

**FORSYTH COUNTY
BOARD OF COMMISSIONERS**

MEETING DATE: September 26, 2019 AGENDA ITEM NUMBER: 9

SUBJECT:

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT FINANCING AGREEMENT, A DEED OF TRUST AND RELATED DOCUMENTS IN CONNECTION WITH THE INTERIM FINANCING OF A NEW COURTHOUSE FACILITY FOR THE COUNTY OF FORSYTH, NORTH CAROLINA

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:

SUMMARY OF INFORMATION:

ATTACHMENTS: YES NO

SIGNATURE: _____ COUNTY MANAGER DATE: _____

**RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN
INSTALLMENT FINANCING AGREEMENT, A DEED OF TRUST AND RELATED
DOCUMENTS IN CONNECTION WITH THE INTERIM FINANCING OF A NEW
COURTHOUSE FACILITY FOR THE COUNTY OF FORSYTH, NORTH CAROLINA**

BE IT RESOLVED by the Board of Commissioners (the "Board") for the County of Forsyth, North Carolina (the "County") as follows:

Section 1. The Board does hereby find and determine as follows:

(a) There exists in the County a need to finance the cost of acquiring, constructing and equipping a new 250,000 square foot courthouse facility to be situated adjacent to the existing Forsyth County Government Center and Forsyth County Law Enforcement Detention Center, including, without limitation, the construction of an underground tunnel to the existing Forsyth County Detention Center and a secure staff corridor connection to the adjacent Forsyth County Government Center (the "Project").

(b) After a public hearing and due consideration, the Board has determined that the most efficient manner of providing interim financing for the Project will be through entering into an Installment Financing Agreement, to be dated as of the date of delivery thereof (the "Agreement"), with PNC Bank National Association (the "Bank") pursuant Section 160A-20 of the General Statutes of North Carolina, as amended. Pursuant to the Agreement, the Bank will advance moneys to the County from time to time in amounts sufficient, together with other available funds, to pay the costs of the Project and related financing costs, and the County will repay the advancement in installments, with interest (the "Installment Payments").

(c) In order to secure its obligations under the Agreement, the County will execute and deliver a deed of trust (the "Deed of Trust") granting a lien on all or a portion of the site of the Project, together with all improvements and fixtures located or to be located thereon.

(d) There has been presented to the Board at this meeting proposed forms of the Agreement and the Deed of Trust.

Section 2. In order to provide for the financing of the Project, the County is hereby authorized to enter into the Agreement and receive advancements from time to time pursuant thereto in an aggregate principal amount not to exceed \$70,000,000. The County shall repay the advancement in the amounts and at the times set forth in the Agreement. The payments of the installment payments shall be designated as principal and interest as provided in the Agreement. The interest rate payable under the Agreement shall be a variable rate and shall be calculated as provided in the Agreement.

Section 3. The Board hereby approves the Agreement and the Deed of Trust in substantially the forms presented at this meeting. The Chair, the Vice Chair, the County

Manager and the Chief Financial Officer of the County are each hereby authorized to execute and deliver on behalf of the County said documents in substantially the forms presented at this meeting, containing such modifications as the person executing such documents shall approve, such execution to be conclusive evidence of approval by the Board of any such changes. The Clerk to the Board or any deputy or assistant Clerk to the Board for the County is hereby authorized and directed to affix the official seal of the County to said documents and to attest the same.

Section 4. No deficiency judgment may be rendered against the County in any action for breach of any contractual obligation authorized pursuant to this resolution and the taxing power of the County is not and may not be pledged directly or indirectly to secure any moneys due under any contract herein authorized.

Section 5. The Chair, the Vice Chair, the County Manager, the Chief Financial Officer and the Clerk to the Board for the County, and any other officers, agents and employees of the County, are hereby authorized and directed to execute and deliver such closing certificates, opinions, agreements and other items of evidence as shall be deemed necessary to consummate the transactions described above.

Section 6. This resolution shall take effect immediately upon its adoption.

Adopted this 26th day of September 2019.

The Board of Commissioners for the County of Forsyth, North Carolina met in a regular meeting in the Commissioners' Meeting Room on the fifth floor of the Forsyth County Government Center located at 201 N. Chestnut Street in Winston-Salem, North Carolina, the regular place of meeting, at 2:00 p.m. on September 26, 2019.

Present: Chair David R. Plyler, presiding, and Commissioners

Absent: Commissioners

Also Present: _____

* * * * *

_____ introduced the following resolution the title of which was read and a copy of which had been distributed to each Commissioner:

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT FINANCING AGREEMENT, A DEED OF TRUST AND RELATED DOCUMENTS IN CONNECTION WITH THE INTERIM FINANCING OF A NEW COURTHOUSE FACILITY FOR THE COUNTY OF FORSYTH, NORTH CAROLINA

BE IT RESOLVED by the Board of Commissioners (the "Board") for the County of Forsyth, North Carolina (the "County") as follows:

Section 1. The Board does hereby find and determine as follows:

(a) There exists in the County a need to finance the cost of acquiring, constructing and equipping a new 250,000 square foot courthouse facility to be situated adjacent to the existing Forsyth County Government Center and Forsyth County Law Enforcement Detention Center, including, without limitation, the construction of an underground tunnel to the existing Forsyth County Detention Center and a secure staff corridor connection to the adjacent Forsyth County Government Center (the "Project").

(b) After a public hearing and due consideration, the Board has determined that the most efficient manner of providing interim financing for the Project will be through entering into an Installment Financing Agreement, to be dated as of the date of delivery thereof (the "Agreement"), with PNC Bank National Association (the "Bank") pursuant Section 160A-20 of

the General Statutes of North Carolina, as amended. Pursuant to the Agreement, the Bank will advance moneys to the County from time to time in amounts sufficient, together with other available funds, to pay the costs of the Project and related financing costs, and the County will repay the advancement in installments, with interest (the "Installment Payments").

(c) In order to secure its obligations under the Agreement, the County will execute and deliver a deed of trust (the "Deed of Trust") granting a lien on all or a portion of the site of the Project, together with all improvements and fixtures located or to be located thereon.

(d) There has been presented to the Board at this meeting proposed forms of the Agreement and the Deed of Trust.

Section 2. In order to provide for the financing of the Project, the County is hereby authorized to enter into the Agreement and receive advancements from time to time pursuant thereto in an aggregate principal amount not to exceed \$70,000,000. The County shall repay the advancement in the amounts and at the times set forth in the Agreement. The payments of the installment payments shall be designated as principal and interest as provided in the Agreement. The interest rate payable under the Agreement shall be a variable rate and shall be calculated as provided in the Agreement.

Section 3. The Board hereby approves the Agreement and the Deed of Trust in substantially the forms presented at this meeting. The Chair, the Vice Chair, the County Manager and the Chief Financial Officer of the County are each hereby authorized to execute and deliver on behalf of the County said documents in substantially the forms presented at this meeting, containing such modifications as the person executing such documents shall approve, such execution to be conclusive evidence of approval by the Board of any such changes. The Clerk to the Board or any deputy or assistant Clerk to the Board for the County is hereby authorized and directed to affix the official seal of the County to said documents and to attest the same.

Section 4. No deficiency judgment may be rendered against the County in any action for breach of any contractual obligation authorized pursuant to this resolution and the taxing power of the County is not and may not be pledged directly or indirectly to secure any moneys due under any contract herein authorized.

Section 5. The Chair, the Vice Chair, the County Manager, the Chief Financial Officer and the Clerk to the Board for the County, and any other officers, agents and employees of the County, are hereby authorized and directed to execute and deliver such closing certificates, opinions, agreements and other items of evidence as shall be deemed necessary to consummate the transactions described above.

Section 6. This resolution shall take effect immediately upon its adoption.

Upon motion of Commissioner _____, seconded by Commissioner _____, the foregoing resolution entitled "RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT FINANCING AGREEMENT, A DEED OF TRUST AND RELATED DOCUMENTS IN CONNECTION WITH THE INTERIM FINANCING OF A NEW COURTHOUSE FACILITY FOR THE COUNTY OF FORSYTH, NORTH CAROLINA" was adopted by the following vote:

Ayes: _____

Noes: _____

* * * * *

I, Ashleigh M. Sloop, Clerk to the Board of Commissioners for the County of Forsyth, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of said Board of Commissioners for said County at a regular meeting held on September 26, 2019, as it relates in any way to the adoption of the foregoing resolution relating to an installment financing agreement by said County and that said proceedings are to be recorded in the minutes of said Board of Commissioners.

I DO HEREBY FURTHER CERTIFY that proper notice of such regular meeting was given as required by North Carolina law.

WITNESS my hand and official seal of said County this 26th day of September, 2019.

Clerk to the Board of Commissioners

[SEAL]

Prepared by and return to:

Paul H. Billow
Attorney at Law
Womble Bond Dickinson (US) LLP
555 Fayetteville Street, Suite 1100
Raleigh, North Carolina 27601

DEED OF TRUST

NORTH CAROLINA
FORSYTH COUNTY

This DEED OF TRUST, dated as of October __, 2019 (the “Deed of Trust”), from the COUNTY OF FORSYTH, NORTH CAROLINA, a body politic and corporate and political subdivision duly organized and validly existing under the Constitution and laws of the State of North Carolina (the “County”), to CB SERVICES CORP., as trustee (the “Deed of Trust Trustee”), for the benefit of PNC BANK, NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America, and its successors and assigns hereinafter mentioned (the “Beneficiary”);

WITNESSETH:

WHEREAS, the County has entered into an Installment Financing Agreement, of even date herewith (the “Agreement”), with the Beneficiary, whereby the Beneficiary has agreed to advance moneys to the County for the purpose of providing funds, together with other available funds, to pay or reimburse the costs of the Project and the Closing Costs (both as defined in the Agreement), and the County has agreed to repay the moneys advanced to the County in installments due at the times and in the amounts set forth in the Agreement (the “Installment Payments”) and to pay certain additional payments as more fully provided therein;

WHEREAS, pursuant to the Agreement, on the date hereof, the Beneficiary has made an Initial Advance (as defined in the Agreement) and, from time to time hereafter, shall make Additional Advances (as defined in the Agreement) upon the request of the County;

COLLATERAL IS OR INCLUDES FIXTURES

WHEREAS, pursuant to the Agreement, the County is delivering this Deed of Trust to secure the repayment by the County to the Beneficiary of the moneys advanced and all other sums payable under the Agreement and to secure the other obligations of the County under the Agreement;

WHEREAS, the County has agreed to pay to the Beneficiary the sum of the moneys advanced, as evidenced by, and payable as provided in, the Agreement, with interest payable at the times and rate specified therein;

WHEREAS, the County desires to secure (a) the payment of the Installment Payments due under the Agreement, (b) the payment by the County of all additional payments required to be paid by the County under the Agreement and the performance by the County of all of the additional covenants of the County set forth in the Agreement and (c) the performance of the covenants and agreements contained in this Deed of Trust, and any amendments and supplements thereto; and

WHEREAS, the County desires to execute and deliver this Deed of Trust as security for the payment of the amounts described above and the performance of the covenants described above;

NOW, THEREFORE, the County, subject to Permitted Encumbrances (as defined in the Agreement), as security for the Installment Payments and other payments to be made by the County under the Agreement and for the performance by the County of all of its obligations under the Agreement and this Deed of Trust, and in further consideration of the sum of \$1.00 paid to the County by the Deed of Trust Trustee, receipt and sufficiency of which are hereby acknowledged, has given, granted, bargained and sold, and by these presents does give, grant, bargain, sell and convey unto the Deed of Trust Trustee, its successors and assigns, in trust, with power of sale, the real property lying and being in Forsyth County in the State of North Carolina, constituting so much thereof as constitutes real property or fixtures, and more particularly described as set forth in Exhibit A attached hereto and made a part hereof; TOGETHER with all buildings, improvements and fixtures of every kind and description now or hereafter erected or located thereon, all rights, appurtenances, easements, privileges, remainders and reversions appertaining thereto and all materials intended for construction, reconstruction, alteration and repair of such buildings and improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises hereby conveyed immediately upon the delivery thereof to the aforesaid real property, and all apparatus, equipment, fixtures and articles of personal property now or hereafter attached thereto as fixtures, and replacements thereof, including, but not limited to, all heating, refrigerating, air conditioning, gas, plumbing and electric apparatus and equipment, all boilers, engines, motors, power equipment, piping and plumbing fixtures, pumps, tanks, lighting equipment and systems, fire prevention and sprinkling equipment and systems, and other things now or hereafter thereon or therein, including all interests of any owner thereof in any of such items, and all renewals or replacements thereof or articles in substitution thereof; TOGETHER with all rents, issues, profits and revenues of the aforesaid real property, fixtures and other property and all of the right, title and interest of the County in and to any and all leases and contracts now or hereafter affecting the real property, fixtures and other property covered hereby or any part thereof; TOGETHER with all proceeds of any of the foregoing real property and fixtures including, without limitation, proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims,

including, without limitation, all awards and other payments as a result of or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain by any governmental authority ("Eminent Domain"), all insurance proceeds and claims therefor as a result of damage to or destruction of all or any part of any of the foregoing, and all proceeds of title insurance with respect to all or any part of any of the foregoing (the real property, fixtures and proceeds granted to the Deed of Trust Trustee pursuant to the foregoing provisions hereof being collectively referred to as the "Mortgaged Property");

TO HAVE AND TO HOLD the Mortgaged Property, with all the rights, privileges and appurtenances thereunto belonging or appertaining to the Deed of Trust Trustee, its heirs, successors and assigns, in fee simple forever, upon the trusts and for the uses and purposes hereinafter set out;

AND THE COUNTY COVENANTS to and with the Deed of Trust Trustee and the Beneficiary that the County is seized of the Mortgaged Property in fee, that the County has the right to convey the Mortgaged Property in fee simple, that the Mortgaged Property is free and clear from all encumbrances and restrictions not specifically mentioned in Exhibit B attached hereto and made a part hereof, and that the County does hereby forever warrant and will forever defend the title to the Mortgaged Property (except for those matters set forth in Exhibit B) against the claims of all persons whatsoever; provided, however, that

THIS CONVEYANCE IS MADE UPON THIS SPECIAL TRUST, that if the County shall make all of the payments required under the Agreement secured hereby in accordance with its terms, together with interest thereon and all taxes, charges, assessments and any premiums for insurance hereby secured, and, further, shall comply with all the covenants, terms and conditions of this Deed of Trust and the Agreement and any amendments and supplements thereto, then this conveyance shall be null and void and may be canceled of record at the request and at the cost of the County.

THE COUNTY FURTHER COVENANTS, REPRESENTS AND AGREES AS FOLLOWS:

Section 1. Amount Secured; Maintenance and Modification of Property by County. This Deed of Trust secures all present and future obligations owing by the County under the Agreement. The amount of the present obligations secured hereby is \$ _____ and the maximum principal amount of the obligations which may be secured hereby at any one time is \$70,000,000. The time period within which such future obligations may be incurred is the period between the date hereof and the date thirty (30) years from the date hereof.

The Deed of Trust Trustee shall not be under any obligation to operate, maintain or repair the Mortgaged Property. The County agrees that it will at its own expense (a) keep the Mortgaged Property in as reasonably safe condition as its operations shall permit, (b) keep the Mortgaged Property in good repair and in good operating condition, (c) comply with all applicable governmental requirements imposed upon the Mortgaged Property or in connection with its use and (d) make from time to time all necessary repairs thereto and renewals and replacements thereof.

Subject to the provisions of the Agreement, the County may also, at its own expense, make from time to time any additions, modifications or improvements to the real property covered hereby that it may deem desirable and that do not materially impair the effective use, nor materially decrease the value, of the Mortgaged Property. All such additions, modifications and improvements so made by the County within the boundaries of the Mortgaged Property shall become a part of the Mortgaged Property. The County will do, or cause to be done, all such things as may be required by law in order fully to protect the security and all rights of the Beneficiary under this Deed of Trust. The County shall not cause or permit the lien of this Deed of Trust to be impaired in any way.

Section 2. Grant and Release of Easements; Release of Property. If no Event of Default under this Deed of Trust shall have occurred and shall continue to exist, the County may at any time or times grant easements, licenses, rights of way and other rights or privileges in the nature of easements with respect to any part of the Mortgaged Property, and the County may release existing interests, easements, licenses, rights of way and other rights or privileges with or without consideration, and the Beneficiary agrees that it shall execute and deliver and will cause, request or direct the Deed of Trust Trustee to execute and deliver any instrument necessary or appropriate to grant or release any such interest, easement, license, right of way or other right or privilege but only upon receipt of (a) a copy of the instrument of grant or release, (b) a written application signed by an authorized representative of the County requesting such instrument and (c) a certificate executed by an authorized representative of the County stating that the grant or release (i) is not detrimental to the proper conduct of the operations of the County at the Mortgaged Property, (ii) will not impair the effective use of or interfere with the operations of the County at the Mortgaged Property and (iii) following such grant or release, the value of the security under this Deed of Trust will not be materially adversely affected. The Beneficiary may request appraisals or other evidence satisfactory to the Beneficiary to support the certificate required by clause (iii) above.

Section 3. Default; Remedies of the Deed of Trust Trustee and Beneficiary Upon Default. (a) If any of the following events shall occur:

(i) default in any payment under the Agreement or default in any of the other terms or conditions of the Agreement secured hereby and the expiration of any applicable grace or notice periods provided thereby;

(ii) failure by the County to observe and perform any warranty, covenant, condition or agreement on the part of the County under this Deed of Trust other than Section 6 hereof for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to the County by the Beneficiary unless the Beneficiary shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in the notice cannot be reasonably corrected within the applicable period, and if corrective action is instituted by the County within the applicable period, the County shall have such additional period of time to correct the failure as shall be necessary, so long as such correction is diligently pursued;

(iii) any lien, charge or encumbrance prior to or affecting the validity of this Deed of Trust is found to exist, other than Permitted Encumbrances, or proceedings are

instituted to enforce any lien, charge or encumbrance against any of said Property and such lien, charge or encumbrance would be prior to the lien of this Deed of Trust;

then and in any of such events (hereinafter referred to as an "Event of Default"), all payments under the Agreement shall, at the option of the Beneficiary, become at once due and payable, regardless of the maturity date or other due date thereof.

(b) Upon the occurrence of an Event of Default:

(i) To the extent permitted by law, the Deed of Trust Trustee shall have the right to enter upon the Mortgaged Property to such extent and as often as the Deed of Trust Trustee, in his sole discretion, deems necessary or desirable in order to cure any default by the County. The Deed of Trust Trustee may take possession of all or any part of the Mortgaged Property and may hold, operate and manage the same, and from time to time make all needful repairs and improvements as shall be deemed expedient by the Deed of Trust Trustee; and the Deed of Trust Trustee may lease any part of the Mortgaged Property in the name of and for the account of the County, and collect, receive and sequester the rent, revenues, receipts, earnings, income, products and profits therefrom, and out of the same and from any moneys received from any receiver of any part thereof pay, and set up proper reserves for the payment of, all proper costs and expenses of so taking, holding and managing the same, including reasonable compensation to the Deed of Trust Trustee, his agents and counsel, and any taxes and assessments and other charges prior to the lien of this Deed of Trust which the Deed of Trust Trustee may deem it proper to pay, and all expenses of such repairs and improvements, and apply the remainder of the moneys so received in accordance with the provisions hereof.

(ii) To the extent permitted by law, the Deed of Trust Trustee shall have the right after an Event of Default to the appointment of a receiver to collect the rents and profits from the Mortgaged Property without consideration of the value of the premises or the solvency of any person liable for the payment of the amounts then owing, and all amounts collected by the receiver shall, after expenses of the receivership, be applied to the payment of the obligations hereby secured, and the Deed of Trust Trustee, at his option, in lieu of an appointment of a receiver, shall have the right to do the same. If such receiver should be appointed or if there should be a sale of the said premises, as provided below, the County, or any person in possession of the premises thereunder, as tenant or otherwise, shall become a tenant at will of the receiver or of the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

(iii) The Deed of Trust Trustee shall have the right to assign to any other person, for lawful consideration, any rents, revenues, earnings, income, products and profits receivable under this Deed of Trust, provided that the proceeds of any such assignment shall be applied as provided in this Deed of Trust.

(iv) The Deed of Trust Trustee is hereby authorized and empowered to expose to sale and to sell the Mortgaged Property or such part or parts thereof or interests therein as the Deed of Trust Trustee deems prudent at public auction for cash, and upon collection of the proceeds from such sale to make and deliver a deed therefor, after first having complied with all applicable requirements of North Carolina law with respect to the

exercise of powers of sale contained in deeds of trust. The County agrees that in the event of a sale hereunder, the Beneficiary shall have the right to bid at it and to become the purchaser. The Deed of Trust Trustee may require the successful bidder at any sale to deposit immediately with the Deed of Trust Trustee cash or a certified check in an amount not to exceed five percent (5%) of his bid, provided notice of such requirement is contained in the advertisement of the sale. The bid may be rejected if the deposit is not immediately made and thereupon the next highest bidder may be declared to be the successful bidder. Such deposit shall be refunded in case a resale is had; otherwise it shall be applied to the purchase price. The sale of the Mortgaged Property or any part thereof or any interest therein, whether pursuant to judicial foreclosure, foreclosure under power of sale or otherwise under this Deed of Trust, shall forever bar any claim with respect to the Mortgaged Property by the County.

(v) To the extent permitted by law, the Beneficiary, immediately and without additional notice and without liability therefor to the County, may do or cause to be done any or all of the following: (A) take physical possession of the Mortgaged Property; (B) exercise its right to collect the rents and profits thereof; (C) enter into contracts for the completion, repair and maintenance of the Mortgaged Property; (D) expend any rents, income and profits derived from the Mortgaged Property for payment of any taxes, insurance premiums, assessments and charges for completion, repair and maintenance of the Mortgaged Property, preservation of the lien of this Deed of Trust and satisfaction and fulfillment of any liabilities or obligations of the County arising out of or in any way connected with the Mortgaged Property whether or not such liabilities and obligations in any way affect, or may affect, the lien of this Deed of Trust; (E) enter into leases demising the Mortgaged Property or any part thereof; (F) take such steps to protect and enforce the specific performance of any covenant, condition or agreement in this Deed of Trust or the Agreement or to aid the execution of any power herein granted; and (G) generally, supervise, manage, and contract with reference to the Mortgaged Property as if the Beneficiary were the equitable owner of the Mortgaged Property. The County also agrees that any of the foregoing rights and remedies of the Beneficiary may be exercised at any time independently of the exercise of any other such rights and remedies, and the Beneficiary may continue to exercise any or all such rights and remedies until the Event(s) of Default of the County are cured with the consent of the Beneficiary or until foreclosure and the conveyance of the Mortgaged Property to the high bidder or until the indebtedness secured hereby is otherwise satisfied or paid in full.

(vi) The Beneficiary may proceed against the fixtures referred to in Section 12 as provided in and in accordance with the applicable provisions of the Uniform Commercial Code as adopted by the State of North Carolina, as amended (the "UCC") or, at its election, may proceed and may instruct the Deed of Trust Trustee to proceed as to the portion of the Mortgaged Property constituting fixtures, in accordance with its rights and remedies with respect thereto and those granted to the Deed of Trust Trustee, all as set forth in this Deed of Trust. Subject to any limitations imposed by the applicable provisions of the UCC, the Beneficiary may sell, lease, or otherwise dispose of all or any part of the fixtures, at public or private sale, for cash or on credit, as a whole or in part, and the Beneficiary may at such sale or sales purchase the fixtures or any part thereof. The proceeds of such sale, lease, collection or other disposition shall be applied first to

the costs and expenses of the Beneficiary incurred in connection with such sale, lease, collection or other disposition, and then to such outstanding balance due on any and all indebtedness owed to the Beneficiary. Further, the Beneficiary may require the County to assemble the fixtures, or evidence thereof, and make them reasonably available to the Beneficiary at one or more places to be designated by the Beneficiary which are reasonably convenient to the Beneficiary, and the Beneficiary may take possession of the fixtures and hold, prepare for sale, lease or other disposition and sell, lease or otherwise dispose of the fixtures. Any required notice by the Beneficiary of sale or other disposition or default, when mailed to the County at its address set forth herein, shall constitute reasonable notice to the County. In addition to, but not in limitation of, any of the foregoing, the Beneficiary may exercise any or all of the rights and remedies afforded to the Beneficiary by the provisions of the UCC or otherwise afforded to the Beneficiary under this Deed of Trust, with all such rights and remedies being cumulative and not alternative, and the County agrees, to the extent permitted by law, to pay the reasonable costs of collection, including, in addition to the costs and disbursements provided by statute, reasonable attorneys' fees and legal expenses which may be incurred by the Beneficiary subject to the procedures and limitations set forth in Section 6-21.2 of the General Statutes of North Carolina, as amended.

In all such cases, the Beneficiary shall have the right to direct the Deed of Trust Trustee to exercise the remedies granted hereunder.

(c) The County also agrees that any of the foregoing rights and remedies of the Beneficiary may be exercised at any time independently of the exercise of any other such rights and remedies, and the Beneficiary may continue to exercise any or all such rights and remedies until the Event(s) of Default of the County are cured with the consent of the Beneficiary or until foreclosure and the conveyance of the Mortgaged Property to the high bidder or until the indebtedness secured hereby is otherwise satisfied or paid in full.

(d) The County hereby waives, to the full extent it lawfully may, the benefit of all appraisalment, valuation, stay, moratorium, exemption from execution, extension and redemption laws and any statute of limitations, now or hereafter in force and all rights of marshalling in the event of the sale of the Mortgaged Property or any part thereof or any interest therein.

(e) Except as set forth in (f), the foregoing shall in no way be construed to limit the powers of sale or to restrict the discretion the Deed of Trust Trustee may have under the provisions of Article 2A of Chapter 45 of the General Statutes of North Carolina, as amended. Each legal, equitable or contractual right, power or remedy of the Deed of Trust Trustee now or hereafter provided herein or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power and remedy, and the exercise or beginning of the exercise by the Deed of Trust Trustee of any one or more of such rights, powers and remedies shall not preclude the simultaneous or later exercise of any or all such other rights, powers and remedies.

(f) NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NO DEFICIENCY JUDGMENT SHALL BE RENDERED AGAINST THE COUNTY IN ANY ACTION FOR BREACH BY THE COUNTY OF ITS OBLIGATIONS UNDER THE AGREEMENT OR THIS DEED OF TRUST, OR FOLLOWING THE EXERCISE BY

THE COUNTY OF ITS RIGHT OF TERMINATION OF ITS OBLIGATION TO MAKE THE INSTALLMENT PAYMENTS AND ANY ADDITIONAL PAYMENTS UNDER THE AGREEMENT; THE REMEDIES PROVIDED UNDER THIS DEED OF TRUST, INCLUDING FORECLOSURE AND SALE OF THE MORTGAGED PROPERTY UNDER THIS DEED OF TRUST, BEING THE SOLE REMEDY GRANTED HEREBY. THE TAXING POWER OF THE COUNTY IS NOT AND MAY NOT BE PLEDGED IN ANY WAY, DIRECTLY OR INDIRECTLY TO SECURE THE PAYMENT OF ANY MONEYS DUE UNDER THE AGREEMENT, INCLUDING THE INSTALLMENT PAYMENTS UNDER THE AGREEMENT OR ANY OTHER INSTRUMENT CONTEMPLATED HEREBY OR THEREBY.

Section 4. Application of Proceeds. The proceeds of (a) the operation and management of the Mortgaged Property pursuant to Section 3 hereof, (b) any sale of the Mortgaged Property or any interest therein, whether pursuant to judicial foreclosure, foreclosure under power of sale or otherwise and (c) any insurance policies or eminent domain awards or other sums (other than awards or sums to which the County is entitled to under the Agreement) retained by the Deed of Trust Trustee upon the occurrence of an Event of Default shall be applied to pay:

First: The costs and expenses of sale, reasonable attorneys' fees actually incurred at standard hourly rates to the extent permitted by Section 6-21.2 of the General Statutes of North Carolina, as amended, the Beneficiary's fees and expenses, court costs, any other expenses or advances made or incurred in the protection of the rights of the Beneficiary or in the pursuance of any remedies hereunder and the Deed of Trust Trustee's commission payable under Section 5 hereof;

Second: All taxes and assessments then constituting a lien against said premises other than those advertised and sold subject to;

Third: Any indebtedness secured by this Deed of Trust and at the time due and payable (whether by acceleration or otherwise), including all amounts of principal and interest at the time due and payable with respect to the Installment Payments, and interest on any overdue principal of at a rate per annum equal to the original interest rate payable with respect to the Installment Payments; and

Fourth: The balance, if any, to the persons then entitled thereto under the Agreement.

Section 5. Deed of Trust Trustee's Commission. In the event of a consummated sale under the power of sale contained herein, the Deed of Trust Trustee's commission shall be a reasonable commission for services rendered not to exceed five percent (5%) of the highest bid thereat.

It is further provided that in the event foreclosure is terminated upon the request of the County prior to delivery of the deed by the Deed of Trust Trustee, the County shall pay the Deed of Trust Trustee all costs and expenses incident to the foreclosure, including reasonable compensation for services rendered; together with attorneys' fees actually incurred at standard hourly rates to the extent permitted by Section 6-21.2 of the General Statutes of North Carolina, as amended.

It is further provided that the compensation herein allowed to the Deed of Trust Trustee shall constitute indebtedness secured hereby on the Mortgaged Property immediately upon request of sale.

Section 6. General Covenant. The County shall pay the amounts due under the Agreement and shall observe and perform all covenants, conditions and agreements contained in the Agreement, and any amendments and supplements thereto.

Section 7. Payment of Costs, Attorneys' Fees and Expenses. The County shall pay, to the extent permitted by law, any and all costs, attorneys' fees and other expenses of whatever kind incurred by the Beneficiary or the Deed of Trust Trustee in connection with (a) obtaining possession of the Mortgaged Property, (b) the protection and preservation of the Mortgaged Property, (c) the collection of any sum or sums secured hereby, (d) any litigation involving the Mortgaged Property, this trust, any benefit accruing by virtue of the provisions hereof, or the rights of the Deed of Trust Trustee or the Beneficiary, (e) the presentation of any claim under any administrative or other proceeding in which proof of claim is required by law to be filed, (f) any additional examination of the title to the Mortgaged Property which may be reasonably required by the Beneficiary or the Deed of Trust Trustee, (g) taking any steps whatsoever in enforcing this Deed of Trust, claiming any benefit accruing by virtue of the provisions hereof, or exercising the rights of the Beneficiary hereunder, or (h) any proceeding, legal or otherwise, which the Beneficiary shall deem necessary to sustain the lien of this Deed of Trust or its priority. If the County shall fail to make any payment required to be made by the foregoing covenant, however, such amount shall be payable solely from the amounts realized upon the enforcement of the remedies set forth in Section 3 of this Deed of Trust.

Section 8. Insurance and Taxes. Pursuant to the Agreement, the County will obtain and maintain certain insurance and will pay all lawful taxes, assessments and charges, if any, at any time levied or assessed upon or against the Mortgaged Property or any part thereof; provided, however, that nothing contained in this Deed of Trust shall require the maintenance of insurance or the payment of any such taxes, assessments or charges if the same are not required to be paid under the Agreement. If the County shall fail to make any payment required to be made by the foregoing covenant, however, such amount shall be payable solely from the amounts realized upon the enforcement of the remedies set forth in Section 3 of this Deed of Trust.

Section 9. No Assignment or Encumbrance of the Mortgaged Property. Except as permitted by the Agreement and this Deed of Trust, the County shall not sell, transfer, exchange, lease, mortgage, encumber, pledge, assign or otherwise dispose of the Mortgaged Property or any interest therein or part thereof without the prior written consent of the Beneficiary. Any such disposition or encumbrance of the Mortgaged Property or any interest therein or any part thereof other than Permitted Encumbrances without such prior written consent shall, at the option of the Beneficiary, constitute a default hereunder, giving rise to all of the remedies herein provided for an Event of Default.

Section 10. Advances by Beneficiary. The Beneficiary is authorized, but is not required to, for the account of the County, to make any required payments under any lien prior hereto or under this Deed of Trust, the non-payment of which would constitute a default, including but not limited to principal payments, interest payments, premium payments, if any, taxes and insurance premiums. All sums so advanced shall attach to and become part of the debt secured hereby,

shall become payable at any time on demand therefor and, from the date of the advance to the date of repayment, any sum so advanced shall bear interest at a rate of eight percent (8%) per annum. The failure to make payment on demand shall, at the option of the Beneficiary, constitute a default hereunder, giving rise to all of the remedies herein provided for an Event of Default. If the County shall fail to make any payment required to be made by the foregoing covenant, however, such amount shall be payable solely from the amounts realized upon the enforcement of the remedies set forth in Section 3 of this Deed of Trust.

Section 11. The Deed of Trust Trustee. The Deed of Trust Trustee shall be under no duty to take any action hereunder except as expressly required, or to perform any act which would involve him in expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to his satisfaction by the Beneficiary. All reasonable expenses, charges, counsel fees and other disbursements incurred by the Deed of Trust Trustee in and about the administration and execution of the trusts hereby created, and the performance of its duties and powers hereunder, shall, to the extent permitted by law, be secured by this Deed of Trust prior to the indebtedness represented by the Agreement, and such amounts not paid when due shall, to the extent permitted by law, bear interest at a rate of eight percent (8%) per annum. If the County shall fail to make any payment required to be made by the foregoing covenant, however, such amount shall be payable solely from the amounts realized upon the enforcement of the remedies set forth in Section 3 of this Deed of Trust.

Section 12. Security Interest in Fixtures. **COLLATERAL IS OR INCLUDES FIXTURES.** With respect to any portion of the Mortgaged Property which is or may become fixtures, this Deed of Trust shall constitute a financing statement filed as a fixture filing. The lien upon fixtures granted herein and perfected hereby shall be in addition to and not in lieu of any lien upon fixtures acquired under real property law.

Section 13. Leases. The County shall keep, observe and perform all of the covenants, agreements, terms, conditions and provisions on its part to be kept, observed or performed under any leases involving all or any part of the Mortgaged Property, shall require tenants to keep, observe and perform all of the covenants, agreements, terms, conditions and provisions on their part to be kept, observed or performed under any such leases and shall not suffer or permit any breach or default to occur with respect to the foregoing. In the event of a default by the County under any lease involving all or any part of the Mortgaged Property, the Beneficiary shall have the right to perform or to require performance of any such covenants, agreements, terms, conditions or provisions of such leases, and to add any expense incurred in connection therewith to the debt secured hereby. Any such expense incurred by the Beneficiary shall be immediately due and payable. If the County shall fail to make any payment required to be made by the foregoing covenant, however, such amount shall be payable solely from the amounts realized upon the enforcement of the remedies set forth in Section 3 of this Deed of Trust.

Section 14. Additional Documents. The County agrees to execute and deliver to the Beneficiary, concurrently with the execution of this Deed of Trust and upon the request of the Beneficiary from time to time hereafter, all financing statements and other documents reasonably required to perfect and maintain the lien or security interest created hereby. For the period in which the indebtedness of the County to the Beneficiary remains unpaid, the County hereby irrevocably makes, constitutes and appoints the Beneficiary as the true and lawful attorney in fact of the County, to the extent permitted by law, to sign the name of the County on any

financing statement, continuation of financing statement or similar document required to perfect or continue such security interests.

Section 15. Environmental Issues. The County for itself, its successors and assigns represents, warrants and agrees that, except as disclosed in writing to the Beneficiary by the County, (a) neither the County nor, to the best of the County's knowledge, any other person has improperly used or installed any Hazardous Material (as hereinafter defined) on the Mortgaged Property or received any notice from any governmental agency, entity or other person with regard to Hazardous Materials on, from or affecting the Mortgaged Property; (b) neither the County nor, to the best of the County's knowledge, any other person has violated any applicable Environmental Laws (as hereinafter defined) relating to or affecting the Mortgaged Property; (c) to the best of the County's knowledge, the Mortgaged Property is presently in compliance with all Environmental Laws and there are no circumstances presently existing upon or under the Mortgaged Property, or relating to the Mortgaged Property which may violate any applicable Environmental Laws, and there is not now pending, or threatened, any action, suit, investigation or proceeding against the County relating to the Mortgaged Property (or against any other party relating to the Mortgaged Property) seeking to enforce any right or remedy under any of the Environmental Laws; (d) the Mortgaged Property shall be used to generate, manufacture, refine, transport, treat, store, handle, dispose, produce or process Hazardous Materials only in accordance with all applicable Environmental Laws; (e) the County shall not cause nor permit the improper installation of Hazardous Materials in the Mortgaged Property nor a release of Hazardous Materials on the Mortgaged Property; (f) the County shall at all times comply with and ensure compliance by all other parties with all applicable Environmental Laws relating to or affecting the Mortgaged Property and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to any applicable Environmental Laws; (g) the County has obtained and will at all times continue to obtain and/or maintain all licenses, permits, and/or other governmental or regulatory actions necessary to comply with Environmental Laws with respect to the Mortgaged Property (the "Permits"), and the County is in full compliance with the terms and provisions of the Permits and will continue to comply with the terms and provisions of the Permits; (h) the County shall immediately give the Beneficiary oral and written notice in the event that the County receives any notice from any governmental agency, entity, or any other party with regard to Hazardous Materials on, from or affecting the Mortgaged Property and shall conduct and complete all investigations, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Mortgaged Property in accordance with all applicable Environmental Laws. To the extent permitted by law, the County hereby agrees to defend and indemnify the Deed of Trust Trustee and the Beneficiary and hold them harmless from and against any and all losses, liabilities, damages, injuries (including, without limitation, attorneys' fees) and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against the Deed of Trust Trustee or the Beneficiary for, with respect to, or as a direct or indirect result of (a) the presence on, or under, or the escape, spillage, emission or release from the Mortgaged Property of any Hazardous Material regardless of whether or not caused by or within the control of the County, (b) the violation of any Environmental Laws relating to or affecting the Mortgaged Property, whether or not caused by or within the control of the County, (c) the failure by the County to comply fully with the terms and provisions of this paragraph, or (d) any warranty or representation made by the County in this paragraph being false or untrue in any material respect. In the event that the Beneficiary elects to control, operate, sell or otherwise claim

property rights in the Mortgaged Property, the County shall deliver the Mortgaged Property free of any and all Hazardous Materials so that the conditions of the Mortgaged Property shall conform with all applicable Environmental Laws. Prior to any such delivery of the Mortgaged Property, the County shall pay to the Beneficiary from its own funds any amounts required to be paid under the indemnification provisions set forth above. For purposes of this Deed of Trust, "Hazardous Material" means and includes petroleum products, any flammable explosives, radioactive materials, hazardous materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous waste, substance or material defined as such in (or for the purpose of) the Environmental Laws. For the purposes of this Deed of Trust, "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Hazardous Materials Transportation Act, the Oil Pollution Act of 1990, the Emergency Planning and Right-to-Know Act, the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, the Resource Conservation and Recovery Act, any "Super Fund" or "Super Lien" law (including in all cases any regulations promulgated thereunder), or any other federal, state, or local law, regulation or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials, as may now or at any time hereafter be in effect. The obligations and liabilities of the County under this paragraph shall survive the foreclosure of the Deed of Trust, the delivery of a deed in lieu of foreclosure, and the cancellation of this Deed of Trust; or if otherwise expressly permitted in writing by the Beneficiary, the sale or alienation of any part of the Mortgaged Property.

Section 16. Miscellaneous. (a) Notices. All notices, approvals, consents, requests and other communications hereunder shall be in writing and, unless otherwise provided herein, shall be deemed to have been given when delivered or mailed by registered or certified mail, postage prepaid, addressed as follows: (a) if to the County, to 4th Floor, Government Center, 201 N. Chestnut Street, Winston-Salem, North Carolina 27101, Attention: Chief Financial Officer; (b) if to the Beneficiary, to 301 Fayetteville Street, Suite 2100, Raleigh, North Carolina 27601, Attention: Casey Turner; and (c) if to the Deed of Trust Trustee, to 555 Main Street, Norfolk, Virginia 23510. The County, the Deed of Trust Trustee and the Beneficiary may, by notice given hereunder, designate any further or different addresses to which subsequent notices, approvals, consents, requests or other communications shall be sent or persons to whose attention the same shall be directed.

(b) Substitution of Deed of Trust Trustee. The County and the Deed of Trust Trustee covenant and agree to and with the Beneficiary that in case the Deed of Trust Trustee, or any successor trustee, shall die, become incapable of acting, renounce his trust, or for any reason the holder the Beneficiary desires to replace the Deed of Trust Trustee, then the Beneficiary may appoint, in writing, a trustee to take the place of the Deed of Trust Trustee; and upon the probate and registration of the same, the trustee thus appointed shall succeed to all rights, powers and duties of the Deed of Trust Trustee. This granting of power to the Beneficiary is coupled with an interest and is irrevocable.

(c) Successors and Assigns. This Deed of Trust shall inure to the benefit of and be enforceable by the Deed of Trust Trustee and the Beneficiary and their respective successors and assigns.

(d) Amendments and Supplements. This Deed of Trust may be amended and supplemented only as provided in the Agreement.

(e) Applicable Law. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of North Carolina.

(f) Execution in Counterparts. This Deed of Trust may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(g) Severability. In the event any term, provision or covenant herein contained or the application thereof to any circumstances or situation shall be invalid or unenforceable in whole or in part, the remainder hereof and the application of said term or provision or covenant to any other circumstances or situation shall not be affected thereby, and every other term, provision or covenant herein shall be valid and enforceable to the full extent permitted by law.

[signatures to follow on next page]

IN WITNESS WHEREOF, the County has caused this Deed of Trust to be executed in its name by its County Manager and Finance Director and its seal to be impressed hereon and attested by the County Clerk, all as of the date first above written.

COUNTY OF FORSYTH, NORTH CAROLINA

[SEAL]

By: _____
County Manager

Attest:

Clerk to the Board of Commissioners

ACKNOWLEDGEMENT FOR COUNTY

STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

This ____ day of October, 2019, personally came before me, a Notary Public in and for the said County and State, Ashleigh M. Sloop, who, being by me duly sworn, says that she is the Clerk to the Board of Commissioners for the County of Forsyth, North Carolina, a body politic and corporate and political subdivision existing under the laws of the State of North Carolina and acting through said Board of Commissioners, and by authority duly given and as the act of said County, the foregoing instrument was signed in its name by J. Dudley Watts, Jr., as its County Manager, sealed with its seal and attested by herself as its Clerk to the Board of Commissioners.

WITNESS my hand and notarial seal this ____ day of October, 2019.

Notary Public

Printed Name: _____

My commission expires:

(Notarial Seal)

LEGAL DESCRIPTION OF PROPERTY

[To be inserted]

LIST OF ENCUMBRANCES

All exceptions to title listed in Schedule B – Section 2 of the following title insurance commitment issued by _____ - Commitment No. _____.

INSTALLMENT FINANCING AGREEMENT

Dated as of October __, 2019

between

COUNTY OF FORSYTH, NORTH CAROLINA

and

PNC BANK, NATIONAL ASSOCIATION

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INSTALLMENT FINANCING AGREEMENT

This INSTALLMENT FINANCING AGREEMENT, dated as of October __, 2019 (the “Agreement”), between COUNTY OF FORSYTH, NORTH CAROLINA, a body politic and corporate and political subdivision duly organized and validly existing under the laws of the State of North Carolina (the “County”), and PNC BANK, NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America (the “Bank”);

WITNESSETH:

WHEREAS, the County is a body politic and corporate and political subdivision duly organized and validly existing under and by virtue of the Constitution and laws of the State of North Carolina;

WHEREAS, pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended, the County may finance the acquisition of property and the construction of fixtures or improvements on real property by contracts that create in the fixtures or improvements, or in all or some portion of the property upon which the fixtures or improvements are located, or in both, a security interest to secure repayment of the moneys advanced or made available for construction;

WHEREAS, the County desires to finance the acquisition, construction and equipping of a new 250,000 square foot courthouse facility to be situated adjacent to the existing Forsyth County Government Center and Forsyth County Law Enforcement Detention Center, including, without limitation, the construction of an underground tunnel to the existing Forsyth County Detention Center and a secure staff corridor connection to the adjacent Forsyth County Government Center (the “Project”);

WHEREAS, after a public hearing and due consideration, the Board of the County has determined to (a) refinance the Prior Agreement and (b) acquire, construct and equip the Project;

WHEREAS, in order for the County to obtain the funds to pay the costs of refinancing the Prior Agreement and financing the Project, the County has determined to enter into this Agreement whereby the Bank will advance funds to the County to be applied, together with other available funds, to (a) refinance the Prior Agreement, (b) pay the costs of the Project and (c) pay certain financing costs relating thereto, and the County will repay such advancement with interest in installments pursuant to the terms of this Agreement;

WHEREAS, as security for the performance of its obligation under this Agreement, including the payment of the installment payments hereunder, the County will execute and deliver a Deed of Trust, dated as of the date hereof (the “Deed of Trust”), to the Deed of Trust trustee named therein, for the benefit of the Bank, pursuant to which the County will grant a lien on the Site (hereafter defined) and all of the buildings, improvements and fixtures located and to be located thereon;

WHEREAS, the Bank is willing to advance moneys to the County for the purpose of refinancing the Prior Agreement and paying the costs of the Project and related financing expenses, and the County is willing to repay the moneys so advanced by the Bank in installments as more fully provided herein; and

WHEREAS, the County and the Bank have each duly authorized the execution and delivery of this Agreement.

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

SECTION 1.1. Definitions and Rules of Construction. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa. The words “hereby”, “herein”, “hereof”, “hereto”, “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof. All references herein to “Articles”, “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement unless some other reference is indicated. As used in this Agreement, the following words and terms shall have the following meanings:

“Act” means Section 160A-20 of the General Statutes of North Carolina, as amended.

"Additional Advance" means each advance of funds, other than the Initial Advance, made hereunder by the Bank to the County pursuant to an Advance Request.

“Adjusted LIBOR Index Rate” means a per annum rate of interest equal to the sum of (a) the product of the LIBOR Index multiplied by the Applicable Factor plus (b) the Applicable Spread.

“Advance Request” has the meaning given such term in Section 3.1.

"Advance Schedule" means the Advance Schedule attached hereto as Exhibit A and made a part hereof, which shall set forth the date and amount of the Initial Advance and each Additional Advance and each prepayment of the Advancement, if any, as provided herein.

“Advancement” means the sum of the Initial Advance plus all Additional Advances, less the amounts of all prepayments of the Advancement to (a) pay or reimburse the costs of the Project and (b) pay or reimburse the Closing Costs.

“Agreement” means this Installment Financing Agreement, including any amendment or supplement hereto as permitted hereby.

“Applicable Factor” means 79.0%.

“Applicable Spread” means 0.27% per annum.

“Bank” means PNC Bank, National Association, a national banking association organized and existing under the laws of the United States of America, and its successors and assigns.

“Base Rate” means the higher of (a) the Prime Rate and (b) the sum of the Federal Funds Open Rate plus fifty (50) basis points (0.50%).

“Board” means the Board of Commissioners for the County.

“Business Day” means any day other than a Saturday, Sunday or other day on which the New York Stock Exchange is closed or on which banks are authorized or required to be closed in the County of Raleigh, North Carolina.

“Closing” means the date on which the County executes and delivers this Agreement, and the Bank makes the Initial Advance to the County.

“Closing Costs” means and further includes all items of expense directly or indirectly payable by or reimbursable to the County relating to the refinancing of the Prior Agreement and the financing of the Project, including, but not limited to, filing and recording costs, title insurance premiums, settlement costs, printing costs, word processing costs, reproduction and binding costs, legal fees and charges and financing and other professional consultant fees.

“County” mean the County of Forsyth, North Carolina, a body politic and corporate and political subdivision duly organized and validly existing under and by virtue of the Constitution and laws of the State of North Carolina, and any successor entity.

“Deed of Trust” means the Deed of Trust, of even date herewith, from the County to the Deed of Trust Trustee, for the benefit of the Bank, securing the Installment Payments and other obligations specified hereunder and thereunder, as supplemented and amended from time to time.

“Deed of Trust Trustee” means the person or other entity at the time serving as trustee under the Deed of Trust.

“Default Rate” means the lower of (a) the sum of the Base Rate plus three-hundred (300) basis points (3.00%) and (b) the Maximum Rate.

“Determination of Taxability” means and shall be deemed to have occurred on the date when (a) the County shall receive notice from the Bank that the Internal Revenue Service has assessed as includable in gross income the interest component of the Installment Payments and that such determination is due to the occurrence of an Event of Taxability or (b) the County or the Bank shall receive notice from the Commissioner or any District Director of the Internal Revenue Service that the interest component of the Installment Payments is includable in the gross income of the Bank for federal income tax purposes and such determination is due to the occurrence of an Event of Taxability.

“Enforcement Limitation” means the provisions of the Act that provide that no deficiency judgment may be rendered against the County in any action for breach of a contractual obligation incurred under the Act and that the taxing power of the County is not and may not be pledged directly or indirectly to secure any moneys due under this Agreement.

“Event of Nonappropriation” means (a) the failure by the Board to budget and appropriate in its budget for the ensuing Fiscal Year adopted on or about June 30 of each year moneys sufficient to pay all Installment Payments and any reasonably estimated additional payments under this Agreement coming due in the next ensuing Fiscal Year or (b) the Board’s deletion from its duly adopted budget of any appropriation for the purposes specified in clause (a) above. In the event that during any Fiscal Year, any additional payments shall become due that were not included in the County’s current budget, and if there are no moneys available to

pay such additional payments prior to the date upon which such additional payments are due, an Event of Nonappropriation shall be deemed to have occurred upon notice by the Bank to the County to such effect.

“Event of Taxability” means the occurrence or existence of any fact, event or circumstance caused by the failure of the County to comply with any covenants in this Agreement or any document or certificate executed by the County in connection with the transactions contemplated by this Agreement which has the effect of causing the interest component of the Installment Payments to be includable in the gross income of the Bank for federal income tax purposes.

“Federal Funds Open Rate” means, for any day, the rate per annum (based on a year of 360 days and actual days elapsed) which is the daily federal funds open rate as quoted by ICAP North America, Inc. (or any successor) as set forth on the Bloomberg Screen BTMM for that day opposite the caption “OPEN” (or on such other substitute Bloomberg Screen that displays such rate), or as set forth on such other recognized electronic source used for the purpose of displaying such rate as selected by the Bank (an “Alternate Source”) (or if such rate for such day does not appear on the Bloomberg Screen BTMM (or any substitute screen) or on any Alternate Source, or if there shall at any time, for any reason, no longer exist a Bloomberg Screen BTMM (or any substitute screen) or any Alternate Source, a comparable replacement rate determined by the Bank at such time (which determination shall be conclusive absent manifest error); provided however, that if such day is not a Business Day, the Federal Funds Open Rate for such day shall be the “open” rate on the immediately preceding Business Day.

“Final Maturity Date” means October __, 2026.

“Fiscal Year” means the period beginning on July 1 of any year and ending on June 30 of the following year.

“Inclusion Date” means the date that the interest component of the Installment Payments first becomes includable in the gross income of the Bank as a result of a Determination of Taxability.

“Initial Advance” means the advance made to the County on the date of Closing as described in Section 3.1.

“Initial Term Period” means the period commencing on the Closing Date and ending on October __, 2022.

“Installment Payment Date” means (a) with respect to the interest components of the Installment Payments, the first Business Day of each month and the Final Maturity Date (or as may be provided otherwise in connection with any prepayment of the Advancement) and (b) with respect to the principal component of the Installment Payments, the Final Maturity Date (or as may be provided otherwise in connection with any prepayment of the Advancement).

“Installment Payments” means the payments required to be paid by the County pursuant to Section 4.1 in order to repay the Advancement with interest.

“LIBOR Index” means, for any Reset Date, the interest rate per annum determined by the Bank by dividing (i) the rate which appears on the Bloomberg Page BBAM1 (or on such other substitute Bloomberg page that displays rates at which US dollar deposits are offered by leading banks in the London interbank deposit market), or the rate which is quoted by another source selected by the Bank which has been approved by the British Bankers’ Association as an authorized information vendor for the purpose of displaying rates at which US dollar deposits are offered by leading banks in the London interbank deposit market (a “LIBOR Alternate Source”), at approximately 11:00 a.m., London time, two (2) London Business Days prior to such Reset Date, as the one month London interbank offered rate for US Dollars commencing on such Reset Date (or if there shall at any time, for any reason, no longer exist a Bloomberg Page BBAM1 (or any substitute page) or any LIBOR Alternate Source, a comparable replacement rate determined by the Bank at such time (which determination shall be conclusive absent manifest error)), by (ii) a number equal to 1.00 minus the LIBOR Reserve Percentage. In the event that the LIBOR Index is a negative number, the LIBOR Index shall be deemed to be zero. For purposes of this definition, “London Business Day” means any day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency) in the County of London, United Kingdom.

“LIBOR Reserve Percentage” means the maximum effective percentage in effect on such day as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the reserve requirements (including, without limitation, supplemental, marginal and emergency reserve requirements) with respect to eurocurrency funding (currently referred to as “Eurocurrency liabilities”).

“LGC” means the Local Government Commission of North Carolina, a division of the Department of the State Treasurer, and any successor thereto.

“Maximum Rate” means the lesser of (a) 12% per annum and (b) the maximum rate permitted by applicable law.

“Mortgaged Property” means the property subject to the lien of the Deed of Trust, consisting of the Site, together with all of the buildings, improvements and fixtures located or to be located thereon.

“Net Proceeds” means any proceeds of insurance or any eminent domain or condemnation proceedings paid with respect to the Mortgaged Property remaining after payment therefrom of any expenses (including attorneys’ fees) incurred in the collection thereof.

“Permitted Encumbrances” means and includes (a) liens for taxes, assessments and other governmental charges due but not yet payable; (b) landlord’s, warehouseman’s, carrier’s, worker’s, vendor’s, mechanic’s and materialmen’s liens and similar liens incurred in the ordinary course of business remaining undischarged for not longer than sixty (60) days from the filing thereof; (c) attachments remaining undischarged for not longer than sixty (60) days from the making thereof; (d) liens in respect of pledges or deposits under workers’ compensation laws, unemployment insurance or similar legislation and in respect of pledges or deposits to secure bids, tenders, contracts (other than contracts for the payment of money), leases or statutory obligations, or in connection with surety, appeal and similar bonds incidental to the conduct of

litigation; (e) the lien created by the Deed of Trust and any lease of all or any portion of the Mortgaged Property permitted by Section 8.2; (f) this Agreement; (g) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which the County certifies in writing to the Bank will not materially impair the use of the Project for its intended purpose or the marketability of the Mortgaged Property; (h) any mortgage or encumbrance on the Mortgaged Property consented to by the Bank pursuant to Section 9 of the Deed of Trust; and (i) any other encumbrances described in the policy evidencing title insurance required pursuant to Section 5.4.

“Prime Rate” shall mean the rate publicly announced by the Bank from time to time as its prime rate. The Prime Rate is determined from time to time by the Bank as a means of pricing loans to its borrowers. The Prime Rate is not tied to any external rate of interest or index, and does not necessarily reflect the lowest rate of interest actually charged by the Bank to any particular class or category of customers.

“Project” has the meaning set forth in the preambles to this Agreement.

“Reset Date” means the first Business Day of each calendar month, commencing on the first Business Day of November 2019.

“Site” means the real property on which the Project is located, as more specifically identified in Exhibit A to the Deed of Trust.

“State” means the State of North Carolina.

“Term Loan Interest Rate” means for (a) for the first ninety (90) days of the Term Loan Period, the Base Rate and (b) thereafter during the Term Loan Period until the Final Maturity Date, the Base Rate plus 2.00%.

“Term Loan Period” means the period, if any, commencing on October __, 2022 and ending on the earlier of the Final Maturity Date or the date the principal component of the Installment Payments has been prepaid in whole prior to the Final Maturity Date.

SECTION 1.2. Exhibits. The following exhibits are attached to, and by reference made a part of, this Agreement:

Exhibit A	Advance Schedule
Exhibit B	Advance Request

ARTICLE II

REPRESENTATIONS OF THE COUNTY AND BANK

SECTION 2.1. Representations, Covenants and Warranties of the County. The County represents, covenants and warrants to the Bank as follows:

(a) The County is a body politic and corporate and political subdivision duly organized and validly existing under and by virtue of the Constitution and laws of the State of North Carolina.

(b) The Constitution and laws of the State authorize the County to execute and deliver this Agreement and the Deed of Trust and to enter into the transactions contemplated by and to carry out its obligations under this Agreement and the Deed of Trust.

(c) The County has duly authorized and executed this Agreement and the Deed of Trust in accordance with the Constitution and laws of the State.

(d) Neither the execution and delivery of this Agreement and the Deed of Trust, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions or any charter provision, restriction or any agreement or instrument to which the County is now a party or by which the County is bound, or constitutes a default under any of the foregoing.

(e) No approval or consent is required from any governmental authority with respect to the entering into or performance by the County of this Agreement, the Deed of Trust and all other documents related thereto and the transactions contemplated hereby and thereby, or if such approval is required, it has been duly obtained.

(f) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or threatened against or affecting the County challenging the validity or enforceability of this Agreement, the Deed of Trust or any other documents relating hereto and the performance of the County's obligations hereunder and thereunder.

(g) The County will obtain or cause to be obtained all licenses, permits and other approvals of any other governmental entity having jurisdiction over the County or the Project that are necessary for the Project.

SECTION 2.2. Representations, Covenants and Warranties of the Bank. The Bank represents, covenants and warrants to the County as follows:

(a) The Bank is a national banking association organized, existing and in good standing under and by virtue of the laws of the United States of America and has the power and authority to enter into this Agreement.

(b) Neither the execution and delivery of this Agreement nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of the organizational documents of the Bank or any restriction or any agreement or instrument to which the Bank is now a party or by which the Bank is bound.

SECTION 2.3. Representations as to Role of Bank. The County and the Bank acknowledge and agree that this transaction is an arm's-length commercial transaction between the County and the Bank. In connection with this transaction, the Bank is acting solely as a principal and not as the County's agent, advisor or fiduciary. The Bank has not assumed a fiduciary responsibility with respect to this transaction, and nothing in this transaction or in any prior relationship between the County and the Bank will be deemed to create an advisory, fiduciary or agency relationship between the County and the Bank in respect of this transaction. The County has engaged an independent advisor to advise it in connection with this transaction and has consulted its own legal and other advisors to the extent it has deemed appropriate.

ARTICLE III

ADVANCEMENT; ACQUISITION, CONSTRUCTION AND EQUIPPING OF PROJECT

SECTION 3.1. Advancement. On the date of Closing, the Bank hereby agrees to make the Initial Advance to the County in the amount of \$_____ for the purpose of paying or reimbursing the County for costs of the Project and Closing Costs. During the Initial Term Period, the County may request the Bank to make Additional Advances in an aggregate amount not to exceed \$_____. For each request for an Additional Advance, the County shall submit to the Bank at least five (5) Business Days prior to the requested date of disbursement a complete written disbursement request (an "Advance Request") substantially in the form set forth in Exhibit B hereto, together with the documents or other items required thereunder. The Advancement shall be a non-revolving, and any amounts advanced by the Bank under this Agreement either as the Initial Advance or an Additional Advance that are subsequently repaid shall permanently reduce the amount remaining available to be advanced under this Agreement as an Additional Advancement.

Each Advance Request shall be delivered by regular mail or facsimile or electronic communication confirmed with a hard copy and be executed by the County Manager, the Chief Financial Officer or any Assistant Chief Financial Officer [**anyone else?**] of the County (each, an "Authorized Officer"). The proceeds of each Additional Advance shall be used by the County solely to pay, or to reimburse itself for the payment of, the costs of the Project or Closing Costs to be funded pursuant to this Agreement. The Bank shall make an Additional Advance to the County in accordance with instructions provided to the Bank by the County in the Advance Request and send a written confirmation thereof (which may be delivered by electronic mail) to the County within four (4) Business Days of the receipt by it of an Advance Request. The Initial Advance and Additional Advances shall not exceed \$70,000,000 on a cumulative basis (without regard to repayment of any Advance). The Bank shall not be obligated to make any Additional Advances to the County if an event of default shall have occurred and be continuing hereunder. The Initial Advance and Additional Advances shall be evidenced by the Advance Schedule. The Bank shall endorse on the Advance Schedule the amount of the Initial Advance and each Additional Advance made by the Bank to the County hereunder and the date on which each such Initial Advance and Additional Advance is made; provided, however, that any failure by the Bank to make any such endorsement shall not affect the obligations of the County hereunder in respect of such Initial Advance or Additional Advance. The Bank shall also endorse on the Advance Schedule the date and amount of each prepayment of the Advancement made by the County to the Bank hereunder.

SECTION 3.2. Acquisition, Construction and Equipping of Project. The County shall enter into, or cause to be entered into, one or more contracts or purchase orders providing for the acquisition, construction and equipping of the Project. The County shall cause the acquisition, construction and equipping of the Project to be carried on expeditiously and completed in accordance with the plans and specifications therefor and in compliance with all applicable ordinances and statutes and requirements of all regularly constituted authorities having jurisdiction over the same. The County shall require, or cause to be required, that each

contractor for the Project provide performance and labor and materials payment bonds in an amount not less than the amount of the respective contract.

SECTION 3.3. Payment of Project Costs and Closing Costs. The County shall be obligated to pay all costs of the Project and the Closing Costs when the same become due and payable from the proceeds of the Advancement or other available funds of the County.

SECTION 3.4. Disclaimer of Bank. The County acknowledges and agrees that the Bank (a) has not made any recommendation, given any advice nor taken any other action with respect to (i) the acquisition, construction or equipping of the Project or any component part thereof or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Project or any component part thereof or any property or rights relating thereto at any stage of the acquisition, construction or equipping thereof, (b) has not at any time had physical possession of the Project or any component part thereof or made any inspection thereof or any property or rights relating thereto, and (c) has not made any warranty or other representation, express or implied, that the Project or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed or used, or will accomplish the results which the County intends therefor, or (iii) is safe in any manner or respect.

THE BANK MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE PROJECT OR ANY COMPONENT PART THEREOF TO THE COUNTY OR WITH RESPECT TO ANY OTHER CIRCUMSTANCE WHATSOEVER WITH RESPECT THERETO, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE; COMPLIANCE THEREOF WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO; ANY LATENT DEFECT; THE TITLE TO OR INTEREST OF THE BANK THEREIN BEYOND THAT TITLE OR INTEREST WHICH THE COUNTY OBTAINS FROM THE BANK PURSUANT HERETO; THE ABILITY THEREOF TO PERFORM ANY FUNCTION; THAT THE PROCEEDS DERIVED FROM THE ADVANCEMENT WILL BE SUFFICIENT, TOGETHER WITH ANY OTHER AVAILABLE FUNDS OF THE COUNTY, TO PAY THE COST OF ACQUIRING, CONSTRUCTING AND EQUIPPING THE PROJECT; OR ANY OTHER CHARACTERISTICS OF THE PROJECT, IT BEING AGREED THAT ALL RISKS RELATING TO THE PROJECT, THE ACQUISITION, CONSTRUCTION AND EQUIPPING THEREOF OR THE TRANSACTIONS CONTEMPLATED HEREBY ARE TO BE BORNE BY THE COUNTY, AND THE BENEFITS OF ANY AND ALL IMPLIED WARRANTIES AND REPRESENTATIONS OF THE BANK ARE HEREBY WAIVED BY THE COUNTY.

ARTICLE IV

REPAYMENT OF THE ADVANCEMENT; SECURITY FOR REPAYMENT

SECTION 4.1. Repayment of the Advancement. (a) The County shall repay the principal component of the Advancement on the Final Maturity Date, subject to the right of prior prepayment and subject to any required mandatory prepayments, all as hereinafter provided. Interest on the outstanding principal amount of the Advancement shall be calculated and shall accrue and be payable as provided in this Section.

(b) Interest on the outstanding principal amount of the Advancement shall accrue on the basis of the actual number of days elapsed during the interest rate period and a year of 360 days and shall be payable on each Installment Payment Date for the period commencing on and including the immediately preceding Installment Payment Date (or in the case of the first Installment Payment Date, for the period commencing on and including the date of Closing) and ending on but excluding such Installment Payment Date.

(c) During the Initial Term Period, the outstanding principal component of the Advancement shall bear interest at the Adjusted LIBOR Index Rate. The Adjusted LIBOR Index Rate shall initially be _____% and shall thereafter be adjusted on each Reset Date. In the event that it is impossible for the Bank to determine the Adjusted LIBOR Rate in connection with a Reset Date, the Advancement shall bear interest at a rate equal to the Base Rate (as adjusted on each Reset Date) until the Adjusted LIBOR Index Rate can be established. During the Term Loan Period, the outstanding principal component of the Advancement shall bear interest at the Term Loan Interest Rate (as adjusted on each Reset Date).

(d) From and after the occurrence of an event of default hereunder until such time as such event of default has been remedied or otherwise waived by the Bank, the outstanding principal component of the Advancement shall bear interest at the Default Rate (as adjusted on each Reset Date).

(e) The Bank shall notify the County of the Adjusted LIBOR Index Rate, the Term Loan Interest Rate, the Base Rate or the Default Rate, as applicable, for each interest period within two (2) days of establishing such rate in writing by facsimile or email communication addressed to the Chief Financial Officer [anyone else?] of the County. The Bank shall also notify the County not less than two (2) days before each Installment Payment Date of the amount due on such Installment Payment Date, such notice to be given in writing by facsimile or email transmission, confirmed by first-class mail, postage prepaid, and addressed to the Chief Financial Officer [anyone else?] of the County. Notwithstanding the foregoing, the Bank's failure to provide the County with any notice described in this subsection shall not in any way relieve the County of its obligation to make any Installment Payments due on the dates and in the amounts provided in this Agreement.

(f) All payments to be made to the Bank hereunder shall be made to PNC Bank, National Association at the following address: 301 Fayetteville Street, Suite 2100, Raleigh, North Carolina 27601, or as may otherwise be directed by the Bank. Any payment required to be made

under this Agreement that is not paid within fifteen (15) days of the due date thereof is subject to a late payment charge of 5% of the amount of the past due payment.

(g) In the event of a Determination of Taxability, the interest rate payable under this Agreement, from and after the Inclusion Date, shall be adjusted to preserve the Bank's after-tax economic yield with respect to the interest components of the Installment Payments. In addition, the County shall pay to the Bank (i) an amount necessary to reimburse the Bank for any interest, penalties or other charges assessed by the Internal Revenue Service and the Department of Revenue by reason of the Bank's failure to include the interest portion of the Installment Payments in its gross income for income tax purposes, together with any reasonable attorneys' fees, court costs or other out-of-pocket costs incurred by the Bank in connection therewith, and (ii) upon request of the Bank, additional interest as a result of the increase in the interest rate on all previous payments made by the County after the Inclusion Date. The County agrees to give prompt written notice to the Bank upon the County's receipt of any notice or information from any source whatsoever to the effect that an Event of Taxability or a Determination of Taxability shall have occurred.

(h) Notwithstanding any other provision of this Section to the contrary, the interest rate or rates payable under this Section shall not at any time exceed the Maximum Rate.

SECTION 4.2. Budget and Appropriation. (a) The officer of the County at any time charged with the responsibility for formulating budget proposals shall include in the budget proposals for review and consideration by the Board in any Fiscal Year in which this Agreement shall be in effect, items for all Installment Payments and any additional payments required for such Fiscal Year under this Agreement or the Deed of Trust. Any budget item referred to in this Section shall be deleted from the applicable budget by the Board only by the adoption of a resolution to such effect containing a statement of its reasons therefor, which resolution shall be adopted by roll-call vote and shall be spread upon the minutes of the Board. The County shall promptly provide written notice to the Bank and the LGC of any Event of Nonappropriation.

(b) NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A DELEGATION OF GOVERNMENTAL POWERS NOR AS A DONATION BY OR A LENDING OF THE CREDIT OF THE COUNTY WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE. THIS AGREEMENT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE COUNTY TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE SOLE DISCRETION OF THE COUNTY FOR ANY FISCAL YEAR IN WHICH THIS AGREEMENT IS IN EFFECT; PROVIDED, HOWEVER, THAT ANY FAILURE OR REFUSAL BY THE COUNTY TO APPROPRIATE FUNDS WHICH RESULTS IN THE FAILURE BY THE COUNTY TO MAKE ANY PAYMENT COMING DUE HEREUNDER WILL IN NO WAY OBLIVATE THE OCCURRENCE OF THE EVENT OF DEFAULT RESULTING FROM SUCH NONPAYMENT. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE COUNTY IN ANY ACTION FOR BREACH OF A CONTRACTUAL OBLIGATION UNDER THIS

AGREEMENT AND THE TAXING POWER OF THE COUNTY IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY MONEYS DUE UNDER THIS AGREEMENT.

No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the County's moneys, nor shall any provision of this Agreement restrict the future issuance of any of the County's bonds or moneys. To the extent of any conflict between this Section and any other provision of this Agreement, this Section shall take priority.

SECTION 4.3. Deed of Trust. In order to secure its obligations under this Agreement, including its obligation to make the Installment Payments hereunder, the County will execute and deliver the Deed of Trust simultaneously with the execution and delivery of this Agreement.

[To the extent that it becomes necessary during the course of acquisition, construction and equipping of the Project to modify or adjust the boundary lines of the Site in order to provide for the proper location of the Project upon the Site, the Bank hereby agrees to consent to such modifications to the Deed of Trust or partial releases to the Mortgaged Property as may be reasonable necessary to accomplish such purpose; provided, however, that the main performance arts center building constituting a part of the Project shall remain wholly located upon the Site and the value of the Mortgaged Property shall not be materially diminished by such modifications or partial releases.]

SECTION 4.4. No Set-Off; Recoupment, Etc. Subject to Section 4.2 and the Enforcement Limitation, the obligation of the County to make the Installment Payments hereunder and to perform and observe the other covenants of this Agreement shall be absolute and unconditional, and the County will pay without abatement, diminution or deduction all such amounts regardless of any cause or circumstance whatsoever, including, without limitation, any defense, set-off, recoupment or counterclaim that the County may have against the Bank.

ARTICLE V

INSURANCE

SECTION 5.1. Comprehensive General Liability. The County shall maintain or cause to be maintained throughout the term of this Agreement, a comprehensive general liability policy or policies in protection of the County, its officers, agents and employees. Said policy shall cover such losses and for such amounts and shall have such deductible amounts as shall be satisfactory to the County and, in the judgment of the County, shall protect the County against losses not protected under the principles of sovereign immunity. The net proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.

SECTION 5.2. Workers' Compensation. The County shall maintain workers' compensation insurance issued by a responsible carrier authorized under the laws of the State to insure its employees against liability for compensation under the laws now in force in the State, or any act hereafter enacted as an amendment or supplement thereto or in lieu thereof. The proceeds of such workers' compensation insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.

SECTION 5.3. Insurance. (a) The County shall procure and maintain, or cause to be procured and maintained, throughout the term of this Agreement, insurance against loss or damage to any portion of the Mortgaged Property by fire and lightning, with extended coverage, and vandalism, theft and malicious mischief insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. Such insurance policies shall name the Bank as loss payee and additional insured.

(b) If any buildings, fixtures or other improvements are located on any portion of the Mortgaged Property that is located in a special flood hazard area according to the Federal Emergency Management Agency ("FEMA"), then the County must maintain a flood insurance policy on the Mortgaged Property. If at any time during the term of the Agreement, such portion of the Mortgaged Property is classified by FEMA as being located in a special flood hazard area, flood insurance will be mandatory. Should this occur, federal law requires the Bank to notify the County of the reclassification. If, within forty-five (45) days of receipt of notification from the Bank that any portion of the Mortgaged Property has been reclassified by the FEMA as being located in a special flood hazard area, the County has not provided sufficient evidence of flood insurance, the Bank is mandated under federal law to purchase flood insurance on behalf of the County, and any amounts so expended shall, subject to Section 4.2 and the Enforcement Limitation, immediately become debts of the County, shall bear interest at the rate specified in the Agreement, and payment thereof shall be secured by the Deed of Trust.

(c) Such insurance required by this Section shall be in an amount equal to 100% of the replacement cost of the Mortgaged Property (except that such insurance may be subject to a reasonable and customary deductible clause for any one loss); provided, however, that in no

event shall such insurance be maintained in an amount less than the aggregate Installment Payments designated as principal outstanding from time to time.

(d) The Net Proceeds of such insurance required by this Section shall be applied as provided in Section 6.1 or Section 6.2.

SECTION 5.4. Title Insurance. The County shall obtain at the time of execution of this Agreement, and cause to be maintained, a mortgagee's title insurance policy on the Mortgaged Property in form and substance reasonably acceptable to the Bank insuring the County's fee simple interest in the Mortgaged Property, subject only to Permitted Encumbrances, in the amount equal to the maximum amount of the Advancement, naming the Bank as the named insured.

SECTION 5.5 General Insurance Provisions. (a) The County shall pay or cause to be paid when due the premiums for all insurance policies required by this Agreement.

(b) All insurance policies required by this Article shall be issued by a responsible carrier authorized to do business in the State under the laws of the State.

(c) The Bank shall not be responsible for the sufficiency or adequacy of any insurance herein required and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the Bank.

(d) In lieu of obtaining the policies of insurance required by Section 5.1, Section 5.2 and Section 5.3, the County may adopt alternative risk management programs which the County determines to be reasonable, including, without limitation, to self-insure in whole or in part, individually or in connection with other units of local government or other institutions, to participate in programs of captive insurance companies, to participate with other units of local government or other institutions in mutual or other cooperative insurance or other risk management programs, to participate in State or federal insurance programs, to take advantage of State or federal laws now or hereafter in existence limiting liability, or to establish or participate in other alternative risk management programs, all as may be reasonable and appropriate risk management by the County.

(e) The insurance coverage required under Section 5.3 may be maintained under a blanket policy covering other properties of the County.

(f) The County shall cause to be delivered to the Bank annually a certificate stating that the insurance policies or alternative risk management programs required or permitted by this Agreement are in full force and effect.

(g) The County shall cooperate fully with the Bank in filing any proof of loss with respect to any insurance policy maintained pursuant to this Article and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Mortgaged Property or any portion thereof.

ARTICLE VI

DAMAGE AND DESTRUCTION; USE OF NET PROCEEDS

SECTION 6.1. Obligation of the County to Repair and Replace the Mortgaged Property. In the event that Net Proceeds received by the County with respect to the Mortgaged Property exceed \$500,000, the County shall cause such Net Proceeds to be deposited in a separate fund maintained by the County with the Bank or its designee. Unless applied to the payment in full or in part of the remaining Installment Payments pursuant to Section 6.2, all Net Proceeds shall be applied to the prompt repair, restoration or replacement of the Mortgaged Property and, if required to be deposited with the Bank, shall be disbursed upon receipt of requisitions of the County approved by the Bank, stating, with respect to each payment to be made, (a) the requisition number; (b) the name and address of the person, firm or corporation to whom payment is due; (c) the amount to be paid; and (d) that each obligation mentioned therein has been properly incurred, is a proper charge against the separate fund, and has not been the basis of any previous withdrawal and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation. The Bank shall cooperate with the County in the administration of such fund and shall not unreasonably withhold its approval of requisitions under this Section. Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of such Net Proceeds shall be the property of the County, subject to the Deed of Trust and Permitted Encumbrances, and shall be included as part of the Mortgaged Property under this Agreement.

SECTION 6.2. Insufficiency of Net Proceeds; Discharge of the Obligation of the County to Repair the Mortgaged Property. (a) If the Net Proceeds shall be insufficient to pay in full the cost of repair, restoration or replacement of the Mortgaged Property, the County may elect to complete the work and pay any cost in excess of the amount of the Net Proceeds, and the County agrees that, if by reason of any such insufficiency of the Net Proceeds, the County shall make any payments pursuant to the provisions of this subsection, the County shall not be entitled to any reimbursement therefor from the Bank, nor shall the County be entitled to any diminution of the Installment Payments payable under Section 4.1.

(b) If the County elects not to apply the Net Proceeds to the repair, restoration or replacement of the Mortgaged Property, the County shall apply the Net Proceeds of such insurance policies to the prepayment of the principal component of the Installment Payments in accordance with Section 10.1. In the event the amount of such Net Proceeds exceeds the amount necessary to prepay the principal component of all remaining Installment Payments, plus the interest component of the Installment Payments accrued to the date of prepayment, such excess shall be paid to or retained by the County.

(c) Within 90 days following the receipt of Net Proceeds, unless a further extension is approved by the Bank, the County shall commence the repair, restoration or replacement of the Mortgaged Property, or shall elect, by written notice to the Bank, to apply the Net Proceeds to the prepayment of the principal component of the Installment Payments under the provisions of Section 10.1. For purposes of this subsection, "commence" shall include the retention of an

engineer in anticipation of the repair, restoration, modification, improvement or replacement of the Mortgaged Property. In the event that the County shall, after commencing the repair, restoration, modification, improvement or replacement of the Mortgaged Property, determine that the Net Proceeds (plus any amount withheld therefrom by reason of any deductible clause) shall be insufficient for the accomplishment thereof, the County may elect to apply the Net Proceeds to the prepayment of the Installment Payments under the provisions of Section 10.1.

SECTION 6.3. Cooperation of the Bank. The Bank shall cooperate fully with the County in filing any proof of loss with respect to any insurance policy covering the events specified in Section 5.1. In no event shall the Bank or the County voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim with respect to the Mortgaged Property without the written consent of the other.

ARTICLE VII

COVENANTS OF THE COUNTY

SECTION 7.1. Installation of Additional Improvements. The County may at any time and from time to time, in the sole discretion of the County, and at its own expense, construct real property improvements and install items of equipment or other personal property in or upon any portion of the Mortgaged Property that does not materially impair the effective use, nor materially decrease the value, of the Mortgaged Property; provided, however, that the County shall repair and restore any and all damage resulting from the construction, installation, modification or removal of any such items. All such items provided by the County shall be subject to the lien of the Deed of Trust.

SECTION 7.2. Access to the Mortgaged Property. The County agrees that the Bank and its agents and employees, shall have the right, at all reasonable times during normal business hours of the County upon the furnishing of reasonable notice to the County under the circumstances, to enter upon the Mortgaged Property or any portion thereof to examine and inspect the same. The County further agrees that the Bank and the Bank's successors, assigns or designees shall have such rights of access to the Mortgaged Property as may be reasonably necessary to cause the proper maintenance of the Mortgaged Property in the event of failure by the County to perform its obligations hereunder. No right of inspection shall be deemed to impose on the Bank any duty or obligation whatsoever to undertake any inspection, and no inspection made by the Bank shall be deemed to impose upon the Bank any duty or obligation to identify any defects in the Mortgaged Property or to notify any person with respect thereto.

SECTION 7.3. Maintenance, Utilities, Taxes and Assessments. (a) Subject to the Enforcement Limitation, the County shall provide for the repair and replacement of any portion of the Mortgaged Property required on account of ordinary wear and tear or want of care.

(b) Subject to the Enforcement Limitation, the County shall also pay, or provide for the payment of, all taxes and assessments, including, but not limited to, utility charges of any type or nature levied, assessed or charged against any portion of the Mortgaged Property; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the County shall be obligated to pay only such installments as are required to be paid as and when the same become due.

(c) The County may, at the County's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom; provided, however, that prior to such nonpayment, the County shall furnish to the Bank an opinion of counsel acceptable to the Bank to the effect that, by nonpayment of any such items, the interest of the Bank in the Mortgaged Property will not be materially endangered and that all or any portion of the Mortgaged Property will not be subject to loss or forfeiture. Otherwise, subject to the Enforcement Limitation, the County shall promptly pay such taxes, assessments or charges or make provisions for the payment thereof.

SECTION 7.4. Modification of the Mortgaged Property. The County shall, in its sole discretion and at its own expense, have the right to make additions, modifications and improvements to any portion of the Mortgaged Property if such additions, modifications or improvements are necessary or beneficial for the use of the Mortgaged Property. Such additions, modifications and improvements shall not in any way damage any of the Mortgaged Property (unless such damage is to be repaired as provided in Section 6.1) or cause the Mortgaged Property to be used for purposes other than those authorized under the provisions of law, and the Mortgaged Property, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is not less than the value of the Mortgaged Property immediately prior to the making of such additions, modifications and improvements. The Project, as so modified, shall be subject to the lien of the Deed of Trust.

Except for Permitted Encumbrances, the County shall not permit any lien to be established or remain against the Mortgaged Property for labor or materials furnished in connection with any additions, modifications or improvements made by the County pursuant to this Section; provided, however, that if any such lien is established, the County may, at its own expense and in its name, in good faith contest any lien filed or established against the Mortgaged Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, provided that the County shall furnish to the Bank full security against any loss or forfeiture which might arise from the nonpayment of any such item in form satisfactory to the Bank.

SECTION 7.5. Encumbrances. Except as provided in this Article (including, without limitation, Section 7.4 and this Section), the County shall not, directly or indirectly, create, incur, assume or suffer to exist any pledge, lien, charge, encumbrance or claim, as applicable, on or with respect to the Mortgaged Property, other than Permitted Encumbrances. Except as expressly provided in this Article and subject to the Enforcement Limitation, the County shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such pledge, lien, charge, encumbrance or claim for which it is responsible if the same shall arise at any time; provided, however, that the County may contest any such lien, charge, encumbrance or claim if it desires to do so and if it provides the Bank with full security against any loss or forfeiture which might arise from the nonpayment of any such item in form satisfactory to the Bank.

SECTION 7.6. Indemnification of the Bank and the Local Government Commission. To the fullest extent permitted by law, the County covenants to defend, indemnify and hold harmless the Bank and the LGC and their respective officers, directors, members, employees and agents (collectively, the "Indemnified Party") against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such Indemnified Party may become subject under any statute or at law or in equity or otherwise in connection with the transactions contemplated by this Agreement or the Deed of Trust and shall reimburse any such Indemnified Party for any legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of the transactions contemplated by this Agreement or the Deed of Trust; provided, however, that the right to indemnification set forth in this Section shall not apply in any instances where such loss, claim, damage or liability is due to the willful misconduct or negligence of the Bank or any of its

officers, directors, members, employees and agents. In particular, without limitation, the County shall and hereby agrees to indemnify and save the Indemnified Party harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of any breach or default on the part of the County in the performance of any of its obligations under this Agreement or the Deed of Trust.

SECTION 7.7. Financial Statements and Other Information. The County agrees that it will furnish the Bank, when the same become available, but in no event later than 210 days after the end of the Fiscal Year, its annual audited financial statements; provided, however, that the County's obligation to provide the Bank with such information may be satisfied by publically releasing such information on the County's website.

The County shall also furnish to the Bank, at such reasonable times as the Bank shall request, all other financial information (including, without limitation, the County's annual budget as submitted or approved) as the Bank may reasonably request. The County shall permit the Bank and its agents and representatives to inspect the County's financial books and records during regular business hours and make extracts therefrom.

ARTICLE VIII

ASSIGNMENT, LEASING AND AMENDMENT

SECTION 8.1. Assignment by the Bank. The Bank may, at any time and from time to time, assign to any bank, insurance company or similar financial institution approved by the LGC all or any part of its interest in the Mortgaged Property or this Agreement, including, without limitation, the Bank's rights to receive the Installment Payments and any additional payments due and to become due hereunder. Reassignment by any assignee may also only be to a bank, insurance company or similar financial institution approved by the LGC. The County agrees that this Agreement may become part of a pool of obligations at the Bank's or its assignee's option. The Bank or its assignees may assign or reassign either the entire pool or any partial interest herein to any bank, insurance company or similar financial institution. Notwithstanding the foregoing, no assignment or reassignment of the Bank's interest in the Mortgaged Property or this Agreement shall be effective unless and until the County shall receive a duplicate original counterpart of the document by which such assignment or reassignment is made disclosing the name and address of each assignee. The County covenants and agrees with the Bank and each subsequent assignee of the Bank to maintain for the full term of this Agreement a written record of each such assignment or reassignment. The County agrees to execute any document reasonably required by the Bank in connection with any assignment. Notwithstanding any assignment by the Bank of its interest in this Agreement, the County shall not be obligated to provide any financial or other information to any assignee of the Bank except as set forth in Section 7.7.

After the giving of notice described above to the County, the County shall thereafter make all payments in accordance with the notice to the assignee named therein and shall, if so requested, acknowledge such assignment in writing, but such acknowledgement shall in no way be deemed to make the assignment effective.

The Bank covenants that any disclosure document circulated by it or an assignee in connection with the sale of the Bank's rights in this Agreement will contain a statement to the effect that the County has not reviewed and is not responsible for the disclosure document. The Bank covenants to defend, indemnify and hold harmless the County and its officers, employees and agents against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such Indemnified Party may become subject on account of any statement included in a disclosure document, or failure to include a statement in a disclosure document, unless the County shall have expressly approved the use of such disclosure document.

SECTION 8.2. Assignment and Leasing by the County. (a) This Agreement may not be assigned by the County.

(b) The County may lease all or any portion of the Mortgaged Property, subject to each of the following conditions:

(i) the obligation of the County to make Installment Payments hereunder shall remain obligations of the County;

(ii) any such lease by its terms shall be subordinate to the lien of the Deed of Trust unless otherwise agreed to in writing by the Bank;

(iii) the County shall provide a copy of any such lease to the Bank at least twenty (20) days before its effective date, and

(iv) any such lease shall not cause the Mortgaged Property to be used for a purpose other than a governmental or proprietary function of the County authorized under the provisions of the Constitution and laws of the State and shall not cause the interest component in the Installment Payments to be includable in gross income of the Bank or its assignees for federal income tax purposes.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

SECTION 9.1. Events of Default Defined. The following shall be “events of default” under this Agreement and the terms “events of default” and “default” shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) The failure by the County to pay or prepay any Installment Payment required to be paid hereunder when due.

(b) The occurrence of an Event of Nonappropriation.

(c) Failure by the County to observe and perform any warranty, covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto other than as referred to in clause (a) or (b) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the County by the Bank; provided, however, that if the failure stated in the notice cannot be corrected within the applicable period and if corrective action is instituted by the County within the applicable period and diligently pursued, the County shall have such additional period of time to correct the failure as shall be necessary to correct such failure so long as such correction is diligently pursued.

(d) The County becomes insolvent or the subject of insolvency proceedings; or is unable, or admits in writing its inability, to pay its debts as they mature; or makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its property; or files a petition or other pleading seeking reorganization, composition, readjustment or liquidation of assets, or requesting similar relief; or applies to a court for the appointment of a receiver for it or for the whole or any part of its property; or has a receiver or liquidator appointed for it or for the whole or any part of its property (with or without the consent of the County) and such receiver is not discharged within ninety (90) consecutive days after his appointment; or becomes the subject of an “order for relief” within the meaning of the United States Bankruptcy Code; or files an answer to a creditor’s petition admitting the material allegations thereof for liquidation, reorganization, readjustment or composition or to effect a plan or other arrangement with creditors or fail to have such petition dismissed within sixty (60) consecutive days after the same is filed against the County.

(e) The occurrence of an “Event of Default” under the Deed of Trust as defined therein.

(f) Any warranty, representation or statement made by the County herein or in the Deed of Trust or any other document executed and delivered by the County in connection herewith is found to be incorrect or misleading in any material respect as of the date made.

SECTION 9.2. Remedies on Default. Upon the occurrence of any event of default under Section 9.1, the Bank may, without any further demand or notice, exercise any one or more of the following remedies:

(a) declare the entire amount of the principal component of the Installment Payments and the accrued and unpaid interest component to the date of declaration to be immediately due and payable;

(b) exercise all remedies available at law or in equity or under the Deed of Trust, including sale of the Mortgaged Property, and apply the proceeds of any such sale or other disposition, after deducting all costs and expenses, including court costs and reasonable attorneys' fees incurred with the recovery, repair, storage and other sale or other disposition costs, toward the principal component and accrued and unpaid interest of the balance of Installment Payments due; and

(c) subject to the Enforcement Limitation, proceed by appropriate court action to enforce performance by the County of the applicable covenants of this Agreement or to recover for the breach thereof.

NOTWITHSTANDING ANY OTHER PROVISIONS HEREIN, IT IS THE INTENT OF THE PARTIES HERETO TO COMPLY WITH SECTION 160A-20 OF THE GENERAL STATUTES OF NORTH CAROLINA, AS AMENDED. NO DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST THE COUNTY IN FAVOR OF THE BANK OR ANY OTHER PERSON IN VIOLATION OF SAID SECTION 160A-20, INCLUDING, WITHOUT LIMITATION, ANY DEFICIENCY JUDGMENT FOR AMOUNTS THAT MAY BE OWED HEREUNDER WHEN THE SALE OF ALL OR ANY PORTION OF THE MORTGAGED PROPERTY IS INSUFFICIENT TO PRODUCE ENOUGH MONEYS TO PAY IN FULL ALL REMAINING OBLIGATIONS HEREUNDER.

SECTION 9.3. No Remedy Exclusive. No remedy conferred herein upon or reserved to the Bank is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. To the extent permitted by law, any delay or omission to exercise any right or power accruing upon any default shall not impair any such right or power nor shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Bank to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required in this Article or by law.

SECTION 9.4. Agreement to Pay Attorneys' Fees and Expenses. In the event the County should default under any of the provisions hereof and the Bank should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the County contained herein, the County agrees that it will pay on demand to the Bank, subject to the limitations and provisions of Section 6-21.2 of the General Statutes of North Carolina, as amended, the reasonable fees of such attorneys and such other expenses so incurred by the Bank. For purposes of this Section,

the reasonable fees of attorneys shall mean attorneys' fees actually incurred at such attorneys' standard hourly rate for such services and shall not be based on any percentage of the outstanding amount due; provided, however that such attorneys' fees shall not exceed the maximum amount permitted by law.

SECTION 9.5. No Additional Waiver Implied by One Waiver. In the event any provision contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder except as may be provided by law.

ARTICLE X

PREPAYMENT OF INSTALLMENT PAYMENTS

SECTION 10.1. Optional Prepayment of Installment Payments. The County may prepay, in whole or in part, the outstanding principal component of the Installment Payments on any date upon at least thirty (30) days' prior written notice to the Bank (unless otherwise waived by the Bank), at a prepayment price equal to 100% of the principal component of the Installment Payments to be prepaid, plus accrued interest to the prepayment date.

Any notice of optional prepayment pursuant to this Section may state that the redemption to be effected is conditioned upon the receipt by the Bank on or prior to the prepayment date of moneys sufficient to pay the prepayment price of, and accrued interest to the prepayment date on, the principal component of the Installment Payments to be prepaid, and that if such moneys are not so received, such notice shall be of no force or effect and the principal components of the Installment Payment to be prepaid shall not be required to be prepaid. In the event that such notice contains such a condition and moneys sufficient to pay the prepayment price of, and accrued interest to the prepayment date on, the principal component of the Installment Payments to be prepaid on or prior to the prepayment date, such prepayment shall not be made, and the County shall within a reasonable time thereafter give notice to the Bank, in the manner in which the notice of prepayment was given, that such moneys were not so received.

SECTION 10.2. Mandatory Prepayment of Installment Payments. The County shall provide to the Bank on a date that is not less than five (5) Business Days and not more than ten (10) Business Days prior to the expiration of the Initial Term Period a certificate stating that (a) no event of default has occurred and is continuing under Section 9.1 and (b) all representations and warranties of the County set forth in this Agreement are true and correct as of the date of such certificate. In the event that the County does not deliver to the Bank such certificate as provided in the immediately preceding sentence, the outstanding principal component of the Installment Payments shall be subject to mandatory prepayment in whole on the last day of the Initial Term Period at a prepayment price equal to 100% of the principal component of the Installment Payments to be prepaid, plus accrued interest to the prepayment date. In the event that such certificate is so delivered by the County and the principal component of the Installment Payments is not prepaid in whole on or prior to the last day of the Initial Term Period, such unpaid principal balance shall be subject to mandatory prepayment in part in sixty (60) equal principal installments payable on the first Business Day of each month, with the final payment of the remaining outstanding principal being prepaid on the Final Maturity Date, all at a prepayment price equal to 100% of the principal component of the Installment Payments to be prepaid on each such date.

ARTICLE XI
MISCELLANEOUS

SECTION 11.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received upon the earlier of actual receipt or three days after deposit in the United States first-class, registered or certified mail (unless otherwise provided herein), postage prepaid, at the following addresses:

If to the County:

County of Forsyth, North Carolina
4th Floor, Government Center
201 N. Chestnut Street
Winston-Salem, North Carolina 27101
Attention: Chief Financial Officer

If to the Bank:

PNC Bank, National Association
301 Fayetteville Street
Suite 2100
Raleigh, North Carolina 27601
Attention: Casey Turner

The County and the Bank, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

SECTION 11.2. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the County and the Bank and their respective successors and assigns. Whenever in this Agreement either the County or the Bank is named or referred to, such reference shall be deemed to include the successors or assigns thereof and all the covenants and agreements in this Agreement contained by or on behalf of the County or the Bank shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 11.3. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 11.4. Legal Holidays. In any case where any Installment Payment Date or other date for a required payment of any Installment Payment or other payment required by this Agreement shall not be a Business Day, then such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date so required, except in the case of the computation of interest or fees hereunder, such extension of time shall, in such case, be included in the computation of the payment due hereunder.

SECTION 11.5. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 11.6. Commitment Letter. The terms of this Agreement shall supersede the terms of any commitment letter, proposal or other term sheet provided by the Bank. To the extent of any conflict between this Agreement and such other documents, this Agreement shall take priority.

SECTION 11.7. Applicable Law. This Agreement shall be construed and governed in accordance with the laws of the State of North Carolina.

[signatures to follow on next page]

IN WITNESS WHEREOF, the County and the Bank have caused this Agreement to be executed in their respective names by their respective duly authorized officers as of the date first above written.

COUNTY OF FORSYTH, NORTH CAROLINA

[SEAL]

By: _____
County Manager

Attest:

Clerk to the Board of Commissioners

PNC BANK, NATIONAL ASSOCIATION

By: _____
Vice President

[Counterpart signature page to the Installment Financing Agreement, dated as of October __, 2019, between the County of Forsyth, North Carolina and PNC Bank, National Association]

CERTIFICATE OF LOCAL GOVERNMENT COMMISSION

The foregoing Installment Financing Agreement has been approved under the provisions of Section 160A-20 and Article 8 of Chapter 159 of the General Statutes of North Carolina, as amended.

Secretary, Local Government Commission
of North Carolina

ADVANCE SCHEDULE

Date	Amount
Initial Advance (10/__/2019)	\$ _____

ADVANCE REQUEST

[Date]

PNC Bank, National Association
301 Fayetteville Street
Suite 2100
Raleigh, NC 27601
Attention: Casey Turner

Re: Request for disbursement of funds under an Installment Financing Agreement, dated as of October __, 2019 (the "Agreement"), between the County of Forsyth, North Carolina (the "County") and PNC Bank, National Association (the "Bank")

Pursuant to the terms and conditions of the Agreement, the County hereby requests the disbursement of funds to the County as an Additional Advance under the Agreement for the costs described below. Capitalized terms used herein but not defined herein shall have the meanings given to such terms in the Agreement.

This is request number _____ for funds under the Agreement in the amount of \$ _____. The requested disbursement should be made to the credit of the County's account in accordance with the following instructions:

[Insert wire transfer or other instructions.]

The County makes the following representations in connection with this request:

1. The requested disbursement will be used by the County to reimburse itself for costs of the Project or Closing Costs previously paid by it.
2. The requested disbursement has not been the subject of any previous request by the County.
3. To the best knowledge of the undersigned, no "default" or "event of default" has occurred and is continuing under the Agreement.
4. The undersigned is an Authorized Officer.

COUNTY OF FORSYTH, NORTH CAROLINA

By:

Printed Name:

Title: