

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

Jay C. Toland
Chief Financial Officer

INSTALLMENT FINANCING AGREEMENT

Dated as of June __, 2022

between

CITY OF FAYETTEVILLE, NORTH CAROLINA

and

TRUIST BANK

TABLE OF CONTENTS

ARTICLE I

DEFINITIONS AND EXHIBITS

SECTION 1.1.	Definitions and Rules of Construction.....	2
SECTION 1.2.	Exhibits	4

ARTICLE II

REPRESENTATIONS OF THE CITY AND THE LENDER

SECTION 2.1.	Representations, Covenants and Warranties of the City.....	5
SECTION 2.2.	Representations, Covenants and Warranties of the Lender	6

ARTICLE III

ADVANCE

SECTION 3.1.	Advance	7
SECTION 3.2.	Construction and Equipping of the Project.....	7
SECTION 3.3.	Reliance of the Lender on the Documents.....	7
SECTION 3.4.	Disclaimer of the Lender	7

ARTICLE IV

REPAYMENT OF THE ADVANCE; SECURITY FOR REPAYMENT

SECTION 4.1.	Repayment of the Advance.....	9
SECTION 4.2.	Budget and Appropriation	9
SECTION 4.3.	Deed of Trust	10
SECTION 4.4.	No Set-Off, Recoupment, Etc.	10

ARTICLE V

INSURANCE

SECTION 5.1.	Comprehensive General Liability	11
SECTION 5.2.	Workers' Compensation	11
SECTION 5.3.	Causalty and Theft Insurance.....	11
SECTION 5.4.	General Insurance Provisions	12

ARTICLE VI

DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

SECTION 6.1.	Obligation of the City to Repair and Replace the Mortgaged Property....	13
SECTION 6.2.	Insufficiency of Net Proceeds; Discharge of the Obligation of the City to Repair the Mortgaged Property.....	13
SECTION 6.3.	Cooperation of the Lender	14

ARTICLE VII

COVENANTS OF THE CITY

SECTION 7.1.	Installation of Additional Improvements	15
SECTION 7.2.	Access to the Mortgaged Property	15
SECTION 7.3.	Maintenance, Utilities, Taxes and Assessments	15
SECTION 7.4.	Modification of the Mortgaged Property	15
SECTION 7.5.	Encumbrances	16
SECTION 7.6.	Indemnification of the Lender and the Local Government Commission .	16
SECTION 7.7.	Financial Information to the Lender	16

ARTICLE VIII

ASSIGNMENT, LEASING AND AMENDMENT

SECTION 8.1.	Assignment by the Lender	18
SECTION 8.2.	Assignment and Lease by the City	19

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

SECTION 9.1.	Events of Default Defined	20
SECTION 9.2.	Remedies on Default.....	21
SECTION 9.3.	No Remedy Exclusive	21
SECTION 9.4.	No Additional Waiver Implied by One Waiver.....	21
SECTION 9.5.	Late Charge.....	21

ARTICLE X

PREPAYMENT OF INSTALLMENT PAYMENTS

SECTION 10.1	Prepayment of Installment Payments	23
--------------	--	----

ARTICLE XI

MISCELLANEOUS

SECTION 11.1.	Notices	23
SECTION 11.2.	Binding Effect.....	23
SECTION 11.3.	Severability	23
SECTION 11.4.	Execution in Counterparts	23
SECTION 11.5.	Commitment Letter.....	23
SECTION 11.6.	Applicable Law	24
SECTION 11.7.	E-Verify	24
SECTION 11.8.	Electronic Signatures	24
SECTION 11.9.	Filing of Agreement.....	24
EXHIBIT A	Installment Payment Schedule.....	A-1
EXHIBIT B	Form of Self-Insurance Letter.....	B-1

INSTALLMENT FINANCING AGREEMENT

This INSTALLMENT FINANCING AGREEMENT, dated as of June __, 2022 (the "Agreement"), between the CITY OF FAYETTEVILLE, NORTH CAROLINA, a municipal corporation duly organized and validly existing under the laws of the State of North Carolina (the "City"), and TRUIST BANK, a North Carolina banking corporation (the "Lender");

WITNESSETH:

WHEREAS, the City is a municipal corporation duly organized and validly existing under and by virtue of the Constitution and laws of the State of North Carolina;

WHEREAS, pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended, the City may finance the construction of fixtures or improvements on real property by contracts that create in such fixtures or improvements, or in both, a security interest to secure repayment of the moneys advanced or made available for construction;

WHEREAS, after public hearing and due consideration, the City Council of the City has determined to finance the cost of the construction and equipping of a new fire station (collectively, the "Project");

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

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

WHEREAS, the Lender is willing to advance moneys to the City for the purpose of financing the costs of the Project, and the City is willing to repay the moneys so advanced by the Lender in installments as more fully provided herein; and

WHEREAS, the City and the Lender have each duly authorized the execution and delivery of this Agreement.

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

ARTICLE I

DEFINITIONS AND EXHIBITS

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

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

“Advance” means the advance being made by the Lender to the City in the amount of \$10,430,000 pursuant to Section 3.1 to pay the costs of the Project and related Closing Costs.

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

“Business Day” means a day on which the Lender and the New York Stock Exchange are open for the purpose of conducting their businesses.

“City” means the City of Fayetteville, North Carolina, a municipal corporation duly organized and validly existing under and by virtue of the Constitution and laws of the State of North Carolina, and any successors or assigns.

“City Council” means the City Council of the City.

“Closing” means the date on which the City executes and delivers this Agreement, and the Lender makes the Advance to the City.

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

“Deed of Trust” means the Deed of Trust, of even date hereof, from the City to the Deed of Trust Trustee, for the benefit of the Lender, securing the Installment Payments and the performance by the City of its other obligations specified hereunder and thereunder, as supplemented and amended from time to time.

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

“Determination of Taxability” means and shall be deemed to have occurred on the date when (a) the City shall receive notice from the Lender that the Internal Revenue Service has

assessed as includable in gross income the interest component of the Installment Payments under this Agreement due to the occurrence of an Event of Taxability or (b) the City or the Lender shall receive notice from the Commissioner or any District Director of the Internal Revenue Service that the interest component of the Installment Payments under this Agreement is includable in the gross income of the Lender for federal income tax purposes due to the occurrence of an Event of Taxability.

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

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

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

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

“Inclusion Date” means the effective date that the interest component of the Installment Payments under this Agreement is includable in the gross income of the Lender as a result of a Determination of Taxability.

“Installment Payment Date” means each of the dates set forth on the Installment Payment Schedule attached hereto as Exhibit A.

“Installment Payments” means the payments required to be paid by the City pursuant to Section 4.1 in order to repay the Advance, as specified in Exhibit A attached hereto.

“Investment Obligation” means any security or investment authorized by Section 159-30 of the General Statutes of North Carolina, as may be amended from time to time, or any substitute or successor statute.

“Lender” means Truist Bank, a North Carolina banking corporation, and any of its successors or assigns.

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

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

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

“Permitted Encumbrances” means, and includes (a) liens for taxes, assessments and other governmental charges due but not yet payable; (b) landlord’s, warehouseman’s, carrier’s, worker’s, vendor’s, mechanic’s and materialmen’s liens and similar liens incurred in the ordinary course of business remaining undischarged for not longer than sixty (60) days from the filing thereof; (c) attachments remaining undischarged for not longer than sixty (60) days from the making thereof; (d) liens in respect of pledges or deposits under workers’ compensation laws, unemployment insurance, or similar legislation and in respect of pledges or deposits to secure bids, tenders, contracts (other than contracts for the payment of money), leases or statutory obligations, or in connection with surety, appeal, and similar bonds incidental to the conduct of litigation; (e) the lien created by the Deed of Trust and any lease of all or any portion of the Mortgaged Property permitted by Section 8.2; (f) this Agreement; (g) easements, rights of way, mineral rights, drilling rights, and other rights, reservations, covenants, conditions, or restrictions which the City certifies in writing to the Lender will not materially impair the use of the Mortgaged Property for its intended purpose or the marketability of the Mortgaged Property; and (h) any mortgage or encumbrance on the Mortgaged Property consented to by the Lender pursuant to Section 9 of the Deed of Trust.

“Project” means the construction and equipping of a new fire station to be located on the Site.

“Project Fund Agreement” means the Project Fund Agreement, dated of even date hereof, between the City and the Lender, including any amendment or supplement thereto.

“Site” means the real property upon which the fire station is to be located, as more particularly described in Exhibit A to the Deed of Trust.

“State” means the State of North Carolina.

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

Exhibit A	Installment Payment Schedule
Exhibit B	Form of Self-Insurance Letter

ARTICLE II

REPRESENTATIONS OF THE CITY AND THE LENDER

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

(a) The City is a municipal corporation duly organized and validly existing under and by virtue of the Constitution and laws of the State of North Carolina.

(b) The Constitution and laws of the State authorize the City to (i) execute and deliver this Agreement, the Deed of Trust, and the Project Fund Agreement, (ii) enter into the transactions contemplated thereby and (iii) carry out its obligations thereunder.

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

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

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

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

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

(h) The City is not in violation of any laws or regulations relating to terrorism or money laundering ("Anti-Terrorism Laws"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order"), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 107 56 (signed into law October 26, 2001) (the "Patriot Act"). Specifically, the City (i) is not an entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order; (ii) is not an entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order; (iii) is not an entity with which the

Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (iv) is not an entity that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or (v) is not an entity that is named as a “specially designated national and blocked person” on the most current list published by the Office of Foreign Asset Control (“OFAC”) or any list of persons or entities issued by OFAC pursuant to the Executive Order at its official website or any replacement website or other replacement official publication of such list. The City does not and will not conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any blocked or prohibited person or entity described in the preceding sentence or deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or engage in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law or the Patriot Act.

(i) The City acknowledges and agrees that this transaction is an arm’s-length commercial transaction between the City and the Lender. In connection with this transaction, the Lender is acting solely as a principal and not as the City’s agent, advisor or fiduciary. The Lender has not assumed a fiduciary responsibility with respect to this transaction, and nothing in this transaction or in any prior relationship between the City and the Lender shall be deemed to create an advisory, fiduciary or agency relationship between the City and the Lender in respect of this transaction. The City has consulted its own legal and other advisors to the extent it has deemed appropriate.

(j) The Mortgaged Property is accessible from public roads and is not subject to reversion.

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

(a) The Lender is a North Carolina banking corporation and has the requisite power and authority to enter into this Agreement.

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

ARTICLE III

ADVANCE

SECTION 3.1. Advance. In consideration of the covenants, warranties and representations contained herein, and in consideration of the City's agreement to repay the moneys advanced hereunder and interest thereon, the Lender hereby agrees to advance to the City at Closing moneys in the aggregate amount of \$10,430,000 (the "Advance"). On the date of Closing, the proceeds of the Advance (less a closing fee of \$7,500 to be paid directly by the Lender to its legal counsel) shall be deposited in a Project Fund (the "Project Fund") established pursuant to the Project Fund Agreement and invested and disbursed to pay the costs of the Project and related Closing Costs in accordance with the terms and provisions thereof.

SECTION 3.2. Construction and Equipping of the Project. The City shall enter into one, or cause to be entered into, or more contracts or purchase orders providing for the construction and equipping of the Project. The City shall cause the construction and equipping of the Project to be carried expeditiously in accordance with the plans and specifications therefor and in compliance with all applicable ordinances and statutes and requirements of all regularly constituted authorities having jurisdiction over the same. The City shall require, or cause to be required, that each contractor for the Project provides performance and labor and materials payment bonds in an amount not less than the amount of the respective contract. The net proceeds received by the City from any such bond or bonds shall be deposited in the Project Fund and applied as provided in the Project Fund Agreement. If the moneys held in the Project Fund are insufficient to pay all of the Closing Costs and the costs of the Project, the City shall provide any balance of the funds needed to complete the construction and equipping of the Project.

SECTION 3.3. Reliance of the Lender on the Documents. The Lender may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Lender shall not be liable in any manner for the sufficiency or correctness as to the form, manner of execution, or validity of any instrument or as to the identity, authority, or right of any person executing the same; and the Lender's duties hereunder shall be limited to the receipts of such moneys, instruments or other documents received by it as the Lender, and for the disposition of the same in accordance herewith.

SECTION 3.4. Disclaimer of the Lender. The City acknowledges and agrees that the design of the Project has not been made by the Lender, and the Lender has not supplied any plans or specifications with respect thereto and that the Lender (a) is not a manufacturer of, nor a dealer in, any of the component parts of the Project or similar projects, (b) has not made any recommendation, given any advance nor taken any other action with respect to (i) the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Project or any component part thereof or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Project or any component part thereof or any property or rights relating thereto at any stage of the construction thereof, (c) has not at any time had physical possession of the Project or any component part thereof or made any inspection thereof or any property or rights relating thereto, and (d) has not made any warranty or other representation, express or

implied, that the Project or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed, or will accomplish the results which the City intends therefore, or (iii) is safe in any manner of respect.

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

ARTICLE IV

REPAYMENT OF THE ADVANCE; SECURITY FOR REPAYMENT

SECTION 4.1. Repayment of the Advance. (a) The City shall repay the Advance, with interest, computed at the rate of 3.29% per annum (computed on the basis of a 360-day year consisting of twelve 30-day months and subject to adjustment as provided herein), in installments due at the times and in the amounts set forth in Exhibit A.

(b) The City shall pay all Installment Payments to the Lender in accordance with wire instructions provided by the Lender or as may otherwise be directed by the Lender.

(c) In the event of a Determination of Taxability, the interest component of the Installment Payments payable under this Agreement, from and after the Inclusion Date, shall be adjusted to preserve the Lender's after-tax economic yield with respect to the interest components of the Installment Payments, taking into account any interest expense deductions lost by the Lender as a direct or indirect result of the City's actions or omissions. In addition, the City shall pay to the Lender (i) an amount necessary to reimburse the Lender for any interest, penalties, or other charges assessed by the Internal Revenue Service and the Department of Revenue by reason of the Lender's failure to include the interest component of the Installment Payments in its gross income for income tax purposes, and (ii) upon request of the Lender, additional interest as a result of the increase in the interest rate on all previous Installment Payments made by the City from and after the Inclusion Date. In the event of a Determination of Taxability, the Lender shall provide the City with a new Installment Payment Schedule which reflects the new interest rate which will replace the Installment Payment Schedule set forth in Exhibit A.

(d) The City agrees to give prompt written notice to the Lender upon the City's receipt of any notice or information from any source whatsoever to the effect that an Event of Taxability or a Determination of Taxability shall have occurred.

SECTION 4.2. Budget and Appropriation. (a) The officer of the City at any time charged with the responsibility for formulating budget proposals shall include in the budget proposals for review and consideration by the City Council in any Fiscal Year in which this Agreement shall be in effect, items for all Installment Payments and any additional payments required for such Fiscal Year under this Agreement or the Deed of Trust and will use all reasonable and lawful means available to secure the appropriation of money for each Fiscal Year sufficient to pay all Installment Payments coming due therein. Any budget item referred to in this Section may be deleted from the applicable budget by the City Council only by the adoption of a resolution to such effect containing a statement of its reasons therefor, which resolution shall be adopted by roll-call vote and shall be included within the minutes of the City Council. The City shall furnish the Lender with copies of its annual budget promptly after its adoption and copies of any amended budget affecting appropriations for Installment Payments or additional payments required under this Agreement or the Deed of Trust. The City shall promptly provide written notice to the Lender of any Event of Nonappropriation.

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

For avoidance of any doubt, the Lender understands, agrees and acknowledges that the City will not violate any provision of the Constitution and laws of the State with respect to budget, appropriation or any other matters. The Lender further understands, agrees and acknowledges that appropriation for Installment Payments is a governmental function which the City cannot contractually commit itself in advance to perform, and no provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the City's moneys, nor shall any provision of this Agreement restrict the future issuance of any of the City's bonds or moneys. To the extent of any conflict between this Section and any other provision of this Agreement, this Section shall take priority.

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

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

ARTICLE V

INSURANCE

SECTION 5.1. Comprehensive General Liability. (a) The City shall maintain or cause to be maintained throughout the term of this Agreement, a comprehensive general liability policy or policies in protection of the City, its officers, agents and employees. Said policy shall cover such losses and for such amounts and shall have such deductible amounts as shall be satisfactory to the City Council and, in the judgment of the City Council, shall protect the City against losses not protected under the principles of sovereign immunity.

(b) The net proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.

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

SECTION 5.3. Casualty and Theft Insurance. (a) The City shall procure and maintain, or cause to be procured and maintained, throughout the term of this Agreement, insurance against loss or damage to any portion of the Mortgaged Property by fire and lightning, with extended coverage, and vandalism, theft and malicious mischief insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. Such insurance policies shall name the Lender as a loss payee/mortgagee and additional insured. To the extent that any contractor shall provide an insurance policy or certificate of insurance demonstrating that the same coverage as is required by this subsection is being carried by such contractor with respect to the Mortgaged Property or any part thereof and adequately protects the interest of the City and the Lender, the insurance provided for by this subsection shall not be required with respect to the Mortgaged Property or such part thereof while the Mortgaged Property or such part thereof is so covered by such other insurance.

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

thereof shall be secured by the Deed of Trust.

(c) Such insurance required by this Section shall be in an amount equal to 100% of the replacement cost of the Mortgaged Property (except that such insurance may be subject to a reasonable and customary deductible clause for any one loss).

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

SECTION 5.4. General Insurance Provisions. (a) The City shall pay or cause to be paid when due the premiums for all insurance policies required by this Agreement.

(b) Except as otherwise provided in subsection (d) of this Section, all insurance policies required by this Article shall be issued by a responsible carrier authorized to do business under the laws of the State.

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

(d) In lieu of obtaining the policies of insurance required by Section 5.1, Section 5.2, and Section 5.3, the City may adopt alternative risk management programs which the City determines to be reasonable, including, without limitation, to self-insure in whole or in part, individually or in connection with other institutions, to participate in programs of captive insurance companies, to participate with 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 City. In addition, any insurance coverage pursuant to Section 5.1, Section 5.2, and Section 5.3 may also be pursuant to a program whereby the City self-insures against certain losses up to a stated loss amount, and retains excess coverage from an insurer meeting the requirements of said Sections. In the event that the City maintains such self-insurance or other alternative risk management programs as permitted by this subsection, the City shall provide to the Lender a letter in substantially the form set forth in Exhibit B attached hereto.

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

(f) The City shall cause to be delivered to the Lender annually on or about July 1 of each year a certificate stating that the insurance policies or alternative risk management programs required or permitted by this Agreement are in full force and effect.

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

ARTICLE VI

DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

SECTION 6.1. Obligation of the City to Repair and Replace the Mortgaged Property. Unless applied to the payment in full of the remaining Installment Payments pursuant to Section 6.2 and Section 10.1, the City shall cause the Net Proceeds of any insurance policies in excess of \$500,000 to be deposited in a separate fund maintained by the City in a depository account approved by the Lender. Except as set forth in Section 6.2, all Net Proceeds so deposited shall be disbursed upon receipt of requisitions of the City approved by the Lender, stating, with respect to each payment to be made, (a) the requisition number; (b) the name and address of the person, firm or corporation to whom payment is due; (c) the amount to be paid; and (d) that each obligation mentioned therein has been properly incurred, is a proper charge against the separate fund, and has not been the basis of any previous withdrawal and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation. The Lender shall cooperate with the City in the administration of such account and shall not unreasonably withhold its approval of requisitions under this Section. Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of such Net Proceeds shall be the property of the City, subject to the Deed of Trust and Permitted Encumbrances, and shall be included as part of the Mortgaged Property under this Agreement.

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

(b) If the City elects not to apply the Net Proceeds to the repair, restoration or replacement of the Mortgaged Property, the City may apply the Net Proceeds of such insurance policies, together with any other available funds of the City, to the prepayment in whole of the principal component of the Installment Payments in accordance with Section 10.1; provided, however, that on or before May 1, 2032, Net Proceeds must account for at least 50% of the principal component of the Installment Payments to be prepaid. In the event the amount of such Net Proceeds exceeds the amount necessary to prepay the principal component of all remaining Installment Payments, plus any prepayment premium and the interest component of the Installment Payments accrued to the date of prepayment, such excess shall be paid to or retained by the City.

Within ninety (90) days following the receipt of Net Proceeds, unless a further extension is approved by the Lender, the City shall commence the repair, restoration or replacement of the Mortgaged Property, or shall apply the Net Proceeds and any other available funds of the City to the prepayment of the Installment Payments under the provisions of Section 10.1. For purposes of this subsection, “commence” shall include the retention of an engineer in anticipation of the

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

SECTION 6.3. Cooperation of the Lender. The Lender shall cooperate fully with the City in filing any proof of loss with respect to any insurance policy covering the events specified in Section 5.1 and Section 5.3. In no event shall the Lender or the City voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim with respect to the Mortgaged Property without the written consent of the other.

ARTICLE VII

COVENANTS OF THE CITY

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

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

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

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

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

SECTION 7.4. Modification of the Mortgaged Property. The City shall, in its sole discretion and at its own expense, have the right to make additions, modifications and

improvements to any portion of the Mortgaged Property if such additions, modifications or improvements are necessary or beneficial for the use of the Mortgaged Property. Such additions, modifications and improvements shall not in any way damage any of the Mortgaged Property (unless such damage is to be repaired as provided in Section 6.1) or cause the Mortgaged Property to be used for purposes other than those authorized under the provisions of law, and the Mortgaged Property, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is not less than the value of the Mortgaged Property immediately prior to the making of such additions, modifications and improvements. All such items, as so modified, shall be subject to the lien of the Deed of Trust.

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

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

SECTION 7.6. Indemnification of the Lender and the Local Government Commission. To the fullest extent permitted by law, the City covenants to defend, indemnify and hold harmless the Lender and the LGC and their respective officers, directors, members, employees and agents (collectively, the “Indemnified Party”) against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such Indemnified Party may become subject under any statute or at law or in equity or otherwise in connection with the transactions contemplated by this Agreement or the Deed of Trust and shall reimburse any such Indemnified Party for any legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of the transactions contemplated by this Agreement or the Deed of Trust. In particular, without limitation, the City shall and hereby agrees, to the fullest extent permitted by law, to indemnify and save the Indemnified Party harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of any breach or default on the part of the City in the performance of any of its obligations under this Agreement or the Deed of Trust.

SECTION 7.7. Financial Information to the Lender. The City agrees that it will furnish to the Lender, when the same become available, but in no event later than two hundred seventy (270) days after the end of the Fiscal Year, its annual audited financial statements and, upon the written request of the Lender, it will furnish to the Lender information regarding its annual budget as submitted or approved.

ARTICLE VIII

ASSIGNMENT, LEASING AND AMENDMENT

SECTION 8.1. Assignment by the Lender. The Lender may, at any time and from time to time, assign to any bank, insurance company or similar financial institution or any other entity approved by the LGC all or any part of its interest in the Mortgaged Property or this Agreement, including, without limitation, the Lender's rights to receive the Installment Payments and any additional payments due and to become due hereunder. Reassignment by any assignee may also only be to a bank, insurance company or similar financial institution or any other entity approved by the LGC. The City agrees that this Agreement may become part of a pool of obligations at the Lender's or its assignee's option. In addition, the Lender or its assignees may assign or reassign all or any part of this Agreement, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Agreement, or making this agreement part of a pool of obligations without the consent of the LGC, so long as such assignment or reassignment is to (i) a bank, insurance company or similar institution or any other entity approved by the LGC; or (ii) a trustee for the purpose of issuing certificates of participation or other forms of certificates evidencing an undivided interest in the Agreement, provided such certificates are sold only to a bank, insurance company, or similar financing institution or other entity approved by the LGC. Notwithstanding the foregoing, no assignment or reassignment of the Lender's interest in the Mortgaged Property or this Agreement shall be effective unless and until the City shall receive a duplicate original counterpart of the document by which such assignment or reassignment is made disclosing the name and address of each assignee. The City covenants and agrees with the Lender and each subsequent assignee of the Lender to maintain for the full term of this Agreement a written record of each such assignment or reassignment. The City hereby appoints the Lender as its agent for the purpose of maintaining any written record in connection with an assignment under this Section, and the Lender hereby accepts such appointment. The City agrees to execute any document reasonably required by the Lender in connection with any assignment. Notwithstanding any assignment by the Lender of its interest in this Agreement, the City shall not be obligated to provide any financial or other information to any assignee of the Lender except as set forth in Section 7.7.

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

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

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

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

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

(ii) the City shall within thirty (30) days prior to the execution and delivery of any such lease, furnish or cause to be furnished to the Lender, a true and complete copy of the form of such lease;

(iii) the Lender shall have received an opinion of counsel to the City to the effect that such lease is subordinate in all respects to the lien of the Deed of Trust; and

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

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

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

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

(b) The occurrence of an Event of Nonappropriation.

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

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

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

(f) The City shall fail to pay the principal of or the interest or any redemption premium on any general obligation bonds or notes of the City as required by such bonds or notes or the documents providing for the issuance thereof.

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

SECTION 9.2. Remedies on Default. Upon the occurrence of any event of default under Section 9.1, the Lender may, without any further demand or notice (except as expressly provided below), exercise any one or more of the following remedies:

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

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

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

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

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

SECTION 9.4. No Additional Waiver Implied by One Waiver. In the event any provision contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder except as may be provided by law.

SECTION 9.5. Late Charge. To the extent permitted by applicable law, the City shall pay the Lender a charge on any Installment Payment or any other amount payable hereunder not paid on the date such payment is due at a rate equal to the rate per annum set by the Lender as its

“Prime Rate” in effect at such time, or the maximum amount permitted by law, whichever is less, from such date.

ARTICLE X

PREPAYMENT OF INSTALLMENT PAYMENTS

SECTION 10.1. Prepayment of Installment Payments. The City may not prepay the outstanding principal component of the Installment Payments in whole or in part on any date on or before May 1, 2032. On any date on or after May 1, 2032, upon at least thirty (30) days' prior written notice to the Lender (unless otherwise waived by the Lender, the City may prepay the outstanding principal component of the Installment Payments in whole, but not in part, at a prepayment price of 100% of the principal component of the Installment Payments to be prepaid, plus accrued interest thereon to the prepayment date; provided, however, that in the event that the City shall elect to prepay the outstanding principal component of the Installment Payments from Net Proceeds and any other available funds in accordance with Section 6.2(b), such prepayment may be made in whole, but not in part, on any date at a prepayment price of 100% of the principal component of the Installment Payments to be prepaid, plus accrued interest thereon to the prepayment date.

ARTICLE XI

MISCELLANEOUS

SECTION 11.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received upon the earlier of actual receipt or three (3) days after deposit in the United States first-class, registered or certified mail (unless otherwise provided herein), postage prepaid, at the following addresses:

If to the City:

City of Fayetteville, North Carolina
433 Hay Street
P.O. Drawer D
Fayetteville, North Carolina 28302
Attention: Chief Financial Officer

If to the Lender:

Truist Bank
2320 Cascade Pointe Boulevard, Suite 600
Charlotte, North Carolina 28208
Attention: Governmental Finance

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

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

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

SECTION 11.4. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 11.5. Commitment Letter. The terms of this Agreement shall supersede the terms of any commitment letter, proposal or other term sheet provided by the Lender. To the extent of any conflict between this Agreement and such other documents, this Agreement shall take priority.

SECTION 11.6. Applicable Law. This Agreement shall be construed and governed in accordance with the laws of the State of North Carolina.

SECTION 11.7. E-Verify. The 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. The 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. The Lender shall require that any subcontractor that it uses in connection with the performance of its obligations under this Agreement to certify to such subcontractor’s compliance with E-Verify.

SECTION 11.8 Electronic Signatures. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties agree that any electronically signed document (including this Agreement) shall be deemed (i) to be “written” or “in writing,” (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or “printouts”, if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, “electronic signature” means a manually signed original signature that is then transmitted by electronic means; “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a “pdf” (portable document format) or other replicating image attached to an e mail message; and, “electronically signed document” means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

SECTION 11.9 Filing of Agreement. In connection with the City’s compliance with any continuing disclosure undertakings (each, a “Continuing Disclosure Agreement”) entered into by the City pursuant to SEC Rule 15c2-12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the “Rule”), the City may be required to file with the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access system, or its successor (“EMMA”), notice of its incurrence of its obligations under this Agreement and notice of any accommodation, waiver, amendment, modification of terms or other similar events reflecting financial difficulties in connection with this Agreement, in each case including posting a full copy thereof or a description of the material terms thereof (each such posting, an “EMMA Posting”). Except to the extent required by applicable law, including the Rule, the City shall not file or submit or permit the filing or submission of any EMMA Posting that includes the following unredacted confidential information about the Lender or its affiliates in any portion of such EMMA Posting: address and account information of the Lender or its affiliates; and e-mail addresses, telephone numbers, fax numbers, names and signatures of officers, employees and signatories of the Lender or its affiliates. The City acknowledges and agrees that the Lender and its affiliates are not responsible for the City’s or any other entity’s (including, but not limited to, any broker-dealer’s) compliance or noncompliance (or any claims, losses or liabilities arising

therefrom) with the Rule, any Continuing Disclosure Agreement or any applicable securities or other laws, including but not limited to those relating to the Rule.

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

CITY OF FAYETTEVILLE, NORTH CAROLINA

[SEAL]

By: _____
City Manager

Attest:

City Clerk

TRUIST BANK

By: _____
Name: _____
Title: _____

CERTIFICATE OF THE LOCAL GOVERNMENT COMMISSION

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

Secretary of the Local Government Commission
of North Carolina

EXHIBIT A**INSTALLMENT PAYMENT SCHEDULE**

<u>Installment Payment Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
11/01/2022	\$ --	\$135,352.43	\$135,352.43
05/01/2023	521,000.00	171,573.50	692,573.50
11/01/2023	--	163,003.05	163,003.05
05/01/2024	522,000.00	163,003.05	685,003.05
11/01/2024	--	154,416.15	154,416.15
05/01/2025	522,000.00	154,416.15	676,416.15
11/01/2025	--	145,829.25	145,829.25
05/01/2026	522,000.00	145,829.25	667,829.25
11/01/2026	--	137,242.35	137,242.35
05/01/2027	522,000.00	137,242.35	659,242.35
11/01/2027	--	128,655.45	128,655.45
05/01/2028	522,000.00	128,655.45	650,655.45
11/01/2028	--	120,068.55	120,068.55
05/01/2029	522,000.00	120,068.55	642,068.55
11/01/2029	--	111,481.65	111,481.65
05/01/2030	522,000.00	111,481.65	633,481.65
11/01/2030	--	102,894.75	102,894.75
05/01/2031	522,000.00	102,894.75	624,894.75
11/01/2031	--	94,307.85	94,307.85
05/01/2032	522,000.00	94,307.85	616,307.85
11/01/2032	--	85,720.95	85,720.95
05/01/2033	522,000.00	85,720.95	607,720.95
11/01/2033	--	77,134.05	77,134.05
05/01/2034	521,000.00	77,134.05	598,134.05
11/01/2034	--	68,563.60	68,563.60
05/01/2035	521,000.00	68,563.60	589,563.60
11/01/2035	--	59,993.15	59,993.15
05/01/2036	521,000.00	59,993.15	580,993.15
11/01/2036	--	51,422.70	51,422.70
05/01/2037	521,000.00	51,422.70	572,422.70
11/01/2037	--	42,852.25	42,852.25
05/01/2038	521,000.00	42,852.25	563,852.25
11/01/2038	--	34,281.80	34,281.80
05/01/2039	521,000.00	34,281.80	555,281.80
11/01/2039	--	25,711.35	25,711.35
05/01/2040	521,000.00	25,711.35	546,711.35
11/01/2040	--	17,140.90	17,140.90
05/01/2041	521,000.00	17,140.90	538,140.90
11/01/2041	--	8,570.45	8,570.45
05/01/2042	521,000.00	8,570.45	529,570.45

EXHIBIT B

FORM OF SELF-INSURANCE LETTER

Truist Bank
Attention: Governmental Finance
2320 Cascade Pointe Boulevard, Suite 600
Charlotte, North Carolina 28208

Re: Installment Financing Agreement, dated as of June __, 2022 (the “Agreement”),
between the City of Fayetteville, North Carolina (the “City”) and Truist Bank (the
“Lender”)

In connection with the above-referenced Agreement (the “Agreement”), the City of Fayetteville, North Carolina (the “City”) hereby warrants and represents to Truist Bank the following information. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Agreement.

1. The City is self-insured for damage or destruction to the Mortgaged Property. The dollar amount limit for property damage to the Mortgaged Property under such self-insurance program is \$_____. [The City maintains an umbrella insurance policy for claims in excess of City’s self-insurance limits for property damage to the Mortgaged Property which policy has a dollar limit for property damage to the Mortgaged Property under such policy of \$_____.]

2. The City is self-insured for liability for injury or death of any person or damage or loss of property arising out of or relating to the condition of the Mortgaged Property. The dollar limit for such liability claims under the City’s self-insurance program is \$_____. [The City maintains an umbrella insurance policy for claims in excess of City’s self-insurance limits for liability which policy has a dollar limit for liabilities for injury and death to persons as well as damage or loss of property arising out of or relating to the condition of the Mortgaged Property in the amount of \$_____.]

[3]. The City maintains a self-insurance fund. Monies in the self-insurance fund [are/are not] subject to annual appropriation. The total amount maintained in the self-insurance fund to cover City’s self-insurance liabilities is \$_____. [Amounts paid from the City’s self-insurance fund are subject to a dollar per claim of \$_____.]

[3]. The City does not maintain a self-insurance fund. The City obtains funds to pay claims for which it has self-insured from the following sources: _____.
Amounts payable for claims from the such sources are limited as follows:
_____.

4. Attached hereto are copies of certificates of insurance with respect to policies maintained by City.

CITY OF FAYETTEVILLE, NORTH CAROLINA

By: _____
City Representative