

RESOLUTION NO. R2011 - 06

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND ENTITLED A RESOLUTION PROVIDING FOR THE MODIFICATION OF CERTAIN TERMS AND PROVISIONS OF THE 2006 BOND IDENTIFIED HEREIN; APPROVING THE SUBSTANTIALLY FINAL FORM OF, AND AUTHORIZING THE COMPLETION, EXECUTION AND DELIVERY OF THE MODIFICATION AGREEMENT RELATING TO THE 2006 BOND REFERRED TO HEREIN; AUTHORIZING THE NEGOTIATION, EXECUTION AND DELIVERY OF THE ADDITIONAL DOCUMENTS AND SUCH INSTRUMENTS, SUPPORTING DOCUMENTS, CERTIFICATES AND AGREEMENTS AS ARE PROVIDED FOR HEREIN; ACKNOWLEDGING THE INTENTION OF THE CITY NOT TO ADVERSELY EFFECT THE TAX-EXEMPT STATUS OF THE 2006 BOND; AUTHORIZING CERTAIN OFFICIALS AND EMPLOYEES TO TAKE CERTAIN ACTIONS, MAKE CERTAIN DESIGNATIONS, ELECTIONS, DETERMINATIONS OR FILINGS (INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO THE TAX-EXEMPT STATUS OF THE 2006 BOND) AND TO CONSUMMATE AND CARRY OUT THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION AND THE MODIFICATION AGREEMENT; ACKNOWLEDGING AND AGREEING TO PAY THE EXPENSES PROVIDED FOR IN THE MODIFICATION AGREEMENT; ACKNOWLEDGING THE SECURITY FOR THE OBLIGATIONS, AS MODIFIED; PROVIDING THAT THE PROVISIONS OF THIS RESOLUTION SHALL BE BROADLY CONSTRUED; AND GENERALLY RELATING TO THE TRANSACTIONS CONTEMPLATED BY THE MODIFICATION AGREEMENT AND THIS RESOLUTION.

MAY 10 2011

RECITALS

1. Pursuant to the authority of Sections 31 through 37, inclusive, of Article 23A of the Annotated Code of Maryland, as replaced, supplemented or amended (the “Enabling Act”), Sections 81 and 82A of the Charter of the City of Cumberland, as published in Municipal Charters of Maryland, as replaced, supplemented or amended (the “Charter”), Ordinance No. 3562, passed by the Mayor and City Council (the “Mayor and City Council”) of Mayor and City Council of Cumberland (the “City”) on July 25, 2006 and effective on August 24, 2006, and a Resolution adopted by the Mayor and City Council on September 14, 2006 and effective on September 14, 2006, on September 27, 2006, the City issued and delivered its Public Improvements Bond of 2006, dated September 27, 2006, and issued in the original principal amount of \$4,500,000 (the “2006 Bond”).

2. The 2006 Bond was issued as a general obligation bond of the City and the full faith and credit and unlimited taxing power of the City are pledged to the payment of the 2006 Bond. The 2006 Bond was issued with the expectation that interest thereon would remain excludable from gross income of the holder thereof for purposes of federal income taxation.

3. SunTrust Bank (the “Bank”) is the current holder of the 2006 Bond.

4. The Bank is also the current holder of certain obligations of the City referred to in Resolution No. R2011-05 adopted by the Mayor and City Council on April 26, 2011 (“Resolution No. R2011-05”) as the 1999 Bond, the 2005 Bond, the 2007 Bond and the TAN. Resolution No. R2011-05 authorizes the City to enter into a modification agreement with the Bank with respect to certain contemplated modifications to the 2005 Bond and the 2007 Bond and, to the extent required by the Bank with respect to the modification agreement authorized by Resolution No. R2011-05, the 1999 Bond, the 2006 Bond and the TAN.

5. Pursuant to the authority of Resolution No. R2011-05, the City and the Bank executed and delivered a Modification Agreement dated as of April 1, 2011 and entered into as of April 29, 2011 (the "April Modification Agreement"). The April Modification Agreement does not provide for any modifications to the 2006 Bond.

6. The City wishes to pursue a current refunding of the 2006 Bond in connection with a contemplated refunding of other City obligations. The 2006 Bond provides by its terms that it is not subject to prepayment prior to September 1, 2016.

7. The City has requested that the Bank modify the prepayment terms of the 2006 Bond, and the Bank has agreed to do so on the terms and conditions of the Modification Agreement referred to herein.

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND:

SECTION 1. The Recitals hereto constitute an integral part of this Resolution and are incorporated herein by reference. Capitalized terms used in the Sections of this Resolution and not defined therein shall have the meanings given to such terms in the Recitals hereto.

SECTION 2. Pursuant to the authority of the Enabling Act and Sections 81 and 82A of the Charter, the Mayor and City Council hereby authorize and approve the entry by the City into the Modification Agreement with the Bank (the "Modification Agreement"), substantially in the form attached hereto as Exhibit A, in order to provide for the modification of the prepayment terms of the 2006 Bond. Each of the Mayor and the City Administrator, acting on his own, on behalf of the City, with the advice of the Comptroller and bond counsel to the City, is hereby authorized and empowered to execute and deliver the Modification Agreement, substantially in the form attached hereto as Exhibit A, with such changes, terms or conditions that are more beneficial to the City than those reflected in the attached Exhibit A and/or that are designed to

preserve the tax-exempt status of the 2006 Bond as either such official and/or the Comptroller is able to negotiate on behalf of the City and with such immaterial changes, insertions and additions and any appropriate corrections thereto as such official shall approve not inconsistent with the provisions of this Resolution, which approval shall be evidenced conclusively by the Mayor's or the City Administrator's execution and delivery of the Modification Agreement. The City agrees to abide by and perform the covenants and agreements set forth in the final Modification Agreement as though such covenants and agreements were set forth in full in this Resolution. The Mayor and City Council expressly acknowledge that the Modification Agreement provides for increases in the interest rate borne by the 2006 Bond to the extent provided for in the Modification Agreement.

SECTION 3. To the extent required by the Bank or recommended by counsel to the Bank or bond counsel to the City, the City shall enter into such allonges to the 2006 Bond and/or such other or additional agreements, documents, certificates or instruments as may be necessary or appropriate to reflect the terms of the Modification Agreement (collectively, the "Additional Documents"). Each of the Mayor and the City Administrator, acting on his own, on behalf of the City, with the advice of the Comptroller and bond counsel to the City, is each hereby authorized to negotiate, approve, execute and deliver any Additional Documents so required or recommended. The City agrees to abide by and perform the covenants and agreements set forth in any Additional Documents as though such covenants and agreements were set forth in full in this Resolution.

SECTION 4. It is the intention of the City that by entry into the Modification Agreement and/or any Additional Documents, that such actions will not adversely effect the exclusion of the interest payable on the 2006 Bond from the gross income of the Bank or any successor owner of the 2006 Bond for purposes of Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and the U.S. Treasury Regulations promulgated thereunder.

SECTION 5. (a) The Mayor, the City Administrator, the Treasurer, the Director of Administrative Services, the Comptroller, the City Clerk and/or all other appropriate officials and employees of the City, are hereby authorized and empowered to do any and all things necessary, execute, acknowledge and deliver or file such other and further instruments, supporting documents, certificates and agreements, including (without limitation) such certificates, agreements, tax forms or information returns as may be required by the Code and the U.S. Treasury Regulations promulgated thereunder, and otherwise take any and all action as the Mayor and/or the Treasurer may determine to be necessary, proper or expedient to consummate the transactions contemplated by this Resolution and the Modification Agreement, including (without limitation) in connection with any opinion of bond counsel to the City required to be delivered in accordance with the provisions of the Modification Agreement and/or any applicable designations, elections, determinations or filings relating to the tax-exempt status of the 2006 Bond, including (without limitation) designations, elections, determinations or filings under Sections 148, 149 or 265 of the Code, which approval, designations, elections, determinations or filings may be evidenced in any certificate, agreement or instrument executed and delivered pursuant to the applicable provisions of the Code and the U.S. Treasury Regulations promulgated thereunder in accordance with the provisions of this Resolution.

(b) To the extent bond counsel to the City, with the assistance of the financial advisor to the City, determines that the execution and delivery of the Modification Agreement and/or any of the Additional Documents causes a reissuance of the 2006 Bond for purposes of Section 1001 of the Code and the U.S. Treasury Regulations promulgated thereunder, or any applicable revenue rulings, notices or other guidance issued by the U.S. Treasury, the City hereby authorizes and empowers the Mayor and/or the Treasurer, on behalf of the City, to approve or

provide for the approval of the reissuance of the 2006 Bond and to make or provide for the making of any applicable designations, elections, determinations or filings in connection with such reissuance, including (without limitation) designations, elections, determinations or filings under Sections 148, 149 or 265 of the Code, which approval, designations, elections, determinations or filings may be evidenced in any certificate, agreement or instrument executed and delivered pursuant to the applicable provisions of the Code and the U.S. Treasury Regulations promulgated thereunder in accordance with the provisions of this Resolution.

SECTION 6. The City Clerk is hereby authorized to attest to the seal of the City imprinted or impressed on any agreements, documents, certificates or other instruments contemplated by this Resolution, including (without limitation) the Modification Agreement and any Additional Documents.

SECTION 7. The Mayor and City Council acknowledge and accept the obligation of the City to pay the expenses provided for in the Modification Agreement.

SECTION 8. To the extent not otherwise expressly provided for in this Resolution, the Mayor, the Treasurer, the City Administrator, the Director of Administrative Services, the Comptroller, the City Clerk and all other appropriate officials and employees of the City are expressly authorized, empowered and directed to take any and all action necessary to consummate and carry out the transactions contemplated by this Resolution, the Modification Agreement and, to the extent applicable, the Additional Documents, and to execute and deliver all documents, certificates and instruments necessary or appropriate in connection therewith.

SECTION 9. Upon the execution and delivery of the Modification Agreement, and from and after the effective date of the Modification Agreement, the 2006 Bond shall be modified and supplemented as provided therein, and the provisions of the Resolution identified in Recital 1 to this

Resolution pursuant to which the 2006 Bond was issued are deemed supplemented and modified to reflect the provisions of the Modification Agreement as finally executed and delivered in accordance with Section 2 of this Resolution.

SECTION 10. The Mayor and City Council hereby acknowledge that the full faith and credit and unlimited taxing power of the City are pledged to the payment of the 2006 Bond, as modified as provided in the Modification Agreement.

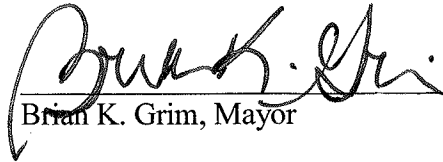
SECTION 11. The provisions of this Resolution shall be liberally and broadly construed in order to effectuate the modifications to the 2006 Bond provided for in the Modification Agreement and any other modifications authorized by this Resolution, and to preserve the tax-exempt status of the 2006 Bond, as so modified.

SECTION 12. This Resolution shall become effective immediately upon its adoption.

[SIGNATURES ON FOLLOWING PAGE]


MAYOR AND CITY COUNCIL OF
CUMBERLAND

(SEAL)



Brian K. Grim, Mayor

ATTEST:



Marjorie A. Eirich
City Clerk

Introduced: May 10, 2011

Adopted: **May 10** , 2011

Effective: **May 10** , 2011

#138346;10002.048

EXHIBIT A

MODIFICATION AGREEMENT

[See Attached]

MODIFICATION AGREEMENT
(2006 Bond)

THIS MODIFICATION AGREEMENT (this "Agreement") is dated and entered into as of May _____, 2011 (the "Modification Date") by and between MAYOR AND CITY COUNCIL OF CUMBERLAND, a body politic and corporate and a municipal corporation of the State of Maryland (the "City") and SUNTRUST BANK, a Georgia banking corporation (the "Bank").

RECITALS

A. The Bank is the purchaser and owner of the Mayor and City Council of Cumberland Public Improvements Bond of 2006, dated September 27, 2006 (the "Bond"). The outstanding principal balance of the Bond as of the Modification Date is \$3,885,000 and the current interest rate is 4.36% per annum. The Bond can be prepaid prior to maturity at any time on and after September 1, 2016, at an initial prepayment price of 101.0%, declining by 0.5% per annum to 100.0% on and after September 1, 2018, but it cannot be prepaid prior to September 1, 2016.

B. The City has requested that the Bank agree to modify the Bond to allow it to be prepaid at any time on or after the Modification Date, without premium or penalty, and the Bank is willing to agree to such request upon the terms and conditions hereinafter set forth.

AGREEMENTS

NOW THEREFORE, in consideration of the foregoing and of the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Bank hereby agree as follows:

Section 1. Redemption. Anything in the Bond to the contrary notwithstanding, the Bond can be redeemed in whole or in part at any time upon five (5) days prior written notice to the Bank, at a redemption price equal to the principal amount being redeemed, plus interest accrued to the redemption date, without premium or penalty. In addition, the City agrees that it will redeem the Bond within five (5) business days of the date of delivery of any bonds or other obligations issued to refund or otherwise refinance the Bond.

Section 2. Interest on the Bond.

(a) Through July 31, 2011, the Bond shall continue to bear interest at the rate of 4.36% per annum.

(b) From August 1, 2011 to June 30, 2012, the Bond shall bear interest at a rate equal to the prime rate of interest established and declared by the Bank (the "Prime Rate") as of July 31, 2011, plus 4.5% per annum.

(c) From July 1, 2012 to June 30, 2013, the Bond shall bear interest at a rate equal to the Prime Rate as of April 30, 2012 plus 4.5% per annum.

(d) For each fiscal year of the City thereafter, the Bond shall bear interest commencing on July 1 of such fiscal year at a rate equal to the Prime Rate as of April 30 of the preceding fiscal year plus 4.5% per annum.

(e) In addition, (i) (A) if any principal or interest on the Bond is not paid on or before the date on which such principal or interest is due as provided in this Agreement, and (B) the City does not make such payment within five (5) days after the date of written notice from the Bank to the City (which notice shall be sent by email, fax or overnight delivery to the City Administrator of the City) or (ii) upon the occurrence of any other Default (hereinafter defined), then, effective as of the due date of such non-payment or the date such other Default occurs, as applicable, the interest rate on the Bond shall be increased by 2.00% per annum until all payments not paid when due shall be due and payable or such other Default is cured, as applicable.

Section 3. Opinion of Bond Counsel. It is a condition precedent to the effectiveness of this Agreement that the Bank shall have received an opinion of Bond Counsel to the City, addressed to the Bank and the City, to the effect that this Agreement (a) has been duly and properly authorized by the City, (b) will, upon the execution and delivery thereof, be valid and binding upon the City in accordance with its terms, (c) will not adversely affect the exclusion of the interest payable on the Bond from the gross income of the Bank or any successor owner of the Bond for purposes of federal income taxation pursuant to Section 103 of the Internal Revenue Code of 1986 and the regulations thereunder (the "Code"), and (d) will not cause the Bond to cease to be a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code.

Section 4. Income and Expense Report. Within ten (10) days after the end of each month, commencing with the month ending May 31, 2011, the City shall deliver to the Bank a report as to its income and expenses, including without limitation, a report as to its accounts payable, which report shall contain such detail as the Bank may require. The form of such report shall also be acceptable to the Bank in its reasonable discretion.

Section 5. FY2012 Budget. The City shall deliver to the Bank a copy of its final Budget for Fiscal Year 2012 (the "FY2012 Budget") within five (5) days after its adoption.

Section 6. Refunding Bond Sale. The City shall also deliver to the Bank:

(a) On or before the tenth (10th) day of each month, commencing with the month beginning June 1, 2011, a report as to the actions undertaken by the City in connection with the issuance and sale of bonds to refund the Bond (the "Refunding Bonds") during the preceding month and the proposed schedule of activities for the then-current month and thereafter in connection with the issuance and sale of the Refunding Bonds;

(b) Copies of all resolutions and ordinances prepared in connection with the issuance of Refunding Bonds, concurrently with the introduction of any such legislation; and

(c) Copies of all drafts of preliminary official statements, all other disclosure materials and all materials furnished by the City to any rating agency or to EMMA.

Section 7. Inter-Fund Borrowing.

(a) The City shall deliver to the Bank a report, on or before the tenth (10th) day of each month, commencing with the month beginning June 1, 2011, a report as to the actions undertaken by the City during the preceding month in connection with the amendment of its charter to permit inter-fund borrowing and the proposed schedule of activities during the then-current month and thereafter in connection with such charter amendment. The City shall also notify the Bank promptly when such charter amendment becomes effective.

(b) The City shall also deliver to the Bank a report as to its proposed utilization of any such inter-fund borrowing on or before the tenth (10th) day of each month, commencing with the month beginning June 1, 2011.

Section 8. Unpaid Taxes. On or before the tenth (10th) day of each month, commencing with the month beginning June 1, 2011, the City shall report to the Bank its progress in revising the authorization and procedures for tax lien sales, including requesting Allegany County to shorten the time period between the establishment of a tax lien and its sale commencing with fiscal year 2012 and/or notifying Allegany County of the City's intent to conduct its own sale of unpaid tax liens in fiscal year 2012 and thereafter.

Section 9. Reissuance of the Bond.

(a) Bond Counsel to the City has advised that the modification to the Bond provided for in this Agreement will result in a reissuance of the Bond for purposes of Section 1001 of the Code. Accordingly, the Bond is deemed to be currently refunded on the Modification Date.

(b) The Bank hereby represents and certifies that the Bank is deemed to purchase the Bond, as modified, as of the Modification Date for its own account and not with a view to resale or other distribution, for a purchase price of \$3,885,000, which is the outstanding par amount of the Bond as unmodified.

Section 10. Acknowledgements, Representations and Warranties. In order to induce the Bank to enter into this Agreement, the City hereby acknowledges, represents, warrants and agrees as follows:

(a) The unpaid balance of the Bond as of the Modification Date set forth in the Recitals are true and correct.

(b) The City is a body politic and corporate and a municipal corporation of the State of Maryland.

(c) The City has full power and authority to enter into this Agreement and to incur and perform all obligations and covenants contained herein, all of which have been duly

authorized by all proper and necessary action of the City. No consent or approval of other creditors of the City, or any other person, and no consent, approval, filing or registration with or notice to any governmental authority, is required as a condition to the validity of this Agreement or the performance of any of the City's obligations hereunder.

(d) All understandings, representations, warranties and recitals contained or expressed in this Agreement are true, accurate, complete and correct in all respects; and, no such understanding, representation, warranty or recital fails or omits to state or otherwise disclose any material fact or information necessary to prevent such understanding, representation, warranty or recital from being misleading. The City acknowledge and agree that the Bank has been induced in part to enter into this Agreement based upon the Bank's justifiable reliance on the truth, accuracy, and completeness of all understandings, representations, warranties and recitals contained in this Agreement. There is no fact known to the City or which should be known to the City which the City have not disclosed to the Bank in writing on or prior to the date of this Agreement which would or could materially and adversely affect the understandings of the Bank expressed in this Agreement or any representation, warranty or recital contained in this Agreement.

(e) The Bond continues in full force and effect notwithstanding the execution and delivery of this Agreement. The City hereby ratifies and confirms the enforceability and validity of the Bond and agrees that the Bond constitutes a legal, valid and binding general obligation of the City, enforceable in accordance with its terms. In addition, the City acknowledges and agrees that neither the execution and delivery of this Agreement nor any of the terms, provisions, covenants or agreements contained in this Agreement shall in any manner release, impair, lessen, modify, waive or otherwise affect the liability and obligations of the City under the terms of the Bond, except to the extent expressly provided in this Agreement.

(f) The Bank has acted in good faith and has conducted itself in a commercially reasonable manner in its relationships with the City in connection with this Agreement and in connection with the Bond, the City hereby waiving and releasing any claims to the contrary. The City has no defenses, affirmative or otherwise, rights of setoff, rights of recoupment, claims, counterclaims, actions or causes of action of any kind or nature whatsoever against the Bank or any past, present or future agent, attorney, legal representative, predecessor in interest, affiliate, successor, assign, employee, director or officer of the Bank (collectively, the "Bank Group"), directly or indirectly, arising out of, based upon, or in any manner connected with, any transaction, event, circumstance, action, failure to act, or occurrence of any sort or type, whether known or unknown, which occurred, existed, was taken, permitted, or begun prior to the execution of this Agreement and occurred, existed, was taken, permitted or begun in accordance with, pursuant to, or by virtue of the Bond or any of the terms or conditions thereof or which directly or indirectly relate to or arise out of or in any manner are connected with the Bond; to the extent any such defenses, affirmative or otherwise, rights of setoff, rights of recoupment, claims, counterclaims, actions or causes of action exist or existed, such defenses, rights, claims, counterclaims, actions and causes of action are hereby forever waived, discharged and released. The City hereby acknowledges and agrees that the execution of this Agreement by the Bank shall not constitute an acknowledgment of or admission by the Bank or any member of the Bank Group of the existence of any claims or of liability for any matter or precedent upon which any

claim or liability may be asserted. The City further acknowledges and agrees that, to the extent any such claims may exist, they are of a speculative nature so as to be incapable of objective valuation and that, in any event, the value to the City of the covenants and obligations of the Bank contained in this Agreement and the other documents executed and delivered in connection with this Agreement substantially and materially exceeds any and all value of any kind or nature whatsoever of any such claims. The City further acknowledges and agrees that the Bank is not in any way responsible or liable for the previous, current or future condition or deterioration of the financial condition of the City and that the Bank has not breached any agreement or commitment to loan money or otherwise make financial accommodations available to the City or to fund any operations of the City at any time.

(g) THE CITY HEREBY ACKNOWLEDGES THAT IT HAS FREELY AND VOLUNTARILY ENTERED INTO THIS AGREEMENT AFTER AN ADEQUATE OPPORTUNITY AND SUFFICIENT PERIOD OF TIME TO REVIEW, ANALYZE AND DISCUSS (I) ALL TERMS AND CONDITIONS OF THIS AGREEMENT AND (II) ALL FACTUAL AND LEGAL MATTERS RELEVANT TO THIS AGREEMENT, WITH COUNSEL FREELY AND INDEPENDENTLY SELECTED BY THE CITY. THE CITY FURTHER ACKNOWLEDGES AND AGREES THAT IT HAS ACTIVELY AND WITH FULL UNDERSTANDING PARTICIPATED IN THE NEGOTIATION OF THIS AGREEMENT AFTER CONSULTATION AND REVIEW WITH ITS COUNSEL, THAT ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT HAVE BEEN NEGOTIATED AT ARM'S-LENGTH, AND THAT THIS AGREEMENT HAS BEEN NEGOTIATED, PREPARED AND EXECUTED WITHOUT FRAUD, DURESS, UNDUE INFLUENCE, OR COERCION OF ANY KIND OR NATURE WHATSOEVER HAVING BEEN EXERTED BY OR IMPOSED UPON ANY PARTY TO THIS AGREEMENT UPON ANY OTHER PARTY. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED AGAINST OR INTERPRETED TO THE DISADVANTAGE OF ANY PARTY TO THIS AGREEMENT BY ANY COURT OR OTHER GOVERNMENTAL OR JUDICIAL AUTHORITY BY REASON OF SUCH PARTY HAVING OR BEING DEEMED TO HAVE STRUCTURED, DICTATED OR DRAFTED SUCH PROVISION.

(h) There is no constitutional provision, statute, regulation, rule, order or judgment, no charter, by-law, or preference stock provision of the City, and no provision of any mortgage, indenture, contract or other agreement binding on the City or any of its properties, which would prohibit or cause a default under or in any way prevent the execution, delivery, performance, compliance or observance of any of the terms and conditions of this Agreement and/or any of the other documents executed and delivered in connection with this Agreement.

Section 11. Releases and Waivers. (a) To the extent permitted by applicable law and subject to applicable public policy as determined by a court of competent jurisdiction, the City hereby knowingly and voluntarily forever releases, acquits and discharges the Bank and the Bank Group, from and of any and all claims, damages, losses, costs, expenses, compensation, causes of actions, counterclaims, suits, judgments, obligations, liabilities, indebtedness, debts, affirmative and other defenses, setoffs, and demands of any kind or nature whatsoever, in law, in equity or otherwise, whether presently known or unknown, which the City may have had, now has, or which it can, shall or may have for, upon, or by reason of any matter, course or thing

whatsoever relating to, arising out of, based upon, or in any manner connected with, directly or indirectly, any transaction, contracts, controversies, promises, duties, event, circumstance, action, failure to act, or occurrence of any sort or type, whether known or unknown, which occurred, existed, was taken, permitted, begun, or otherwise related or connected to or with (i) the Bond or this Agreement, (ii) the Bank's acts, statements, conduct, representations and omissions made in connection therewith, including, without limitation, the terms and conditions of this Agreement, or (iii) any fact, matter, transaction or event relating thereto, whether known or unknown, suspected or unsuspected, whether presently enforceable or enforceable in the future, that could, might or may be claimed to exist, whether liquidated or unliquidated, each as though fully set forth herein at length.

(b) Without implying any limitation on the foregoing, the City hereby agrees that from and after the Modification Date, it will not assert to any person or entity that any deterioration of the business operations or financial condition of the City was caused by any breach of contract or wrongful act of the Bank or any of the Bank Group including, without limitation, any act to loan money or make other financial accommodations available to the City or to fund any operations of the City at any time. The City hereby, knowingly and voluntarily, forever releases, acquits and discharges the Bank and the Bank Group from and of any and all claims that the Bank or any of the Bank Group is in any way responsible for the past, current or future condition or deterioration of the business operations and/or financial condition of the City, and from and of any and all claims that the Bank or any of the Bank Group breached any agreement.

(c) To the extent permitted by applicable law and subject to applicable public policy as determined by a court of competent jurisdiction, the City hereby waives the provisions of any applicable laws restricting the release of claims that the City does not know or suspect to exist at the time of release, which, if known, would have materially affected the decision to agree to these releases. In this connection, the City hereby agrees, represents and warrants to the Bank that it realizes and acknowledges that factual matters now unknown may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses, expenses and/or other rights, claims or amounts which are presently unknown, unanticipated and unsuspected, and the City further agrees, represents and warrants that the releases provided herein have been negotiated and agreed upon in light of that realization and the City nevertheless hereby intends to release, discharge and acquit the parties set forth hereinabove from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses, expenses and/or other rights, claims or amounts that are in any manner set forth in or related to the Bond, this Agreement and all dealings in connection therewith.

Section 12. Default. The occurrence of any or more of the following events or occurrences shall constitute a default under this Agreement (a "Default"):

(a) The failure of the City to observe, perform, or comply with any of the terms, conditions or provisions of this Agreement, of the Modification Agreement dated as of April 1, 2011 entered into as of April 29, 2011 between the City and the Bank (the "Other Modification Agreement") and/or any other document executed and delivered in connection with this Agreement or the Other Modification Agreement, as and when required.

(b) If any recital, representation or warranty made herein, in any document executed and delivered in connection herewith, or in any report, certificate, financial statement or other instrument or document previously, now or hereafter furnished by or on behalf of the City in connection with this Agreement or any other document executed and delivered in connection with this Agreement, shall prove to have been false, incomplete or misleading in any respect on the date as of which it was made.

(c) The occurrence of a default under the Bond other than the specific defaults described in any notice of default.

(d) If the City commences, institutes or otherwise intervenes in any proceeding or action against the Bank or any member of the Bank Group in connection with any of the Bond, this Agreement, or the Other Modification Agreement, or any of the documents executed and delivered in connection with this Agreement.

Section 13. Waiver of Jury Trial. THE CITY AND THE BANK EACH HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH THE CITY AND THE BANK MAY BE PARTIES, ARISING OUT OF OR IN ANY WAY PERTAINING TO (A) THIS AGREEMENT, (B) ANY OF THE DOCUMENTS EXECUTED AND DELIVERED IN CONNECTION WITH THIS AGREEMENT, AND (C) THE BOND. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT.

THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE CITY AND THE BANK, AND THE CITY AND THE BANK EACH HEREBY REPRESENT AND WARRANT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THE CITY FURTHER REPRESENTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

Section 14. Expenses. The City shall pay, within ten (10) days after the receipt of a statement therefore, all out-of-pocket fees, commissions, costs, charges, taxes and other expenses incurred by the Bank and its counsel in connection with this Agreement, including, but not limited to, reasonable fees and expenses of the Bank's counsel.

Section 15. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the City and its successors and assigns, and the Bank and its successors and assigns.

Section 16. Execution of Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the

EXHIBIT A

same instrument. Each party to this Agreement agrees that the respective signatures of the parties may be delivered by fax, “.pdf”, or other electronic means acceptable to the Bank and that the parties may rely on a signature so delivered as an original. Any party who chooses to deliver its signature in such manner agrees to provide promptly to the other parties a copy of this Agreement with its inked signature, but the party’s failure to deliver a copy of this Agreement with its inked signature shall not affect the validity, enforceability and binding effect of this Agreement.

Section 17. Applicable Law. This Agreement, having been executed, sealed and delivered in the State of Maryland, shall be interpreted and construed in accordance with and governed by the laws of the State of Maryland.

Section 18. Effective Date; Termination. This Agreement shall become effective when at least one counterpart hereof has been executed by each party, and it shall be and remain in full force and effect until the Bond and all of the City’s other payment obligations hereunder have been paid in full.

[SIGNATURES ON THE FOLLOWING PAGE]

EXHIBIT A

IN WITNESS WHEREOF, the City and the Bank have each caused this Modification Agreement to be executed under seal as of the day and year first above written.

[SEAL]

ATTEST:

MAYOR AND CITY COUNCIL OF
CUMBERLAND, as City

Marjorie A. Eirich, City Clerk

By: _____
Brian K. Grim, Mayor

WITNESS OR ATTEST:

SUNTRUST BANK, as Bank

By: _____
Laurie S. Lee,
Senior Vice President