FIRST AMENDED AND RESTATED THREE-PARTY AGREEMENT

A FIRST AMENDED AND RESTATED THREE-PARTY AGREEMENT TO PROVIDE FOR THE DEVELOPMENT OF THE GARRISON INDUSTRIAL PARK PROPERTY BETWEEN THE ECONOMIC INVESTMENT FUND OF HENDERSON COUNTY, THE COUNTY OF HENDERSON AND THE CITY OF HENDERSONVILLE MADE PURSUANT TO N.C. GEN. STAT. §158-7.1

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

1. Economic Investment Fund of Henderson County, Inc., a North Carolina nonprofit corporation (the "***Fund***"), whose address is 330 North King Street, Hendersonville, North Carolina 28792.

2. 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.

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

* * * * *

WHEREAS, the Fund, the ***County*** and the ***City*** entered into a three party 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***, 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 acknowledged by all parties, the parties agree as follows:

<u>Purpose and Background</u>.

4. The ***Original Agreement*** provided for the financing of the purchase, and for the marketing, development and sale to industries meeting both the ***City***'s and the ***County***'s Economic Development Assistance Guidelines, in a manner consistent with the land development ordinances of the ***City*** and the ***County***, of the ***Original Park Property***.

5. The parties wish to add certain real property to Garrison Industrial Park, said real property 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***.

6. 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***.

7. 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***").

8. The ***Fund*** has 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***.

Duration.

9. This ***Amended Agreement*** shall remain in effect until the sale of all of the ***Garrison Park Property*** to ***industrial clients*** qualifying for incentives under both the ***City's*** and ***County's*** Economic Development Assistance Guidelines (attached hereto and incorporated by reference as Exhibits B and C), at which point this ***Amended 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 ***Property*** for the length of time required to qualify for incentives under the ***Economic Development Assistance Guidelines*** of both the ***City*** and the ***County***.

Financing of Purchase of the *Property*.

10. Because the ***Fund*** was originally required 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 ***Property*** as a whole.

11. 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 both the ***City*** and the ***County***'s Economic Development Assistance Guidelines (Exhibits B and C) has contracted with the ***Fund*** to purchase of 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 ***Net Proceeds*** (sale price less closing costs) received from the ***Initial Sale*** shall 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 (ref Paragraph 11(C) below).

C. The ***Fund*** shall be required (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 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 11.B, however nowithstanding Paragraph 11.B, the ***Net Proceeds*** must at least equal the per acreage release fee provided in Paragraph 11.D, below, 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 ***Amended Agreement***, and shall be in such form as is acceptable to both the ***City*** and the ***County***.

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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 ***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 ***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***.

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 ***City***'s and the ***County***'s Economic Development Assistance Guidelines (Exhibits B and C) and both the ***City*** and the ***County*** determine the probably 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 $64,500.00 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 the ***City's*** and ***County's*** 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 after a duly advertised public hearing, that an ***industrial client*** 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***.

12. 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 11 of this ***Amended Agreement***.

<u>Operational Ownership of the *Original Park Property*</u>.

13. 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.

14. 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).

15. Upon the ***Initial Sale***, and all sales following, the proceeds of such sale(s) shall be applied as follows:

A. If the ***Fund*** has not yet paid the balance owed on the ***Loan Amount,*** repayment to the ***City*** and the ***County*** of the ***Loan Amount***. If the net proceeds any given sale of a portion of the ***Original Park Property*** is for less than the total amount remaining owed to both the ***City*** and the ***County*** for repayment of the purchase price, then the ***City*** and the ***County*** shall each receive one-half (½) of such net proceeds; however release deeds will only be signed by the ***City*** and the ***County*** for the amount of acreage qualifying for release at the per acre price, plus interest (if not waived), pursuant to Paragraph 10 above.

B. Once the ***City*** and the ***County*** are repaid in full for the ***Loan Amount*** plus any accrued interest not waived, then any amounts received from the sale of any remaining portions of the ***Garrison Park Property*** shall belong to the ***Fund***, to be used by the ***Fund*** for its purposes.

16. Obligations of the parties:

A. The ***Fund*** shall:

(i) Take title to the ***Original Park Property***.

(ii) Encumber the ***Original Park Property*** with a first deed of trust benefitting the ***City*** and ***County*** equally.

(iii) Petition the ***City*** for annexation of the entire ***Original Park Property*** into the ***City*** by voluntary annexation prior to the transfer of title by the ***Fund*** of any portion of the ***Original Park Property***. The ***Fund*** shall contractually obligate all purchasers named on all sales contracts (and all persons or entities in whose name title will be held if different) and all transferees of any portion of the ***Original 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 the contract. The annexation Petition shall be signed and submitted to the ***City*** as part of the closing on the ***Initial Sale***.

(iv) Cause the addition of the ***Additional Property*** to the ***Original Park Property*** by encumbering the entirety of the ***Garrison Park Property*** with the ***Covenants,*** after amending the ***Covenants*** as follows:

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.

a. Provide exemption to Article VII, Section 7.2

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

The ***Covenants*** (and all amendments thereto) shall be subject to the prior approval of both the ***City*** and the ***County***.) The ***Covenants***, and any amendments thereto, shall be recorded by the ***Fund.***

(iv) Market the ***Garrison Park Property*** through the ***Partnership*** for sale to the owner or operator of a qualified industrial or manufacturing facility under the both the ***City***'s and the ***County's*** Economic Development Assistance Guidelines, attached hereto as Exhibits B and C.

(v) Negotiate with such owners or operators to insure the future use of the ***Garrison Park Property*** for the purposes set out herein.

(vi) Repay the ***City*** and the ***County*** all amounts loaned to the ***Fund*** and all accrued interest not waived.

B. The ***County*** shall:

(i) Loan to the ***Fund*** one-half (½) of the ***Loan Amount***. Notwithstanding anything in this ***Amended Agreement*** to the contrary, if the ***Fund*** purchases less than the entire ***Original Park Property***, the ***County*** shall not be obligated to make any loan to the ***Fund***.

(ii) Release the subdivided lots in the ***Original Park Property*** upon payment to the ***County*** of the release fee provided in paragraph 11.D above. Should any proposed sale of one of such lots bring less than the total amount required to pay the release fee for the acreage included in the proposed sale, then the ***County*** shall not be obligated to release the acreage from the first lien Deed of Trust held for the benefit of the ***City*** and the ***County***.

(iii) 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***.

C. The ***City*** shall:

(i) Loan to the ***Fund*** one-half (½) of the ***Loan Amount***. Notwithstanding anything in this ***Amended Agreement*** to the contrary, if the ***Fund*** purchases less than the entire ***Original Park Property***, the ***City*** shall not be obligated to make any loan to the ***Fund***.

(ii) Release the subdivided lots in the ***Original Park Property*** upon payment to the ***City*** of the release fee provided in paragraph 11.D above. Should any proposed sale of one of such lots bring less than the total amount required to pay the release fee for the acreage included in the proposed sale, then the ***City*** shall not be obligated to release the acreage from the first lien Deed of Trust held for the benefit of the ***City*** and the ***County***.

(iii) 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***.

17. This ***Amended Agreement*** provides the entire agreement of the parties hereto, and all prior or contemporaneous discussions, written communications, emails, are superseded by the terms hereof. This ***Amended Agreement*** may only be amended by written instrument signed by all parties hereto.

18. This ***Amended Agreement*** may not be assigned by any party hereto without the express written consent of all other parties.

19. There shall be no intended nor incidental third-party beneficiaries to this ***Amended Agreement***.

20. The ***Fund*** shall require all purchasers of the ***Garrison Park Property*** to certify to all of the following as part of the purchase agreement:

A. That the purchaser will comply with, and require all contractors and subcontractors to comply with, the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, “Verification of Work Authorization,” sometimes known as E-verify;

B. That the purchaser is not on the Iran Final Divestment List created by the N.C. State Treasurer pursuant to N.C.G.S. § 147-86.58, and will not contract with anyone on such List; and

C. That the purchaser is not on the Companies that Boycott Israel List created by the N.C. State Treasurer pursuant to N.C.G.S. § 147-86.80, and will not contract with anyone on such List in performance of the work hereunder.

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

ECONOMIC INVESTMENT FUND
OF HENDERSON COUNTY, INC.

By:____
JOHN GOULD, Chairman

COUNTY OF HENDERSON

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

Attest: (Official Seal)

____
Clerk to the Board of Commissioners

CITY OF HENDERSONVILLE

By:____
BARBARA VOLK, Mayor

Attest: (Official Seal)

____
City Clerk

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

________________________________ ________________________________
Finance Director for the City of Hendersonville Finance Director for Henderson County