

Prepared by and return to: after recording

Truist Bank
Attention: Governmental Finance
5130 Parkway Plaza Boulevard
Charlotte, NC 28217

AMENDED AND RESTATED FINANCING AGREEMENT AND DEED OF TRUST

STATE OF NORTH CAROLINA )
) COLLATERAL IS OR
) INCLUDES FIXTURES
HENDERSON COUNTY )

THIS AMENDED AND RESTATED FINANCING AGREEMENT AND DEED OF TRUST (this "Contract") is dated as of April 5, 2021, amends and restates the Original Financing Agreement (as defined herein) and is granted by the CITY OF HENDERSONVILLE, NORTH CAROLINA, a public body of the State of North Carolina (the "Borrower"), to BB&T Collateral Service Corporation, a North Carolina business corporation (the "Deed of Trust Trustee"), for the benefit of TRUIST BANK ("Truist").

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 or improvement of real or personal 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 Truist to advance \$3,600,000 to the Borrower to enable the Borrower to refinance the acquisition and construction of the Facilities (as defined in the hereinafter defined Original Financing Agreement) by prepaying all amounts due under the Financing Agreement and Deed of Trust, dated as of April 5, 2013 (the "Original Financing Agreement"), between Branch Banking and Trust Company (as predecessor to Truist) and the Borrower, and provides for securing the Borrower's obligations under this Contract by creating certain security interests in favor of Truist.

This Contract secures current advances of \$3,600,000. The current scheduled date for final repayment is on or about April 5, 2033.

**NOW, THEREFORE,**

- (1) in consideration of the execution and delivery of this Contract and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged;
- (2) to secure the Borrower's performance of all its covenants under this Contract, including the repayment of amounts advanced and to be advanced, together with interest on all such advances as provided in this Contract or any amendments hereto, and all charges and expenses of collection (including court costs and reasonable attorneys' fees and expenses); and
- (3) to charge the Mortgaged Property (as defined below) with such payment and performance,

the Borrower hereby sells, grants and conveys to the Deed of Trust Trustee, its heirs and assigns forever, in trust, with power of sale, the following (collectively, the "Mortgaged Property"):

- (a) (i) the property described in Exhibit A, (ii) any other real property acquired by the Borrower with the proceeds made available to the Borrower pursuant to this Contract, and (iii) all real property hereafter acquired by the Borrower in replacement of, or in substitution for, all or any part of any property described in this subparagraph, and in all cases together with all easements, rights, liberties, rights-of-way and appurtenances belonging to any such property (collectively, the "Site");
- (b) the improvements described in Exhibit B and all other improvements and fixtures now or hereafter attached or appurtenant to or used in or on those improvements or the Site, including (i) all renewals and replacements thereof and all additions thereto, (ii) all articles in substitution thereof, (iii) all building materials for construction or repair of such improvements upon their delivery to the Site, and (iv) all proceeds of all the foregoing in whatever form resulting from the loss or disposition of the foregoing, including all proceeds of and unearned premiums for any insurance policies covering the Site and such improvements, proceeds of title insurance and payments related to the exercise of condemnation or eminent domain authority, and all judgments or settlements in lieu of any of the foregoing (collectively, the "Facilities"); and
- (c) the Equipment, as defined in Section 2.03.

**TO HAVE AND TO HOLD** the Mortgaged Property with all privileges and appurtenances thereunto belonging thereto, to the Deed of Trust Trustee, its heirs and assigns forever, upon the trusts, terms and conditions and for the purposes set out below, in fee simple in trust;

**SUBJECT, HOWEVER,** to the encumbrances described in Exhibit C (the "Existing Encumbrances");

**BUT THIS CONVEYANCE IS MADE UPON THIS SPECIAL TRUST:** if the Required Payments (as defined below) are paid in full in accordance with this Contract, and the Borrower shall comply with all of the terms, covenants and conditions of this Contract, this conveyance shall be null and void and shall be canceled of record at the Borrower's request and cost, and title shall revert as provided by law.

**BUT IF, HOWEVER, THERE SHALL OCCUR AN EVENT OF DEFAULT UNDER THIS AGREEMENT,** then Truist shall have the remedies provided for in this Contract, including directing the Deed of Trust Trustee to sell the Mortgaged Property under power of sale.

**THE BORROWER COVENANTS AND AGREES** with the Deed of Trust Trustee and Truist (and their respective heirs, successors and assigns), in consideration of the foregoing, 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:

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

“Additional Payments” means any of Truist's reasonable and customary fees and expenses related to the transactions contemplated by this Contract, any of Truist'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 Truist 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 Truist 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 Truist) of an attorney or firm of attorneys acceptable to Truist.

“Borrower” means the City of Hendersonville, North Carolina.

“Borrower Representative” means the Borrower's Finance Director or such other person or persons at the time designated, by a written certificate furnished to Truist and signed on the Borrower's behalf by the presiding officer of the Borrower's Governing Board, to act on the Borrower's behalf for any purpose (or any specified purpose) under this Contract.

“Budget Officer” means the Borrower's 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.

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

“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, as contemplated by Section 3.05.

“Existing Encumbrances” means the encumbrances described in Exhibit C.

“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.

“Mortgaged Property” means the Mortgaged Property, as defined above.

“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 Mortgaged Property, payments on any bonds required by Section 5.03, any amounts recovered from any contractor on an action for default or breach, as described in Section 5.03, or any amounts received in lieu or in settlement of any of the foregoing, means the amount remaining after deducting from the gross proceeds thereof all expenses (including attorneys’ fees and costs) incurred in the collection of such proceeds, and after reimbursement to the Borrower or Trustee for amounts previously expended to remedy the event giving rise to such payment

or proceeds.

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

“Permitted Encumbrances” means, as of any particular time, (a) the Existing Encumbrances, (b) liens for taxes and assessments not then delinquent, (c) this Contract, and (d) easements, rights-of-way and other such minor defects or restrictions as normally exist with respect to property of the same general character as the Mortgaged Property which will not impair the Borrower’s intended use of the Mortgaged Property.

“Plans and Specifications” means all plans and specifications for the Facilities prepared by architects, engineers and other consultants.

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

“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.

“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 AGREEMENT; 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.** Truist shall advance \$3,600,000 (the “Amount Advanced”) to the Borrower by internally transferring the Amount Advanced on the Closing Date for the prepayment of the amount outstanding under the Original Financing Agreement, and the Borrower hereby accepts the Amount Advanced from Truist. On the Closing Date, the Borrower shall pay a fee of \$5,900 to Truist’s legal counsel, Pope Flynn, PLLC.

**2.03. UCC Security Agreement.**

(a) This Contract is intended as and constitutes a security agreement pursuant to the UCC with respect to all personal property acquired or refinanced by the Borrower with funds advanced by Truist pursuant to this Contract, all personal property obtained in substitution or replacement therefore, and all personal property obtained in substitution or replacement for any portion of the Mortgaged Property, and all proceeds of the foregoing (collectively, the “Equipment”).

The Borrower hereby grants to Truist a security interest in the Equipment to secure the Required Payments.

(b) The security interest in the Equipment granted in this Section shall be in addition to, and not in lieu of, any lien upon or security interest in the Equipment acquired by real property law.

(c) The Borrower shall allow Truist 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 Truist) in such form as Truist may reasonably require to perfect and continue the security interest in the Equipment.

**2.04. Borrower’s Limited Obligation.** (a) THE PARTIES INTEND THAT THIS TRANSACTION COMPLY WITH SECTION 160A-20. NO PROVISION OF THIS AGREEMENT 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 AGREEMENT 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 Mortgaged 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 provision of this Contract.

(b) Nothing in this Section is intended to impair or prohibit foreclosure on this Contract if the Required Payments are not paid when due or otherwise upon the occurrence of an Event of Default under this Contract, and in any such event Truist may request the Deed of Trust Trustee to foreclose on the Mortgaged Property as provided in 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) Truist’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 Facilities or the Equipment or any other person;

(c) The release of all or part of the Mortgaged Property or the release of any party who assumes all or any part of such performance;

(d) Any act or omission by Truist (but this provision does not relieve Truist of any of its obligations under this Contract);

(e) The sale of all or any part of the Mortgaged Property; or

(f) Another party's assumption of the Borrower's obligations under this Contract.

**2.06. Security Interest in Utility Equipment; Grant of Easements and Other Rights.**

(a) The Borrower hereby grants Truist a security interest in any pipes, valves, fittings, wires and poles or any other utility-type property to be financed with the proceeds made available to the Borrower pursuant to this Contract, as well as in all substitutions, replacements and proceeds therefore or thereof (for the purposes of this Contract, the "Utility Equipment"). The parties agree and intend that, even if all or any part of the Utility Equipment is installed in or on the ground, all the Utility Equipment shall be and remain personal property subject to the security interest granted in this Section. This Contract is intended as and constitutes a security agreement pursuant to the UCC with respect to the Utility Equipment and the security interest therein. The Utility Equipment is part of the Equipment and therefore part of the Mortgaged Property.

(b) The Borrower may install the Utility Equipment over or across property as to which the Borrower owns only an easement interest or some other limited interest, such as rights under an encroachment agreement with the North Carolina Department of Transportation. The Borrower hereby sells and grants to Truist (in connection with effecting remedies on default) such licenses or other rights as may be necessary or desirable for Truist or its agents to enter the real estate that is subject to such easements and other interests to remove, construct, operate, maintain and inspect the Utility Equipment. The Borrower grants these licenses in connection with the other interests granted under this Contract to Truist with the intent that such licenses thereby qualify as licenses coupled with an interest so as to be irrevocable.

(c) The Borrower hereby makes a collateral assignment to Truist of its rights under such easements and other interests. If any Event of Default shall be continuing, then to the extent permitted by law, Truist shall have the Borrower's rights under the easements and other interests.

## 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 Truist in lawful money of the United States at the times and in the amounts set forth in Exhibit D, except as otherwise provided in this Contract. As indicated in Exhibit D, 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 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.

**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 Truist, 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 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 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 Site or of the Facilities, except as expressly provided in this Contract. The Borrower assumes and shall bear the entire risk of completion, loss and damage to the Site and the Facilities 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 any action by the Internal Revenue Service (including the delivery of a deficiency notice) or any other federal court or administrative body determining (i) 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 (ii) that the Borrower's obligations under this Contract are not "qualified tax-exempt obligations" within the meaning of Code Section 265 (a "265 Event"), in any case as a result of any misrepresentation by the Borrower or as a result of any action the Borrower takes or fails to take.

(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 D, 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 (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 be a beneficiary under this Contract on the date of a Rate Adjustment Event. The Borrower shall additionally pay to all affected beneficiaries 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.

## ARTICLE IV

### BORROWER'S COVENANTS, REPRESENTATIONS AND WARRANTIES

**4.01. Warranties of Title.** The Borrower covenants with the Deed of Trust Trustee and Truist that the Borrower is seized of and has the right to convey the Mortgaged Property in fee simple, that the Mortgaged Property is free and clear of all liens and encumbrances other than the Existing Encumbrances, that title to the Mortgaged Property is marketable, and that the Borrower will forever warrant and defend title to the Mortgaged Property against the claims of all persons.

**4.02. Indemnification.** To the extent permitted by law, the Borrower shall indemnify, protect and save the Deed of Trust Trustee, Truist 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 Mortgaged Property or the transactions contemplated by this Contract, including without limitation the possession, condition, construction or use of the Facilities or the Equipment. The indemnification arising under this Section shall survive the Agreement's termination.

**4.03. 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) Truist 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 Truist 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 Trustee 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 Trustee 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 Original Financing Agreement was a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3) of the Code. This Contract effects a current refunding of the Original Financing Agreement, and does not extend the weighted average maturity of the obligation represented by the Original Financing Agreement. The final maturity date of this Contract is no later than 30 years from the date of the Original Financing Agreement.

**4.04. 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.

**4.05. 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.

**4.06. 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 hereby and the acquisition and construction of the Facilities 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.

**4.07. No Breach of Law or Contract.** Neither the execution and delivery of this Contract nor the consummation of the transactions contemplated hereby, 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.

**4.08. 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 hereby, (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.

**4.09. 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.

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

**4.11. Environmental Warranties and Indemnification.** (a) The Borrower warrants and represents to Truist as follows:

(i) The Borrower has no knowledge of, and after reasonable inquiry no reason to believe (A) that any industrial use has been made of the Mortgaged Property, (B) that the Mortgaged Property has been used for the storage, treatment or disposal of chemicals or any wastes or materials that are classified by federal, State or local laws as hazardous or toxic substances, or (C) that any manufacturing, landfilling or chemical production has occurred on the Mortgaged Property.

(ii) The Mortgaged Property is in compliance with all federal, State and local environmental laws and regulations, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Public Law No. 96-510, 94 Stat. 2767, 42 USC 9601 *et seq.*, and the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Public Law No. 99-499, 100 Stat. 1613.

(iii) The Borrower has fully disclosed to Truist in writing the existence, extent and nature of any hazardous materials, substances, wastes or other environmentally regulated substances (including without limitation, any materials containing asbestos), which the Borrower is legally authorized and empowered to maintain on, in or under the Mortgaged Property or use in connection therewith, and the Borrower has obtained and will maintain all licenses, permits and approvals required with respect thereto, and is in compliance with all of the terms, conditions and requirements of such licenses, permits and approvals.

(iv) The Borrower will promptly notify Truist of any change in the nature or extent of any hazardous materials, substances or wastes maintained on, in or under the Mortgaged Property or used in connection therewith, and will promptly send to Truist copies of any citations,

orders, notices or other material governmental or other communication received with respect to any other hazardous materials, substances, wastes or other environmentally regulated substances affecting the Mortgaged Property.

(b) To the extent permitted by law, the Borrower shall indemnify and hold Truist and the Deed of Trust Trustee 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 the Deed of Trust Trustee or Truist as a direct or indirect result of any warranty or representation made by the Borrower in subsection (a) above 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 the Deed of Trust Trustee, Truist or the Borrower or any transferee or assignee of the Deed of Trust Trustee, Truist or the Borrower.

(c) The Borrower's obligations under this Section shall continue in full effect notwithstanding full payment of the Required Payments or foreclosure under this Contract or delivery of a deed in lieu of foreclosure.

**4.12. Further Instruments.** Upon Truist's request, the Borrower shall execute, acknowledge and deliver such further instruments reasonably necessary or desired by Truist to carry out more effectively the purposes of this Contract or any other document related to the transactions contemplated hereby, and to subject to the liens and security interests hereof and thereof all or any part of the Mortgaged 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.

**4.13. Truist's Advances for Performance of Borrower's Obligations.** If the Borrower fails to perform any of its obligations under this Contract, Truist is hereby authorized, but not obligated, to perform such obligation or cause it to be performed. All expenditures incurred by Truist (including any advancement of funds for payment of taxes, insurance premiums or other costs of maintaining the Mortgaged 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 Truist immediately upon demand.

**4.14. Facilities Will Be Used and Useful.** The acquisition and construction of the Facilities 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 Facilities, and does not expect such need or use to diminish in any material respect during the term of the Agreement. The Facilities will not be used in any private business or put to any private business use.

**4.15. Financial Information.** (a) The Borrower shall send to Truist 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 Truist, at such reasonable times as Truist shall request, all

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

**4.16. 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 Agreement term. The Borrower shall not allow any liens for taxes, assessments or governmental charges with respect to the Mortgaged Property or any portion thereof to become delinquent (including, without limitation, any taxes levied upon the Mortgaged Property or any portion thereof which, if not paid, will become a charge on any interest in the Mortgaged Property, including Truist's interest, or the rentals and revenues derived therefrom or hereunder).

**4.17. Borrower's Insurance.** (a) From and after substantial completion of each principal portion of the Facilities, the Borrower shall, at its own expense, acquire, carry and maintain broad-form extended coverage property damage insurance with respect to all improvements in or on the Site or otherwise related to the Facilities in an amount equal to the estimated replacement cost of such improvements. Such property damage insurance shall include standard mortgagee coverage in favor of Truist. Any Net Proceeds of the insurance required by this subsection (a) shall be payable as provided in Section 5.10.

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

(c) If the property (building) secured by this Contract has been determined to be in a "Special Flood Hazard" area, shown on a map published by the Federal Emergency Management Agency (FEMA), the Borrower, at its own expense, must maintain an adequate policy for flood insurance for the life of the loan in compliance with the Flood Disaster Protection Act of 1973 (Federal law). If at any time during the term of the Agreement, such portion of the Mortgaged Property is classified by FEMA as being located in a special flood hazard area, flood insurance will be mandatory. Should Truist become aware of such an event, federal law requires Truist to notify the Borrower of the reclassification. If, within forty-five (45) days of receipt of notification from Truist that any portion of the Mortgaged Property has been reclassified by the FEMA as being located in a special flood hazard area, the Borrower has not provided sufficient evidence of flood insurance, Truist is mandated under federal law to purchase flood insurance on behalf of the Borrower, and any amounts so expended shall, subject to Section 3.05 and the Enforcement Limitation, immediately become debts of the Borrower, shall bear interest at the rate specified in the Agreement, and payment thereof shall be secured by the Agreement.

(d) 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.

(e) All insurance shall be maintained with generally recognized responsible insurers in

accordance with State law and may carry reasonable deductible or risk-retention amounts.

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

(g) Truist 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 Truist.

(h) Upon request by Truist, the Borrower shall deliver to Truist a certificate stating that the property 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 V

### CARE AND USE OF FACILITIES

**5.01. Compliance with Requirements.** (a) The Borrower shall cause the Facilities to be designed and constructed in compliance with all applicable legal requirements, including subdivision, building and zoning regulations. The Borrower shall not initiate or acquiesce in a change in the Site's zoning classification, except with respect to any change that may be appropriate to conform the actual zoning to that appropriate for the use of the Facilities contemplated as of the Closing Date.

(b) The Borrower shall observe and comply promptly with all current and future requirements relating to the Mortgaged Property's use or condition imposed by (i) any judicial, governmental or regulatory body having jurisdiction over the Facilities or any portion thereof or (ii) any insurance company writing a policy covering the Facilities 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 Mortgaged Property.

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

(d) The Borrower shall in no event use the Mortgaged Property 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 Mortgaged Property 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.

**5.02. Use and Operation.** The Borrower shall use and operate the Facilities and related facilities for their intended public purposes, and for no other purpose unless required by law. The Borrower shall be solely responsible for the Facilities' operation, and shall not contract with any other person or entity for the Facilities' operation.

**5.03. Maintenance and Repairs; Additions.** (a) The Borrower shall keep the Mortgaged Property 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 Mortgaged Property 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 Mortgaged Property 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 Mortgaged Property. 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 Truist's rights under this Contract.

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

(d) Notwithstanding the provisions of subsection (c) above, 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 Facilities. All such property shall remain the Borrower's sole property in which Truist shall have no interest; provided, however, that any such property which becomes permanently affixed to the Facilities shall be subject to the lien and security interest arising under this Contract if Truist shall reasonably determine that the Facilities would be damaged or impaired by the removal of such machinery, equipment or other tangible property.

**5.04. 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.

**5.05. Utilities.** The Borrower shall pay all charges for utility services furnished to or used on or in connection with the Site and the Facilities.

**5.06. Risk of Loss.** The Borrower shall bear all risk of loss to and condemnation of the Site and the Facilities.

**5.07. Condemnation.**

(a) The Borrower shall immediately notify Truist 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 Mortgaged Property or any interest therein under the power of eminent domain, or if there shall be any damage to the Mortgaged Property due to governmental action, but not resulting in a taking of any portion of the Mortgaged Property. 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 Truist, and to the extent permitted by law hereby irrevocably authorizes and empowers Truist or the Deed of Trust Trustee, 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 5.10.

(b) If any of the real or personal property acquired or improved by the Borrower (in whole or in part) using any portion of the Amount Advanced consists of or is located on any real property acquired by the Borrower through the exercise of the power of eminent domain, or through the threat of the exercise of the power of eminent domain, then during the term of this Contract the Borrower may not transfer any interest in such real property to any entity other than a local governmental unit without Truist's prior express written consent.

**5.08. Title.** Title to the Site and the Facilities 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, Truist, at the Borrower's expense and request, shall cancel this Contract.

**5.09. No Encumbrance, Mortgage or Pledge of Site or Facilities.**

(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 Mortgaged Property, except Permitted Encumbrances. 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 Truist for any expense incurred by Truist to discharge or remove any such mortgage, pledge, lien, security interest, encumbrance or claim, with interest thereon at the Prime Rate.

**5.10. Damage and Destruction; Use of Net Proceeds.** (a) The Borrower shall promptly notify Truist if (i) the Mortgaged Property or any portion thereof is stolen or is destroyed or damaged by fire or other casualty, (ii) a material defect in the construction of the Facilities shall become apparent, or (iii) title to or the use of all or any portion of the Mortgaged Property 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 Mortgaged Property (and pay any costs in excess of 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.

(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 Facilities.

## ARTICLE VI

### THE DEED OF TRUST TRUSTEE

**6.01. Deed of Trust Trustee's Liability.** The Deed of Trust Trustee shall suffer no liability by virtue of his acceptance of this trust except such as may be incurred as a result of the Deed of Trust Trustee's failure to account for the proceeds of any sale under this Contract.

**6.02. Substitute Trustees.** If the Deed of Trust Trustee, or any successor, shall die, become incapable of acting or renounce its trust, or if for any reason Truist desires to replace the Deed of Trust Trustee, then Truist shall have the unqualified right to appoint one or more substitute or successor Deed of Trust Trustees by instruments filed for registration in the office of the Register of Deeds where this Contract is recorded. Any such removal or appointment may be made at any time without notice, without specifying any reason therefor and without any court approval. Any such appointee shall become vested with title to the Mortgaged Property and with all rights, powers and duties conferred upon the Deed of Trust Trustee by this Contract in the same manner and to the same effect as though such Deed of Trust Trustee were named as the original Deed of Trust Trustee.

## ARTICLE VII

### DEFAULTS AND REMEDIES; FORECLOSURE

**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) above, 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 Truist, unless Truist 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 (other than Permitted Encumbrances) prior to 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 Mortgaged Property 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, Truist 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) Avail itself of all available remedies under this Contract, including execution and foreclosure as provided in Sections 7.03 and 7.04, and recovery of attorneys' fees and other expenses.

Notwithstanding any other provision of this Contract, Borrower, the Deed of Trust Trustee and Truist 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, Truist shall have all the rights and remedies of a secured party under the UCC and may proceed as to the personal property portion of the Mortgaged Property in the same manner as provided in this Contract for the real property portion, with Truist having no obligation to proceed against real or personal property in preference to the other.

**7.04. Foreclosure; Sale under Power of Sale.**

(a) Right to foreclosure or sale. Upon the occurrence and continuation of an Event of Default, at Truist's request, the Deed of Trust Trustee shall foreclose Mortgaged Property by judicial proceedings or, at Truist's option, the Deed of Trust Trustee shall sell (and is hereby empowered to sell) all or any part of the Mortgaged Property (and if in part, any such sale shall in no way adversely affect the lien created hereby against the remainder) at public sale to the last and highest bidder for cash (free of any equity of redemption, homestead, dower, curtesy or other exemption, all of which the Borrower expressly waives to the extent permitted by law) after compliance with applicable State laws relating to foreclosure sales under power of sale. The Deed

of Trust Trustee shall, at Truist's request, execute a proper deed or deeds to the successful purchaser at such sale.

(b) Bank's bid. Truist may bid and become the purchaser at any sale under this Contract, and in lieu of paying cash therefor may make settlement for the purchase price by crediting against the Required Payments the proceeds of sale net of sale expenses, including the Deed of Trust Trustee's commission, and after payment of such taxes and assessments as may be a lien on the Mortgaged Property superior to the lien of this Contract (unless the Mortgaged Property is sold subject to such liens and assessments, as provided by State law).

(c) Borrower's bid. The Borrower may bid for all or any part of the Mortgaged Property at any foreclosure sale; provided, however, that the price bid by the Borrower may not be less than an amount sufficient to provide for full payment of the Required Payments.

(d) Successful bidder's deposit. At any such sale the Deed of Trust Trustee may, at its option, require any successful bidder (other than Truist) immediately to deposit with the Deed of Trust Trustee cash or a certified check in an amount equal to all or any part of the successful bid, and notice of any such requirement need not be included in the advertisement of the notice of such sale.

(e) Application of sale proceeds. The proceeds of any foreclosure sale shall be applied in the manner and in the order prescribed by State law, it being agreed that the expenses of any such sale shall include a commission to the Deed of Trust Trustee of five percent of the gross sales price for making such sale and for all services performed under this Contract. Any proceeds of any such sale remaining after the payment of all Required Payments and the prior application thereof in accordance with State law shall be paid to the Borrower.

**7.05 Possession of Mortgaged Property.** After a foreclosure sale, the Borrower shall immediately lose the right to possess, use and enjoy the Mortgaged Property (but may remain in possession of the Mortgaged Property as a tenant at will of Truist), and thereupon the Borrower (a) shall pay monthly in advance to Truist a fair and reasonable rental value for the use and occupation of the Mortgaged Property (in an amount Truist shall determine in its reasonable judgment), and (b) upon Truist's demand, shall deliver possession of the Mortgaged Property to Truist or, at Truist's direction, to the purchaser of the Mortgaged Property at any judicial or foreclosure sale under this Contract.

In addition, upon the continuation of any Event of Default, Truist, to the extent permitted by law, is hereby authorized to (i) take possession of the Mortgaged Property, with or without legal action, (ii) lease the Mortgaged Property, (iii) collect all rents and profits therefrom, with or without taking possession of the Mortgaged Property, 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 Truist shall reasonably deem appropriate. Truist shall be liable to account only for rents and profits it actually receives.

**7.06. Due on Sale Provision; Acceleration.** Truist may, at its option, require the immediate payment in full of the Required Payments and the Amount Advanced and all other sums secured by this Financing Agreement upon the sale, transfer, conveyance or encumbrance of all or any part of the Mortgaged Property, or any legal or beneficial interest in the Mortgaged Property, without Truist's prior written consent. This option applies whether the sale, transfer, conveyance or encumbrance is voluntary, involuntary, by operation of law or otherwise, and includes (i) any creation of lien or encumbrance, whether or not subordinate to the lien created pursuant to this Financing Agreement, (ii) the creation of any easement, right-of-way or similar interest other than such as would constitute a Permitted Encumbrance, or (iii) the grant of any leasehold or similar interest or any option to purchase, right of first refusal or similar interest.

**7.07. 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 the other parties, 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.

**7.08. Payment of Costs and Attorney's Fees.** If Truist employs an attorney to assist in the enforcement or collection of Required Payments, or if the Deed of Trust Trustee or Truist voluntarily or otherwise shall become a party or parties to any suit or legal proceeding (including a proceeding conducted under any state or federal bankruptcy or insolvency statute) to protect the Mortgaged Property, 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**

In order to prevent unauthorized or fraudulent wire transfers through cyberfraud and other means, Truist 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 Truist 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 Truist 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 Truist in person by a representative of the Borrower, Truist 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 Truist. The Borrower shall not disclose, or allow to be disclosed, such Truist 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 Truist immediately.

**8.03. Payee Identification.** The Borrower is solely responsible for accurately identifying the wire transfer information contained in the Disbursement Authorization delivered to Truist 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 Truist (collectively, "Remittance Instructions"). If the Remittance Instructions describe a beneficiary inconsistently by name and account number, the Borrower

acknowledges that Truist may make payment on the basis of the account number alone, that Truist 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, Truist 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 Truist, and shall report to Truist 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. Truist and the Borrower agree that ten Business Days is a reasonable time for the detection and reporting to Truist 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 Truist if such wire transfer identified in the written confirmation was actually made by Truist. 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 10.02, it shall be binding on the Borrower if Truist acted in good faith in making such Disbursement.

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

**8.07. Indemnification and Hold Harmless.** If Truist complies with the provisions of this Article VIII, the Borrower agrees that Truist 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, Truist and hold Truist 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 Uniform Commercial Code, 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 Truist 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 145 Fifth Avenue East, Hendersonville, North Carolina 28792, Attention: Finance Director;
  - (ii) if to the Deed of Trust Trustee, to 5130 Parkway Plaza Boulevard, Charlotte, North Carolina 28217, Attention: Governmental Finance; or
  - (iii) If to Truist, to 5130 Parkway Plaza Boulevard, Charlotte, North Carolina 28217, Attention: Governmental Finance.
- (c) Any communication to the Deed of Trust Trustee shall also be sent to Truist.
- (d) 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 Truist.** Truist may, at any time and from time to time, assign all or any part of its interest in the Site, the Facilities or this Contract, including, without limitation, Truist's rights to receive Required Payments. Any assignment made by Truist or any subsequent assignee shall not purport to convey any greater interest or rights than those held by Truist pursuant to this Contract.

The Borrower agrees that this Contract may become part of a pool of obligations at Truist's or its assignee's option. Truist 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 Truist 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 Truist's interest in the Mortgaged Property 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 Truist'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 Trust.

**9.05. No Marshalling.** The Borrower hereby waives any and all rights to require marshalling of assets in connection with the exercise of any remedies provided in this Contract or as permitted by law.

**9.06. Governing Law.** The Borrower, Trust and the Deed of Trust Trustee intend that State law shall govern this Contract.

**9.07. 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 hereby. 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.

**9.08. Covenants Running with the Land.** All covenants contained in this Contract shall run with the real estate encumbered by this Contract.

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

**9.10. 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.

**9.11. Entire Agreement.** This Contract constitutes the Borrower's entire agreement with respect to the general subject matter covered hereby.

**9.12. Binding Effect.** Subject to the specific provisions of this Contract, and in particular Section 8.03, this Contract shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

**9.13. E-Verify.** Trust 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. Trust 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. Trust 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.

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**IN WITNESS WHEREOF**, the Borrower has caused this instrument to be executed as of the day and year first above written by duly authorized officers.

**(SEAL)**

**ATTEST:**

**CITY OF HENDERSONVILLE,  
NORTH CAROLINA**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**STATE OF NORTH CAROLINA;  
HENDERSON COUNTY**

I, a Notary Public of such County and State, certify that \_\_\_\_\_ and \_\_\_\_\_ personally came before me this day and acknowledged that they are the \_\_\_\_\_ and \_\_\_\_\_, of the City of Hendersonville, North Carolina, and that by authority duly given and as the act of the City of Hendersonville, North Carolina, the foregoing instrument was signed in the Borrower's name by such \_\_\_\_\_, sealed with its corporate seal and attested by such \_\_\_\_\_.

**WITNESS** my hand and official stamp or seal, this \_\_\_ day of April, 2021.

**[NOTARY SEAL]**

\_\_\_\_\_  
Notary Public

Notary's Printed Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

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

By: \_\_\_\_\_  
Finance Director  
City of Hendersonville, North Carolina

*[Financing Agreement and Deed of Trust from the City of Hendersonville, North Carolina  
for the benefit of Truist Bank]*

**TRUIST BANK**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

This contract has been approved under the provisions of Article 8, Chapter 159 of the General Statutes of North Carolina.

Sharon G. Edmundson  
Secretary, North Carolina  
Local Government Commission

By \_\_\_\_\_  
[Sharon G. Edmundson or  
Designated Assistant]

*[Financing Agreement and Deed of Trust from City of Hendersonville, North Carolina  
for the benefit of Truist Bank]*

## **EXHIBIT A -- SITE DESCRIPTION AND EQUIPMENT DESCRIPTION**

New fire station site:

BEING all that certain tract of land containing 11.56 acres located in Hendersonville Township, Henderson County, North Carolina, and being more particularly described as follows:

BEGINNING at a point in the southern margin of Sugarloaf Road, said point being the northeastern corner of the Massagee property described in the agreement and deed recorded in Deed Book 600 at page 471 of the Henderson County, North Carolina registry; thence with the southern margin of the right of way of Sugarloaf Road south 83° 58' 41" east 505.20 feet to northwest corner of the Pines Condominiums property described in that deed recorded in Deed Book 656 at page 1, Henderson County registry, thence with the western lines of the Pines Condominiums and CD-MAT LLC property south 05° 41' 45" west 1006.78 feet to an iron pipe in a rock in a corner of the Gertrude Thompson Trust property described in that deed recorded in Deed Book 973 at page 312, Henderson County registry, thence with the Gertrude Thompson Trust line north 78° 21' 39" west 367.45 feet to an iron pipe, thence north 20° 50' 48" west 251.47 feet to a corner in the George Bradshaw property described in that deed recorded in Deed Book 1065 at page 556 Henderson County registry, thence with the northern boundary of the George Bradshaw property north 82° 17' 58" west 95.53 feet to the southeastern corner of the Massagee property described in the agreement and deed recorded in Deed Book 600 at page 471 of the Henderson County registry, and with the Massagee line north 10° 55' 59" east 746.41 feet to the point of beginning, containing 11.56 acres more or less, as set forth on that survey entitled "*604 Sugarloaf Road, Hendersonville, Henderson County, North Carolina*", prepared by Kevin S. Baucom, PLS L-4275, dated March 19, 2013, and being the same real property described in that deed to the City of Hendersonville recorded in Deed Book 1418 at page 202, Henderson County Registry.

One (1) Pierce PUC Fire Engine mounted on a Pierce Arrow XT Custom Chassis.

Equipment and improvements for the Main Street Rehabilitation Project as set forth on those plans and specifications entitled: *Main Street Infrastructure Improvements Phase 3, City of Hendersonville, Henderson County, North Carolina*, dated October 25, 2012 and bearing Project No. 12001.

## **EXHIBIT B -- IMPROVEMENTS DESCRIPTION**

Construction of a new 11,000 square foot fire station as set forth on those plans and specifications entitled *Hendersonville Fire Station No. 2* by ADW Architects, dated March 11, 2013 and bearing Project Number 12041.

Completion of Phase 3 of the Main Street Rehabilitation Project as set forth on those plans and specifications entitled: *Main Street Infrastructure Improvements Phase 3, City of Hendersonville, Henderson County, North Carolina*, dated October 25, 2012 and bearing Project No. 12001.

**EXHIBIT C -- EXISTING ENCUMBRANCES**

Those exceptions set forth on Schedule B – Section Two of the loan policy of title insurance issued pursuant to First American Title Insurance Company commitment number 13H010944.

## EXHIBIT D-- PAYMENT SCHEDULE

Bond Debt Service  
City of Hendersonville, NC    Customer # 9933001684    NAICS = 921140  
Fire Station (refunding Note 00002) Note No. 00004  
Dated  
Date                    4/5/2021  
Delivery  
Date                    4/5/2021

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service	Bond Balance	Total Bond Value
4/5/2021						3,600,000	3,600,000
10/5/2021	150,000	1.730%	31,140.00	181,140.00		3,450,000	3,450,000
4/5/2022	150,000	1.730%	29,842.50	179,842.50		3,300,000	3,300,000
6/30/2022					360,982.50	3,300,000	3,300,000
10/5/2022	150,000	1.730%	28,545.00	178,545.00		3,150,000	3,150,000
4/5/2023	150,000	1.730%	27,247.50	177,247.50		3,000,000	3,000,000
6/30/2023					355,792.50	3,000,000	3,000,000
10/5/2023	150,000	1.730%	25,950.00	175,950.00		2,850,000	2,850,000
4/5/2024	150,000	1.730%	24,652.50	174,652.50		2,700,000	2,700,000
6/30/2024					350,602.50	2,700,000	2,700,000
10/5/2024	150,000	1.730%	23,355.00	173,355.00		2,550,000	2,550,000
4/5/2025	150,000	1.730%	22,057.50	172,057.50		2,400,000	2,400,000
6/30/2025					345,412.50	2,400,000	2,400,000
10/5/2025	150,000	1.730%	20,760.00	170,760.00		2,250,000	2,250,000
4/5/2026	150,000	1.730%	19,462.50	169,462.50		2,100,000	2,100,000
6/30/2026					340,222.50	2,100,000	2,100,000
10/5/2026	150,000	1.730%	18,165.00	168,165.00		1,950,000	1,950,000
4/5/2027	150,000	1.730%	16,867.50	166,867.50		1,800,000	1,800,000
6/30/2027					335,032.50	1,800,000	1,800,000
10/5/2027	150,000	1.730%	15,570.00	165,570.00		1,650,000	1,650,000
4/5/2028	150,000	1.730%	14,272.50	164,272.50		1,500,000	1,500,000
6/30/2028					329,842.50	1,500,000	1,500,000
10/5/2028	150,000	1.730%	12,975.00	162,975.00		1,350,000	1,350,000
4/5/2029	150,000	1.730%	11,677.50	161,677.50		1,200,000	1,200,000
6/30/2029					324,652.50	1,200,000	1,200,000
10/5/2029	150,000	1.730%	10,380.00	160,380.00		1,050,000	1,050,000
4/5/2030	150,000	1.730%	9,082.50	159,082.50		900,000	900,000
6/30/2030					319,462.50	900,000	900,000
10/5/2030	150,000	1.730%	7,785.00	157,785.00		750,000	750,000
4/5/2031	150,000	1.730%	6,487.50	156,487.50		600,000	600,000
6/30/2031					314,272.50	600,000	600,000

10/5/2031	150,000	1.730%	5,190.00	155,190.00		450,000	450,000
4/5/2032	150,000	1.730%	3,892.50	153,892.50		300,000	300,000
6/30/2032					309,082.50	300,000	300,000
10/5/2032	150,000	1.730%	2,595.00	152,595.00		150,000	150,000
4/5/2033	150,000	1.730%	1,297.50	151,297.50			
6/30/2033					303,892.50		
<hr/>							
	3,600,000		389,250.00	3,989,250.00	3,989,250.00		
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