

AMENDMENT TO AN INTERLOCAL AGREEMENT

This **AMENDMENT TO AN INTERLOCAL AGREEMENT** dated as of April 15, 2014 (the “*Amendment*”) between the **COUNTY OF BUNCOMBE, NORTH CAROLINA**, a political subdivision of the State of North Carolina (the “*County*”) and the **TOWN OF WOODFIN, NORTH CAROLINA**, a municipal corporation organized under the laws of the State of North Carolina (the “*Town*”);

WITNESSETH

WHEREAS, under Article 20 of Chapter 160A of the North Carolina General Statutes, as amended (the “*Interlocal Act*”), municipalities and counties are authorized to enter into interlocal cooperation undertakings with other local governments for the joint exercise of any power, function, public enterprise, right, privilege, or immunity of local governments in North Carolina;

WHEREAS, pursuant to Article 1 of Chapter 158 of the North Carolina General Statutes, as amended (the “*Local Development Act*”), the Town authorized the creation of the Woodfin Downtown Corridor Financing District, a project development financing district (the “*District*”), under a resolution adopted by the Board of Aldermen of the Town on November 21, 2006, within which the Town, the County and Reynolds Mountain Partners, LLC (the “*Developer*”), as agent for and on behalf of the Town, developed and constructed certain public improvements (the “*Public Project*”) located within the District in order for the Developer to develop and construct a mixed-use project containing residential, retail office and, perhaps, civic components (collectively, the “*Private Project*”) located within the District;

WHEREAS, the County and the Town have previously executed and delivered an Interlocal Agreement dated as of August 1, 2008 (the “*2008 Interlocal Agreement*”) in connection with the issuance by the County of Project Development Financing Bonds (Woodfin Downtown Corridor Financing), Series 2008 (the “*2008 Bonds*”), pursuant to which both the Town and the County pledged all or any part of the taxes received or to be received on the incremental valuation accruing to the District to the repayment of the 2008 Bonds;

WHEREAS, the County and the Town have also previously executed and delivered an Interlocal Agreement dated as of February 15, 2014 (the “*Interlocal Agreement*”) in connection with the County’s purchase of \$11,885,000 of its installment obligations relating to the 2008 Bonds pursuant to an Amendment Number Two to an Installment Financing Contract dated as of February 15, 2014 (the “*Second Amendment*”) with the Buncombe Financing Corporation (the “*Corporation*”), further amending an Installment Financing Contract dated as of December 1, 2010 (the “*2010 Contract*”), as previously amended by Amendment Number One to an Installment Financing Contract dated as of July 1, 2012 (the “*First Amendment*” and together with the 2010 Contract and the Second Amendment, the “*Contract*”), each between the County and the Corporation;

WHEREAS, the County plans to defease the remaining \$1,075,000 of its installment obligations relating to the 2008 Bonds pursuant to an Escrow Agreement dated as of April 15, 2014 (the “*Escrow Agreement*”) between the County and U.S. Bank National Association, as escrow agent.

WHEREAS, in connection with the defeasance of the remaining 2008 Bonds, the parties agree to certain amendments to the Interlocal Agreement and desire to set forth their agreement herein;

NOW THEREFORE, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

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

“*District*” means the parcels identified on Exhibit A attached to this agreement. This term shall survive the defeasance of the 2008 Bonds and apply herein and in the Interlocal Agreement after the Woodfin Downtown Corridor Financing District has dissolved.

“*Bonds*” means the allocable portion of the County’s installment obligation with respect to the Second Amendment related to the purchase of all or a portion of the 2008 Bonds, as set forth in Appendix A to this Agreement.

“*Incremental Revenues*” means tax revenues generated from the incremental ad valorem tax valuation inside the District as set forth in the 2008 Interlocal Agreement.

ARTICLE II

AMENDMENTS

Section 2.1 *Amendments.*

(a) Section 3.1 of the Interlocal Agreement is hereby deleted and replaced with the following:

“Section 3.1. *Use of Incremental Revenues.*

“(a) Pursuant to the Project Development Financing Act, the Town and the County agree to contribute their respective allocations of the Incremental Revenues in each Fiscal Year to the repayment of the Bonds and the repayment to the County of County funds used to defease \$1,075,000 of the 2008 Bonds. Unless otherwise agreed to by the Town and the County, Incremental Revenues are to be used in each Fiscal Year in the following order or priority: (1) to pay debt service on the portion of the Bonds related to the allocable portion of the County’s installment obligation with respect to the Second Amendment related to the purchase of \$11,885,000 of the 2008 Bonds, (2) to repay the County \$[827,705.18] of County funds used to defease \$1,075,000 of the 2008 Bonds and (3) to the extent that the Incremental Revenues in a Fiscal Year are insufficient to meet the obligations set forth in clause (1), to reimburse the County for any such advances until the County is fully repaid.

“(b) The County Finance Director will send the Town a written report of the application of the Incremental Revenues in each Fiscal Year within 90 days after the end of each Fiscal Year.”

(b) Section 3.2 of the Interlocal Agreement is hereby deleted and replaced with the following:

“Section 3.2 ***Disposition of Excess Revenues.*** To the extent any Incremental Revenues remained at the end of the preceding Fiscal Year after satisfying the requirements of Section 3.1(a), the County will transfer such excess on or after the first day of each Fiscal Year to the General Fund of the County and the Town in proportion to their rates of *ad valorem* tax on taxable property located in the District.”

ARTICLE III

MISCELLANEOUS

Section 4.1. ***Amendment.*** This Amendment may be amended through a supplement approved in writing by the Town and the County.

Section 4.2. ***Severability.*** If any section of this Amendment is deemed to be illegal or otherwise unenforceable, it is the intent of the parties hereto that all other provisions of this Amendment shall remain in full force and effect.

Section 4.3. ***Governing Law.*** This Amendment is to be governed by and interpreted in accordance with the laws of the State of North Carolina.

Section 4.4. ***Time is of the Essence.*** Time is of the essence in this Amendment.

Section 4.5. ***Execution in Multiple Counterparts.*** This Amendment may be executed in multiple counterparts, each of which constitutes a completed document.

Section 4.6 ***Effective Date.*** This Amendment takes effect on its execution by the Town and the County.

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Mayor of the Town and the Chairman of the Board of Commissioners of the County have each executed this Amendment to evidence the agreement of the parties hereto and the Town Clerk and the Clerk to the Board of County Commissioners have affixed the seal of the Town and the County, as applicable, this Amendment.

TOWN OF WOODFIN, NORTH CAROLINA

[SEAL]

By: _____
Mayor

ATTEST:

Town Clerk

COUNTY OF BUNCOMBE, NORTH CAROLINA

[SEAL]

By: _____
Chairman

ATTEST:

Clerk to the Board of County Commissioners

EXHIBIT A

[list of parcels to come]