

**WICKED WEED BREWING, LLC**

**and**

**BUNCOMBE COUNTY, NORTH CAROLINA**

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**INCENTIVE AGREEMENT**

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**Dated as of September \_\_\_\_, 2014**

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## INCENTIVE AGREEMENT

THIS INCENTIVE AGREEMENT ("**Agreement**") is dated as of \_\_\_\_ day of September, 2014 ("**Effective Date**"), and is between **WICKED WEED BREWING, LLC**, a North Carolina limited liability company (hereinafter sometimes "Wicked Weed"), and **BUNCOMBE COUNTY**, a public body politic and a political subdivision of the State of North Carolina ("**County**").

### RECITALS:

Wicked Weed currently employs 145 workers, 130 of which are full-time employees, in Buncombe County primarily located at its current facility located at 91 Biltmore Avenue in Asheville, North Carolina ("**Facility**"). Wicked Weed plans to expand its operations in Buncombe County by investing at least Six Million Five Hundred Thousand and No/100 Dollars (\$6,500,000.00) and creating 75 new full time jobs that pay an average annual wage of \$32,000, not including benefits (the "**Project**"). In order to induce Wicked Weed to make that investment and to create those jobs in the County, the County offered certain incentives to Wicked Weed. This Agreement describes Wicked Weed's commitments and the terms and conditions on which the County will pay the incentives to Wicked Weed.

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants contained in this Agreement, the parties hereby agree as follows:

## ARTICLE I

### DEFINITIONS; RULES OF CONSTRUCTION

**1.1 Definitions.** For all purposes of this Agreement, unless the context requires otherwise, the following terms shall have the following meanings:

"Abandonment of Operations" means that for a period in excess of four continuous months Wicked Weed ceases manufacturing operations at the Facility.

"Business Day" means any day that is not a Saturday or a Sunday, or a day on which banks in the State of North Carolina are required by law to be closed.

"Direct Investment" means the increase in property tax value attributable to property (before depreciation) in the County owned by Wicked Weed pursuant to the Project after the effective date of this Incentive Agreement as determined by the Buncombe County Tax Department in accordance with applicable law, regardless of the funding sources for said property.

"Facility" the Property and improvements located at 145 Jacob Holm Way, Candler, North Carolina and described as that tract shown as Phase III Lot A, 5.80± Acres (D.M.D.), as shown on plat recorded in Plat Book 106, Page 194 Buncombe County Registry reference to which plat is hereby made for purposes of description.

"Full-Time Project Related Jobs" means the total number of new full time employees employed by Wicked Weed in connection with the Project as of December 31 of each year during the term of this Agreement. Such employees may be hired at any time on or prior to December 31 of the

applicable year so long as Wicked Weed hires the required number of new full time employees specified below being paid at the average wages as identified below.

“Incentive” means the various incentive payments referred to in this Agreement that the County will pay to Wicked Weed.

“Performance Commitments” means the levels of Full-Time Project Related Jobs to be created by Wicked Weed at average wage levels indicated below and the levels of Direct Investment to be made by Wicked Weed in relation to Wicked Weed’s operations in the Facility.

“Project” has the meaning specified in the Recitals.

“State” means the State of North Carolina.

"Year 1" means October 1, 2014 through December 31, 2015.

"Year 2" means calendar year 2016.

"Year 3" means calendar year 2017.

"Year 4" means calendar year 2018.

**1.2 Rules of Construction.** Unless the context otherwise indicates:

(a) Words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders as well;

(b) All references to Articles, Sections or Exhibits are references to Articles, Sections and Exhibits of this Agreement;

(c) All references to officers are references to County officers; and

(d) The headings herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meanings, construction or effect.

**ARTICLE II**

**WICKED WEED’S COMMITMENTS**

2.1 In return for the Incentives set forth herein, which are a competitive necessity for Wicked Weed to increase capacities and operations in the County, Wicked Weed commits to certain Performance Commitments related to jobs created and incrementally increased taxes in the County. The parties acknowledge and agree that the consideration for the County to enter into this Agreement is the expectation that Wicked Weed will meet or exceed the Performance Commitments.

Specifically, Wicked Weed agrees to meet or exceed the following Performance Commitments:

- (a) Wicked Weed will create and maintain at the Facility for a five (5) year period running from January 1, 2019 through December 31, 2024 (“**Jobs Retention Period**”), the number of Full-Time Project Related Jobs specified below, and Wicked Weed will retain the current 130 full-time jobs it has in Buncombe County (collectively, “**Jobs Minimum**”). Wicked Weed must meet or exceed the applicable Jobs Minimum on or before December 31 of each year during the Jobs Retention Period.

Applicable Year/Required Number of Full-Time Project Related Jobs

Year 1: 21 new Full-Time Project Related Jobs  
Year 2: 18 new Full-Time Project Related Jobs for a cumulative total of 39  
Year 3: 18 new Full-Time Project Related Jobs for a cumulative total of 57  
Year 4: 18 new Full-Time Project Related Jobs for a cumulative total of 75

- (b) Wicked Weed agrees that for the length of the Jobs Retention Period, the average wage level of the Full-Time Project Related Jobs specified in **Section 2.1(a)** above shall be at least Thirty-Six Thousand Dollars (\$32,000) per year excluding benefits. The calculation of the average wages for Full-Time Project Related Jobs shall be done as of December 31 of each year during the Jobs Retention Period.
- (c) Wicked Weed shall make Direct Investment in new construction and improvements to **the Facility** as well as new machinery and equipment having a property tax value (before depreciation) of at least Six Million Five Hundred Thousand and No/100 Dollars (\$6,500,000.00). Such Direct Investment (or replacement property of equal or greater value for property tax purposes before depreciation) shall remain in the County subject to ad valorem property tax assessments through the end of the Jobs Retention Period. All such initial Direct Investment, to be considered a basis for incentives covered hereunder, shall be made by not later than December 31 of each year as set forth below.

Applicable Year/Required Direct Investment:

Year 1: \$3,500,000  
Year 2: \$1,000,000 for a cumulative total of \$4,500,000  
Year 3: \$1,000,000 for a cumulative total of \$5,500,000  
Year 4: \$1,000,000 for a cumulative total of \$6,500,000

2.2 Confirmations. Confirmations of Wicked Weed’s attainment of the Performance Commitments shall be as follows: (1) the amount of Direct Investment shall be the amount of the new and additional property tax value (before depreciation) as determined by the Buncombe County Tax Department in accordance with applicable law attributable to Direct Investment related to the Project for property owned by Wicked Weed in the County as shown on its Business Real and Personal Property Tax Listings for the applicable year; and (2) the number of new and additional Full-Time Project Related Jobs attributable to the Project shall be the number shown on filings by Wicked Weed with the N.C. Employment Security Commission as to unemployment compensation taxes. The County may, subject to the agreement of Wicked Weed, have access to other documentation to verify the attainment of these Performance Commitments.

2.3 Direct Investment and Jobs Minimum.

- (a) Wicked Weed will make the Direct Investment in accordance the Direct Investment schedule. If Wicked Weed does not make the Direct Investment on or before the scheduled investment dates set forth above, the amount of the Future Incentive Payments will be adjusted as provided in **Article IV**.
- (b) Wicked Weed will meet the applicable Jobs Minimum for each year during the Jobs Retention Period. If the Jobs Minimum is not achieved on or before the schedule dates set forth above, the amount of the Future Incentive Payments will be adjusted as provided in **Article IV**.

### **ARTICLE III**

#### **FUTURE INCENTIVE PAYMENTS and PURCHASE AND SALE AGREEMENT**

To induce Wicked Weed to make the Direct Investment associated with the Project, to locate its new operations associated with the expanded employee base at its facilities, and to achieve the Jobs Minimum, the County commits to pay to Wicked Weed a grant on the date specified below ("**Future Incentive Payment**"). This Future Incentive Payment shall be in the amount of Seventy-Four Thousand Nine Hundred Twenty-Five and No/100 (\$74,925.00) Dollars.

Further, contemporaneously with this agreement, the parties will enter into an Agreement for Lease of Real Property and a Purchase and Sale Agreement whereby County agrees to sell to Wicked Weed and Wicked Weed agrees to buy from County the Facility and Property as same is shown on the records of the Buncombe County Tax Office as PIN: 9617-73-4279. The sales price will be \$1,300,000 which is less than the current listed tax value on the Property of \$1,519,400. Such sale is conditioned on compliance by Wicked Weed with the terms and conditions of this Agreement and both the Agreement for Lease of Real Property and a Purchase and Sale Agreement entered into between the parties hereto.

Should Wicked Weed comply with the terms and conditions of the Agreement for Lease of Real Property, the Purchase and Sale Agreement as well as achieve 85% of both its Direct Investment commitment and the new Full-Time Project Related Jobs as of December 31, 2018 then County shall pay the the Future Incentive Payment by February 28, 2019.

Provided however, that if Wicked Weed has for any reason failed to file its Business Real and Personal Property Tax Listings in a timely manner during Years 1-4 then such Future Incentive Payment will not be made until these Listings are properly filed and accepted.

Further, provided if the Wicked Weed is in default on its obligation to pay property taxes to the County, the County will not be required to make any Future Incentive Payment to Wicked Weed until Wicked Weed pays the amount of such property taxes it owes the County, unless Wicked Weed is in a bona fide dispute with a governmental taxing authority as to the value of some or all of its property. Nothing herein shall preclude County and the Buncombe County Tax Collector from seeking to recover any such unpaid property taxes in accordance with applicable laws.

## **ARTICLE IV**

### **ABANDONMENT OF OPERATIONS**

If an Abandonment of Operations occurs, the County shall not be obligated to make any Future Incentive Payment, and Wicked Weed shall refund to the County all Future Incentive Payments the County has already paid Wicked Weed within 60 days after receiving the County's invoice. In the event of such a refund, there shall be no additional costs, interest, fees or any additions whatsoever imposed on Wicked Weed above and beyond the refund amount due.

## **ARTICLE V**

### **TEMPORARY REDUCTIONS IN PERFORMANCE COMMITMENTS**

Notwithstanding anything herein to the contrary, if Wicked Weed shall be prevented or delayed from fulfilling, or continuing to fulfill, either or both of the Performance Commitments as set forth in herein, by reason of a:

- (a) government moratorium;
- (b) delay in obtaining any governmental or quasi-governmental approvals, permits or certificates, despite reasonable efforts by Wicked Weed to obtain same;
- (c) enemy or hostile governmental or terrorist action;
- (d) act of God, including but not limited to hurricane, tornado, snowstorm, windstorm, earthquake or flood, fire or other extreme weather conditions or other casualty;
- (e) strike, lockout or a labor dispute involving entities other than Wicked Weed which causes Wicked Weed an inability to obtain labor or materials;
- (f) delay in funding from any state or local government incentive to or for the benefit of Wicked Weed, or;
- (g) any other event, other than normal business exigencies, which is beyond the reasonable control of Wicked Weed.

then the Performance Commitments and the Future Incentive Payment for the year(s) in which such event occurred shall be equitably reduced to reflect the effect of such event.

The parties shall negotiate in good faith to make an equitable reduction in the Performance Commitments for any affected year(s). However, if the parties cannot in good faith reach an agreement as to such adjustment, all parties agree to submit this issue to mediation to be conducted in accordance with local rules of the General Court of Justice of Buncombe County, North Carolina.

## **ARTICLE VI**

### **ASSIGNMENT**

Wicked Weed will have the right to assign this Agreement, and any rights, privileges, or claims under this Agreement, to any future purchaser or lessee of the Facility without the consent of the County. If the assignee agrees in writing to assume the Company's obligations under this Agreement, then Wicked Weed will be relieved of its obligations under this Agreement. Wicked Weed will give the County written notice of any such assignment and assumption.

Wicked Weed may, without the consent of the County, pledge, mortgage, grant a security interest in, and collaterally assign this Agreement, and any rights, privileges or claims under this Agreement, to any person or entity, including a collateral agent acting on behalf of lenders providing financing for the Facility (collectively, "**Financing Parties**"). The County will cooperate with Wicked Weed, its affiliates, any assignee of this Agreement, and any Financing Parties from time to time, including by entering into a consent to assignment or other agreements in connection with any collateral assignment on such terms as may be customary under the circumstances and shall be reasonably required by such Financing Parties.

## **ARTICLE VII**

### **REPRESENTATIONS AND WARRANTIES**

Wicked Weed represents and warrants to the County that as of the Effective Date: (i) it is a corporation duly organized and existing under the laws of the State of North Carolina; (ii) it has the power and authority to own its properties and assets and to carry on its business as now being conducted and has the power and authority to execute and perform this Agreement; (iii) this Agreement (A) is the legal, valid and binding agreement of Wicked Weed, enforceable against Wicked Weed in accordance with its terms, (B) does not violate any order of any court or other agency of government binding on Wicked Weed or the charter documents of Wicked Weed, and (C) does not conflict with, result in a breach of, or constitute an event of default under any material indenture, agreement or other instrument to which Wicked Weed is a party; and (iv) Wicked Weed has not received written notice of any action or proceeding that challenges the validity of this Agreement or Wicked Weed's right and power to enter into and perform this Agreement.

The County represents and warrants to Wicked Weed that: (i) the County is a political subdivision and body politic of the State of North Carolina with power and authority to enter into and perform this Agreement; (ii) the County has taken all action necessary to authorize the execution, delivery and performance of this Agreement; (iii) this Agreement is a legal, valid, and binding obligation of the County, enforceable against the County in accordance with its terms; and (iv) the County has not received written notice of any action or proceeding that challenges the validity of this Agreement or the County's right and power to enter into and perform this Agreement.

## ARTICLE VIII

### CONTINUING CONTRACT

The parties hereto understand that this Agreement is and shall be construed as a continuing contract pursuant to N.C.G.S. §153A-13.

## ARTICLE IX

### MISCELLANEOUS

**Governing Law.** The parties intend that this Agreement shall be governed by the law of the State of North Carolina as follows:

#### Mediation

- Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to voluntary non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If the parties are unable to agree upon a certified mediator to hear their dispute, the Buncombe County Resident Superior Court Judge shall name a mediator to hear the matter.
- The parties shall equally share the mediator's fee. The mediation shall be held in Asheville at a location designated by the mediator selected to hear the matter.

#### Legal Proceedings

- Claims, disputes and/or other matters in question between the parties that are not resolved by mediation shall be heard in the North Carolina General Courts of Justice in Asheville, Buncombe County, North Carolina, which said Court shall have jurisdiction to hear any dispute between the parties arising out of this agreement. The Parties hereby agree that this paragraph establishes exclusive and sole jurisdiction for any legal proceeding in Buncombe County, North Carolina.

**Notices.** Any notice permitted or required under this Agreement from one party to the other must be in writing and will be effective (a) on the date it was actually delivered to the addressee if delivered personally, or sent by a nationally recognized courier (such as FedEx or United Parcel Service) or sent by facsimile, or (b) three days after having been deposited in the United States mail, if sent by certified mail, return receipt request, in each case to the respective addresses of Wicked Weed and the County listed below, or those other addresses of which either party gives the other party written notice:

If to Wicked Weed, to:

Wicked Weed Brewing, LLC  
91 Biltmore Avenue  
Asheville, NC 28801



If to the County, to:

Jon Creighton  
Assistant County Manager/Planning Director  
46 Valley Street  
Asheville, NC 28801

With copy to:

Michael C. Frue  
Buncombe County  
Senior Staff Attorney  
59 Woodfin Place, Suite 100  
Asheville, NC 28801

Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others.

**Non-Business Days.** If the date for making any payment or the last day for performance of any act or the exercising of any right shall not be a Business Day, such payment shall be made or act performed or right exercised on or before the next preceding Business Day.

**Severability.** Each provision in this Agreement is severable. If any provision of this Agreement will be determined to be invalid or unenforceable by a court of competent jurisdiction, then: (a) such determination will not invalidate or render unenforceable any other provision of this Agreement; (b) such provision will be construed as closely as possible to the parties' original intent in order to render such provision valid or enforceable, as applicable; and (c) the remaining terms of this Agreement, together with such reconstructed provision, will constitute the parties' entire agreement.

**Entire Agreement; Amendments.** This Agreement constitutes the entire contract between the parties, and this Agreement shall not be changed except in writing signed by both parties.

**Binding Effect.** Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

**Time.** Time is of the essence in this Agreement and each and all of its provisions.

**Liability of Directors, Officers and Agents.** No director, officer, agent or employee of the County or Wicked Weed shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

**Confidentiality.** The County will keep confidential and will not disclose or publish any of Wicked Weed's trade secrets as defined in Section 132-1.2(1) of the North Carolina General Statutes, will keep all records evidencing such trade secrets marked as "confidential trade secrets", and will keep all such records segregated in the County's files. If the County receives a request, subpoena or court order to

disclose any information or records Wicked Weed or its representatives have provided or provide in the future relating to this Agreement or the project described in this Agreement, the County will give Wicked Weed prompt written notice of the request, subpoena or court order and will discuss any proposed disclosure of such information or records with Wicked Weed (and, to the extent possible, give Wicked Weed the opportunity to contest any disclosure of information or records Wicked Weed believes should not be disclosed) before making any such disclosure.

**Counterparts.** This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

[Signature Page Follows]

**SIGNATURE PAGE 1 OF 2 TO INCENTIVE AGREEMENT BETWEEN  
WICKED WEED BREWING, LLC and BUNCOMBE COUNTY**

**IN WITNESS WHEREOF**, the parties have caused this Incentive Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

[SEAL]

**WICKED WEED BREWING, LLC**

**ATTEST:**

**By:** \_\_\_\_\_  
**Printed Name:**  
**Title:**

**By:** \_\_\_\_\_  
**Printed Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**SIGNATURE PAGE 2 OF 2 TO INCENTIVE AGREEMENT BETWEEN  
WICKED WEED BREWING, LLC and BUNCOMBE COUNTY**

[SEAL]

**BUNCOMBE COUNTY**

**ATTEST:**

**By:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

\_\_\_\_\_  
Kathy Hughes, Clerk to the Board

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

\_\_\_\_\_  
Name: Donna Clark  
Finance Officer, Buncombe County  
North Carolina