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TO: Board of County Commissioners
FROM: Julia E. Edwards, Finance Director
DATE: August 19, 2020
RE: Installment Financing Contract

Attached is the deed installment financing contract for the Walnut Cove EMS Station and Maintenance Building. Please approve the resolution in the consent agenda.

If you have any questions, please contact me.

INSTALLMENT FINANCING CONTRACT

BETWEEN

TRUIST BANK

AND

COUNTY OF STOKES, NORTH CAROLINA

DATED AS OF
SEPTEMBER 1, 2020

INSTALLMENT FINANCING CONTRACT

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and is not part of the Installment Financing Contract.)

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INSTALLMENT FINANCING CONTRACT

THIS INSTALLMENT FINANCING CONTRACT, dated as of September 1, 2020 (this "*Contract*"), is between **TRUIST BANK**, a state banking corporation (the "*Bank*"), and its successors and assigns, and the **COUNTY OF STOKES, NORTH CAROLINA** (the "*County*"), a political subdivision of the State of North Carolina (the "*State*"), validly existing under and by virtue of the Constitution, statutes and laws of the State.

PREAMBLES

WHEREAS, the County has the power, pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended, to (1) purchase real and personal property, (2) enter into installment financing contracts in order to finance the purchase of real and personal property used, or to be used, for public purposes, and (3) finance the construction of fixtures or improvements on real property by contracts that create in the fixtures or improvements and in the real property on which such fixtures or improvements are located a security interest to secure repayment of money advanced or made available for such construction;

WHEREAS, the Board of Commissioners of the County (the "*Board*") has determined that it is in the County's best interests to receive an advance of funds in an aggregate principal amount of \$1,265,000 (the "*Advance*") under this Contract in order to (a) finance all or a portion of the costs of the Project (as defined below), in exchange for which the County will make Installment Payments and Additional Payments (as each term is defined below) on the terms set forth below, and (b) pay certain costs incurred in connection with the execution and delivery of this Contract;

WHEREAS, the Board has authorized, approved and directed the County's execution, performance and delivery of this Contract by a resolution passed and adopted by the Board on August 24, 2020 (the "*Resolution*");

WHEREAS, the Bank's execution, delivery and performance of this Contract have been authorized, approved and directed by all necessary and appropriate action of the Bank;

WHEREAS, the County's obligation to make the Installment Payments and Additional Payments constitutes a limited obligation of the County, payable solely from currently budgeted appropriations of the County; does not constitute a general obligation or other indebtedness of the County within the meaning of the Constitution of the State; and does not constitute a direct or indirect pledge of the faith and credit or taxing power of the County within the meaning of the Constitution of the State;

WHEREAS, in order to secure the County's obligations under this Contract, the County has executed and delivered a Deed of Trust, Security Agreement and Fixture Filing dated as of September 1, 2020 (the "*Deed of Trust*") to the deed of trust trustee named therein for the benefit of the Bank, creating a lien on all of the County's right, title and interest in the real property on which the Project is located and all improvements thereon (the "*Mortgaged Property*"); and

WHEREAS, no deficiency judgment may be rendered against the County in any action for breach of a contractual obligation under this Contract, and the taxing power of the County is not and may not be pledged in any way directly or indirectly or contingently to secure any money due under this Contract;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants in this Contract contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. The following terms have the meanings specified below unless the context clearly requires otherwise:

“Additional Payments” means the reasonable and customary expenses and fees of the Bank, any expenses of the Bank in defending an action or proceeding in connection with this Contract and any taxes or any other expenses, including, but not limited to, licenses, permits, state and local income, sales and use or ownership taxes or property taxes which the Bank is expressly required to pay as a result of this Contract (together with interest that may accrue thereon in the event that the County fails to pay the same, as set forth in this Contract).

“Advance” means the original aggregate principal amount equal to \$1,265,000 advanced by the Bank for the purposes provided in this Contract, as such amount advanced may be adjusted by amendment to this Contract.

“Bank” means Truist Bank, a state banking corporation, and its successors and assigns.

“Bank Representative” means any person or persons at the time designated to act on behalf of the Bank for purposes of performing any act on behalf of the Bank under this Contract by a written certificate furnished to the County containing the specimen signatures of such person or persons and signed on behalf of the Bank by any vice president.

“Board” means the duly elected governing Board of Commissioners of the County, or any successor to its functions.

“Business Day” means a day other than a Saturday or Sunday on which the Bank, at its principal corporate offices, is not required or authorized by law to remain closed.

“Closing Date” means September 4, 2020.

“Code” means the Internal Revenue Code of 1986, as amended, including regulations promulgated thereunder.

“Completion Date” means the date on which completion of the Project has occurred, as evidenced by a certificate provided for in Section 5.3.

“Construction Contracts” means the contracts between the County and contractors selected and hired by the County relating to the construction of the Project.

“Costs of Construction” are deemed to include the payment of, or the reimbursement to the County for the following items:

- (1) obligations incurred or assumed for the Project in connection with the acquisition and construction of the Project;

(2) the cost to construct, improve, equip and furnish the Project; including, without limitation, the Bank's fees and expenses incurred in connection with the delivery of the Advance to the County, fees and expenses of the LGC, if any, legal fees and expenses, taxes, inspection costs, the cost of permit fees, filing and recording costs and survey expenses in connection with the granting of any lien on, or security interest in, the Mortgaged Property;

(3) all other costs which are considered to be a part of the costs of the construction, improvement, equipping and furnishing of the Project in accordance with generally accepted accounting principles payable by the County under this Contract, including sums required to reimburse the County for advances made by the County that are properly chargeable to the construction, improvement, equipping and furnishing of the Project; and

(4) payment or prepayment of the principal components of the Installment Payments from any funds remaining in the Project Fund after the Completion Date.

"County" means the County of Stokes, North Carolina, a political subdivision of the State, validly existing under and by virtue of the Constitution, statutes and laws of the State, and any successor to its functions.

"County Representative" means (1) the person or persons at the time designated to act on behalf of the County for the purpose of performing any act under this Contract by a written certificate furnished to the Bank containing the specimen signatures of such person or persons and signed on behalf of the County by the County Manager or the Finance Director of the County, or (2) if any or all of the County's rights and obligations are assigned under this Contract, the person or persons at the time designated to act on behalf of the County and the assignee by a written certificate similarly furnished and of the same tenor.

"Deed of Trust" means the Deed of Trust, Security Agreement and Fixture Filing dated as of September 1, 2020 from the County to the deed of trust trustee named therein, for the benefit of the Bank and its successor and assignees, creating a lien in and to the Mortgaged Property, and as the same may be amended and supplemented from time to time as provided in the Deed of Trust, all of the terms, definitions, conditions and covenants of which are incorporated herein by reference and are made a part of this Contract as if fully set forth herein.

"Deed of Trust Trustee" means BB&T Collateral Service Corporation, as the trustee named in the Deed of Trust, and any successor trustee thereto.

"Determination of Taxability" means the circumstance of the interest portion of Installment Payments hereunder becoming includable for federal income tax purposes in the gross income of the Bank as a consequence of any action, inaction, error or omission of the County. A Determination of Taxability shall be evidenced by (i) the issuance by the Internal Revenue Service of a statutory notice of deficiency or other written notification which holds in effect that the interest portion of one or more Installment Payments made under this Contract is includable for federal income tax purposes in the gross income of the Bank, which notice or notification is not contested by either the County or the Bank, or (ii) a determination by a court of competent jurisdiction that the interest portion of any Installment Payment is includable for federal income tax purposes in the gross income of the Bank thereof, which determination either is final and non-appealable or is not appealed within the requisite time period for appeal, or (iii) the admission in writing by the County to the effect that the interest portion of any Installment Payment is includable for federal income tax purposes in the gross income of the Bank.

“Electronic Means” means delivery to the Bank Representative or the County Representative, as applicable, via the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, and passwords and/or authentication keys.

“Event of Default” means any of the events of default as defined in Section 13.1.

“Fiscal Year” means a twelve-month period commencing on July 1 of any year and ending on June 30 of the immediately succeeding year, or such other twelve-month period which may subsequently be adopted as the Fiscal Year of the County.

“Installment Payment Date” means each date that an Installment Payment is due and payable to the Bank in accordance with the terms of this Contract.

“Installment Payments” means, collectively, the payments made by the County to the Bank as described in Article III and in the Payment Schedule attached hereto.

“Interest Rate” means 1.66% per annum, calculated on the basis of a 360 day year consisting of twelve-30 day months.

“LGC” means the Local Government Commission of North Carolina or any successor to its functions.

“Mortgaged Property” means, the real property located within the County on which the Project is located, and all improvements thereon, as more particularly described in Exhibit A to the Deed of Trust, as the same may be amended and supplemented from time to time so as to add real property thereto or to release real property therefrom.

“Net Proceeds” means, when used with respect to any proceeds from policies of insurance or construction bonds required under this Contract, proceeds of any condemnation award arising out of the condemnation of all or any portion of the Mortgaged Property, or the proceeds from any sale or lease of the Mortgaged Property pursuant to this Contract, the Deed of Trust or otherwise, the amount remaining after deducting from the gross proceeds thereof all expenses (including, without limitation, attorneys’ fees and costs) incurred in the collection of such proceeds.

“Payment Schedule” means the document setting forth the County’s Installment Payments which is attached hereto and incorporated herein by reference.

“Plans and Specifications” means the plans and specifications, if any, to be prepared by an architect approved by the County relating to the construction, improving, equipping and furnishing of the Project.

“Project” means the construction of (i) a new Emergency Medical Services Station and (ii) a new Maintenance Facility in the County.

“Project Fund” means the fund of that name created pursuant to the Project Fund Agreement into which the Bank shall deposit the Advance.

“Project Fund Agreement” means the Project Fund Agreement dated as of April 1, 2020 between the County and the Bank.

“Prime Rate” shall mean a rate of interest equal to the announced prime commercial lending rate per annum of the Bank. The Prime Rate is a reference rate for the information and use of the Bank in establishing the actual rate to be charged to the County. The Prime Rate is purely discretionary and is not

necessarily the lowest or best rate charged any customer. The Prime Rate shall be adjusted from time to time without notice or demand as of the effective date of any announced change thereof.

“*Revenues*” means all revenues derived from this Contract, including all Installment Payments and all Net Proceeds not applied to the replacement of the Mortgaged Property.

“*State*” means the State of North Carolina.

“*Tax Certificate*” means the Tax Certificate dated as of the Closing Date executed by the County in connection with the execution and delivery of this Contract.

“*Taxable Rate*” shall mean a rate equal to the Prime Rate times that percentage which after the Determination of Taxability will result in the same after-tax yield to the Bank of the interest portion of Installment Payments as before the Determination of Taxability.

[END OF ARTICLE I]

ARTICLE II

THE ADVANCE

Section 2.1 Advance. The Bank hereby makes an advance to the County of the Advance, and the County hereby accepts from the Bank the Advance to be applied in accordance with the terms and conditions of this Contract. The County will use the proceeds of the Advance (1) to complete the Project in accordance with the Plans and Specifications, if any, and (2) to pay certain costs incurred in connection with the execution and delivery of this Contract.

[END OF ARTICLE II]

ARTICLE III

INSTALLMENT PAYMENTS; ADDITIONAL PAYMENTS

Section 3.1 *Amounts and Times of Installment Payments and Additional Payments.*

(a) Subject to the provisions of Article XV, the County shall repay the Advance in Installment Payments consisting of an interest component and a principal component, as applicable, on each Installment Payment Date in the amounts set forth in this Contract and the Payment Schedule attached to this Contract. The County hereby approves the Advance by the Bank to the County pursuant to this Contract in the amount of \$1,265,000 (less a fee of \$5,900 to be paid directly by the Bank to its legal counsel) to be repaid by the County in Installment Payments at an interest rate per annum equal to the Interest Rate.

(b) The County shall pay each Installment Payment in the amounts and at the times set forth in the attached Payment Schedule, except as otherwise provided in this Contract. If an Installment Payment is due on any day which is not a Business Day, such Installment Payment is due on the next succeeding Business Day and the County shall make such Installment Payment on such Business Day with no additional interest due thereon. Installment Payments will be sufficient in the aggregate to repay the principal amount of the Advance, together with interest thereon, as the same become due and payable. The County shall pay any Additional Payments on a timely basis directly to the person or entity to which such Additional Payments are owed. All payments must be made in lawful currency of the United States.

Section 3.2 *Place of Payments.* All payments required to be made to the Bank hereunder shall be made to the Bank (1) at the address set forth in Section 16.1 in immediately available funds, (2) as wire transfers to the Bank on the Installment Payment Date as directed by the Bank or (3) as may be otherwise directed in writing by the Bank.

Section 3.3 *Late Charges.* An Installment Payment that is not paid within 30 days of the due date thereof is subject to a late payment charge of 4% of the amount of the past due Installment Payment. Interest with respect to the principal component of such unpaid Installment Payment shall continue to accrue at the Interest Rate until paid.

Section 3.4 *No Abatement.* There will be no abatement or reduction of the Installment Payments or Additional Payments by the County for any reason, including but not limited to, any failure by the County to appropriate sufficient funds for the payment of the Installment Payments or Additional Payments, any defense, recoupment, setoff, counterclaims or any claim (real or imaginary) arising out of or related to the Mortgaged Property or the completion of the Project. The County assumes and shall bear the entire risk of loss and damage to the Project from any cause whatsoever, it being the intention of the parties that the Installment Payments shall be made in all events unless the obligation to make such Installment Payments is terminated as otherwise provided herein.

Section 3.5 *Prepayment of the Advance.* The County may prepay the Advance in whole at its option at any time at a prepayment price equal to 100% of the par amount of the Advance to be prepaid, together with accrued interest and any Additional Payments due to the date of prepayment.

[END OF ARTICLE III]

ARTICLE IV

PROJECT FUND

The Bank and the County hereby agree to comply with the terms of the Project Fund Agreement.

[END OF ARTICLE IV]

ARTICLE V

CONSTRUCTION OF THE PROJECT

Section 5.1 Construction. The County shall comply with the provisions of Article 8 of Chapter 143 of the General Statutes of North Carolina and enter into Construction Contracts in accordance with Section 143-128.1A of the General Statutes of North Carolina. The County shall cause the Project to be carried on expeditiously in accordance with the Plans and Specifications, if any, all applicable ordinances and statutes, and in accordance with the requirements of all regularly constituted authorities having jurisdiction over the same. The County shall ensure (1) that the Project does not impermissibly encroach on nor impermissibly overhang any easement or right of way and (2) that the Project, when completed, (a) will, if applicable, be wholly within the real property on which the Project is located and any building restriction lines, however established, and (b) will not violate applicable use or other restrictions contained in prior conveyances or applicable protective covenants or restrictions. The County shall cause all utility lines, septic systems and streets serving the Project to be completed in accordance with health department standards and other applicable regulations of any governmental agency having jurisdiction. The County will promptly correct or cause to be corrected any structural defect in the improvements or any departure from the Plans and Specifications, if any.

Section 5.2 Right of Entry and Inspection. The Bank and its representatives and agents have the right to enter on and inspect the Project from time to time, during and after any construction, and the County will cause the contractor, the design-builder or any first-tier subcontractor to cooperate with the Bank and its representatives and agents during such inspections. No right of inspection or approval contained in this Contract imposes on the Bank any duty or obligation whatsoever to undertake any inspection or to give any approval.

Section 5.3 Completion of Construction. The County shall proceed with reasonable diligence to complete the Project in a timely manner. On completion of the Project, and upon request of the Bank, a County Representative shall deliver to the Bank (1) a certificate of the County stating the fact and date of such completion and stating that all of the Costs of Construction have been determined and paid (or that all of such Costs have been paid less specified claims which are subject to dispute and for which a retention in the Project Fund is to be maintained in the full amount of such claims until such dispute is resolved), and (2) proof of the insurance coverage required by the Deed of Trust and Section 6.7 of this Contract.

Section 5.4 Payment and Performance Bonds. Each contractor entering into a Construction Contract, or the design-builder or any first-tier subcontractor entering into a construction contract with the design-builder for the construction of the Project, shall be required to furnish a performance bond and a separate labor and material payment bond as required by Article 3, Chapter 44A of the General Statutes of North Carolina, as amended. In lieu of furnishing a performance bond and a separate labor and material payment bond, each contractor, or the design-builder or any first-tier subcontractor entering into a construction contract with the design-builder, may furnish collateral in an amount of its construction contract securing the County.

In the event of any material default by a contractor, or the design-builder or any first-tier subcontractor entering into a construction contract with the design-builder, under any Construction Contract, or in the event of a material breach of warranty with respect to any materials, workmanship or performance, the County shall promptly proceed, either separately or in conjunction with others, to pursue diligently its remedies against such contractor and/or against each surety of any bond securing the performance of the Construction Contracts.

Section 5.5 Contractor's General Public Liability and Property Damage Insurance. To the extent mandated by State and local requirements (and in amounts required thereby), the County shall require

each contractor entering into a Construction Contract to procure and maintain standard form (a) comprehensive general public liability and property damage insurance, at such contractor's own cost and expense, during the duration of such contractor's construction contract, and (b) comprehensive automobile liability insurance on owned, hired and non-owned vehicles. Such insurance shall provide protection from all claims for bodily injury, including death, property damage and contractual liability, products/completed operations, broad form property damage and XCU (explosive, collapse and underground damage), where applicable.

Section 5.6 Contractor's Builder's Risk Completed Value Insurance. To the extent mandated by State and local requirements, the County will procure and maintain, or will require each contractor entering into a Construction Contract for the construction of the Project, or the design-builder or any first-tier subcontractor entering into a construction contract with the design-builder for the construction of the Project, to procure and maintain, property insurance (builder's risk) on all construction, improving, equipping and furnishing of the Project (excluding contractor's tools and equipment) at the full and insurable value thereof. Such insurance will include the interest of the County and the contractor as additional insureds, and shall insure against "all risk" subject to standard policy conditions and exclusions. With respect to any portion of the Project in a flood plain, flood insurance is required up to, but not exceeding, the maximum attainable amount of coverage under Federal flood insurance. Each contractor, or the design-builder or any first-tier subcontractor entering into a construction contract with the design-builder, shall purchase and maintain similar property insurance for portions of the work stored off the real property on which the Project is located or in transit when such portions of the work are to be included in an application for payment. Each contractor, or the design-builder or any first-tier subcontractor entering into a construction contract with the design-builder, is responsible for the payment of any deductible amounts associated with this insurance.

Section 5.7 Contractor's Worker's Compensation Insurance. To the extent mandated by State and local requirements, each contractor entering into a Construction Contract for the construction of the Project, or the design-builder or any first-tier subcontractor entering into a construction contract with the design-builder for the construction of the Project, shall be required to procure and maintain, at its own cost and expense, worker's compensation insurance during the term of its Construction Contract, covering its employees working thereunder. Such insurance, if issued by a private carrier, shall contain a provision providing that if such policies are cancelled or terminated that the issuing insurer will endeavor to mail 30 days prior written notice to the named insureds, but failure to mail such notice will impose no liability on the insurer. A certificate evidencing such coverage shall be provided to the County and, if the Bank so requests, to the Bank; or, if such insurance is provided by a private carrier, a completed certificate of insurance, in form acceptable to the County and the Bank, shall be provided to the County and the Bank, if the Bank so requests, with respect to each contractor entering into a Construction Contract or, in the case of a design-builder, to the design-builder or any first-tier subcontractor entering into a construction contract with the design-builder.

Section 5.8 Filing With the Bank. The County shall cause copies of all performance bonds and insurance contracts or approved certificates thereof, as required under Sections 5.4, 5.5, 5.6 and 5.7, to be delivered to the Bank in a timely manner and in such form as to certify compliance with the applicable provisions of this Article V.

[END OF ARTICLE V]

ARTICLE VI

COVENANTS OF THE COUNTY

Section 6.1 Care and Use. The County shall use, and shall cause the use of, the Mortgaged Property in a careful and proper manner, in compliance with all applicable laws and regulations, and, at its sole cost and expense, shall service, repair and maintain the Mortgaged Property so as to keep the Mortgaged Property in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear excepted, and shall replace any part of the Mortgaged Property as may from time to time become worn out, unfit for use, lost, stolen, destroyed or damaged. Any and all additions to or replacements of the Mortgaged Property and all parts thereof shall constitute accessions to the Mortgaged Property and shall be subject to all the terms and conditions of this Contract and included in the term "Mortgaged Property" as used in this Contract.

Section 6.2 Inspection. The Bank has the right on reasonable prior notice to the County to enter into and on the Mortgaged Property to inspect the Mortgaged Property and observe the use of the Mortgaged Property during normal business hours.

Section 6.3 Utilities. The County shall pay all charges for gas, water, steam, electricity, light, heat or power, telephone or other utility services furnished to or used on or in connection with the Mortgaged Property. There shall be no abatement of the Installment Payments on account of interruption of any such services.

Section 6.4 Taxes. The County agrees to pay when due any and all taxes relating to the Mortgaged Property and the County's obligations under this Contract including, but not limited to, all license or registration fees, gross receipts tax, sales and use tax, if applicable, license fees, documentary stamp taxes, rental taxes, assessments, charges, ad valorem taxes, excise taxes, and all other taxes, licenses and charges imposed on the ownership, possession or use of the Mortgaged Property by any governmental body or agency, together with any interest and penalties.

Section 6.5 [Reserved].

Section 6.6 [Reserved].

Section 6.7 Insurance. The County shall maintain, or cause to be maintained, at its own expense, except as hereinafter provided, insurance with respect to its property and business against such casualties and contingencies in amounts not less than is customary in similar activities and similarly situated. Without limiting the foregoing, the County shall maintain, or cause to be maintained, except as hereinafter provided, the following insurance:

(a) Insurance against loss and/or damage to the Mortgaged Property under a policy or policies covering such risks as are ordinarily insured against by similar facilities, including without limiting the generality of the foregoing, fire, lightning, windstorm, windblown rain, hail, explosion, riot, riot attending a strike, civil commotion, damage from aircraft, smoke and uniform standard extended coverage and vandalism and malicious mischief endorsements, war risk (to the extent obtainable from an agency of the United States Government). Such insurance policy shall be in an amount not less than the lesser of (1) the full replacement cost of the Mortgaged Property, or (2) the prepayment price of all outstanding Installment Payments; *provided, however*, that no such insurance policy may have a deductible amount of more than \$100,000. No such insurance policy shall be written such that the proceeds thereof will produce less than the minimum coverage required by the preceding sentence, by reason of co-insurance provisions or otherwise, without the prior written consent thereto by the Bank. The term "full insurable value" shall mean the actual

replacement cost of the Mortgaged Property (excluding foundation and excavation costs and costs of underground flues, pipes, drains and other uninsurable items), without deduction for physical depreciation, and shall be determined once every three years by an insurance consultant, in any case, selected and paid for by the County. Each such policy shall contain a replacement cost endorsement.

(b) Comprehensive general liability insurance protecting the County and the Bank as their respective interests may appear, against liability for injuries to persons and/or property, occurring on, in or about the Mortgaged Property, in the minimum amount of \$1,000,000 liability to any one person for property damage, \$1,000,000 liability for personal injury for any one occurrence and an aggregate annual liability limit of not less than \$2,000,000, with a deductible amount of not more than \$100,000.

(c) Workers' compensation insurance respecting all employees of the County, if any, working at the Mortgaged Property in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; *provided, however*, that the County may be self-insured with respect to all or any part of its liability for workers' compensation.

(d) During the course of any construction or repair of improvements on the Mortgaged Property, builder's risk insurance, covering the total value of work performed and equipment, supplies and materials furnished in connection with such construction or repair of the improvements.

(e) National flood insurance, if applicable, in an amount acceptable to the Bank.

Each insurance policy obtained pursuant to this Section shall (1) be issued by a generally recognized and responsible insurance company qualified under the laws of the State to assume the risks covered by such policy, (2) with respect to the policies contained in paragraphs (a) and (d) above, contain standard mortgagee clauses naming the Bank as mortgagee, and (3) unless unavailable from the insurer, provide that such policy shall not be cancelled or modified in any way adverse to any insured party without at least 30 days' prior written notice to each insured party named therein. The County shall have the right to receive the proceeds from any insurance maintained pursuant to this Section, subject, however, to the limitations of this Article VI.

In lieu of separate insurance policies, the County may maintain blanket or umbrella insurance policies if such policies provide the same coverage required by this Section with protection against each risk not reducible by claims for other risks to amounts less than that specified in this Section.

In lieu of policies of insurance written by commercial insurance companies meeting the requirements of this Section, the County may maintain a program of self-insurance or participate in group risk financing programs, risk pools, risk retention groups, purchasing groups and captive insurance companies, and in state or federal insurance programs.

Section 6.8 *[Reserved].*

Section 6.9 ***Environmental Audit.*** The County shall provide, as may be required by the Bank, either a Phase I Environmental Audit or a completed environmental questionnaire on the Bank's form on the real property on which the Mortgaged Property is located prior to receipt of the Advance by the County.

Section 6.10 ***Risk of Loss.*** The County shall bear all risk of loss or damage to and condemnation of the Mortgaged Property.

Section 6.11 Performance by the Bank of the County's Responsibilities. Any performance required of the County or any payments required to be made by the County may, if not timely performed or paid, be performed or paid by the Bank, and, in such event, the Bank shall be immediately reimbursed by the County for such payments or other performance by the Bank, with interest thereon at a rate equal to the Interest Rate applied to determine the interest component of Installment Payments.

Section 6.12 Financial Statements. The County agrees that it will furnish the Bank current audited financial statements within 270 days of the end of each Fiscal Year, carrying an unqualified opinion of a certified public accountant and prepared in accordance with generally accepted accounting principles and presented on a consistent basis. Except as set forth below, the County represents and warrants to the Bank that all financial statements which have been delivered to the Bank in connection with this Contract fairly and accurately reflect the County's financial condition and there has been no material adverse change in the County's financial condition as reflected in the financial statements since the date thereof. Notwithstanding the foregoing, the United States is currently dealing with the COVID-19 pandemic and while the County expects that there will be generally negative financial consequences as a result of the pandemic, it is unknown at this time what the impact on the County's financial condition will be.

[END OF ARTICLE VI]

ARTICLE VII

TITLE; LIENS

Section 7.1 Title. Title to the Mortgaged Property and any and all additions, repairs, replacements or modifications thereto shall be in the County from and after the Closing Date. On the Closing Date, the Deed of Trust will be in full force and effect and no events of default shall have occurred thereunder. On payment or provision for payment in full of all of the County's obligations hereunder, including the principal components of the Installment Payments then outstanding and all other payments due hereunder, the Bank or its assignee, at the County's expense and request, shall cancel the Deed of Trust and this Contract will terminate.

Section 7.2 Liens. The County shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, security interest, encumbrance or claim on or with respect to the Mortgaged Property or any interest in therein, except for: (1) the lien and security interest of the Bank in the Mortgaged Property; (2) utility, access and other easements and rights of way, restrictions and exceptions which do not interfere with or impair the intended use of the Mortgaged Property; (3) any permitted encumbrances as described in Exhibit B to the Deed of Trust; and (4) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property of the general character of the Mortgaged Property and as do not materially impair title thereto or the ability of the County to construct and operate the Project thereon. The County shall promptly, at its own expense, take such action as may be necessary duly to discharge any such mortgage, pledge, lien, security interest, charge, encumbrance or claim if the same shall arise at any time. The County shall reimburse the Bank for any expense incurred by the Bank in order to discharge or remove any such mortgage, pledge, lien, security interest, charge, encumbrance or claim.

[END OF ARTICLE VII]

ARTICLE VIII

DAMAGE, DESTRUCTION, AND CONDEMNATION; USE OF NET PROCEEDS

Section 8.1 *Damage, Destruction or Condemnation.* If, during the term of this Contract, (1) the Mortgaged Property or any portion of the Mortgaged Property is destroyed, or is damaged by fire or other casualty; (2) title to or the temporary or permanent use of the Mortgaged Property or any portion thereof or the estate of the County or the Bank or its assignee in the Mortgaged Property or any portion thereof is taken under the power of eminent domain by any governmental authority; (3) a material defect in construction of the Mortgaged Property becomes apparent; or (4) title to or the use of all or any portion of the Mortgaged Property is lost by reason of a defect in title thereto, the County shall continue to be obligated, subject to the provisions of Section 8.2, to pay the amounts specified in Section 3.1 at the respective times required.

Section 8.2 *Obligation of the County to Repair and Replace the Mortgaged Property.* Subject to the provisions of Section 8.3, the Net Proceeds of any insurance policies, performance bonds, condemnation awards or Net Proceeds made available by reason of any occurrence described in Sections 5.4, 6.7(a) or 8.1, shall be applied to the prompt repair, restoration, modification, improvement or replacement of the damaged or destroyed Mortgaged Property. 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, if located on the Mortgaged Property, to the Deed of Trust, and shall be included as part of the Mortgaged Property under this Contract.

Section 8.3 *Insufficiency of Net Proceeds; Discharge of the Obligation of the County To Repair the Mortgaged Property.* If the Net Proceeds (plus any amount withheld therefrom by reason of any deductible clause) are insufficient to pay in full the cost of any repair, restoration, modification, improvement or replacement of the Mortgaged Property as required under Section 8.2, the County may elect to proceed under either of the following options:

(a) The County may 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 this Section, the County is not entitled to any reimbursement therefor from the Bank nor is the County entitled to any diminution of the amounts payable under Section 3.1; or

(b) The obligation of the County to repair or replace the Mortgaged Property under Section 8.2 may be discharged by causing the Net Proceeds of such insurance policies, performance bonds or condemnation awards to be applied to the prepayment of all or any part of the then outstanding principal component of the Installment Payments as agreed to by the Bank. If the Net Proceeds exceed the amount necessary to prepay the then outstanding principal component of the Installment Payments, such excess shall be paid to or retained by the County.

Within 120 days of the occurrence of an event specified in Section 8.1, the County shall commence the repair, restoration, modification, improvement or replacement of the Mortgaged Property, or shall elect, by written notice to the Bank, to proceed under the provisions of paragraph (b) above. For purposes of this Section, "commence" shall include the retention of an architect or engineer in anticipation of repair, restoration, modification, improvement or replacement of the Mortgaged Property.

Section 8.4 *Cooperation of Bank.* The Bank shall cooperate fully with the County in filing any proof of loss with respect to any insurance policy covering the events described in Section 8.1. 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.

[END OF ARTICLE VIII]

ARTICLE IX

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COUNTY

Section 9.1 Representations, Warranties and Covenants of the County. The County represents, warrants and covenants to and with the Bank (all such representations, warranties and covenants to be continuing) that:

(a) The County is a political subdivision of the State, validly organized and existing under the laws of the State and has all powers necessary to enter into the transactions contemplated by this Contract and the Deed of Trust and to carry out its obligations hereunder;

(b) The County agrees that during the term of this Contract, it will take no action that would adversely affect its existence as a political subdivision in good standing in the State, cause the County to be consolidated with or merge into another political subdivision of the State or permit one or more other political subdivisions of the State to consolidate with or merge into it, unless the County is the surviving entity or the entity created thereby expressly assumes in writing the County's obligations hereunder;

(c) This Contract, the Deed of Trust and all other documents relating hereto and thereto, and the performance of the County's obligations hereunder and thereunder, have been duly and validly authorized, executed and delivered by the County and approved under all laws, regulations and procedures applicable to the County including, but not limited to, compliance with public meeting and bidding requirements, and, assuming the due authorization, execution and delivery hereof and thereof by the other parties hereto and thereto, constitute valid, legal and binding obligations of the County, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency and other laws affecting the enforcement of creditors' rights generally and such principles of equity as a court having proper jurisdiction may impose;

(d) Neither the execution and delivery of this Contract or the Deed of Trust or the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the terms and conditions hereof or thereof conflicts with or results in a breach of the terms, conditions, or provisions of any 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, nor conflicts with or results in a violation of any provision of applicable law or regulation governing the County and no representation, covenant and warranty in this Contract is false, misleading or erroneous in any material respect;

(e) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best of the County's knowledge, threatened, against or affecting the County challenging the validity or enforceability of this Contract, the Deed of Trust or any other documents relating hereto and the performance of the County's obligations hereunder and thereunder, and compliance with the provisions hereof or thereof, under the circumstances contemplated hereby or thereby, does not and will not in any material respect conflict with, constitute on the part of the County a breach of or default under, or result in the creation of a lien or other encumbrance on any property of the County (except as contemplated herein or therein) pursuant to any agreement or other instrument to which the County is a party, or any existing law, regulation, court order or consent decree to which the County is subject;

(f) Other than building permits or other procedural requirements which are a prerequisite to the construction of the Project and the approval of the LGC, which approval has been obtained, no approval or consent is required from any governmental authority with respect to

the entering into or performance by the County of this Contract, the Deed of Trust and all other documents related hereto and thereto and the transactions contemplated hereby and thereby or if such approval is required, such approval has been duly obtained;

(g) The funds in the Project Fund and any investment earnings thereon will be used only for the purposes permitted in Article IV;

(h) There are no liens or encumbrances on the Mortgaged Property other than the lien created by this Contract, the Deed of Trust and the other liens permitted thereby. Any lease in place is subordinate to the lien created by this Contract and the Deed of Trust;

(i) The resolutions relating to the performance by the County of this Contract, the Deed of Trust and the transactions contemplated hereby and thereby, have been duly adopted, are in full force and effect, and have not been in any respect modified, revoked or rescinded;

(j) The Project is essential to the proper, efficient and economical operation of the County and the delivery of services and permits the County to carry out its public functions that it is authorized and required by law to perform;

(k) The County reasonably believes sufficient funds will be available to satisfy all of its obligations hereunder;

(l) The County shall (1) cause its County Manager to include the Installment Payments coming due in any Fiscal Year in the corresponding annual budget request and shall require the County Manager to use his or her best efforts to obtain an appropriation therefor and (2) require that the deletion of such funds from the County's final budget be made only pursuant to an express resolution of the Board which explains the reason for such action. This covenant on the part of the County contained in this Section 9.1(l) shall be deemed to be and shall be construed to impose by law ministerial duties and it shall be the duty of each and every public official of the County to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the County to carry out and perform the covenant in this subparagraph and the agreements in this Contract to be carried out and performed by the County; *provided, however*, that nothing contained in this Section 9.1(l) shall obligate the County to so appropriate the funds included in such proposed budget;

(m) Funds appropriated by the County to make Installment Payments due in any Fiscal Year shall be used for no other purpose;

(n) The County agrees that during the term of this Contract, it will maintain the appropriate insurance required pursuant to this Contract and the Deed of Trust; and

(o) The County has or will have good and marketable title to the Mortgaged Property, not subject to any possibility of reverter, right of re-entry or other reversionary interest.

(p) [The Mortgaged Property is bordered on the east by and has access to NC Highway 89 North and on the north/south by Walnut Cove School Road.]

[END OF ARTICLE IX]

ARTICLE X

TAX COVENANTS AND REPRESENTATIONS

Section 10.1 Covenants and Representations.

(a) The County covenants that it will not take any action, or fail to take any action, if any such action or failure to take such action would adversely affect the exclusion from gross income of the interest component of the Installment Payments created by this Contract for federal income tax purposes. The County will not directly or indirectly use or permit the use of any proceeds of any fund created under this Contract or any funds of the County, or take or omit to take any action that would cause the obligations created by this Contract to be an “*arbitrage bond*” within the meaning of Section 148(a) of the Code. The County will maintain books on which will be recorded (1) the Bank, or (2) any assignee of the Installment Payments due under this Contract, as the registered owner of such Installment Payments. To that end, the County has executed and delivered the Tax Certificate and will comply with all of the requirements of Section 148 of the Code to the extent applicable. The County further covenants that this Contract is not a “*private activity bond*” as defined in Section 141 of the Code. All of the terms, definitions, representations, warranties, conditions and covenants contained in the Tax Certificate are incorporated herein by reference and are made a part of this Contract as if fully set forth herein.

(b) Without limiting the generality of the foregoing, the County agrees to pay from time to time all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code and any temporary, proposed or final Treasury Regulations as may be applicable to the obligation created under this Contract from time to time. This covenant will survive the termination of this Contract.

(c) Notwithstanding any provision in this Contract to the contrary, if the County provides to the Bank an opinion of nationally recognized bond counsel reasonably acceptable to the Bank to the effect that any action required under this Article is no longer required, or to the effect that some further action is required to maintain the tax-exempt status of the interest component of the Installment Payments, the County and the Bank may rely conclusively on such opinion in complying with the provisions of this Article.

(d) If at any time there is a Determination of Taxability, the principal portion of the indebtedness of the County to the Bank which is represented by the Installment Payments shall, from and after the Date of Taxability, as hereinafter defined, bear interest at the Taxable Rate payable from the Date of Taxability to such time as the Loan Amount matures or is prepaid or the Determination of Taxability is no longer in effect. In such event, the County also shall be required to pay to the Bank all amounts, if any, which may be necessary to reimburse the Bank for any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States of America or the Department of Revenue of the State of North Carolina by reason of the Bank’s failure to include the interest portion of the Installment Payments related to the Loan Amount (hereinafter called “Interest”) in its gross income for income tax purposes. All such additional interest, additions to tax, penalties and interest shall be paid by the County within sixty (60) days following the Determination of Taxability and demand by the Bank. Installment Payment amounts shall be increased as a result of the applicability of the Taxable Rate. The County shall pay to the Bank the Interest calculated at the Taxable Rate notwithstanding any transfer by the Bank or payment or prepayment by the County prior to the date such Determination of Taxability was made.

The Date of Taxability shall mean the first date upon which Interest is included in the gross income of the Bank for federal income tax purposes as a result of a Determination of Taxability.

(e) The County hereby designates the Installment Payments due under this Contract as a “*qualified tax-exempt obligation*” eligible for the exception from the disallowance of the deduction of interest by financial institutions allocable to the cost of carrying tax-exempt obligations in accordance with the provisions of Section 265(b)(3) of the Code. The County does not reasonably anticipate issuing more than \$10,000,000 of qualified tax-exempt obligations pursuant to such Section 265(b)(3), including all entities which issue obligations on behalf of the County and all subordinate entities of the County, during calendar year 2020 and will not designate more than \$10,000,000 of qualified tax-exempt obligations pursuant to such Section 265(b)(3) during calendar year 2020.

[END OF ARTICLE X]

ARTICLE XI

INDEMNIFICATION

Section 11.1 Indemnification. To the fullest extent permitted by applicable law, the County hereby agrees to indemnify, protect and save the LGC, the Bank and their respective officers, employees, directors, members and agents harmless from all liabilities, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys' fees that (1) arise in tort, in contract, under 42 U.S. Code §1983 or under the public bidding laws of the State or (2) arise out of, are connected with, or result, directly or indirectly, from the Project or any portion thereof, including, without limitation, the manufacture, selection, acquisition, delivery, possession, condition, construction, improvement, environmental or other condition, lease, use operation or return of the Project or any portion thereof. The indemnification arising under this Article XI shall continue in full force and effect notwithstanding the payment in full of all of the obligations under this Contract.

[END OF ARTICLE XI]

ARTICLE XII

DISCLAIMER OF WARRANTIES

Section 12.1 No Representations by the Bank. The County acknowledges and agrees that the designs for the Project have not been made by the Bank, and the Bank has not supplied any plans or specifications with respect thereto and that the Bank (a) is not a manufacturer of, nor a dealer in, any of the component parts of the Project or similar projects; (b) has not made any recommendation, given any advice nor taken any other action with respect to (i) the choice of any supplier, vendor or designer of, or any other contractor with respect to, 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 construction thereof; (c) 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 (d) 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 will accomplish the result which the County intends therefor, or (iii) is safe in any manner or respect.

Section 12.2 Disclaimer by the Bank. THE BANK MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE PROJECT OF ANY COMPONENT PART THEREOF TO THE COUNTY OR IN REGARD TO ANY OTHER CIRCUMSTANCE WHATSOEVER WITH RESPECT THERETO, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATIONS WITH RESPECT TO: THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE; THE DESIGN OR CONDITION THEREOF; THE SAFETY, WORKMANSHIP OR QUALITY THEREOF; 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; THE ABILITY THEREOF TO PERFORM ANY FUNCTION; THAT THE ADVANCE WILL BE SUFFICIENT (TOGETHER WITH ANY OTHER AVAILABLE FUNDS OF THE COUNTY) TO PAY THE COST OF IMPLEMENTING THE PROJECT; OR ANY OTHER CHARACTERISTICS OF THE PROJECT, IT BEING AGREED THAT ALL RISKS RELATING TO THE PROJECT, THE COMPLETION 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.

[END OF ARTICLE XII]

ARTICLE XIII

DEFAULT AND REMEDIES

Section 13.1 Definition of Event of Default. The County shall be deemed to be in default hereunder on the happening of any of the following events of default (each, an “*Event of Default*”):

- (a) The County fails to pay any Installment Payment or Additional Payment when due;
- (b) The County fails to budget and appropriate money sufficient to pay all Installment Payments and the reasonably estimated Additional Payments coming due in the following Fiscal Year of the County;
- (c) The County deletes from its duly adopted budget any appropriation for the purposes specified in clause (b) above;
- (d) The County fails to perform or observe any term, condition or covenant of this Contract on its part to be observed or performed, other than as referred to in clauses (a), (b) or (c) above, or of the Deed of Trust on its part to be observed or performed, or breaches any warranty by the County herein or therein contained, for a period of 30 days after the Bank has provided the County written notice specifying such failure and requesting that it be remedied, unless the Bank shall agree in writing to an extension of such time prior to its expiration;
- (e) Any bankruptcy, insolvency or reorganization proceedings or similar litigation, is instituted by the County, or a receiver, custodian or similar officer is appointed for the County or any of its property, and such proceedings or appointments are not vacated or fully stayed within 90 days after the institution or occurrence thereof;
- (f) Any representation, warranty or statement made by the County herein, in the Deed of Trust or in any other document executed or delivered in connection herewith or therewith is found to be incorrect or misleading in any material respect on the date made; or
- (g) An attachment, levy or execution is levied on or against any portion of the Mortgaged Property.

Section 13.2 Remedies on Default. On the occurrence of any Event of Default, the Bank may exercise any one or more of the following remedies as the Bank, in its sole discretion, shall elect:

- (a) Declare the unpaid portion of the then outstanding principal components of the Installment Payments and the accrued interest thereon immediately due and payable, without notice or demand to the County;
- (b) Proceed by appropriate court action to enforce the performance by the County of the applicable covenants of this Contract or to recover for any breach thereof;
- (c) Exercise or direct the Deed of Trust Trustee to exercise all the rights and remedies of a secured party or creditor under the Uniform Commercial Code of the State and the general laws of the State with respect to the enforcement of the security interest granted or reserved hereunder and under the Deed of Trust including, without limitation, to the extent permitted by law, re-enter and take possession of the Mortgaged Property without any court order or other process of law and without liability for entering the premises and to sell, lease, sublease or make other disposition of the same in a commercially reasonable manner for the account of the County, and

apply the proceeds of any such sale, lease, sublease or other disposition, after deducting all costs and expenses, including court costs and attorneys' fees, incurred with the recovery, repair, storage and other sale, lease, sublease or other disposition, toward the balance due under this Contract and, thereafter, to pay any remaining proceeds to the County;

(d) Enforce its security interest in the Mortgaged Property or direct the Deed of Trust Trustee to institute foreclosure proceedings under the Deed of Trust and sell the Mortgaged Property or exercise any rights under the Deed of Trust; or

(e) Pursue any other remedy available at law or equity to the Bank.

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 IN VIOLATION OF SECTION 160A-20 OF THE GENERAL STATUTES OF NORTH CAROLINA, AS AMENDED, 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 MONEY TO PAY IN FULL ALL REMAINING OBLIGATIONS UNDER THIS CONTRACT.

Section 13.3 Further Remedies. This Contract shall remain in full force and effect and the County shall be and remain liable for the full performance of all its obligations under this Contract. All remedies of the Bank are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy.

[END OF ARTICLE XIII]

ARTICLE XIV

ASSIGNMENT

Section 14.1 Assignment. Except pursuant to this Contract and the Deed of Trust, as applicable, the County will not sell, assign, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance on or against any interest in this Contract or the Mortgaged Property (except for any other permitted encumbrances under Section 7.2) without the prior written consent of the Bank. The County's interest in this Contract may not be assigned or transferred by operation of law.

The Bank may, at any time and from time to time, assign all or any part of its interest in the Mortgaged Property, the Project or this Contract, including, without limitation, the Bank's rights to receive Installment Payments payable to the Bank hereunder. Any assignment made by the Bank or any subsequent assignee shall not purport to convey any greater interest or rights than those held by the Bank pursuant to this Contract.

The County agrees that this Contract 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 all or any part of this Contract, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Contract without the consent of the LGC, although the Banks or any assignee shall give written notice to the LGC of any such assignment. Any assignment by the Bank may be only to a bank, insurance company, or similar financial institution or any other entity approved by the LGC. Notwithstanding the foregoing, no assignment or reassignment of the Bank's interest in the Deed of Trust or this Contract 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 such assignee.

The County further agrees that the Bank's interest in this Contract may be assigned in whole or in part on terms which provide in effect that the assignor or assignee will act as a collection and paying agent for any holders of certificates of participation in this Contract, provided the County receives a copy of such agency contract and such collection and paying agent covenants and agrees to maintain for the full remaining term of this Contract a written record of each assignment and reassignment of such certificates of participation.

The County agrees to execute any document reasonably required in connection with any assignment. Any assignor must provide notice of any assignment to the County and the LGC, and the County shall keep a complete and accurate record of all assignments as required by the Code. After the giving of any such notice, 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 acknowledgment shall in no way be deemed necessary to make the assignment effective.

[END OF ARTICLE XIV]

ARTICLE XV

LIMITED OBLIGATION OF THE COUNTY

Section 15.1 Limited Obligation of the County. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE COUNTY WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS CONTRACT 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 CONTRACT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE COUNTY TO MAKE ANY PAYMENTS BEYOND ANY PAYMENTS APPROPRIATED IN THE SOLE DISCRETION OF THE COUNTY FOR ANY FISCAL YEAR IN WHICH THIS CONTRACT IS IN EFFECT; *PROVIDED, HOWEVER,* THAT ANY FAILURE OR REFUSAL BY THE COUNTY TO APPROPRIATE FUNDS WHICH RESULTS IN ITS FAILURE TO MAKE ANY PAYMENT COMING DUE HEREUNDER WILL IN NO WAY OBIVATE 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 HEREUNDER, AND THE TAXING POWER OF THE COUNTY IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY AMOUNTS DUE HEREUNDER. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED TO PLEDGE OR TO CREATE A LIEN ON ANY CLASS OR SOURCE OF THE COUNTY'S FUNDS, NOR SHALL ANY PROVISION OF THIS CONTRACT RESTRICT THE FUTURE ISSUANCE OF ANY OF THE COUNTY'S BONDS OR OBLIGATIONS PAYABLE FROM ANY CLASS OR SOURCE OF THE COUNTY'S FUNDS. TO THE EXTENT OF ANY CONFLICT BETWEEN THIS ARTICLE XV AND ANY OTHER PROVISION OF THIS CONTRACT, THIS ARTICLE XV SHALL TAKE PRIORITY.

[END OF ARTICLE XV]

ARTICLE XVI

MISCELLANEOUS

Section 16.1 Notices. Any and all notices, requests, demands, and other communications given under or in connection with this Contract are only effective if made in writing and delivered either personally, by Electronic Means, or mailed by certified or registered mail, postage prepaid, or return receipt requested, and addressed as follows:

IF TO THE COUNTY: County of Stokes, North Carolina
P.O. Box 20
Danbury, North Carolina 27016
Attention: Finance Director

IF TO THE BANK: Truist Bank
5130 Parkway Plaza Boulevard
Charlotte, North Carolina 28217
Attention: Governmental Finance

The County and the Bank may, by written notice to each other, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 16.2 Time. Time is of the essence of this Contract and each and all of its provisions.

Section 16.3 If Payment or Performance Date not a Business Day. If the date for making any payment, or the last date for performance of any act or the exercising of any right, as provided in this Contract, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Contract, and no interest shall accrue for the period after such nominal date.

Section 16.4 Waiver. No covenant or condition of this Contract can be waived except by the written consent of the Bank. Any failure of the Bank to require strict performance by the County or any waiver by the Bank of any terms, covenants or contracts in this Contract shall not be construed as a waiver of any other breach of the same or any other term, covenant or contract in this Contract.

Section 16.5 Section Headings. All section headings contained in this Contract are for convenience of reference only and are not intended to define or limit the scope of any provision of this Contract.

Section 16.6 Entire Contract. This Contract, together with any schedules and exhibits attached to this Contract and Deed of Trust, constitutes the entire agreement between the parties, and this Contract shall not be modified, amended, altered or changed except as the County and the Bank may subsequently agree in writing.

Section 16.7 Binding Effect. Subject to the specific provisions of this Contract, this Contract is binding on and inures to the benefit of the parties and their respective successors and assigns (including expressly any successor of the Bank).

Section 16.8 Covenants of County not Covenants of Officials Individually. Notwithstanding anything to the contrary in this Contract, no covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, agent or employee of the County in such person's individual capacity, and neither the members of the Board

nor any other officer of the Board or the County shall be subject to any personal liability or accountability by reason of the execution and delivery of this Contract. No member of the Board or any agent or employee of the County shall incur any personal liability in acting or proceeding or if not acting or not proceeding, in good faith, reasonably and in accordance with the terms of this Contract.

Section 16.9 Severability. If any portion of this Contract is determined to be invalid under any applicable law, such provision is void and the remainder of this Contract continues in full force and effect.

Section 16.10 Governing Law. This Contract is to be construed, interpreted and enforced in accordance with, the laws of the State.

Section 16.11 Execution in Counterparts; Electronic Signatures. This Contract may be executed in any number of counterparts, by manual, facsimile, digital, electronic or .pdf file signatures, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument. An executed copy of this Contract delivered by facsimile, email, or other electronic means will be deemed to have the same legal effect as delivery of a manual signed copy of this Contract. This Contract and related documents may be sent and stored by electronic means.

Section 16.12 E-Verify. The Bank understands that “E-Verify” is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. The Bank uses E-Verify to verify the work authorization of its employees in accordance with Section 64-26(a) of the General Statutes of North Carolina, as amended. The Bank will require that any subcontractor that it uses in connection with the transactions contemplated by this Contract certify to such subcontractor's compliance with E-Verify.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the County and the Bank have caused this Installment Financing Contract to be executed by their duly authorized officers as of the day and year first above written.

COUNTY OF STOKES, NORTH CAROLINA

[SEAL]

By: _____
Andy Nickelston
Chairman
Board of Commissioners

ATTEST:

Shannon Shaver
Clerk to the Board of Commissioners

[COUNTERPART SIGNATURE PAGE TO THE INSTALLMENT FINANCING CONTRACT,
DATED AS OF SEPTEMBER 1, 2020, BETWEEN TRUIST BANK
AND THE COUNTY OF STOKES, NORTH CAROLINA]

TRUIST BANK,
as Bank

By: _____
Andrew G. Smith
Senior Vice President

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

[COUNTERPART SIGNATURE PAGE TO THE INSTALLMENT FINANCING CONTRACT,
DATED AS OF SEPTEMBER 1, 2020, BETWEEN TRUIST BANK
AND THE COUNTY OF STOKES, NORTH CAROLINA]

This Contract has been approved under the provisions of
Section 159-152 of the General Statutes of North
Carolina, as amended.

By: _____
Greg C. Gaskins
Secretary
Local Government Commission of North Carolina

EXHIBIT A

PAYMENT SCHEDULE

<u>PAYMENT DATE</u>	<u>INSTALLMENT PAYMENT - PRINCIPAL COMPONENT</u>	<u>INSTALLMENT PAYMENT - INTEREST COMPONENT*</u>	<u>TOTAL INSTALLMENT PAYMENT</u>
03/01/21		\$ 9,916.19	\$ 9,916.19
09/01/21	\$ 126,500	10,499.50	136,999.50
03/01/22		9,449.55	9,449.55
09/01/22	126,500	9,449.55	135,949.55
03/01/23		8,399.60	8,399.60
09/01/23	126,500	8,399.60	134,899.60
03/01/24		7,349.65	7,349.65
09/01/24	126,500	7,349.65	133,849.65
03/01/25		6,299.70	6,299.70
09/01/25	126,500	6,299.70	132,799.70
03/01/26		5,249.75	5,249.75
09/01/26	126,500	5,249.75	131,749.75
03/01/27		4,199.80	4,199.80
09/01/27	126,500	4,199.80	130,699.80
03/01/28		3,149.85	3,149.85
09/01/28	126,500	3,149.85	129,649.85
03/01/29		2,099.90	2,099.90
09/01/29	126,500	2,099.90	128,599.90
03/01/30		1,049.95	1,049.95
09/01/30	126,500	1,049.95	127,549.95
	<u>\$1,265,000</u>	<u>\$114,911.19</u>	<u>\$1,379,911.19</u>

* Interest rate of 1.66% calculated on a 30/360-day basis