

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

AGREEMENT

This Agreement is entered into this _____ day of January, 2014 by and between Buncombe County, a North Carolina body politic (the "County"), and Carben, LLC, a North Carolina limited liability company ("Carben").

WITNESSETH

WHEREAS, Charles D. Owen Manufacturing Company ("Owen") owned that certain property described in those deeds recorded in Book 1079, Page 559; Book 1177, Page 41; Book 3199, Page 393, LESS AND EXCEPT all of that property described in those deeds recorded in Book 1119, Page 407; Book 1177, Page 401 and in Book 3199, Page 393, Buncombe County Registry, commonly known as 875 Warren Wilson Road; and

WHEREAS, Owen conveyed this property to Carben by deed recorded in Book 5050, Page 1858, Buncombe County Registry (the "Carben Property"); and

WHEREAS, by deed recorded in Book 1119, Page 407, Buncombe County Registry, Owen granted and conveyed to the County certain real property for use as a ballpark (the "Ballpark Property") in exchange for water rights to a certain water supply located next to the proposed ballpark property; and

WHEREAS, the County constructed a baseball field on the Ballpark Property, a portion of which was inadvertently built on the Carben Property; and

WHEREAS, Owen granted to the County a right-of-way from Warren Wilson Road to the Ballpark Property, said right-of-way having been recorded in Book 1119, Page 407, Buncombe County Registry. The location of said right-of-way was moved by those instruments recorded in Book 1260, Page 486 and in Book 1563, Page 10, Buncombe County Registry. The right-of-way, as amended, shall hereinafter be referred to as the "Right-of-Way;" and

WHEREAS, the actual roadway from Warren Wilson Road to the Ballpark Property was not constructed within the deeded Right-of-Way; and

WHEREAS, the entrance to the Right-of-Way from Warren Wilson Road ("Entrance") is located Northeast of the loading dock of an industrial building located on the Carben Property; and

WHEREAS, both the general public accessing the Ballpark Property and large trucks delivering materials to Carben utilize the Entrance, resulting in two concerns: (a) a member of the public utilizing the Entrance to the Ballpark Property running into a truck backing up from the loading dock and (b) members of the public looking for the Ballpark Property having difficulty ascertaining that the Entrance will lead to the Ballpark Property, as the ballpark is not visible from Warren Wilson Road;

WHEREAS, a creek is located East of, but not on, the Carben Property, the bed of which creek poses an erosion concern for the County.

NOW THEREFORE, for mutual and adequate consideration, the sufficiency of which is acknowledged, the County and Carben hereby agree as follows:

1. At a time to be agreed upon by the parties, but in no more than 5 years from the date of the execution of this Agreement, the Entrance shall be widened, a line shall be painted down the approximate centerline of the Entrance, signage shall be placed just East of the Entrance, indicating that ballpark traffic shall keep East (left) of the new painted line, and dividers shall be installed to the East of the loading dock and to the West of the public's access to the Ballpark Property, all as shown on the depiction of the Entrance, attached hereto and marked Exhibit A.

2. The parties will share equally in the expense of widening the Entrance and painting a line down the approximate center of the Entrance. The County shall be responsible for the new signage and Carben shall be responsible for the installation of the dividers.

3. The parties will enter into a Modification of Easement Agreement, moving the centerline of the Right-of-Way to the centerline of the existing roadway and granting to the County an additional right-of-way over the East side of the newly expanded Entrance, once installed.

4. The County shall be solely responsible for the maintenance of its portion of the Entrance and for the entire the Right-of-Way and Carben shall refrain from using the County's side of the Entrance and/or the Right-of-Way in its regular course of business.

5. Carben shall be solely responsible for the maintenance of its portion of the Entrance.

6. Carben shall convey to the County that portion of the ball field currently located on the Carben Property in fee simple, as shown on the survey attached hereto and marked Exhibit B.

7. The County shall be solely responsible for the maintenance of the creek bed, identified above and Carben shall, again, refrain from using the County's side of the Entrance and/or the Right-of-Way in its regular course of business.

8. This Agreement embodies the entire agreement between the parties. Any oral or written agreement not included herein shall not be binding upon or enure to the benefit of either party.

9. This Agreement shall be governed by the laws of the State of North Carolina.

10. This Agreement shall insure to the benefit of each party, their successors and/or assigns.

In witness whereof, the parties have made and executed this Agreement the day and year first above-written.

CARBEN, LLC

By: _____
Jeffrey Slosman, President

BUNCOMBE COUNTY

By: _____

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

Chief Financial Officer for Buncombe County