

**REQUEST FOR BOARD ACTION**  
**HENDERSON COUNTY**  
**BOARD OF COMMISSIONERS**

**MEETING DATE:** February 6, 2023  
**SUBJECT:** Agreement with Economic Investment Fund  
**PRESENTER:** Charles Russell Burrell  
**ATTACHMENT(S):** Draft agreement

**SUMMARY OF REQUEST:**

Proposed is a marketing agreement with the Economic Investment Fund of Henderson County (a separate function operated through the Henderson County Partnership for Economic Development). This agreement addresses the marketing and use of proceeds of the property owned by the County in the Ferncliff Industrial Subdivision adjacent to property owned by the Greater Asheville Regional Airport Authority. In substance, this agreement is very similar to that entered into by the County with the Economic Investment Fund for the Garrison property.

County staff will be present and prepared if requested to give further information on this matter.

**BOARD ACTION REQUESTED:**

Approve the draft agreement.

If the Board is so inclined, the following motion is suggested:

***I move that the Board approve the agreement as proposed with the Economic Investment Fund of Henderson County.***

## MEMORANUM OF UNDERSTANDING

A MOU TO PROVIDE FOR THE DEVELOPMENT OF THE FERNCLIFF PARK PROPERTY BETWEEN THE ECONOMIC INVESTMENT FUND OF HENDERSON COUNTY, THE COUNTY OF HENDERSON MADE PURSUANT TO N.C. GEN. STAT. §158-7.1

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This MEMORANDUM OF UNDERSTANDING (the “*Agreement*”) is made this the \_\_\_\_ day of January, 2023, by and among the following 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.

\* \* \* \* \*

The parties agree as follows:

### **Purpose and Background.**

3. The *Agreement* is to provide for the marketing, development and sale to industries meeting the *County*’s Economic Development Assistance Guidelines, in a manner consistent with the land development ordinances of the *County*, of the “Ferncliff Park”, which consists of 39.7 acres, more or less, and is located off Ferncliff Park Road in Mills River, Henderson County (the “*Property*”).
4. The *Property* is more fully known as the parcel identified by PIN 9643239462. Exhibit A, and shown on the geographical information system of the *County*.
5. The *County* owns the *Property* for economic development purposes. The *Fund* markets the property and has received funds for due diligence purposes. The *Fund* has requested that the *County* transfer the property and the proceeds of the sale into an Economic Development Account to be established to support economic and product development through the Henderson County Partnership for Economic Development, Inc., a North Carolina nonprofit corporation (“*Partnership*”) and the *Fund*.
6. The *Fund* has been marketing and will continue to market the *Property* through the *Partnership*.
7. The agreement will follow the covenants of Ferncliff Park and the potential expansion of the park through a land transfer with the Asheville Regional Airport for parcels identified through PIN 9643149129 and 9643159128

### **Duration.**

8. This *Agreement* shall remain in effect until the sale of all of the *Property* by the *Fund/County* to industrial clients qualifying for incentives under the *County's* Economic Development Assistance Guidelines (attached hereto and incorporated by reference as Exhibits B and C) or by mutual consent of both parties, at which point this *Agreement* shall expire and terminate as to all provisions except those which, by their terms, survive such expiration and termination.

**Ownership to the Fund.**

9. Because the *Fund* is established to secure industrial property and has and will invest into the due diligence of the property, proceeds shall go to the referenced Economic Development Account (do we want to say it this way based on John M's comments?).

10. Upon completing the MOU with the Asheville Regional Airport, the *County* shall transfer ownership and title of the *Property* to the *Fund*, subject to the first lien Deed of Trust.

**Operational Ownership of the Property.**

11. The marketing by the *Partnership* and the negotiations for the sale of the *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 the *County* and shall subdivide the *Property* for the same.

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

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

A. Repayment to *County* of for any expense above the initial 2022 purchase price and an establishment of an Economic Development Account that shall act as a revolving loan fund for economic development purposes. Net proceeds will be placed in the Account and will be used for economic development purposes by the *Fund and the Partnership*.

14. This *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 *Agreement* may only be amended by written instrument signed by all parties hereto.

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

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

17. The *Fund* shall require all purchasers of the *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: \_\_\_\_\_  
P. KELLY LEONARD, Chairman

COUNTY OF HENDERSON

By: \_\_\_\_\_  
REBECCA MCCALL, Chairman of the Henderson  
County Board of Commissioners

Attest: (Official Seal)

\_\_\_\_\_  
Clerk, Henderson County Board of Commissioners

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

\_\_\_\_\_  
Finance Director for the City of Hendersonville

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Finance Director for Henderson County