

## TAX FORECLOSURE ATTORNEY AGREEMENT

This agreement (“Agreement” or “Contract”), made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 2024, by and between County of Guilford, hereinafter referred to as County, and Mark D. Bardill, P.C., a North Carolina professional corporation, trading as Zacchaeus Legal Services, hereinafter referred to as Attorney, shall be for the legal services to be provided for foreclosure actions on delinquent real property taxes due to the County, and to this end, the parties hereto make the following recitals:

### WITNESSETH:

WHEREAS, Attorney has in excess of thirty-five years of experience serving as Special Tax Attorney for the Counties of Onslow, Jones, Craven, Lenoir, Beaufort, Wilson, Warren, Chatham, Lee, Cabarrus, Scotland, Tyrrell, Forsyth, Iredell, Yadkin, Gates, Dare, Richmond, Washington, Catawba, Chowan, Guilford, Hertford, Pamlico, Northampton, Moore, Franklin, Perquimans, Robeson and the Towns of Jonesville, Wallace, Columbia, Rose Hill, Yadkinville, Dobbins Heights, Gibsonville, Plymouth, Hoffman, Farmville, Maxton, Roper, Hertford, Pembroke, Williamston, Ellerbe, Red Springs and the Cities of Lumberton and Laurinburg; and

WHEREAS, Attorney has served as the County’s Special Tax Attorney since 2016 and during its service has collected over \$11,000,000 of delinquent revenue at a cost to the County of less than 1 %, ensuring fairness to those taxpayers who pay their taxes on time, avoiding increases in the tax rate by collecting taxes that are already on the books and providing a low cost to delinquent taxpayers who wish to redeem their parcel from foreclosure; and

WHEREAS, tax foreclosure is a certain and special area of practice and any attorney who serves as a Special Tax Attorney must provide specially trained staff, must advance thousands of dollars in costs and must dedicate other resources in order to successfully complete the foreclosure assignments made to it; and

WHEREAS, to support these specially trained staff, advanced costs and other dedicated resources, Attorney needs to extend the contract with County to serve as its special tax attorney for a term of no less than that provided for herein.

NOW, THEREFORE, for good and valuable consideration, and upon the agreements, conditions, and covenants found herein, the parties hereto agree as follows:

1. The Attorney shall initiate foreclosure actions on all parcels with delinquent taxes which County has designated for foreclosure to be assigned to Attorney in batches made on or before the 1<sup>st</sup> day of every May, August, November and February during the term of this Agreement, or at different intervals, upon mutual agreement of the parties hereto. Attorney has previously accepted assignment of numerous parcels under the Parties’ previous contracts (“the previously-assigned parcels” assigned pursuant to the “2016 Contract” or the “2020 Contract”). For the previously-assigned parcels for which suit has been filed prior to the beginning of the term of this Agreement, the terms of the Parties’ previous agreements shall continue to apply. In particular, if any of those cases were when filed, or later became or become, eligible for

additional compensation under the terms of the previous agreement (for example, because they exceed 15 parties and lienholders), the terms of the 2020 Contract will apply regarding such additional compensation. For the previously-assigned parcels for which suit has not been filed prior to the beginning of the term of this Agreement, the terms of this Agreement shall apply. The Parties agree that the filing of suit on parcels shall not be delayed or accelerated due to this difference in applicable terms.

2. The Tax Collector shall provide to the Attorney the name of the delinquent taxpayer, the most recent address on file, the total delinquent taxes, including interest and penalties by year and a map of the parcel with its identification number. This information shall be in the form of a computer printout and GIS Map, with other information provided as available.

3. All related work and filing of foreclosure actions shall take place within one hundred eighty (180) calendar days from the date that the Tax Collector transmits the initial information outlined in Paragraph 2 above and the request for foreclosure to the Attorney; however, if for some reason, the foreclosure action is not filed within one hundred eighty (180) calendar days from the date of transmittal, Attorney shall submit a written statement to the Tax Collector as to the reason why the action has not been filed and shall diligently work to file the action. If a Taxpayer tenders payment in full prior to the filing of the complaint, the Tax Collector must accept payment and no attorney fees are due from the Taxpayer or County. Provided, however, should the Tax Office fail to inform the Attorney that a parcel has been paid in full while Attorney continues to work on preparing the case for filing, then in that event the Tax Office shall pay Attorney the standard per parcel fee as set forth in Paragraph 6 (as reduced by Paragraph 9 and/or increased by Paragraph 10, if applicable), and all incurred expenses, copy charges, and the like, including but not limited to those set out in Paragraph 12, even though the case has not been filed.

4. The Attorney shall notify the Tax Collector, in writing, immediately upon the filing of a foreclosure complaint with the Office of the Clerk of Superior Court, the cost for filing and in-county service by the Guilford County Sheriff's Department to be advanced by Attorney. Attorney shall immediately invoice the County for reimbursement of these costs and County shall pay the same within thirty (30) days of invoice.

5. The Attorney shall bring the foreclosure to conclusion within two years after filing said foreclosure action with the Clerk of Court's office; however, if for some reason, the foreclosure action is not concluded within two years of filing, Attorney shall submit a written statement to the Tax Collector as to the reason why the action has not been concluded and shall diligently work to conclude the matter.

6. The Attorney shall be compensated in each foreclosure action in accordance with procedures set forth in the North Carolina General Statutes, Chapter 105 as ordered by a District or Superior Court Judge, or as agreed between the instant Taxpayer and Attorney. Attorney shall be guaranteed compensation for foreclosure on each parcel in the amount of One Thousand Eight Hundred Thirty and 00/100 Dollars (\$1,830.00) plus all incurred expenses, i.e., service fees,

copy charges, postage, publication costs, filing fees, and the like, including but not limited to those set out in Paragraph 12. Attorney shall be paid said compensation and incurred expenses upon redemption of the parcel from foreclosure or as part of the amount paid to purchase the property at sale. Notwithstanding any other provision in this Agreement, for any parcel for which the Attorney files for foreclosure on behalf of the County and on behalf of any municipal unit of government, or for which the Attorney ultimately represents the County and any municipal unit of government in a foreclosure initially filed on behalf of just one of those jurisdictions, including where the taxes of a municipality are placed in the hands of the County Tax Collector pursuant to NCGS Section 105-354, (hereinafter "joint representation"), the compensation guaranteed to Attorney shall be One Thousand Eight Hundred Thirty and 00/100 Dollars (\$1,830.00) plus all expenses, i.e., service fees, copy charges, postage, publication costs, filing fees, and the like, including but not limited to those set out in Paragraph 12, the total amount of which is to be divided equally between the County and each such municipality in which Attorney is also its Special Tax Attorney, and for those municipalities in which the County collects for the municipality pursuant to NCGS Section 105-354, as the interlocal agreement between the County and such municipality provides. If the Taxpayer applies to the District or Superior Court for determination of a reasonable attorney fee pursuant to the procedures set forth in the North Carolina General Statutes, Chapter 105, and the Court awards less than set forth herein per parcel, the County shall pay the balance of said compensation and incurred expenses within thirty (30) days of invoice.

County and Attorney agree that the attorney fee set out in this paragraph (as reduced by Paragraph 9 and/or increased by Paragraph 10, if applicable) plus all expenses, i.e., service fees, copy charges, postage, publication costs, filing fees, and the like, including but not limited to those set out in Paragraph 12, as totaled, shall be the "attorney fee" as contemplated by NCGS Section 105-374(i) and that Attorney shall not apply to the Court for an amount higher than this amount without the consent of the County.

7. The Attorney shall use its best efforts to be appointed the Commissioner in the Order of Foreclosure, and upon public sale of such property pursuant to the Order of Foreclosure as provided for in Chapter 105, the Attorney shall be entitled to a Commissioner's Fee, plus incurred expenses, in accordance with the schedule provided for in Chapter 105, as ordered by the District or Superior Court and approved by the Clerk of Superior Court. County and Attorney acknowledge and agree that in past years an effort has been made in the North Carolina General Assembly to revise G.S. Section 105-374(i) to disallow the payment of the Commissioner's Fee under certain circumstances. If this effort results in an enacted bill during the term of this Agreement, County and Attorney agree to make reasonable amendments to this Agreement so as to equitably account for such change. Nevertheless, to assist the County in collecting all taxes due without reduction by the amount of the Commissioner's Fee, the Attorney agrees that as Commissioner, it shall be paid only to the extent available after payment of all amounts so ordered in the Order of Foreclosure plus the expenses incurred by the Attorney to advertise and give proper notice of public sale of such property. To this end, these expenses shall be added to the amount of taxes, fees and costs as ordered in the Order of Foreclosure to determine the opening bid by the County for purchase of such property from local funds. For purposes of illustration, compare the examples below where a typical 5% commission would be appropriate in a foreclosure with \$2,500.00 of taxes, \$2,000.00 of attorney fees and costs and

\$500.00 of advertising/notice of public sale expenses (Total without Commissioner's Fee \$5,000):

Example #1 - County as High Bidder @ \$5,000

In this example, the County is paid in full for the taxes and interest which have accrued to the date the Order of Foreclosure is entered, the Attorney is paid in full for the attorney fees and costs incurred to the date of the Order of Foreclosure, the expenses incurred by the Attorney to advertise and give proper notice of public sale are paid, but no Commissioner's Fee is paid.

Example #2 - Other High Bidder @ \$5,100

In this example, all amounts outlined in Example #1 are paid, plus \$100.00 of the \$255.00 5% Commissioner's Fee is paid.

Example #3 - Other High Bidder @ \$5,500

In this example, all amounts outlined in Example #1 are paid, the \$275.00 5% Commissioner's Fee is paid, and \$225.00 is paid to the Clerk to hold as surplus from the sale.

The County Manager and County Attorney, and their designees, shall each have authority to make or authorize bids on behalf of the County in such amounts as they deem appropriate. However, should the County elect to open bidding in an amount less than all amounts so ordered in the Order of Foreclosure plus the expenses incurred by the Attorney to advertise and give proper notice of public sale of such property, the County shall pay the Attorney a fixed fee of one hundred fifty and 00/100 dollars (\$150.00) per upset bid filed in the Clerk's Office pursuant to NCGS Section 1-339.25 in all foreclosure sales and resales until such time as the bidding reaches the amount that would have been bid if the County had bid in the amount of all amounts so ordered in the Order of Foreclosure plus the expenses incurred by the Attorney to advertise and give proper notice of public sale of such property. The Attorney shall invoice the County for the total amount of all upset bid fees in connection with a sale or resale upon termination of the upset bid period for that sale or resale. Provided, however, in the case of joint representation, this fee shall not be doubled but shall be the total fee allowed per upset bid.

County and Attorney acknowledge that the Court appoints Attorney as Commissioner and that as Commissioner, Attorney must adhere to the directions of the Court and carry out its duties thereto and that Attorney's compliance with the orders of the Court and Attorney's duties to County as its Attorney do not create a conflict under the State's ethics provisions for lawyers, or if a conflict is created, County does hereby consent as it is fully informed and familiar with the process and understands where conflicts may occur, but nonetheless consents. County and Attorney also acknowledge that the attorney fee allowed under NCGS Section 105-374 and for which County agrees to guarantee to Attorney hereunder, covers the period of Attorney's services from the date suit is filed against a parcel through obtaining and serving the judgment authorizing its sale. County and Attorney further acknowledge that Attorney's services after the

judgment is served through the date the Final Account is approved and served, are compensated solely through any commission that is authorized by the Court and paid from funds available from the purchase price but only in those cases in which the parcel actually sells to a third party bidder and for an amount that exceeds the amount of the taxes, fees and other costs allowed under NCGS Section 105-374. To this end, County and Attorney agree that County will not “pull” a parcel from sale after the judgment authorizing the sale is entered unless there is reasonable concern that acquisition of ownership of the parcel (by County, a municipality, or a third-party bidder) would carry with it an unusual risk of liability (for example, due to environmental contamination) or County certifies in writing that all taxes, fees and costs allowed pursuant to NCGS Section 105-374 and this agreement, have been paid in full. If such reasonable concern does not exist or County does not so certify, then County may “pull” a parcel from sale after the judgment authorizing the sale is entered only if County 1) Pays Commissioner 5% of the highest bid received at the sale (including upset bids) at the time that County directs the Commissioner to “pull” the parcel from sale, or, if no bids have been received at the time that County directs the Commissioner to “pull” the parcel from sale, 2) County pays Commissioner the greater of 2.5% of the assessed value of the property or \$1,000.00, in addition to all other sums due Attorney under this Agreement. The purpose of this paragraph is to protect the Commissioner from being uncompensated for its services where a sale has been ordered by the Court.

8. If the Taxpayer files a petition in bankruptcy during the period any foreclosure action brought pursuant to this agreement is pending, the Tax Collector shall file, as part of its claim to the bankruptcy court, the fees, costs and expenses set forth herein, and shall pay Attorney the full amount of compensation and the incurred expenses to date within thirty (30) days of invoice. If the Taxpayer's petition is dismissed or a lift of the stay of bankruptcy court is obtained during the term of this agreement, Attorney agrees to proceed with the foreclosure and complete the remaining services due from it hereunder.

9. If the County assigns to the Attorney, in any one assignment, more than one parcel owned by the same Taxpayer or Taxpayer(s) and none other and encumbered by the same liens, the County's obligation to pay the compensation set forth in Paragraphs 6, 7 and 8 shall be based on the following per parcel charge: 2 to 5 parcels, the same amount as set forth above per parcel; 6 to 10 parcels, the same amount as set forth above less fifty (\$50.00) dollars per parcel, 11 or more parcels, the same amount as set forth above less one hundred (\$100.00) dollars per parcel, plus all costs and expenses. Provided, however, in the case of joint representation, such deductions shall not be doubled but shall be the total amount that the per parcel fee is reduced.

10. The Attorney shall not apply for fees over the amounts aforementioned except for unusual, novel, or difficult cases. County and Attorney acknowledge and agree that a major factor in such cases is a high number of parties as defendants or lienholders. To facilitate the efficient administration of this agreement as to such cases, without further review by the County and irrespective as to sole or joint representation of the County and its municipalities by Attorney, the following fee schedule shall apply according to the number of party defendants and lienholders involved:

16 - 20 .....	\$2,700
21 - 25 .....	\$3,450

26 - 30 .....	\$4,200
31 - 35 .....	\$4,950
36 - 40 .....	\$5,700
41 – Over .....	Upon agreement with County on a case-by-case basis

In the event of an unusual, novel, or difficult case, other than those based purely upon the number of the parties involved, the County shall provide reasonable additional compensation for the extra time necessitated by the unusualness, novelty, or difficulty or shall provide co-counsel. Attorney shall notify the Tax Office for approval before taking on extraordinary time and expense so as to make such application for additional fees necessary.

11. The County shall pay to the Attorney a fixed fee of Five Hundred Dollars and 00/100 (\$500.00) if a parcel is recalled before suit is filed or the standard per parcel fee as set forth in Paragraph 6 (as reduced by Paragraph 9 and/or increased by Paragraph 10, if applicable) if a parcel is recalled after suit is filed plus all incurred expenses, i.e., service fees, copy charges, postage, publication costs, filing fees, and the like, including but not limited to those set out in Paragraph 12, in the event of double listings, clerical, or other erroneous information provided by the Tax Collector to the Attorney, or legal, practical or administrative problems discovered by the Attorney which result in legal impracticality or impossibility to effect proper collection remedies through foreclosure.

12. Costs, expenses, and the like, to the extent that they are ascertainable as of the time this Agreement is executed, are as follows: a) copies at \$ .25 per copy for those made at Attorney’s office and as incurred by Attorney as to copies made elsewhere, *i.e.* register of deeds, clerk of court, *etc.*, with a minimum charge of \$.25 per copy, b) locator, obituary and genealogy tracing charges at the per item amount charged by the vendor providing the service, and if no per unit schedule is provided by the vendor, then at \$2.00 per inquiry made by Attorney, c) filing fees as set by statute, currently \$150 per suit, \$20 per notice filed, and \$15 per *alias & pluries* summons issued d) publication costs as incurred by Attorney according to the publishers= then current rate, e) service fees by certified and regular mail as set by the United States Postal Service, currently \$7.36 per envelope, plus digital mail service charge, f) service fees by North Carolina Sheriff as set by statute, currently \$30 per defendant/lienholder, and g) service fees by out of state service providers as set by that state’s statute.

13. To ensure that the proper amount of delinquent taxes, interest, fees and costs are collected, the Attorney and the Tax Collector shall verify with one another the amount due at the time when, and if, the Taxpayer satisfies the tax lien after the complaint is filed but prior to foreclosure.

14. All funds collected shall be paid to the Tax Collector and shall be paid in the form of cash, bank check or certified funds. County shall immediately inform Attorney of the receipt of any such funds and the parcel to which they pertain. Any part of any such funds that represent attorney fees, service fees, copy charges, postage, publication costs, filing fees, and the like, including but not limited to those set out in Paragraph 12, shall be remitted to Attorney as part of the next ensuing regular disbursement by the County Finance Office.

15. County is not required to utilize Attorney’s services on an exclusive basis and

retains the right to utilize its own or other retained attorneys to provide tax foreclosure services to the extent that it chooses. Until this Agreement is terminated or its term expires, County will not utilize any such other retained attorneys to provide tax foreclosure services unless the terms of their retention meet or exceed the material terms of this Agreement, including but not limited to pricing, capacity and expertise. If County retains such other attorney(s) while the assignment of new parcels to the Attorney under this Agreement continues, County shall not knowingly assign parcels to such other attorney(s) in assignments, which, as a whole, have more favorable collectability factors (such as fewer years delinquent, greater assessed value, and not listed in the name of heirs) than those being assigned to Attorney at that time.

16. Attorney's services hereunder are limited to the general prosecution of foreclosure actions to collect delinquent taxes assessed against real property located in the County, including title search services, document preparation, court appearances to obtain orders of foreclosure by default judgment, judgment on the pleadings, summary judgment, other trial court proceedings, appearances as Commissioner to sell property at public sale, and negotiation with Taxpayers in settlement of such actions. Attorney's services hereunder do not include preparation and court appearances for appeal and the County shall provide all such legal services.

Notwithstanding the forgoing, the County agrees to provide Attorney assistance or additional compensation as follows:

- a) In the event that written discovery is served on County, County will take the lead role in compiling responsive information and records in a form that attorney can use in responding to such discovery.
- b) In the event of unusual or extensive discovery, trial against a represented party, or trial expected to last more than one day, County shall provide Attorney with either co-counsel to assist with such matter or additional compensation at the rate of \$350/hour, at County's option.

17. This agreement shall be for the period beginning December 1<sup>st</sup>, 2024 and terminating on December 31, 2026. After the initial term set out above, this Agreement shall renew itself automatically for two-year terms, unless either party shall give written notice no less than 90 days prior to the end of the then current term. Upon renewal, there will be a six (6%) per cent increase on all attorney fees set out hereunder. The intent of this provision regarding increases in attorney fees is to allow a three per cent (3%) annual increase for each year of the contract, made upon each renewal of the term of the agreement.

18. **Termination.** Notwithstanding paragraph 17, either party shall have the right to terminate this Agreement upon thirty (30) days notice in writing to the other party.

19. **Winding Up.** In the event of the expiration or termination of this agreement, Attorney will handle to completion any previously-assigned parcel(s) which County requests Attorney to complete for the compensation and under the terms set by this agreement. For any previously-assigned parcel(s) which County does not request Attorney to complete following expiration or termination of this agreement, County's sole obligations will be to (a) reimburse Attorney its incurred expenses, i.e., service fees, copy charges, postage, publication costs, filing

fees, and the like, and (b) pay Attorney a fee of \$250/parcel for parcels on which action has not been filed or a fee of 60% of the normally applicable fee for parcels on which action has been filed.

20... **Price Only Contract/Appropriation.** The County is not financially committed by this Agreement to purchase any minimum amount of services. The financial exposure to the County under the provisions of this Agreement and the former agreements between County and Attorney, combined, is not expected to exceed \$500,000.00 in any fiscal year and in any event payment will be made only from budgeted funds in accordance with N.C.G.S. Chapter 159. Pursuant to N.C.G.S. 159-13(15), the County shall budget and appropriate sufficient funds to meet amounts reasonably expected to be paid during each fiscal year under this continuing contract. This provision shall not be construed as a reservation of right by the governing board to limit or not make such appropriation.

21. **Jurisdiction.** The Parties agree that this agreement is subject to the jurisdiction and laws of the State of North Carolina. Attorney will comply with bid restrictions, if any, and applicable laws, including N.C.G.S §143-129(j) regarding E-Verify. Any controversies arising out of this Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

COUNTY:

\_\_\_\_\_  
Jason Jones  
Assistant County Manager

ATTEST:

\_\_\_\_\_  
Robin B. Keller  
Guilford County Clerk to the Board

ATTORNEY:

\_\_\_\_\_  
President, Mark D. Bardill, P.C.

ATTEST:

\_\_\_\_\_  
Secretary



This contract does not create an obligation to purchase and, therefore, has not been preaudited.

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Donald P. Warn  
Guilford County Chief Financial Officer

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Guilford County Department Director

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