

**REQUEST FOR BOARD ACTION**

**HENDERSON COUNTY**

**BOARD OF COMMISSIONERS**

**MEETING DATE:** March 18, 2026

**SUBJECT:** Modification of Agreement

**PRESENTER:** Charles Russell Burrell, County Attorney

**ATTACHMENT(S):** 1. Three Party Agreement  
2. Promissory Note

**SUMMARY OF REQUEST:**

In the financing of the purchase of the property developed into the industrial subdivision in which the Jabil factory is now located, the County and the City of Hendersonville each lent to the Economic Investment Fund of Henderson County under the terms of a three-party agreement.

The Fund and the County are in agreement to modify the terms of the promissory note and the three-party agreement such that the Fund would repay its obligation to the County immediately, without interest payment.

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

**BOARD ACTION REQUESTED:**

Approval of the modification of the agreement

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

*I move that the Board adopt the proposed modification*

## THREE-PARTY AGREEMENT

A 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

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This Three-Party Agreement (the "*Agreement*") is made this the 18th day of November, 2020, 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.

\* \* \* \* \*

The parties agree as follows:

### **Purpose and Background.**

4. The *Agreement* is to provide 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 "Garrison Property", which consists of 41 acres, more or less, and is located off Crest Road in Blue Ridge Township, Henderson County (the "*Property*").

5. The *Property* is more fully known as those parcels numbered 1-7 on the attached Exhibit A, and shown on the geographical information system of the *County* as the following real estate identification numbers:

- 202522 (less a small portion of this parcel is being retained by the seller to access parcel 202519)
- 9967049
- 202520
- 9966237
- 9966236
- 9966235
- 9967047

6. The *Fund* holds an option to purchase the *Property*, purchased with an earnest money payment of \$20,000.00, and monthly payments of \$10,000 toward a purchase price of \$66,476 per acre as determined by an accurate survey of the *Property*. The option period expires September 9, 2021, although the *Fund* has the right to purchase the *Property* outright at any time prior to September 9, 2021. The option does not give the *Fund* the right to purchase less than the totality of the *Property*. The *Fund* has requested that the *City* and the *County* provide a loan to the *Fund*, sufficient to pay the balance of the purchase price for the *Property*, determined in accordance with the provisions provided hereinbelow, and the *City* and *County* have agreed, subject to the terms of this *Agreement*.

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

8. Prior to any transfer of title to any portion of the *Property* by the *Fund* (after the purchase by the *Fund* of the *Property*), the *Fund* shall establish covenants and restrictions on the use of the *Property*, to bind any future owners and users of the *Property*, in form that is acceptable to both the *City* and the *County*. These covenants and restrictions shall establish guidelines for new construction and ongoing maintenance of the *Property*. It is anticipated by all parties that the *City* will annex the *Property*, and the covenants and restrictions would also bridge any difference between the industrial zoning district requirements of the *County* and the *City*, and would also establish the requirement and process for annexation into the *City*. The *Fund* shall record the restrictive covenants as part of the closing on the *Fund's* purchase of the *Property*.

#### Duration.

9. This *Agreement* shall remain in effect until the later of the repayment in full of the *Loan Amount* to both the *City* and the *County* (reference Paragraph 11 below), or sale of all of the *Property* by the *Fund* 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 *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* is required by the terms of the *Option* to purchase the *Property* in its entirety, and not in parts, the *City* and the *County* agree that they will jointly loan the *Fund* the *Loan Amount*, determined below, for the purchase of the *Property* as a whole.

11. The "*Loan Amount*" and the "*Loan Terms*" shall be as follows:

A. The "*Loan Amount*" shall equal the purchase price of the *Property*, less any pre-payments made by the *Fund*.<sup>1</sup> The *City* and the *County* shall each loan one-half (½) of

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<sup>1</sup> 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

the *Loan Amount* to the *Fund* for the purchase of the *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 *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 *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 *Property*, also to be delivered to the *City*<sup>2</sup>, 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 by the *Wall Street Journal* prime rate of interest per annum on the last business day prior to the closing on the purchase of the balance of the *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 notwithstanding 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 *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 *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 *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

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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*.

<sup>2</sup> 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*.

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 *Property*.

E. If an industrial client qualifies for an 80% incentives payment as defined in both the *City's* and *County's* Economic Development Assistance Guidelines, both the *City* and the *County* shall waive the accrued interest upon a finding, in addition to the findings in subparagraph 11.D, by both the *City* and the *County*, after a duly advertised public hearing, that the *industrial client* 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. Upon the closing of the purchase of the *Property* by the *Fund*, title to the *Property* shall be in the *Fund*, subject to the first lien Deed of Trust required by Paragraph 11 of this *Agreement*.

#### Operational Ownership of the *Property*.

13. 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 of the *City* and the *County*, and shall subdivide the *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. Repayment to the *City* and the *County* of the *Loan Amount*. If the net proceeds any given sale of a portion of the *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 *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 *Property*.

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

(iii) Petition the *City* for annexation of the entire *Property* into the *City* by voluntary annexation prior to the transfer of title by the *Fund* of any portion of the *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 *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) Encumber the entirety of the *Property* with covenants and restrictions containing development standards that meet or exceed the standards contained within the Industrial zoning classification of the *City*, prior to the transfer of title to any of the *Property* by the *Fund*. Such covenants and restrictions shall also contain language obligating all future owners of the *Property* to petition for and consent to the voluntary annexation of the entirety of the *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*. The covenants and restrictions shall be recorded as part of the closing for the *Fund's* purchase of the *Property*.

(iv) Market the *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 *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 (1/2) of the *Loan Amount*. Notwithstanding anything in this *Agreement* to the contrary, if the *Fund* purchases less than the entire *Property*, the *County* shall not be obligated to make any loan to the *Fund*.

(ii) Release the subdivided lots in the *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 *Agreement* to the contrary, if the *Fund* purchases less than the entire *Property*, the *City* shall not be obligated to make any loan to the *Fund*.

(ii) Release the subdivided lots in the *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 *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.

18. This *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 *Agreement*.

20. 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.

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

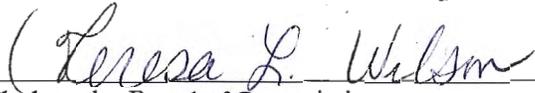
ECONOMIC INVESTMENT FUND  
OF HENDERSON COUNTY, INC.

By:   
JOHN GOULD, Chairman

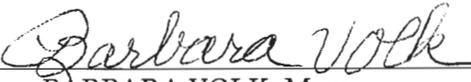
COUNTY OF HENDERSON

By:   
GRADY HAWKINS, Chairman of the Henderson  
County Board of Commissioners

Attest:  (Official Seal)

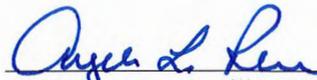
  
Clerk to the Board of Commissioners

CITY OF HENDERSONVILLE

By:   
BARBARA VOLK, Mayor

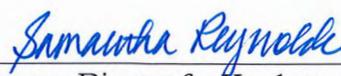


Attest: (Official Seal)

  
Clerk, Hendersonville City Council

This *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

SATISFACTION: The debt evidenced by this Note has been satisfied in full this \_\_\_\_\_ day of \_\_\_\_\_,

COUNTY OF HENDERSON

CITY OF HENDERSONVILLE

By: \_\_\_\_\_  
County Manager

By: \_\_\_\_\_  
City Manager

## PROMISSORY NOTE

Hendersonville, N. C.

**\$2,346,668.56**

Date: February \_\_\_\_\_, 2021

FOR VALUE RECEIVED the undersigned, jointly and severally, promise to pay the sum of Two Million, Three Hundred Forty Six Thousand, Six Hundred Sixty-Eight and 56/100s DOLLARS (**\$2,346,668.56**), said sum to be paid as follows:

1. to the County of Henderson, a body corporate and politic of the State of North Carolina, or order, the principal sum of One Million One Hundred Seventy-Three Thousand Three Hundred Thirty-Four and 28/100s DOLLARS (\$1,173,334.28), with interest from the date hereof, at the rate determined as stated below in the paragraph "Determination of Annual Interest Rate" (hereafter, the "County obligation"); and
2. To the City of Hendersonville, a municipal corporation of the State of North Carolina, or order, the principal sum of One Million One Hundred Seventy-Three Thousand Three Hundred Thirty-Four and 28/100s DOLLARS (\$1,173,334.28), with interest from the date hereof, at the rate determined as stated below in the paragraph "Determination of Annual Interest Rate" (hereafter, the "City obligation").

Interest shall be paid per annum on the unpaid balance owed hereunder until the entire sum, including both the County obligation and the City obligation, is fully paid or until default, both principal and interest payable in lawful money of the United States of America, (1) in the case of the County obligation, at the office of the County of Henderson, One Historic Courthouse Square, Suite Five, Hendersonville, North Carolina 28792, or at such place as the legal holder hereof may designate in writing, and (2) in the case of the City obligation, at the office of the City of Hendersonville, 160 6<sup>th</sup> Avenue East, Attn: City Manager, Hendersonville, North Carolina 28792, or at such place as the legal holder hereof may designate in writing.

This Note is made pursuant to a Three-Party Agreement between the Economic Investment Fund of Henderson County, Inc., the County of Henderson and the City of Hendersonville, executed on or about November 24, 2020 (the "Three-Party Agreement"), which is incorporated herein by reference. All provisions below are intended to restate or be wholly in accord with the requirements of the Three-Party Agreement. Nothing below shall be deemed to in any way modify the provisions of the Three-Party Agreement.

### **Determination of Annual Interest Rate:**

The annual interest rate shall vary from year to year as stated herein. For the first year after the date of this Note stated above, the annual interest rate shall be the Wall Street Journal Prime Rate as published in the Wall Street Journal newspaper or website ("WSJ Prime Rate") on the date of this Note. For each subsequent year, the annual interest rate shall be the WSJ Prime Rate as published on the annual anniversary of the date of this Note which begins such subsequent year, for the balance of such year, and repeating annually until this Note is paid or until default.

### **Amortization and Final Payment:**

The County obligation and the City Obligation shall each be amortized over a period of twenty years from the date hereof. Notwithstanding such amortization period, both the County obligation and the City obligation shall be paid in full not later than ten years from the date hereof.

**Releases and Payment:**

The County of Henderson and the City of Henderson shall release certain of the real estate which is pledged, by Deed of Trust, to secure the repayment of this Note, upon the following terms:

- 1) The release meets all terms of the Three-Party Agreement; and,
- 2) The amount received shall be credited one-half to the County obligation and one-half to the City obligation, and paid one-half each to the County of Henderson and the City of Hendersonville; and,
- 3) All amounts received shall be applied first to interest, and then to principal.

This Note may be prepaid in whole or in part at any time without penalty, provided that any partial pre-payment received shall be credited one-half to the County obligation and one-half to the City obligation, and paid one-half each to the County of Henderson and the City of Hendersonville.

In the event of (a) default in payment of any installment of principal or interest hereof as the same becomes due and such default is not cured within ten (10) days from the due date, or (b) default under the terms of any instrument securing this Note, and such default is not cured within fifteen (15) days after written notice to maker, then in either such event the County of Henderson may without further notice, declare the remainder of the principal sum due on the County obligation, together with all interest accrued thereon and, the prepayment premium, if any, at once due and payable and the City of Hendersonville may without further notice, declare the remainder of the principal sum due on the City obligation, together with all interest accrued thereon and, the prepayment premium, if any, at once due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise the same at any other time. The unpaid principal of this Note and any part thereof, interest accrued after the maturity date, if any, and all other sums due under this Note and the Deed of Trust (excluding interest accrued before the maturity date), if any, shall bear interest at the rate of eight percent (8.00%) per annum after default until paid. Notwithstanding the foregoing, interest accrued prior to the maturity date may be waived or forgiven by the County of Henderson and the City of Hendersonville where permitted by the terms of the Three-Party Agreement.

All parties to this Note, including maker and any sureties, endorsers, or guarantors hereby waive protest, presentment, notice of dishonor, and notice of acceleration of maturity and agree to continue to remain bound for the payment of principal, interest and all other sums due under this Note and the Deed of Trust notwithstanding any change or changes by way of release, surrender, exchange, modification or substitution of any security for this Note or by way of any extension or extensions of time for the payment of principal and interest; and all such parties waive all and every kind of notice of such change or changes and agree that the same may be made without notice or consent of any of them.

Upon default the County of Henderson, the City of Hendersonville, or the both of them (but each entity only as to the obligation owed to it under this Note) may employ an attorney to enforce their rights and remedies and the maker, principal, surety, guarantor and endorsers of this Note hereby agree to pay to the County of Henderson and the City of Hendersonville reasonable attorneys fees not exceeding a sum equal to fifteen percent (15%) of the outstanding balance owing on said Note, plus all other reasonable expenses incurred by them in exercising their rights and remedies upon default. The rights and remedies of the County of Henderson and the City of Hendersonville as provided in this Note and any instrument securing this Note shall be cumulative and may be pursued singly, successively, or together against the property described in the Deed of Trust or any other funds, property or security held by them for payment or security, in their sole discretion. The failure to exercise any such right or remedy shall not be a waiver or release of such rights or remedies or the right to exercise any of them at another time.

This Note is to be governed and construed in accordance with the laws of the State of North Carolina.

This Note is given as evidence of indebtedness, and is secured by a deed of trust on real estate, which is a first lien upon the property therein described. This Note shall be given in duplicate originals, one original being held by the County of Henderson and one original being held by the City of Hendersonville, with the County of Henderson as a holder having only the right to enforce the County obligation, and the City of Hendersonville as a holder having only the right to enforce the City obligation, including the interest accrued and all other sums due and payable hereunder with respect to each of the City and County obligations.

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IN TESTIMONY WHEREOF, the corporate maker has caused this instrument to be executed in duplicate, each to have the force and effect of an original instrument having the limitations stated above, in its corporate name by its President, attested by its Secretary, and its corporate seal to be hereto affixed, all by order of its Board of Directors first duly given, the day and year first above written.

ECONOMIC INVESTMENT FUND OF HENDERSON COUNTY, INC.

By:   
John B. Gould, Chairman

ATTEST:

  
Adam Shealy, Secretary

(Corporate Seal)