, leaving a balance owed to each of the ***City*** and the ***County*** of $460,483.78. The Fund wishes to pay the remaining balance owed to the ***City*** and the ***County***.

6. The ***Fund*** has been marketing and will continue to market the ***Garrison Park Property*** through the Henderson County Partnership for Economic Development, Inc., a North Carolina nonprofit corporation (the "***Partnership***").

7. The ***Fund*** established covenants and restrictions on the use of the ***Original Park Property***, to bind any future owners and users of the ***Original Park Property***, in form that was acceptable to both the ***City*** and the ***County***. These covenants and restrictions, recorded in Book of Record 3721 at Page 204 of the Henderson County Registry, (the "***Covenants***") established guidelines for new construction and ongoing maintenance of the ***Original Park Property***. The ***City*** annexed the ***Original Park Property***, and the ***Covenants*** bridged any difference between the industrial zoning district requirements of the ***County*** and the ***City***, and established the requirement and process for annexation into the ***City***.

<u>Duration</u>.

8. This ***Agreement*** shall remain in effect until the sale of all of the ***Garrison Park Property*** by the ***Fund*** to ***industrial client***s qualifying for incentives under both the ***City's*** and ***County's*** Economic Development Assistance Guidelines (Exhibits B and C attached hereto and incorporated herein by reference), at which point this ***Agreement*** shall expire and terminate as to all provisions except those which, by their terms, survive such expiration and termination. As used herein, "***industrial client"*** shall be deemed to include a purchaser or lessee that will occupy a portion of the ***Garrison Park Property*** for the length of time required to qualify for incentives under the ***Economic Development Assistance Guidelines*** of both the City and the County.

<u>Financing of Purchase of the *Original Park Property*</u>.

9. Because the ***Fund*** was required by the terms of the ***Option*** to purchase the ***Original Park Property*** in its entirety, and not in parts, the ***City*** and the ***County*** jointly loaned the ***Fund*** the ***Loan Amount***, for the purchase of the ***Original Park Property*** as a whole.

10. The the ***"Loan Terms"*** are as follows:

A. The ***"Loan Amount***" shall equal the purchase price of the ***Original Park Property***, less any pre-payments made by the ***Fund***.[1] The ***City*** and the ***County*** shall each loan one-half (½) of the ***Loan Amount*** to the ***Fund*** for the purchase of the ***Original Park Property***. Neither the ***City*** nor the ***County*** will make the loan until such time as an ***industrial client*** qualifying for an economic development incentive of at least an 80% percent incentive payment under the ***City*** and the ***County***'s Economic Development Assistance Guidelines (Exhibits B and C) has contracted with the ***Fund*** to purchase all or a portion of the ***Original Park Property*** for development of an industrial site from the ***Fund***, and the due diligence period under the sales contract (including all extensions) with the ***industrial client*** has expired**.** This shall be referred to as the ***"Initial Sale."***

B. The purchase of the ***Original Park Property*** by the ***Fund***, and ***Initial Sale*** shall occur as two separate transactions, each being fully funded. The "N***et Proceeds"*** (sale price less closing costs) received from the ***Initial Sale*** will be paid to the ***City*** and ***County*** as consideration for the release of the acreage sold by the ***Fund*** as part of the ***Initial Sale*** from their jointly held first lien Deed of Trust (see Paragraph 10(C) below).

C. The ***City*** and the ***County*** shall require the ***Fund*** (1) to sign and deliver to the ***City*** a Promissory Note, payable to the ***City*** and the ***County*** jointly, for the ***Loan Amount***, and (2) to secure the Promissory Note with a first lien Deed of Trust on the ***Original Park Property***, also to be delivered to the ***City***[2], naming the ***City*** and the ***County*** as to a 50% interest each as beneficiaries. The Promissory Note shall bear interest at a fixed market rate of interest established each year by the *Wall Street Journal* prime rate of interest per annum on the anniversary date of the closing on the purchase of the balance of the ***Original Park Property***. The Loan Amount shall be amortized over a twenty (20) year amortization schedule, and interest shall accrue with a balloon payment of all accrued principal and interest being due and payable one hundred twenty (120) months from the date of closing. The initial payment under the Promissory Note shall be the ***Net Proceeds*** from the ***Initial Sale*** as provided in Paragraph 10.B, however notwithstanding Paragraph 10.B, the ***Net Proceeds*** must at least equal the per acre ***Release Fee*** provided in Paragraph 10.D, or else the ***City*** and the ***County*** shall not be obligated to release the acreage for the ***Initial Sale***. . The Promissory Note shall also provide that if the ***Initial Sale*** does not close, or if the ***Initial Sale*** does not close within thirty (30) days of the purchase of the ***Original Park Property*** by the ***Fund*** (including if the ***Initial Sale*** doesn't close as at all), either the ***City*** or the ***County***, or both, shall have the right to accelerate the entire balance due under the Promissory Note. The terms of the Promissory Note and Deed of Trust shall be consistent with the terms of this ***Restated Agreement***, and shall be in such form as is acceptable to both the ***City*** and the ***County***.

D. None of the acreage will be released unless the ***Original Park Property*** is being sold to an ***industrial client*** that would qualify for the payment of incentives under both the

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[1] The ***Option*** requires monthly payments in the amount of $10,000 that count as pre-payments against the ***Fund's*** purchase price for the ***Original Park Property***. As used herein, "pre-payment" refers to the initial earnest money deposit paid by the ***Fund***, the monthly option payments, and any other payments made by the ***Fund*** that count against the ***Fund's*** purchase price for the ***Original Park Property***.

[2] The original promissory note and Deed of Trust will be held by the ***City*** for the benefit of both the ***City*** and the ***County.*** The promissory note and Deed of Trust will not be marked "paid," nor shall a satisfaction of the Deed of Trust be recorded in the Henderson County Registry, without the prior written consent of the ***County***.

City's and the ***County***'s Economic Development Assistance Guidelines (Exhibits B and C) and both the ***City*** and the ***County*** determine the probable average hourly wage to be paid to the employees of the ***industrial client***. It is agreed that the release fee plus accrued interest is the fair market value of the release. After the ***Initial Sale,*** and for each subsequent sale, the ***City*** and the ***County*** shall release the Deed of Trust on the acreage being sold in exchange for payment of the ***Net Proceeds*** of the sale, or $64,500 per acre, whichever is greater, plus the accrued interest attributable to the released acreage. If not sooner paid, the total balance due under the Promissory Note will be due and payable with the release of the final acreage of the ***Original Park Property***.

E. After the ***Initial Sale*** the ***Fund*** will only sell the remaining acreage of the ***Garrison Park Property*** to an ***industrial client*** that qualifies for an 80% incentives payment as defined in both Economic Development Assistance Guidelines. In consideration of this promise, and the repayment of the Loan Amount prior to its maturity date, both the ***City*** and the ***County*** will waive any interest accruing on the portion of the ***Loan Amount*** remaining after the ***Initial Sale*** upon a finding, by both the ***City*** and the ***County***, after a duly advertised public hearing, that an ***industrial client*** will that qualifies for an 80% incentives payment will stimulate the local economy, promote business and result in the creation of a substantial number of jobs in the ***County*** paying at or above the median average wage in the ***County***.

11. Since the closing of the purchase of the ***Original Park Property*** by the ***Fund***, title to the ***Original Park Property,*** less the acreage disposed of in the ***Initial Sale,*** has been in the ***Fund***, subject to the first lien Deed of Trust required by Paragraph 10 of this ***Restated Agreement***.

Operational Ownership of the *Garrison Park Property*.

12. The ***City*** and the ***County*** shall require that the marketing by the ***Partnership*** and the negotiations for the sale of the ***Garrison Park Property*** by the ***Fund*** shall attempt to locate manufacturing industries compatible with the goals of the area and which qualify for incentives under the Economic Development Assistance Guidelines of the ***City*** and the ***County***, and shall subdivide the ***Garrison Park Property*** for the same.

13. The ***City*** and the ***County*** shall require that the terms of any proposed sale by the ***Fund*** and the associated Release by both the ***City*** and the ***County***, will be presented, on a confidential basis pursuant to N.C. Gen. Stat. §143-318.11(a)(4), to both the ***City*** and the ***County***. Such proposed sale shall be to a concern which qualifies for incentives under the Economic Development Assistance Guidelines of both the ***City*** and ***County*** (Exhibits B and C).

Annexation and Zoning, Subdivision and Stormwater Jurisdiction

14. The ***City*** and the ***County*** agree to require the ***Fund*** and any industrial client purchasing any of the ***Garrison Park Property,*** to petition the ***City*** for annexation of the ***Garrison Park Property*** into the ***City*** by voluntary annexation prior to the transfer of title by the ***Fund*** or prior to such purchase by an industrial client of any portion of the ***Garrison Park Property***. The ***Fund*** shall contractually obligate all purchasers from the ***Fund*** (and all persons or entities in whose name title will be held if different) and all transferees of any portion of the ***Garrison Park Property*** to consent to and sign the annexation petition, in addition to the ***Fund.*** The contract(s) of sale shall also preclude the withdrawal of the purchasers' consent to the annexation for a period of 180 days from the date of their purchase contract.(s) The annexation Petition shall be signed and submitted to the ***City*** as part of the closing on thesale or transfer of title.

15. If the ***City*** annexes the ***Garrison Park Property*** into the ***City***, the ***City*** requests and agrees that the ***County*** shall retain zoning regulation, and subdivision regulation jurisdiction over the ***Garrison Park Property*** as allowed by NCGS § 160D-202(f)**.** For the avoidance of doubt, with respect to zoning regulation and subdivision regulation jurisdiction, the City requests that the County exercise those powers that the City could exercise under NCGS Chapter 160D, Articles 7 and 8. It is understood and agreed that the ***City*** may rescind this grant of subdivision and zoning regulation jurisdiction (pursuant to NCGS § 160D-202(h)) at any time by providing written notice to the ***County*** two (2) years in advance of the effective date of such rescission of jurisdiction by the ***City***, and at the end of the two (2) year notice period, repealing the terms of the Resolution which approved this grant of jurisdiction. The terms of this Paragraph shall survive the expiration and termination of this ***Agreement*** pursuant to Paragraph 8 above unless or until this grant of jurisdiction by the ***City*** is rescinded, in which case this Paragraph shall terminate on the effective date of any such rescission of jurisdiction by the ***City***. For the avoidance of doubt, if this ***Agreement*** is terminated for any other reason (i.e. other than pursuant to paragraph 8 above), the ***City*** and the ***County*** agree that the ***County***'s zoning and subdivision regulation jurisdiction shall end as of the date of such termination, without further action by any party hereto.

15. The ***City*** and the ***County*** shall require the ***Fund*** to encumber the entirety of the ***Garrison Park Property*** with covenants and restrictions containing development standards that meet or exceed the standards contained within the Industrial zoning classification of the ***City.*** Such covenants and restrictions shall also contain language obligating all future owners of the ***Garrison Park Property*** to petition for and consent to the voluntary annexation of the entirety of the ***Garrison Park Property*** by the ***City***. The covenants and restrictions (and all amendments thereto) shall be subject to the prior approval of both the ***City*** and the ***County***. Additionally, the ***City and the County*** shall require the ***Fund*** to make and record the following amendments to the restrictive covenants:

a. Prepare and record amended or supplemental declaration, allowing the ***Fund*** to annex the ***Additional Property*** (PIN 9587388841 and PIN 9587483861) into the ***City*** and Garrison Industrial Park and combine with PIN 9587387266.

b. Provide exemption to Article VII, Section 7.2

c. Update the property description to outline the new park boundaries

<u>Other Provisions</u>

16. Decisions of whether or not the ***City*** will provide additional incentives to any ***industrial client*** beyond those provided herein shall be at the sole and independent discretion of the ***City***. Decisions of whether or not the ***County*** will provide additional incentives to any ***industrial client*** beyond those provided herein shall be at the sole and independent discretion of the ***County***.

17. The ***City*** and the ***County*** shall enter into a three-party agreement with the ***Fund*** consistent with the terms of this ***Restated Agreement***. Notwithstanding anything in this ***Restated Agreement*** to the contrary, if the ***Fund*** purchases less than the entire ***Property***, neither the ***City*** nor the County shall be obligated to make any loan to the ***Fund***.

18. This ***Restated Agreement*** may be amended by a written instrument only, signed by both parties hereto, which has been approved by Resolution of both parties after a duly held and advertised public hearing.

19. This ***Restated Agreement*** may be terminated prior to the end of its Duration (ref. paragraph 8 above) by written agreement, signed by both parties hereto, which has been approved by Resolution of both parties after a duly held and advertised public hearing.

Executed by the parties, as of the date shown above.

COUNTY OF HENDERSON

By:____
WILLIAM LAPSLEY, Chairman of the Henderson
County Board of Commissioners

Attest: (Official Seal)

____
Clerk, Henderson County Board of Commissioners

CITY OF HENDERSONVILLE

By:____
BARBARA VOLK, Mayor

Attest: (Official Seal)

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Clerk, Henderson County Board of Commissioners

This ***Restated Agreement*** has been pre-audited in that manner required by the Local Government Fiscal Control Act.

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Finance Director for the City of Hendersonville

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Finance Director for Henderson County