

ESCROW AGREEMENT

This **ESCROW AGREEMENT** (the “*Agreement*”) is dated as of April 15, 2014 between the **COUNTY OF BUNCOMBE, NORTH CAROLINA** (the “*County*”) and **U.S. BANK NATIONAL ASSOCIATION**, as escrow agent (the “*Escrow Agent*”), being authorized to accept and execute trusts of the character herein set out under and by virtue of the laws of the State of North Carolina.

WITNESSETH:

WHEREAS, the County has previously issued its Project Development Financing Revenue Bonds (Woodfin Downtown Corridor Development), Series 2008, in the aggregate principal amount of \$12,960,000 (the “*2008 Bonds*”), of which \$1,075,000 remain outstanding, pursuant to a General Trust Indenture and Series Indenture, Number 1, each dated as of August 1, 2008, as supplemented by a Supplemental Indenture dated as of June 1, 2012 and a second Supplemental Indenture dated as of October 1, 2012 (collectively, the “*Indenture*”) between the County and U.S. Bank National Association, Charlotte, North Carolina, as trustee (the “*Trustee*”);

WHEREAS, the County wishes to defease the outstanding 2008 Bonds (the “*Defeased Bonds*”) in advance of their maturities;

WHEREAS, pursuant to the Indenture and for the purpose of defeasing the Defeased Bonds, the County will deposit money in the Escrow Fund established under this Agreement which, together with money transferred from the Debt Service Reserve Fund created under the Indenture, will be applied to the purchase of Federal Securities, the proceeds of which are to be applied to the payment of the Defeased Bonds; and

WHEREAS, this Agreement sets forth the understandings and agreements of the County and the Escrow Agent with respect to the Defeased Bonds and the Escrow Fund;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and intending to be legally bound, the County and the Escrow Agent covenant and agree:

ARTICLE I

DEFINITIONS

Except as provided herein, all defined terms contained in the Indenture have the same meanings in this Agreement. In addition, the following words and terms, unless the context otherwise requires, have the following meanings:

“**Agreement**” means this Escrow Agreement dated as of April 15, 2014 between the County and the Escrow Agent.

“**County**” means the County of Buncombe, North Carolina, or any successor to its functions.

“Defeased Bonds” means the outstanding 2008 Bonds maturing on August 1, 2029 and August 1, 2036, to be defeased and redeemed with proceeds of the Escrow Fund.

“Escrow Agent” means U.S. Bank National Association, and its successors and assigns.

“Escrow Fund” means the Escrow Fund created in Section 2.01 which is to be applied to the payment of Defeased Bonds as provided herein.

“Federal Securities” means (a) direct obligations of the United States of America for the payment of which the full faith and credit of the United States of America is pledged; (b) obligations issued by any agency controlled or supervised by and acting as an instrumentality of the United States of America, the payment of the principal of and interest on which is fully guaranteed as full faith and credit obligations of the United States of America (including any securities described in (a) or (b) issued or held in the name of the Trustee in book entry form on the books of the Department of Treasury of the United States of America), which obligations, in either case, are held in the name of the Trustee and are not subject to redemption or purchase prior to maturity at the option of anyone other than the Owner; (c) any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are (i) not callable prior to maturity or (ii) as to which irrevocable instructions have been given to the trustee or escrow agent of such bonds or other obligations by the obligor to give due notice of redemption and to call such bonds for redemption on the date or dates specified, and which are rated by Moody’s and S&P within the highest rating category and which are secured as to principal, redemption premium, if any, and interest by a fund consisting only of cash or bonds or other obligations of the character described in clause (a) hereof which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate; or (d) direct evidences of ownership of proportionate interests in future interest and principal payments on specified obligations described in (a) held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor on the underlying obligations described in (a), and which underlying obligations are not available to satisfy any claim of the custodian or any person claiming through the custodian or to whom the custodian may be obligated.

“First Series Indenture” means Series Indenture, Number 1, dated as of August 1, 2008 between the County and the Trustee, as supplemented by a Supplemental Indenture dated as of June 1, 2012 and a second Supplemental Indenture dated as of October 1, 2012, each between the County and the Trustee.

“General Indenture” means the General Trust Indenture, Number 1, dated as of August 1, 2008 between the County and the Trustee.

“Indenture” means, collectively, the General Indenture and the First Series Indenture.

“State” means the State of North Carolina.

“Trustee” means U.S. Bank National Association, as trustee under the Indenture.

“2008 Bonds” means the Project Development Financing Revenue Bonds (Woodfin Downtown Corridor Development), Series 2008, in the aggregate principal amount of \$12,960,000, of which \$1,075,000 remain outstanding.

ARTICLE II

CREATION OF ESCROW FUND

Section 2.01. Escrow Fund. There is hereby created and established with the Escrow Agent a special and irrevocable escrow fund designated the Escrow Fund, to be held in the custody of the Escrow Agent separate and apart from other funds and accounts of the County or the Escrow Agent.

Section 2.02. Initial Deposit. Concurrently with the execution of this Agreement, the County (a) directs the transfer from the Debt Service Reserve Fund created under the Indenture of \$, . and (b) has caused to be deposited with the Escrow Agent \$, . from County funds. The Escrow Agent acknowledges receipt of \$, , . Concurrently with the receipt of such funds, the Escrow Agent shall deposit \$, , . in the Escrow Fund. Amounts deposited in the Escrow Fund will be simultaneously applied to the purchase of the Federal Securities described in Schedule II hereto (“*Schedule II*”), except to the extent of balances designated in Schedule II to be uninvested. The Federal Securities shall mature in principal amounts and pay interest in such amounts so that sufficient money will be available to pay (1) (a) the sinking fund redemption payment due on August 1, 2019 on the Defeased Bonds maturing on August 1, 2029, (b) the maturing interest on the Defeased Bonds until August 1, 2022 and (c) 100% of the principal of the Defeased Bonds on August 1, 2022, at which time the outstanding principal of and interest on the Defeased Bonds will be paid in full. On the basis of a verification report provided by a verification agent as of the date of this Agreement, the County hereby finds and determines that the investments described in Schedule II are advantageous in yield and maturity date to provide sufficient moneys to prepay the Defeased Bonds and to comply with United States Department of the Treasury regulations adopted or applicable pursuant to the Internal Revenue Code of 1986, as amended.

Section 2.03. Irrevocable Deposit; Control. The deposit in the Escrow Fund shall constitute an irrevocable deposit of such money exclusively for the benefit of the Defeased Bonds, respectively, and such money and Federal Securities, together with any income or interest earned thereon, shall be held in trust and shall be applied solely to the payment of the principal of and interest on the Defeased Bonds as the same mature and become due on redemption as set forth in Schedule I hereto (“*Schedule I*”). Subject to the requirements set forth herein for the use of the Escrow Fund and the money and investments therein, including, without limitation, Section 3.02, the County covenants and agrees that the Escrow Agent shall have full and complete control and authority over and with respect to the Escrow Fund and money and investments therein and that the County shall not exercise any control or authority over and with respect to the Escrow Fund and the money and investments therein.

The County irrevocably directs the Trustee to call the Defeased Bonds maturing on August 1, 2036 for optional redemption on August 1, 2022.

ARTICLE III

DUTIES OF THE ESCROW AGENT; FEES AND COSTS

Section 3.01. Payments on Defeased Bonds. The Escrow Agent, without further authorization and direction from the County, shall pay to the Trustee, from money available in the Escrow Fund, on the date on which each payment of principal and interest falls due, money sufficient to pay the principal of and interest falling due on the Defeased Bonds as set forth in Schedule I hereto. Payments with respect to the Defeased Bonds are to be made from the maturing principal of and interest on the Federal Securities or other money in the Escrow Fund securing the Defeased Bonds and shall be made to the persons entitled thereto.

Section 3.02. *Investment of Escrow Fund.* The Escrow Agent shall purchase or cause to be purchased those Federal Securities listed in Schedule II solely from the money deposited in the Escrow Fund. The Escrow Agent shall apply the money deposited in the Escrow Fund and the Federal Securities, together with any income or interest earned thereon, in accordance with this Agreement. The Escrow Agent has no power or duty to invest any money held hereunder or to make substitutions of the Federal Securities held hereunder or to sell, transfer or otherwise dispose of the Federal Securities acquired hereunder except as otherwise provided herein. The Escrow Agent may, on the request of the County, sell or redeem all or a portion of the Federal Securities held for the credit of the Escrow Fund and reinvest the required proceeds of such sale or redemption, in Federal Securities designated in such request of the County, but only on receipt by the Escrow Agent of:

(a) a certificate of an independent certified public accountant stating that after giving effect to such request the Federal Securities held for the credit of such fund are of such maturities and interest payment dates and bear such interest as will, without further investment or reinvestment of either the principal amount thereof or the interest earnings thereon, be sufficient together with all cash and other immediately available invested funds held for the credit of such fund to pay the principal of, and interest on the Defeased Bonds when due and as described in this Agreement; and

(b) an opinion of counsel acceptable to the County and the Escrow Agent, which must be nationally recognized bond counsel, stating that the Defeased Bonds are deemed defeased and that the compliance with such request of the County will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Defeased Bonds.

The liability of the Escrow Agent for the payment of the principal of and interest on the Defeased Bonds under this Section is limited to the cash available for such purposes in the Escrow Fund. The County shall not direct the Escrow Agent to exercise any of its powers to cause any part of the money or funds at any time in the Escrow Fund to be used directly or indirectly to acquire any obligations which would cause any Defeased Bond to be an “arbitrage bond” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended.

Section 3.03. *Escrow Agent’s Fees.* The Escrow Agent’s fees for and in carrying out the provisions of this Agreement have been fixed, which fees are to be paid by the County as they are due from funds of the County and not from funds in the Escrow Fund. The County will bear all costs of publication and mailing of notices required by this Agreement or the Indenture. The Escrow Agent is not liable for any loss resulting from any investment made at the direction of the County pursuant to the terms and provisions of this Agreement. In addition to fixed fees, the County will also pay out of pocket expenses, including reasonable attorney’s fees. Section 4.11 of this Agreement applies to the payment of expenses as described in this Section but not to the payment of fees, which are fixed.

Section 3.04. *Escrow Agent Generally.*

(a) The Escrow Agent has no responsibility to the County or any person in connection herewith except as specifically provided herein and is not responsible for anything done or omitted to be done by it, except for its own negligence or default in the performance of any obligation imposed on it hereunder.

(b) Subject to the exception in paragraph (a) as to its own negligence or default in the performance of any obligation imposed on it hereunder, the Escrow Agent

has no responsibility for verifying the genuineness, correctness, or competence of any document, instrument or writing, and shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein.

(c) The Escrow Agent may act on any written notice, request, waiver, consent, certificate, receipt, authorization, power of attorney, or other instrument or document from the County's Finance Director or Assistant Finance Director which the Escrow Agent reasonably and in good faith believes to be genuine and to be what it purports to be.

(d) The Escrow Agent has no duty to determine or inquire into the happening or occurrence of any event or contingency or the performance or failure of performance of the County with respect to arrangements or contracts with others. The Escrow Agent may request from the County or any person such reasonable evidence as the Escrow Agent in its discretion deems necessary to determine any fact relating to the occurrence of any event or contingency and in this connection may inquire and consult with the County, among others, at any time. The County shall provide such evidence to the Escrow Agent and the Escrow Agent is entitled to rely thereon.

(e) The Escrow Agent has no liability for following any instructions given by the County or in this Agreement or set forth in any court or administrative order.

(f) The Escrow Agent may resign and thereby become discharged from the trusts hereby created by notice in writing given to the County not less than 30 days before such resignation is to take effect. The Escrow Agent agrees to serve as Escrow Agent until a successor is appointed. Such resignation is effective immediately, however, on the appointment of a successor Escrow Agent if such successor Escrow Agent is appointed before the expiration of said notice period. If such appointment of a successor Escrow Agent is not made within 30 days after the date that such resignation was to take effect as provided in the notice thereof given to the County, then the Escrow Agent may apply to a court of competent jurisdiction to appoint a successor Escrow Agent and give notice thereof to the County and not object to the County's intervention therein.

The Escrow Agent may be replaced by the County and thereby become discharged from the trusts hereby created by notice in writing given from the County to the Escrow Agent not less than 30 days before such replacement is to take effect. The Escrow Agent agrees to serve as Escrow Agent until a successor is appointed. Such replacement is effective immediately, however, on the appointment of a successor Escrow Agent if such successor Escrow Agent is appointed before the expiration of said notice period.

(g) If a disagreement or dispute arises under this Agreement, or if adverse claims or demands are made in connection with this Agreement or any property involved herein or affected hereby, the Escrow Agent may petition a court of competent jurisdiction, within the limitations set forth in Section 4.07, to resolve the disagreement or dispute or adverse claims or demands and must, at the time of filing such petition, give notice thereof to the County. In connection therewith, the Escrow Agent may (but is not required to) tender into the custody of the court all money or property in its hands under the terms of this Agreement, and then be discharged from all further duties under this Agreement. The filing of any such legal proceeding does not deprive Escrow Agent of its compensation earned before such filing.

Section 3.05. *Notices to Defeased Bond Owners.* The Escrow Agent shall give notice to the owners from time to time of the Defeased Bonds in accordance with the instructions received from the County from time to time in connection with this Agreement. The Escrow Agent will cause a notice of redemption, substantially in the form attached to this Agreement as Exhibit A, to be mailed to the parties and in the manner set forth on Exhibit A. In addition, the Escrow Agent will cause a notice of defeasance, substantially in the form attached to this Agreement as Exhibit B, to be mailed to the parties and in the manner set forth on Exhibit B.

ARTICLE IV

GENERAL PROVISIONS

Section 4.01. *Escrow Fund Irrevocable.* The Escrow Fund hereby created is irrevocable and the owners of the Defeased Bonds are hereby granted an express lien on the Escrow Fund until applied in accordance with this Agreement.

The Escrow Agent shall hold the Escrow Fund as a separate trust fund wholly segregated from all other funds and accounts held in any capacity and shall make disbursements from such funds only in accordance with the provisions of this Agreement. The principal of and interest on the Federal Securities shall not be reinvested except as provided in Section 3.02, and the Escrow Agent shall not sell or dispose of such securities except as provided in Section 3.02.

Under no circumstances shall the Escrow Agent have a lien on the Escrow Fund for its charges, fees and expenses and under no circumstances shall the Escrow Agent make any claim against the Escrow Fund for such charges, fees and expenses.

Section 4.02. *Report.* The Escrow Agent shall deliver to the County on or before the fifth business day of each month a report of each transaction relating to the Escrow Fund through the last business day of the preceding month.

Section 4.03. *Defeased Bond Owner Rights.* The Escrow Agent and the County agree that the owners of the Defeased Bonds have a beneficial and vested interest in the Escrow Fund as herein provided. It is therefore recited, understood and agreed that, until the provisions hereof have been fully carried out, this Agreement (a) may be amended only to cure ambiguity or correct manifest error without the prior written consent of all of the owners of the Defeased Bonds and (b) is not subject to amendment for any other reason or revocation except with the prior written consent of all of the owners of the Defeased Bonds.

Section 4.04. *Deficiency.* If there is any deficiency in the Escrow Fund, the County will remedy such deficiency by paying to the Escrow Agent the amount of such deficiency. The Escrow Agent is not liable for any such deficiency, except as may be caused by its negligence or misconduct or default in the performance of any obligation imposed on it hereunder.

Section 4.05. *Termination.* This Agreement terminates when all payments of the principal of and interest on the Defeased Bonds required to be made to the owners of the Defeased Bonds under the provisions of the Indenture have been made.

Section 4.06. *Severability.* If any one or more of the covenants or agreements provided in this Agreement on the part of the parties hereto to be performed are determined by a court of competent

jurisdiction to be contrary to law, such covenant or agreement is to be deemed and construed to be severable from the remaining covenants and agreements herein contained and in no way affect the validity of the remaining provisions of this Agreement.

Section 4.07. Law. This Agreement is governed exclusively by the laws of the State. It inures to and is binding on the parties hereto and their respective successors and assigns. This Agreement is deemed made in Buncombe County, North Carolina. The exclusive forum and venue for all actions arising out of this Agreement is the North Carolina General Court of Justice, in Buncombe County. Such actions shall neither be commenced nor removed to federal court. This Section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this Section.

Section 4.08. Counterparts. This Agreement may be executed in several counterparts, all or any of which are regarded for all purposes as one original and constitute one and the same instrument.

Section 4.09. Notices. Any notice or other communication to be given under this Agreement shall be in writing and may be given by certified mail (postage prepaid, return receipt requested), telegraph or personal delivery, if to the County, County of Buncombe, North Carolina, 200 College Street, Suite 420, Asheville, North Carolina 28801, Attention: Finance Director, and if to the Escrow Agent, to U. S. Bank National Association, Hearst Tower, 214 North Tryon Street, Suite 2700, Charlotte, North Carolina 28202, Attention: Global Corporate Trust Services.

Section 4.10. Covenants of County or Corporation not Covenants of Officials Individually. No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, director, agent, officer or employee of the County or the Local Government Commission of North Carolina in his or her individual capacity, and neither the members of the Board of Commissioners of the County, the members of the Local Government Commission of North Carolina nor any other member, director, agent, officer or employee of the County or the Local Government Commission of North Carolina is subject to any personal liability under this Agreement.

Section 4.11. References to Fees and Expenses. Wherever this Agreement contains a reference to fees or expenses, such reference is deemed to include the word “reasonable” as an antecedent thereto.

IN WITNESS WHEREOF, the Escrow Agent and the County have caused this Agreement to be executed and attested by their duly authorized officers, as of the 15th day of April, 2014.

**U.S. BANK NATIONAL ASSOCIATION, as
Escrow Agent**

**By: _____
Vice President**

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

[COUNTERPART SIGNATURE PAGE TO THE AGREEMENT]

COUNTY OF BUNCOMBE, NORTH CAROLINA

By: _____
Wanda Greene
County Manager

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Donna Clark
Finance Director

SCHEDULE I

PAYMENT SCHEDULE FOR DEFEASED BONDS

<u>DATE</u>	<u>PRINCIPAL</u>	<u>INTEREST</u>
08/01/14		\$38,781.25
02/01/15		38,781.25
08/01/15		38,781.25
02/01/16		38,781.25
08/01/16		38,781.25
02/01/17		38,781.25
08/01/17		38,781.25
02/01/18		38,781.25
08/01/18		38,781.25
02/01/19		38,781.25
08/01/19	\$75,000	38,781.25
02/01/20		36,250.00
08/01/20		36,250.00
02/01/21		36,250.00
08/01/21		36,250.00
02/01/22		36,250.00
08/01/22	\$1,000,000	36,250.00

The Defeased Bonds maturing on August 1, 2036 are to be redeemed on August 1, 2022 at the principal amount thereof without premium, plus accrued interest to the redemption date.

SCHEDULE II
FEDERAL SECURITIES

<u>TYPE OF SECURITY</u>	<u>MATURITY DATE</u>	<u>PAR AMOUNT</u>	<u>INTEREST RATE</u>	<u>YIELD</u>
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An amount equal to \$. has been deposited in the Escrow Fund on the Issue Date to establish the Initial Cash Balance in the Escrow Fund and is to be held uninvested as cash.

EXHIBIT A

NOTICE OF REDEMPTION

\$12,960,000
COUNTY OF BUNCOMBE, NORTH CAROLINA
Project Development Financing Revenue Bonds
(Woodfin Downtown Corridor Development), Series 2008

<u>CUSIP*</u>	<u>MATURITY</u>	<u>RATE</u>	<u>ORIGINAL AMOUNT</u>	<u>AMOUNT OUTSTANDING</u>
120534AB6	August 1, 2036	7.25	8,470,000	1,000,000

Notice is hereby given by the County of Buncombe, North Carolina of its intention to redeem its Project Development Financing Revenue Bonds (Woodfin Downtown Corridor Development), Series 2008, (the “*Defeased Bonds*”) maturing on August 1, 2036 on August 1, 2022 (the “*Redemption Date*”) at the redemption price (the “*Redemption Price*”) of 100% of the principal amount thereof without premium, plus accrued interest to the Redemption Date.

Since the Defeased Bonds are held under the book entry system, payment will be made directly to the registered holder. United States Treasury Obligations and uninvested cash sufficient to pay the Redemption Price have been deposited with the Escrow Agent. Consequently, on the Redemption Date, the Defeased Bonds will cease to bear interest.

When presenting the Defeased Bonds for payment, holders of the Defeased Bonds should provide their tax identification number (via Form W-9) to avoid withholding of 28% of the principal paid as required by Federal Tax Law. Those holders who are required to provide their correct taxpayer identification number on IRS Form W-9 and who fail to do so may also be subject to an IRS penalty. Accordingly, please provide all appropriate certifications when presenting the Defeased Bonds for payment.

COUNTY OF BUNCOMBE, NORTH CAROLINA

By: U.S. BANK NATIONAL ASSOCIATION, as trustee

Date: [June 2, 2022 and July 1, 2022]
To: DTC by electronic mail to redemptionnotification@dtcc.com.
LGC by U.S. Mail; and
EMMA, by posting electronically, in PDF format, to www.MSRB.org/msrb1/control/default.asp.

EXHIBIT B

NOTICE OF DEFEASANCE

\$12,960,000

COUNTY OF BUNCOMBE, NORTH CAROLINA
Project Development Financing Revenue Bonds
(Woodfin Downtown Corridor Development), Series 2008

<u>CUSIP*</u>	<u>MATURITY</u>	<u>RATE</u>	<u>ORIGINAL AMOUNT</u>	<u>AMOUNT OUTSTANDING</u>
120534AA0	August 1, 2029	6.75%	\$4,490,000	\$ 75,000
120534AB6	August 1, 2036	7.25	8,470,000	1,000,000

The County of Buncombe, North Carolina (the “County”), under a General Trust Indenture and Series Indenture, Number 1, each dated as of August 1, 2008 (collectively, the “Indenture”) between the County and U.S. Bank National Association, Charlotte, North Carolina, as trustee (the “Trustee”), issued Project Development Financing Revenue Bonds (Woodfin Downtown Corridor Development), Series 2008, in the aggregate principal amount of \$12,960,000 (the “2008 Bonds”), of which \$1,075,000 is currently outstanding (the “Defeased Bonds”).

NOTICE IS HEREBY GIVEN by the County that, in accordance with the Indenture, there has been deposited with the undersigned certain Federal Securities, as permitted under the Indenture, the principal of and the interest on which when due, and without reinvestment thereof, are sufficient to pay (a) the sinking fund redemption payment due on August 1, 2019 on the Defeased Bonds maturing on August 1, 2029, (b) the maturing interest on the Defeased Bonds until August 1, 2022 (the “Redemption Date”), and (c) 100% of the principal of the Defeased Bonds maturing on August 1, 2036 on the Redemption Date, at which time the outstanding principal of and interest on the Defeased Bonds will be paid in full. U.S. Bank National Association, as trustee, has received irrevocable written instructions from the County to redeem the Defeased Bonds maturing on August 1, 2036 on the Redemption Date. Consequently, on the Redemption Date, the Defeased Bonds maturing on August 1, 2036 will cease to bear interest. The Defeased Bonds are deemed to have been paid in accordance with the Indenture.

COUNTY OF BUNCOMBE, NORTH CAROLINA

By: U.S. BANK NATIONAL ASSOCIATION, as trustee

Date: [As soon as practicable after the execution and delivery of the Escrow Agreement]

To: EMMA, by posting electronically, in PDF format, to www.MSRB.org/msrb1/control/default.asp.