

FINANCING AGREEMENT

THIS FINANCING AGREEMENT (this “Contract”) is dated as of _____, 20____, and is between [Borrower], NORTH CAROLINA, a [public body][political subdivision][body corporate and politic] of the State of North Carolina (the “Borrower”), and **TRUIST BANK** (“Lender”).

RECITALS:

The Borrower has the power, pursuant to Section 160A-20 of the North Carolina General Statutes, to enter into installment contracts to finance or refinance the purchase of personal property, or the repair of fixtures or improvements on real property, and to secure its obligations under such contracts by security interests in all or a portion of the property purchased or improved. This Contract provides for Lender to advance \$ _____ to the Borrower to enable the Borrower to acquire [and install] the Equipment (as defined below), and provides for securing the Borrower’s obligations under this Contract by creating certain security interests in favor of Lender.

This Contract secures current advances of \$ _____. The current scheduled date for final repayment is on _____, 20____.

NOW THEREFORE, for and in consideration of the mutual promises in this Contract, and other good and valuable consideration, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS; INTERPRETATION

Unless the context clearly requires otherwise, capitalized terms used in this Contract and not otherwise defined shall have the following meanings:

“Additional Payments” means any of Lender’s reasonable and customary fees and expenses related to the transactions contemplated by this Contract, any of Lender’s expenses (including attorneys’ fees) in prosecuting or defending any action or proceeding in connection with this Contract, any required license or permit fees, state and local sales and use or ownership taxes or property taxes which Lender is required to pay as a result of this Contract, inspection and re-inspection fees, and any other amounts payable by the Borrower (or paid by Lender on the Borrower’s behalf) as a result of its covenants under this Contract (together with interest that may accrue on any of the above if the Borrower shall fail to pay the same, as set forth in this Contract).

“Amount Advanced” has the meaning assigned in Section 2.02.

“Bond Counsel Opinion” means a written opinion (in form and substance acceptable to Lender) of an attorney or firm of attorneys acceptable to Lender.

“Borrower” means the [Borrower], North Carolina.

“Borrower Representative” means the Borrower’s finance officer, investment officer or such other person or persons at the time designated, by a written certificate in the form of Exhibit D attached hereto furnished to Lender and signed on the Borrower’s behalf by an authorized representative of the Borrower, to act on the Borrower’s behalf for any purpose (or any specified purpose) under this Contract.

“Budget Officer” means the Borrower officer from time to time charged with preparing the Borrower’s draft budget as initially submitted to the Governing Board for its consideration.

“Business Day” means any day on which banks in the State are not by law authorized or required to remain closed.

“Closing Date” means the date on which this Contract is first executed and delivered by the parties.

“Code” means the Internal Revenue Code of 1986, as amended, including regulations, rulings and revenue procedures promulgated thereunder or under the Internal Revenue Code of 1954, as amended, as applicable to the Borrower’s obligations under this Contract and all proposed (including temporary) regulations which, if adopted in the form proposed, would apply to such obligations. Reference to any specific Code provision shall be deemed to include any successor provisions thereto.

“Equipment” has the meaning assigned in Section 2.03, and is generally expected to include the personal property described in Exhibit A.

“Event of Default” means one or more events of default as defined in Section 7.01.

“Event of Nonappropriation” means any failure by the Governing Board to adopt, by the first day of any Fiscal Year, a budget for the Borrower that includes an appropriation for Required Payments, or the Governing Board’s amendment of the annual budget to remove an appropriation for Required Payments, in each case as contemplated by Section 3.05.

“Fiscal Year” means the Borrower’s fiscal year beginning July 1, or such other fiscal year as the Borrower may later lawfully establish.

“Governing Board” means the Borrower’s governing board as from time to time constituted.

“Installment Payments” means the payments payable by the Borrower pursuant to Section 3.01.

“LGC” means the North Carolina Local Government Commission.

“Net Proceeds,” when used with respect to any amounts derived from claims made on account of insurance coverages required under this Contract, any condemnation award arising out of the condemnation of all or any portion of the Equipment, or any amounts received in lieu or in settlement of any of the foregoing, means the amount remaining after deducting from the gross

Board of Education - replace 160A-20 with 115C-528

proceeds thereof all expenses (including attorneys' fees and costs) incurred in the collection of such proceeds, and after reimbursement to the Borrower or Lender for amounts previously expended to remedy the event giving rise to such payment or proceeds.

“Payment Dates” means the dates indicated in Exhibit B.

“Prime Rate” means the interest rate so denominated and set by Lender (whether or not such bank, or any affiliate thereof, is at any time the counterparty to this Contract) as its “Prime Rate,” as in effect from time to time.

“Project Costs” means all costs of the design, planning, acquiring and installing the Equipment as determined in accordance with generally accepted accounting principles [and that will not adversely affect the exclusion from gross income for federal income tax purposes of the designated interest component of Installment Payments payable by the Borrower under this Contract][NOTE: delete if transaction is taxable], including (a) sums required to reimburse the Borrower or its agents for advances for any such costs, (b) interest during the period of the acquisition and installation of the Equipment and for up to six months thereafter, and (c) all costs related to the financing of the Equipment through this Contract and all related transactions.

“Project Fund” has the meaning assigned in Section 2.02.

“Required Payments” means Installment Payments and Additional Payments.

“Section 160A-20” means Section 160A-20 of the North Carolina General Statutes, as amended, or any successor provision of law.

“Security Property” means the Equipment and all amounts on deposit from time to time in the Project Fund.

“State” means the State of North Carolina.

“UCC” means the Uniform Commercial Code or any successor law as in effect from time to time in the State, currently Chapter 25 of the North Carolina General Statutes.

All references in this Contract to designated “Sections” and other subdivisions are to the designated sections and other subdivisions of this Contract. The words “hereof” and “hereunder” and other words of similar import refer to this Contract as a whole and not to any particular Section or other subdivision unless the context indicates otherwise. Words importing the singular number shall include the plural number and vice versa.

ARTICLE II

SECURITY PROVIDED BY THIS CONTRACT; ADVANCE

2.01. Security for Payment and Performance. This Contract secures the Borrower's payment, as and when the same shall become due and payable, of all Required Payments and the Borrower's timely compliance with all terms, covenants and conditions of this Contract.

2.02. Advance. Lender shall advance \$ [redacted] (the "Amount Advanced") to the Borrower by making a deposit of \$ [redacted] [(the Amount Advanced less a fee of \$ [redacted] to be paid directly by Lender to its legal counsel)] on the Closing Date to a Project Fund (the "Project Fund") as provided in Article IV herein, and the Borrower hereby accepts the Amount Advanced from Lender.

2.03. UCC Security Agreement.

(a) This Contract is intended as and constitutes a security agreement pursuant to the UCC with respect to the following:

- (i) all moneys on deposit from time to time in the Project Fund; and
- (ii) all property acquired by the Borrower with funds advanced by Lender pursuant to this Contract, all personal property obtained in substitution or replacement therefor, and all personal property obtained in substitution or replacement for any portion of the Security Property, and all proceeds of the foregoing (collectively, the "Equipment").

To secure the Required Payments, the Borrower hereby grants to Lender a security interest in the Equipment and in the moneys on deposit from time to time in the Project Fund.

(b) The Borrower shall allow Lender to deliver and file, or cause to be filed, in such place or places as may be required by law, financing statements (including any continuation statements required by the UCC or determined by Lender) in such form as Lender may reasonably require to perfect and continue the security interest in the Equipment and in the moneys on deposit from time to time in the Project Fund.

2.04. Borrower's Limited Obligation. (a) THE PARTIES INTEND THAT THIS TRANSACTION COMPLY WITH SECTION 160A-20. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE BORROWER'S FAITH AND CREDIT WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS A DELEGATION OF GOVERNMENTAL POWERS OR AS AN IMPROPER DONATION OR A LENDING OF THE BORROWER'S CREDIT WITHIN THE MEANING OF THE STATE CONSTITUTION. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE BORROWER IN VIOLATION OF SECTION 160A-20. No provision of this Contract shall be construed to pledge or to create a lien on any class or source of the Borrower's

moneys (other than the funds held under this Contract), nor shall any provision of this Contract restrict the future issuance of any of the Borrower's bonds or obligations payable from any class or source of the Borrower's moneys (except to the extent this Contract restricts the incurrence of additional obligations secured by the Security Property). In the event of any conflict between this Section or Section 160A-20 and any other provision of this Contract, this Section and Section 160A-20 take precedence over any other provisions of this Contract.

(b) Nothing in this Section is intended to impair or prohibit execution on the Security Property if the Required Payments are not paid when due or otherwise upon the occurrence of an Event of Default under this Contract.

2.05. Borrower's Continuing Obligations. The Borrower shall remain liable for full performance of all its covenants under this Contract (subject to the limitations described in Section 2.04), including payment of all Required Payments, notwithstanding the occurrence of any event or circumstances whatsoever, including any of the following:

- (a) Lender's waiver of any right granted or remedy available to it;
- (b) The forbearance or extension of time for payment or performance of any obligation under this Contract, whether granted to the Borrower, a subsequent owner of the Equipment or any other person;
- (c) The release of all or part of the Security Property or the release of any party who assumes all or any part of such performance;
- (d) Any act or omission by Lender (but this provision does not relieve Lender of any of its obligations under this Contract);
- (e) The sale of all or any part of the Equipment; or
- (f) Another party's assumption of the Borrower's obligations under this Contract.

ARTICLE III

BORROWER'S PAYMENT OBLIGATION AND RELATED MATTERS

3.01. Installment Payments. The Borrower shall repay the Amount Advanced by making Installment Payments to Lender in lawful money of the United States at the times and in the amounts set forth in Exhibit B, except as otherwise provided in this Contract. As indicated in Exhibit B, the Installment Payments reflect the repayment of the Amount Advanced and include designated interest components.

3.02. Additional Payments. The Borrower shall pay all Additional Payments on a timely basis directly to the person or entity to which such Additional Payments are owed in lawful money of the United States.

3.03. Prepayment. The Borrower may prepay the outstanding principal component of the Amount Advanced, at its option on [any regularly scheduled Payment Date][any date], in whole but not in part, by paying (a) all Additional Payments then due and payable, (b) all interest accrued and unpaid to the prepayment date, and (c) 101% of the outstanding principal amount. [Note: to be adjusted depending on prepayment provisions of proposal]

3.04. Late Payments. If the Borrower fails to pay any Installment Payment when due, the Borrower shall pay additional interest on the principal component of the late Installment Payment (as permitted by law) at an annual rate equal to the Prime Rate from the original due date.

3.05. Appropriations. (a) The Budget Officer shall include in the initial proposal for each of the Borrower's annual budgets the amount of all Installment Payments and estimated Additional Payments coming due during the Fiscal Year to which such budget applies. Notwithstanding that the Budget Officer includes such an appropriation for Required Payments in a proposed budget, the Governing Board may determine not to include such an appropriation in the Borrower's final budget for such Fiscal Year.

(b) The Budget Officer shall deliver notification to Lender within 15 days after the adoption of the annual budget if an amount equal to the Installment Payments and estimated Additional Payments coming due during the next Fiscal Year has not been appropriated by the Borrower in such budget for such purposes. If such amount has not been so appropriated, the Budget Officer shall send a copy of such notification to the LGC, to the attention of its Secretary, at 3200 Atlantic Avenue, Raleigh, NC 27604.

(c) The actions required of the Borrower and its officers and/or officials pursuant to this Section shall be deemed to be and shall be construed to be in fulfillment of ministerial duties, and it shall be the duty of each and every Borrower official 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 Borrower to carry out and perform the actions required pursuant to this Section and the remainder of this Contract to be carried out and performed by the Borrower.

(d) The Borrower reasonably believes that it can obtain funds sufficient to pay all Required Payments when due.

3.06. No Abatement. There shall be no abatement or reduction of the Required Payments for any reason, including, but not limited to, any defense, recoupment, setoff, counterclaim, or any claim (real or imaginary) arising out of or related to the Equipment, except as expressly provided in this Contract. The Borrower assumes and shall bear the entire risk of loss and damage to the Equipment from any cause whatsoever. The Installment Payments shall be made in all events unless the Borrower's obligation to make Installment Payments is terminated as otherwise provided in this Contract.

3.07. Interest Rate and Payment Adjustment. (a) "Rate Adjustment Event" means (i) any action by the Internal Revenue Service (including the delivery of a deficiency notice) or any other federal court or administrative body determining, or (ii) receipt by Lender of an opinion of nationally recognized bond counsel to the effect, (A) that the interest component of Installment Payments, or any portion thereof, is includable in any beneficiary's gross income for federal income tax purposes

or (B) that the Borrower's obligations under this Contract are not "qualified tax-exempt obligations" within the meaning of Code Section 265 (a "265 Event").

(b) Upon any Rate Adjustment Event, (i) the unpaid principal portion of the Amount Advanced shall continue to be payable on dates and in amounts as set forth in Exhibit B, but (ii) the interest components of the Installment Payments shall be recalculated, at an interest rate equal to an annualized interest rate equal to the Prime Rate plus 2% (200 basis points), to the date (retroactively, if need be) determined pursuant to the Rate Adjustment Event to be the date interest became includable in any beneficiary's gross income for federal income tax purposes (or in the case of a 265 Event, retroactively to the Closing Date).

(c) The Borrower shall pay interest at such adjusted rate (subject to credit for interest previously paid) to each affected beneficiary, notwithstanding the fact that any particular beneficiary may not necessarily be a beneficiary to this Contract on the date of a Rate Adjustment Event. The Borrower shall additionally pay to all affected counterparties any interest, penalties or other charges assessed against or payable by such beneficiary and attributable to a Rate Adjustment Event notwithstanding the prior repayment of the entire Amount Advanced or any transfer to another beneficiary. [Note: delete this Section 3.07 for taxable transactions][Note: delete the highlighted sections for NBQ transactions]

ARTICLE IV

PROJECT FUND

4.01. Project Fund. Pursuant to Section 2.02, on the Closing Date, Lender shall deposit \$ [redacted] into the Project Fund, which shall be a special account of the Borrower at Truist Bank to be designated "20__-000 [Account Name] Project Fund". The Project Fund shall be held separate and apart from all other funds or accounts of the Borrower. The Project Fund is the Borrower's property, but the Borrower may withdraw amounts on deposit in the Project Fund only as provided herein and only for application from time to time to the payment of Project Costs or otherwise as permitted by Section 4.03 hereof. Pending such application, such amounts shall be subject to a lien and charge in favor of Lender to secure the Borrower's obligations hereunder.

4.02. Requisitions from Project Fund. The Borrower may withdraw funds from the Project Fund only after authorization from Lender. Lender shall authorize the disbursement of funds from the Project Fund only to the Borrower and only upon its receipt of one or more written requisitions in the form set forth in Exhibit C attached hereto signed by one of the designated Borrower Representatives. The Borrower shall submit its signed requisitions in pdf format by electronic transmission at the email address contained in the requisition form.

Upon receipt of a requisition from the Borrower, Lender shall undertake such review of the matters referred to in such requisition as it shall deem appropriate, and within seven (7) Business Days after such receipt shall notify the Borrower if it does not approve the requisition with the reasons for its disapproval. Lender has no obligation to make a review and any review by Lender is only for Lender's benefit. Lender shall not unreasonably withhold payment of any requisition.

4.03. Disposition of Project Fund Balance. (a) Promptly after the acquisition of the

Equipment, and when the Borrower has withdrawn from the Project Fund all of the funds needed to acquire the Equipment, the Borrower shall deliver to Lender a written certificate of completion executed by a Borrower Representative stating that (i) the Equipment has been acquired, (ii) there are no mechanic's or other liens against the Equipment for labor or materials furnished in connection with the acquisition of the Equipment, and (iii) no further funds will be requisitioned from the Project Fund to pay Project Costs. Lender may then withdraw any balance remaining in the Project Fund (and not required to be retained to pay Project Costs incurred but not yet paid) and apply such amount as provided in subsection (d) of this Section.

(b) Upon the occurrence of an Event of Default, Lender may withdraw any balance remaining in the Project Fund and apply such amount as provided in subsection (d) of this Section.

(c) If (i) more than three years have elapsed from the Closing Date or (ii) at least six months have elapsed from Lender's most recent receipt of a requisition for Project Costs, then Lender, upon 30 days' notice from Lender to the Borrower, may withdraw any balance remaining in the Project Fund and apply such amount as provided in subsection (d) of this Section.

(d) Lender may apply any amounts withdrawn from the Project Fund pursuant to this Section in the following order: (i) to the payment of any Additional Payments then due to Lender under this Contract, (ii) to the payment of any interest accrued to the Project Fund disposition date that is then due and payable, (iii) to the payment of any principal amount then due and payable, (iv) to the prepayment of principal and accrued interest in accordance with the prepayment provisions of this Contract, and (v) to the payment of future Installment Payments in inverse order of maturity; provided, however, that **[(1)]** at the option of Lender, Lender may deliver funds held in the Project Fund to the Borrower to be applied to additional Project Costs or future debt service payments[, and (2) in no event will Lender apply any funds in the manner set forth herein if it is advised in an opinion of bond counsel provided by the Borrower that such a use of funds could adversely affect the exclusion from gross income for federal income tax purposes of the interest component of Installment Payments][Note: delete in taxable transactions]. Any prepayment pursuant to this Section shall not affect any other Borrower payment obligation hereunder. Lender shall notify the Borrower of any withdrawal from the Project Fund made under this Section, and in the notice shall describe its application of the funds so withdrawn.

4.04. Investment. (a) The Borrower and Lender agree that money in the Project Fund will be continuously invested and reinvested in a public funds money rate savings account, as directed by Lender, that meets the requirements of Section 159-30 of the General Statutes of North Carolina, as amended.

(b) From and after the date that is three years from the Closing Date, the Borrower and Lender agree that money in the Project Fund will not be invested at a "yield," as determined under the Code, in excess of the "yield" on the Borrower's obligations under this Contract, unless the Borrower has supplied Lender with an opinion of bond counsel to the effect that such investment will not adversely affect the exclusion from gross income for federal income tax purposes to which the interest components of Installment Payments would otherwise be entitled. **[Note: this provision is not required in taxable transactions]**

(c) Investment obligations acquired with money in the Project Fund shall be deemed at all times to be part of the Project Fund. The interest accruing thereon and any profit or loss realized

upon the disposition or maturity of any such investment shall be credited to or charged against the Project Fund.

(d) All earnings on moneys in the Project Fund shall be used for Project Costs or otherwise applied in accordance with Section 4.03 hereof.

ARTICLE V

BORROWER'S COVENANTS, REPRESENTATIONS AND WARRANTIES

5.01. Indemnification. To the extent permitted by law, the Borrower shall indemnify, protect and save Lender and its officers and directors, and the LGC's members and employees, harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including attorneys' fees, arising out of, connected with, or resulting directly or indirectly from the Security Property or the transactions contemplated by this Contract, including without limitation the possession, condition or use of the Equipment. The indemnification arising under this Section shall survive this Contract's termination.

5.02. Covenant as to Tax Exemption. (a) The Borrower covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income for federal income taxation purposes of the interest portion of the obligation created by this Contract under Section 103 of the Code. In particular, the Borrower covenants that it will not directly or indirectly use or permit the use of any proceeds of any fund created under this Contract, any funds of the Borrower or any property financed or refinanced with funds provided to the Borrower under this Contract, or otherwise take or omit to take any action, that would cause the obligation created by this Contract to be an "arbitrage bond" within the meaning of Section 148(a) of the Code or a "private activity bond" under Section 141 of the Code. The Borrower will maintain books on which will be recorded (i) Lender or (ii) any assignee of the Installment Payments due under this Contract, as the registered owner of such Installment Payments. To that end, the Borrower has executed the Use of Proceeds Certificate dated the date hereof (the "Use of Proceeds Certificate"), and will comply with all requirements of Section 141 and Section 148 of the Code to the extent applicable.

(b) The Borrower hereby represents and warrants that its representations and warranties in the Use of Proceeds Certificate with respect to its investment and use of funds provided under this Contract, and its use of any property financed or refinanced with funds provided under this Contract, are true, correct and complete.

(c) Without limiting the generality of the foregoing, the Borrower agrees that there shall be paid 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 by this Contract from time to time. This covenant shall survive the termination of this Contract.

(d) Notwithstanding any provision of this Section, if the Borrower shall provide to Lender a Bond Counsel Opinion to the effect that any action required under this Section or the Use of Proceeds Certificate is no longer required, or to the effect that some further action is required, to

maintain the exclusion from gross income of the interest on the obligation created by this Contract pursuant to Section 103 of the Code, the Borrower and Lender may rely conclusively on such opinion in complying with the provisions thereof.

(e) To the extent permitted by law, the Borrower hereby designates and authorizes Lender and its employees as its agents and attorneys-in-fact of the Borrower for the purpose of preparing and filing with the IRS a form 8038-G (or other form required under Section 149(e) of the Code) with respect to this Contract.

(f) The Borrower acknowledges that its personnel must be familiar with the arbitrage rebate rules because the tax-exempt status of the interest on the Installment Payments depends upon continuing compliance with such rules. The Borrower therefore covenants to take all reasonable action to assure that Borrower personnel responsible for the investment of and accounting for financing proceeds comply with such rules.

(g) The Borrower represents that the aggregate face amount of all tax-exempt obligations issued by the Borrower during the current calendar year does not, and will not, exceed \$10,000,000. The Borrower also represents that it has designated each of the Installment Payments under this Contract as a “qualified tax-exempt obligation” for the purposes of the Code. [Note: remove this paragraph if transaction is not bank qualified] [Note: remove this Section 5.03 in taxable transactions]

5.03. Validity of Organization and Acts. The Borrower is validly organized and existing under State law, has full power to enter into this Contract and has duly authorized and has obtained all required approvals and all other necessary acts required prior to the execution and delivery of this Contract. This Contract is a valid, legal and binding obligation of the Borrower.

5.04. Maintenance of Existence. The Borrower shall maintain its existence, shall continue to be a local governmental unit of the State, validly organized and existing under State law, and shall not consolidate with or merge into another local governmental unit of the State, or permit one or more other local governmental units of the State to consolidate with or merge into it, unless the local governmental unit thereby resulting assumes the Borrower’s obligations under this Contract.

5.05. Acquisition of Permits and Approvals. All permits, consents, approvals or authorizations of all governmental entities and regulatory bodies, and all filings and notices required on the Borrower’s part to have been obtained or completed as of today in connection with the authorization, execution and delivery of this Contract, the consummation of the transactions contemplated by this Contract and the acquisition [and installation] of the Equipment have been obtained and are in full force and effect, and there is no reason why any future required permits, consents, approvals, authorizations or orders cannot be obtained as needed.

5.06. No Breach of Law or Contract. Neither the execution and delivery of this Contract nor the consummation of the transactions contemplated by this Contract, nor the fulfillment of or compliance with the terms and conditions of this Contract, (a) to the best of the Borrower’s knowledge, constitutes a violation of any provision of law governing the Borrower or (b) results in a breach of the terms, conditions or provisions of any contract, agreement or instrument or order, rule or regulation to which the Borrower is a party or by which the Borrower is bound.

5.07. No Litigation. There is no litigation or any governmental administrative proceeding to which the Borrower (or any official thereof in an official capacity) is a party that is pending or, to the best of the Borrower's knowledge after reasonable investigation, threatened with respect to (a) the Borrower's organization or existence, (b) its authority to execute and deliver this Contract or to comply with the terms of this Contract, (c) the validity or enforceability of this Contract or the transactions contemplated by this Contract, (d) the title to office of any Governing Board member or any other Borrower officer, (e) any authority or proceedings relating to the Borrower's execution or delivery of this Contract, or (f) the undertaking of the transactions contemplated by this Contract.

5.08. No Current Default or Violation. (a) The Borrower is not in violation of any existing law, rule or regulation applicable to it, (b) the Borrower is not in default under any contract, other agreement, order, judgment, decree or other instrument or restriction of any kind to which the Borrower is a party or by which it is bound or to which any of its assets are subject, including this Contract, and (c) no event or condition has happened or existed, or is happening or existing, under the provisions of any such instrument, including this Contract, which constitutes or which, with notice or lapse of time, or both, would constitute an event of default hereunder or thereunder.

5.09. No Misrepresentation. No representation, covenant or warranty by the Borrower in this Contract is false or misleading in any material respect.

5.10. Environmental Warranties and Indemnification. (a) The Borrower warrants and represents to Lender that, to the best of the Borrower's knowledge after thorough investigation, the Equipment is not now and has not ever been used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials (as defined herein).

(b) The Borrower covenants that the Equipment shall be kept free of Hazardous Materials and shall not be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in connection with the normal maintenance and operation of the Equipment, and the Borrower shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of the Borrower or any lessee, the release of Hazardous Materials onto the Equipment or suffer the presence of Hazardous Materials on the Equipment, except in connection with the normal maintenance and operation of the Equipment.

(c) The Borrower shall comply with, and ensure compliance by all users and lessees with, all applicable federal, State and local laws, ordinances, rules and regulations with respect to Hazardous Materials and shall keep the Equipment free and clear of any liens imposed pursuant to such laws, ordinances, rules and regulations. If the Borrower receives any notices from any governmental agency or any lessee with regard to Hazardous Materials on, from or affecting the Equipment, the Borrower shall immediately notify Lender. The Borrower shall conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Equipment in accordance with all applicable federal, State and local laws, ordinances, rules, regulations and policies and to Lender's satisfaction.

(d) "Hazardous Materials" means any explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials, asbestos or any

materials containing asbestos, or any other substance or material as defined by any federal, State or local environmental law, ordinance, rule or regulation including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. sections 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. sections 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. sections 9601 et seq.), and the regulations adopted and publications promulgated pursuant thereto.

(e) To the extent permitted by law, the Borrower shall indemnify and hold Lender harmless from and against (i) any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including clean-up costs), judgments and expenses (including attorneys', consultants' or experts' fees and expenses) of every kind and nature suffered by or asserted against Lender as a direct or indirect result of any warranty or representation made by the Borrower in subsections (a) through (c) of this Section being false or untrue in any material respect, or (ii) any requirement under any law, regulation or ordinance, local, State or federal, which requires the elimination or removal of any hazardous materials, substances, wastes or other environmentally regulated substances by Lender or the Borrower or any transferee or assignee Lender or the Borrower.

(f) The Borrower's obligations under this Section shall continue in full force and effect notwithstanding full payment of the Required Payments or execution on the security interests created under this Contract.

5.11. Further Instruments. Upon Lender's request, the Borrower shall execute, acknowledge and deliver such further instruments reasonably necessary or desired by Lender to carry out more effectively the purposes of this Contract or any other document related to the transactions contemplated by this Contract, and to subject to the liens and security interests hereof and thereof all or any part of the Security Property intended to be given or conveyed hereunder or thereunder, whether now given or conveyed or acquired and conveyed subsequent to the date of this Contract.

5.12. Lender's Advances for Performance of Borrower's Obligations. If the Borrower fails to perform any of its obligations under this Contract, Lender is hereby authorized, but not obligated, to perform such obligation or cause it to be performed. All expenditures incurred by Lender (including any advancement of funds for payment of taxes, insurance premiums or other costs of maintaining the Security Property, and any associated legal or other expenses), together with interest thereon at the Prime Rate, shall be secured as Additional Payments under this Contract. The Borrower promises to pay all such amounts to Lender immediately upon demand.

5.13. Equipment Will Be Used and Useful. The acquisition **[and installation]** of the Equipment is necessary and expedient for the Borrower, and will perform essential functions of the Borrower appropriate for units of local government. The Borrower has an immediate need for, and expects to make immediate use of, all of the Equipment, and does not expect such need or use to diminish in any material respect during the term of this Contract. The Equipment will not be used in any private business or put to any private business use.

5.14. Financial Information. (a) The Borrower shall send to Lender a copy of the Borrower's audited financial statements for each Fiscal Year within 30 days of the Borrower's acceptance of such statements, but in any event within 270 days of the completion of such Fiscal

Year.

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

5.15. Taxes and Other Governmental Charges. The Borrower shall pay, as Additional Payments, the full amount of all taxes, assessments and other governmental charges lawfully made by any governmental body during the term of this Contract. With respect to special assessments or other governmental charges which may be lawfully paid in installments over a period of years, the Borrower shall be obligated to provide for Additional Payments only for such installments as are required to be paid during the term of this Contract. The Borrower shall not allow any liens for taxes, assessments or governmental charges with respect to the Equipment or any portion thereof to become delinquent (including, without limitation, any taxes levied upon the Equipment or any portion thereof which, if not paid, will become a charge on any interest in the Equipment, including Lender's interest, or the rentals and revenues derived therefrom or hereunder).

5.16. Borrower's Insurance. (a) The Borrower shall, at its own expense, acquire, carry and maintain broad-form extended coverage property damage insurance with respect to all Equipment in an amount equal to the actual cash value of the Equipment. Such property damage insurance shall include Lender as loss payee. Any Net Proceeds of the insurance required by this subsection (a) shall be payable as provided in Section 6.15.

(b) The Borrower shall, at its own expense, acquire, carry and maintain comprehensive general liability insurance (and auto liability insurance, if applicable) in accordance with State statute or as customarily held by similar entities in the State.

(c) The Borrower shall also maintain workers' compensation insurance issued by a responsible carrier authorized under State law to insure the Borrower against liability for compensation under applicable State law as in effect from time to time.

(d) All insurance shall be maintained with generally recognized responsible insurers in accordance with State law and may carry reasonable deductible or risk-retention amounts.

(e) Lender shall not be responsible for the sufficiency or adequacy of any required insurance 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 Lender.

(f) Upon request by Lender, the Borrower shall deliver to Lender a certificate stating that the risk coverages required by this Contract are in effect, and stating the carriers, policy numbers, coverage limits and deductible or risk-retention amounts for all such coverages.

ARTICLE VI

THE EQUIPMENT

6.01. Acquisition and Installation. The Borrower shall comply with the provisions of Article 8 of Chapter 143 of the North Carolina General Statutes, accept all portions of the Equipment when properly delivered, provide for the proper installation thereof and thereafter promptly place each such portion in service.

6.02. Changes in Location. The Borrower shall promptly inform Lender if any component of the Equipment shall be moved from the location designated for such Equipment at the time of its acquisition.

6.03. Acquisition and Installation within Funds Available. The Borrower represents that, based upon its examination of the plans and specifications for the Equipment, estimated installation costs and the Equipment's anticipated configuration, the Equipment can be acquired and installed for a total price within the total amount of funds to be available therefor in the Project Fund, income anticipated to be derived from the investment thereof and other funds previously identified and designated for such purposes. If the total amount available for such purposes in the Project Fund shall be insufficient to pay the entire cost of acquiring and installing the Equipment, the Borrower promises to pay any such excess costs, with no resulting reduction or offset in the amounts otherwise payable by the Borrower under this Contract.

6.04. Disclaimer of Warranties. The Borrower agrees that Lender has not designed the Equipment, that Lender has not supplied any plans or specifications with respect thereto and that Lender (a) is not a manufacturer of, nor a dealer in, any of the component parts of the Equipment or similar equipment, (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 Equipment 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 Equipment or any component part thereof or any property or rights relating thereto at any stage of the acquisition, installation and equipping thereof, (c) has not at any time had physical possession of the Equipment or any component part thereof or made any inspection thereof or of any property or rights relating thereto, and (d) has not made any warranty or other representation, express or implied, that the Equipment 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 results which the Borrower intends therefor, or (iii) is safe in any manner or respect.

Lender MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE EQUIPMENT OR ANY COMPONENT PART THEREOF, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE, and further including the design or condition thereof; the safety, quality or capacity thereof; compliance thereof with the requirements of any law, rule, specification or contract pertaining thereto; any latent defect; the Equipment's ability to perform any function; that the Amount Advanced will be sufficient to pay all costs of the acquisition and installation of the Equipment; or any other characteristic of the Equipment; it being agreed that the Borrower is to bear all risks relating to the Equipment, the installation thereof and the transactions contemplated by this Contract, and the Borrower hereby waives the benefits of any and all implied warranties and representations of Lender.

The provisions of this Section shall survive this Contract's termination.

6.05. Right of Entry and Inspection. Lender and its representatives and agents shall have the right to enter upon the Borrower's property and inspect the Equipment from time to time during installation and after the completion of installation, and the Borrower shall cause any vendor, contractor or sub-contractor to cooperate with Lender and its representatives and agents during such inspections.

No right of inspection or approval granted in this Section shall be deemed to impose upon Lender any duty or obligation whatsoever to undertake any inspection or to make any approval. No inspection made or approval given by Lender shall be deemed to impose upon Lender any duty or obligation whatsoever to identify or correct any defects in the Equipment or to notify any person with respect thereto, and no liability shall be imposed upon Lender, and no warranties (either express or implied) are made by Lender as to the quality or fitness of any improvement, any such inspection and approval being made solely for Lender's benefit.

6.06. Compliance with Requirements. (a) The Borrower shall cause the Equipment to be installed in a careful manner and in compliance with all applicable legal requirements.

(b) The Borrower shall observe and comply promptly with all current and future requirements relating to the Equipment's use or condition imposed by (i) any judicial, governmental or regulatory body having jurisdiction over the Equipment or any portion thereof or (ii) any insurance company writing a policy covering the Equipment or any portion thereof, whether or not any such requirement shall necessitate structural changes or improvements or interfere with the use or enjoyment of the Equipment.

(c) The Borrower shall obtain and maintain in effect all licenses and permits required for the Equipment's operation.

(d) The Borrower shall in no event use the Equipment or any part thereof, nor allow the same to be used, for any unlawful purpose, or suffer any act to be done or any condition to exist with respect to the Equipment or any part thereof, nor any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private, or which may make void or voidable any insurance then in force with respect thereto.

6.07. Use and Operation. The Borrower shall use and operate the Equipment and related property for its reasonably intended use and purpose, and for no other purpose unless required by law. The Borrower shall be solely responsible for the Equipment's operation, and shall not contract with any other person or entity for the Equipment's operation.

6.08. Maintenance and Repairs; Additions. (a) The Borrower shall keep the Equipment in good order and repair (reasonable wear and tear excepted) and in good operating condition, shall not commit or permit any waste or any other thing to occur whereby the value or usefulness of the Equipment might be impaired, and shall make from time to time all necessary or appropriate repairs, replacements and renewals.

(b) The Borrower may, also at its own expense, make from time to time any additions, modifications or improvements to the Equipment that it may deem desirable for its governmental or proprietary purposes and that do not materially impair the effective use, nor materially decrease the value or substantially alter the intended use, of the Equipment. The Borrower shall do, or cause to be done, all such things as may be required by law in order fully to protect the security of and all Lender's rights under this Contract.

(c) Any and all additions to or replacements of the Equipment and all parts thereof shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Contract and included in the "Equipment" for the purposes of this Contract.

(d) Notwithstanding the provisions of subsection (c) of this Section, however, the Borrower may, from time to time in its sole discretion and at its own expense, install machinery, equipment and other tangible property in or on the Equipment. All such property shall remain the Borrower's sole property in which Lender shall have no interest; provided, however, that any such property which becomes permanently affixed to the Equipment shall be subject to the lien and security interest arising under this Contract if Lender shall reasonably determine that the Equipment would be damaged or impaired by the removal of such machinery, equipment or other tangible property.

6.09. Security. The Borrower shall take all reasonable steps necessary to safeguard the Equipment against theft. The security afforded the Equipment shall at all times be equal to or better than the security afforded the Borrower's personal property that is not subject to this Contract.

6.10. Utilities. The Borrower shall pay all charges for utility services furnished to or used on or in connection with the Equipment.

6.11. Risk of Loss. The Borrower shall bear all risk of loss to and condemnation of the Equipment.

6.12. Condemnation. The Borrower shall immediately notify Lender if any governmental authority shall institute, or shall notify the Borrower of any intent to institute, any action or proceeding for the taking of, or damages to, all or any part of the Equipment or any interest therein under the power of eminent domain, or if there shall be any damage to the Equipment due to governmental action, but not resulting in a taking of any portion of the Equipment. The Borrower shall file and prosecute its claims for any such awards or payments in good faith and with due diligence and cause the same to be collected and paid over to Lender, and to the extent permitted by law hereby irrevocably authorizes and empowers Lender, in the Borrower's name or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claims. If the Borrower receives any Net Proceeds arising from any such action, the Borrower shall apply such Net Proceeds as provided in Section 6.15.

6.13. Title. Title to the Equipment and any and all additions, repairs, replacements or modifications thereto shall at all times be in the Borrower, subject to the lien of this Contract. Upon the Borrower's payment in full of all Required Payments, Lender, at the Borrower's expense and request, shall cancel this Contract.

6.14. No Encumbrance, Mortgage or Pledge of Equipment. (a) The Borrower shall not

directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics' and materialmen's liens), charge, encumbrance or other claim in the nature of a lien on or with respect to the Equipment. The Borrower shall promptly, at its own expense, take such action as may be duly necessary to discharge any such mortgage, pledge, lien, charge, encumbrance or claim not excepted above which it shall have created, incurred or suffered to exist.

(b) The Borrower shall reimburse Lender for any expense incurred by Lender to discharge or remove any such mortgage, pledge, lien, security interest, encumbrance or claim, with interest thereon at the Prime Rate.

6.15. Damage and Destruction; Use of Net Proceeds. (a) The Borrower shall promptly notify Lender if (i) the Equipment or any portion thereof is stolen or is destroyed or damaged by fire or other casualty, (ii) a material defect in the installation of the Equipment shall become apparent, or (iii) title to or the use of all or any portion of the Equipment shall be lost by reason of a defect in title. Each notice shall describe generally the nature and extent of such damage, destruction or taking.

(b) The Borrower shall apply Net Proceeds (i) to the prompt completion, repair or restoration of the Equipment (and pay any costs in excess of the Net Proceeds, if necessary), or (ii) together with other available funds as may be necessary, to the prepayment of all outstanding Required Payments pursuant to Section 3.03. The Borrower shall promptly report to Lender regarding the use of Net Proceeds.

(c) Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of Net Proceeds shall be the Borrower's property and shall be part of the Equipment.

ARTICLE VII

DEFAULTS AND REMEDIES; EXECUTION

7.01. Events of Default. An "Event of Default" is any of the following:

(a) The Borrower's failing to make any Installment Payment when due.

(b) The occurrence of an Event of Nonappropriation.

(c) The Borrower's breaching or failing to perform or observe any term, condition or covenant of this Contract on its part to be observed or performed, other than as provided in subsections (a) or (b) of this Section, including payment of any Additional Payment, for a period of 15 days after written notice specifying such failure and requesting that it be remedied shall have been given to the Borrower by Lender, unless Lender shall agree in writing to an extension of such time prior to its expiration.

(d) The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law by or against the Borrower as a debtor, or the appointment of a receiver, custodian or similar officer for the Borrower or any of its property, and the failure of such proceedings or appointments to be vacated or fully stayed within 30 days after the institution or occurrence thereof.

(e) Any warranty, representation or statement made by the Borrower in this Contract is found to be incorrect or misleading in any material respect on the Closing Date (or, if later, on the date made).

(f) Any lien, charge or encumbrance prior to the security interest created under Section 2.03, or affecting the validity of this Contract, is found to exist, or proceedings are instituted against the Borrower to enforce any lien, charge or encumbrance against the Equipment and such lien, charge or encumbrance would be prior to the lien of this Contract.

(g) The Borrower's failing to pay when due any principal of or interest on any of its general obligation debt.

7.02. Remedies on Default. Upon the continuation of any Event of Default, Lender may, without any further demand or notice, exercise any one or more of the following remedies:

(a) Declare the unpaid principal components of the Installment Payments immediately due and payable;

(b) Proceed by appropriate court action to enforce the Borrower's performance of the applicable covenants of this Contract or to recover for the breach thereof;

(c) As provided in Article IV hereof, pay over any balance remaining in the Project Fund to be applied against outstanding Required Payments in any manner Lender may reasonably deem appropriate; and

(d) Avail itself of all available remedies under this Contract, including execution as provided in Section 7.03, and recovery of attorneys' fees and other expenses.

Notwithstanding any other provision of this Contract, the Borrower and Lender intend to comply with Section 160A-20. No deficiency judgment may be entered against the Borrower in violation of Section 160A-20.

7.03. Execution on Personal Property. Upon the continuation of any Event of Default and in addition to all other remedies granted in this Contract, Lender shall have all the rights and remedies of a secured party under the UCC and may proceed to execute upon the Security Property.

7.04. Possession of Equipment. After a foreclosure sale, the Borrower shall immediately lose the right to possess, use and enjoy the Equipment (but may remain in possession of the Equipment as a lessee at will of Lender), and thereupon the Borrower (a) shall pay monthly in advance to Lender a fair and reasonable rental value for the use and possession of the Equipment (in an amount Lender shall determine in its reasonable judgment), and (b) upon Lender's demand, shall deliver possession of the Equipment to Lender or, at Lender's direction, to any purchaser of the Equipment after an execution sale.

In addition, upon the continuation of any Event of Default, Lender, to the extent permitted by law, is hereby authorized to (i) take possession of the Equipment, with or without legal action, (ii)

lease the Equipment, (iii) collect all rents and profits therefrom, with or without taking possession of the Equipment, and (iv) after deducting all costs of collection and administration expenses, apply the net rents and profits first to the payment of necessary maintenance and insurance costs, and then to the Borrower's account and in reduction of the Borrower's corresponding Required Payments in such fashion as Lender shall reasonably deem appropriate. Lender shall be liable to account only for rents and profits it actually receives.

7.05. No Remedy Exclusive; Delay Not Waiver. All remedies under this Contract 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. If any Event of Default shall occur and thereafter be waived by Lender, such waiver shall be limited to the particular breach so waived and shall not be deemed a waiver of any other breach under this Contract.

7.06. Payment of Costs and Attorney's Fees. If Lender employs an attorney to assist in the enforcement or collection of Required Payments, or if Lender voluntarily or otherwise shall become a party to any suit or legal proceeding (including a proceeding conducted under any state or federal bankruptcy or insolvency statute) to protect the Equipment, to protect the lien of this Contract, to enforce collection of the Required Payments or to enforce compliance by the Borrower with any of the provisions of this Contract, the Borrower agrees to pay reasonable attorneys' fees and all of the costs that may reasonably be incurred (whether or not any suit or proceeding is commenced), and such fees and costs (together with interest at the Prime Rate) shall be secured as Required Payments.

ARTICLE VIII

WIRE TRANSFER REQUIREMENTS

In order to prevent unauthorized or fraudulent wire transfers through cyberfraud and other means, Lender and the Borrower hereby agree to the provisions of this Article VIII.

8.01. Wire Transfer Requirements. In the event a wire transfer is made by Lender to disburse funds as contemplated by this Contract (a "Disbursement"), said wire transfer shall be delivered as directed in a written "Disbursement Authorization" provided to Lender by a representative of the Borrower, subject to the terms and conditions set forth in this Article VIII. For the purposes of this Article, a representative of the Borrower shall include employees and elected and/or appointed officials of the Borrower, bond counsel, the Borrower's legal counsel, the Borrower's financial advisor and the LGC.

8.02. Verification Procedures. Prior to making any Disbursement pursuant to a Disbursement Authorization not delivered to Lender in person by a representative of the Borrower, Lender shall verify such Disbursement Authorization verbally via telephone communication with a representative of the Borrower. The Borrower shall ensure that a representative of the Borrower will provide such verification to Lender. The Borrower shall not disclose, or allow to be disclosed, such Lender verification procedures to any third party unless there is a legitimate business need to make such disclosure or such disclosure is required by law, and the Borrower accepts the risk of such third party knowledge of the security procedures. If the Borrower has reason to believe that a security procedure has been obtained by or disclosed to an unauthorized person or learns of any

unauthorized transfer or of any discrepancy in a transfer request, then the Borrower shall notify Lender immediately.

8.03 Payee Identification. The Borrower is solely responsible for accurately identifying the wire transfer information contained in the Disbursement Authorization delivered to Lender by a representative of the Borrower, including but not limited to the bank name and its ABA number, beneficiary's account name and account number and beneficiary's physical address, together with other information requested by Lender (collectively, "Remittance Instructions"). If the Remittance Instructions describe a beneficiary inconsistently by name and account number, the Borrower acknowledges that Lender may make payment on the basis of the account number alone, that Lender is not obligated to detect such errors, and that the Borrower assumes the risk of any loss resulting therefrom.

8.04 Duty to Reconcile Written Confirmation. Upon request from a representative of the Borrower, Lender shall use its best efforts to send a representative of the Borrower written confirmation of the Disbursement in the form of a reference number, beneficiary name and wire amount. A representative of the Borrower shall promptly review and reconcile the written confirmation of the Disbursement sent by Lender, and shall report to Lender in writing, promptly, but in no event later than ten Business Days after the date of such written confirmation, any unauthorized, erroneous, unreceived or improperly executed payment. Lender and the Borrower agree that ten Business Days is a reasonable time for the detection and reporting to Lender of such information. After that time, all items on the written confirmation will be considered correct and the Borrower will be precluded from recovering from Lender if such wire transfer identified in the written confirmation was actually made by Lender. For the avoidance of doubt, any such writings can be provided electronically.

8.05 Unauthorized Payments. Notwithstanding any other provision herein, if a Disbursement has been verified by a representative of the Borrower pursuant to Section 8.02, it shall be binding on the Borrower if Lender acted in good faith in making such Disbursement.

8.06 Recordation. Lender may record any telephone conversation between Lender and a representative of the Borrower in order to reduce the risk of unauthorized or erroneous transfers. Lender may retain such recordings for as long as Lender may deem necessary.

8.07 Indemnification and Hold Harmless. If Lender complies with the provisions of this Article VIII, the Borrower agrees that Lender shall not be responsible for any communication or miscommunication by a representative of the Borrower, and the Borrower further agrees to indemnify, to the extent allowed by law, Lender and hold Lender harmless from and against any and all losses, claims, expenses, suits, costs or damages, demands or liabilities of whatever kind or nature, whether now existing or hereafter relating in any way to a wire transfer made pursuant to this Contract.

8.08 Applicable Law. All wire transfer orders are governed by Article 4A of the UCC, except as any provisions thereof that may be and are modified by the terms hereof. If any part of the applicable wire transfer order involves the use of the Fedwire, the rights and obligations of Lender and the Borrower regarding that wire transfer order are governed by Regulation J of the Federal Reserve Board.

ARTICLE IX

MISCELLANEOUS

9.01. Notices. (a) Any communication required or permitted by this Contract must be in writing.

(b) Any communication under this Contract shall be sufficiently given and deemed given when delivered by hand or on the date shown on a certified mail receipt, or delivery receipt from a national commercial package delivery service, if addressed as follows:

(i) If to the Borrower, to [REDACTED], North Carolina [REDACTED],
Attention: Finance Officer; or

(ii) If to Lender, to Truist Bank, 5130 Parkway Plaza Boulevard, Charlotte, North Carolina 28217, Attention: Governmental Finance.

(c) Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others.

9.02. No Assignments by Borrower. The Borrower shall not sell or assign any interest in this Contract.

9.03. Assignments by Lender. Lender may, at any time and from time to time, assign all or any part of its interest in the Security Property or this Contract, including, without limitation, Lender's rights to receive Required Payments. Any assignment made by Lender or any subsequent assignee shall not purport to convey any greater interest or rights than those held by Lender pursuant to this Contract.

The Borrower agrees that this Contract may become part of a pool of obligations at Lender's or its assignee's option. Lender 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. Any assignment by Lender 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 Lender's interest in the Equipment or this Contract shall be effective unless and until the Borrower 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 Borrower further agrees that Lender's interest in this Contract may be assigned in whole or in part upon 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 Borrower 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 Borrower agrees to execute any document reasonably required in connection with any assignment. Any assignor must provide notice of any assignment to the Borrower, and the Borrower shall keep a complete and accurate record of all assignments as required by the Code. After the giving of any such notice, the Borrower 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.

9.04. Amendments. No term or provision of this Contract may be amended, modified or waived without the prior written consent of the Borrower and Lender.

9.05. Governing Law. The Borrower and Lender intend that State law shall govern this Contract.

9.06. Liability of Officers and Agents. No officer, agent or employee of the Borrower shall be subject to any personal liability or accountability by reason of the execution of this Contract or any other documents related to the transactions contemplated by this Contract. Such officers or agents shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve an officer, agent or employee of the Borrower from the performance of any official duty provided by law.

9.07. Severability. If any provision of this Contract shall be determined to be unenforceable, that shall not affect any other provision of this Contract.

9.08. Non-Business Days. If the date for making any payment or the last day for performance of any act or the exercising of any right shall not be a Business Day, such payment shall be made or act performed or right exercised on or before the next preceding Business Day.

9.09. Entire Agreement. This Contract constitutes the Borrower's entire agreement with respect to the general subject matter covered by this Contract.

9.10. Binding Effect. Subject to the specific provisions of this Contract, and in particular Section 9.03, this Contract shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

9.11 E-Verify. Lender 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. Lender 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. Lender 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.

The remainder of this page left blank intentionally; signature page follows.

IN WITNESS WHEREOF, the parties have duly signed, sealed and delivered this Contract by duly authorized officers, all as of the date first above written.

(SEAL)

ATTEST:

**[BORROWER],
NORTH CAROLINA**

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

TRUIST BANK

By: _____

Printed Name: _____

Title: _____

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

By: _____
Finance Director

[Signature page to the Financing Agreement between the [Borrower], and Truist Bank]

Board of Education - replace 160A-20 with 115C-528

[REMOVE LGC CERTIFICATE IF APPROVAL IS NOT REQUIRED]

CERTIFICATE OF LOCAL GOVERNMENT COMMISSION

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

Secretary, Local Government Commission
of North Carolina

Board of Education - replace 160A-20 with 115C-528

EXHIBIT A – PROJECT AND EQUIPMENT DESCRIPTION

[INSERT DESCRIPTION OF EQUIPMENT HERE.]

Board of Education - replace 160A-20 with 115C-528

EXHIBIT B – PAYMENT SCHEDULE

[INSERT AMORTIZATION SCHEDULE HERE]

EXHIBIT C – FORM OF PROJECT FUND REQUISITION

[TO BE PREPARED ON BORROWER’S LETTERHEAD FOR SUBMISSION]

PROJECT FUND REQUISITION

[Date] _____

Email requisitions to: GFProjectfunds@truist.com

Requisition Team

Truist Bank

Direct Dial: (252) 296-0452 or (252) 296-0659

RE: Request for disbursement of funds from the Project Fund related to Contract No. _____-000 with the [Borrower], dated _____, 20__

To Whom It May Concern,

Pursuant to the terms and conditions of the Financing Agreement dated as of _____, 20__ (the “Contract”) between [Borrower] (“Borrower”) and Truist Bank (“Lender”), the Borrower requests the disbursement of funds from the Project Fund established under the Contract for the following Project Costs:

This is requisition number _____ from the Project Fund.

Disbursements will be to the [Borrower].

Amount: \$ _____

Attach copies of Certificates of Origin or Titles and vendor invoices to requisition when submitting.

Project Description: [describe project]

Location of Equipment/Project:

To receive funds via wire transfer please include:

ABA Routing Number:

Account Number:

Physical address of Borrower: [Borrower], [Address], Attention: _____

The Borrower makes this requisition pursuant to the following representations:

1. The Borrower has appropriated in its current fiscal year funds sufficient to pay the Installment Payments and estimated Additional Payments due in the current Fiscal Year.

Board of Education - replace 160A-20 with 115C-528

2. The purpose of this disbursement is for partial payment of the cost of the Project provided for under the Contract referenced above.
3. The requested disbursement has not been subject to any previous requisition.
4. No notice of any lien, right to lien or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable herein to any of the persons, firms or corporations named herein has been received, or if any notice of any such lien, attachment or claim has been received, such lien, attachment or claim has been released or discharged or will be released or discharged upon payment of this requisition.
5. This requisition contains no items representing payment on account of any percentage entitled to be retained on the date of this requisition.
6. No Event of Default is continuing under the Contract, and no event or condition is existing which, with notice or lapse of time or both, would become an Event of Default.
7. The Borrower shall allow Lender to deliver and file, or cause to be filed, any Uniform Commercial Code financing statements with respect to the Project or portion of the Project that Lender may request to evidence its security interest.
8. The Borrower has in place insurance on this portion of the Project that complies with the insurance provisions of the Contract.
9. Each amount requested for payment in this requisition either (a) represents a reimbursement to the Borrower for a Project Cost expenditure previously made[, and such reimbursement complies with the provisions of the Code (generally, an issuer may reimburse a prior expenditure out of tax-exempt bond proceeds if (i) the issuer has declared its “official intent” to reimburse the expenditure no later than 60 days after the date the expenditure is paid *and* (ii) the expenditure is being reimbursed no later than the end of the permitted “reimbursement period” of at least 18 months, and at most 3 years, from the date the expenditure was paid)][Note: remove in taxable transactions], or (b) will be used by the Borrower promptly upon the receipt of funds from Lender to make payments for Project Costs to third parties described in this requisition.

Capitalized terms used in this requisition have the meanings ascribed in the Contract.

Board of Education - replace 160A-20 with 115C-528

Attached is evidence that the amounts shown in this requisition are properly payable at this time, such as bills, receipts, invoices, architects' payment certifications or other appropriate documents.

IF REQUEST IS FINAL REQUEST, CHECK HERE .

[BORROWER]

By: _____

Printed Name: _____

Title: _____

**EXHIBIT D – FORM OF CERTIFICATE
DESIGNATING BORROWER REPRESENTATIVES**

In accordance with the terms of the Financing Agreement dated [redacted], 20 [redacted] (the “Contract”) between [redacted] (the “Borrower”) and Truist Bank (“Lender”), the Borrower designates the following persons as Borrower Representatives authorized to sign requisitions to withdraw funds from the Project Fund account (as such terms are defined in the Contract):

Printed Name:

Signature:

_____	_____
_____	_____
_____	_____
_____	_____

The Borrower designates the person listed below an Official Custodian for the purposes of the Federal Deposit Insurance Corporation. The person listed below is an officer, employee or agent of the Borrower who has plenary authority, including control, over funds owned by the Borrower. Control of public funds includes possession of, as well as the authority to establish, accounts in an insured depository institution and to make deposits, withdrawals and disbursements. The Official Custodian on the account is considered the insured depositor.

Printed Name:

Signature:

Last 4 Numbers of
SSN¹:

Date of
Birth:

_____	_____	_____	_____
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Upon written notification to Lender, the Borrower may update (a) Borrower Representatives to sign requisitions, or (b) the Official Custodian.

[redacted]

Name:
Title:

**The Official Custodian must provide a copy of his/her driver’s license.*

¹ The last 4 digits of the official custodian’s social security number will be used only to differentiate the official custodian from other Lender account holders with the same name.