

**ATTACHMENT B**

*Prepared by and return after recording to:*

Robert M. Jessup Jr.  
Sam Smotherman Barnes  
Sanford Holshouser LLP  
209 Lloyd St., Suite 350  
Carrboro, NC 27510

**Financing Agreement and Deed of Trust**

|                                |   |                          |
|--------------------------------|---|--------------------------|
| <b>STATE OF NORTH CAROLINA</b> | ) | <b>COLLATERAL IS OR</b>  |
|                                | ) | <b>INCLUDES FIXTURES</b> |
| <b>ORANGE COUNTY</b>           | ) |                          |

Brief description: "203 Project" property at 203 South Greensboro Street, Carrboro

PIN: 9778-85-7932

**THIS FINANCING AGREEMENT AND DEED OF TRUST** (this "Agreement") is dated as of May 10, 2022, and is granted by the **TOWN OF CARRBORO, NORTH CAROLINA**, a North Carolina municipal corporation (the "Town"), to BB&T Collateral Service Corporation, a North Carolina business corporation (the "Deed of Trust Trustee"), for the benefit of **TRUIST BANK** ("Truist").

***Introduction --***

The Town has previously determined to carry out a plan (the "Project") for the acquisition, construction, equipping, and financing of the 203 South Greensboro Street Project for proposed Town recreation, parks, & cultural resources operations and other various office spaces. Truist has agreed to advance funds to the Town for this purpose.

This Agreement provides for Truist's advance of funds, and the Town's obligation to repay the funds with interest. In accordance with the Town's authority under Section 160A-20 of the North Carolina General Statutes, the Town will secure its obligations under this Agreement by granting to Truist a security interest in the Facility and the Site, as defined below.

The Site includes the property described in Exhibit A. The Town is the record owner of the property described in Exhibit A.

This Agreement secures current advances of \$12,578,000. The current scheduled date for final repayment is on or about March 1, 2042.

**NOW, THEREFORE,**

(1) in consideration of the execution and delivery of this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged;

(2) to secure the Town's performance of all its covenants under this Agreement, including the repayment of amounts advanced and to be advanced, together with interest on all advances as provided in this Agreement or any amendments hereto, and all charges and expenses of collection (including court costs and reasonable legal fees and expenses); and

(3) to charge the Mortgaged Property (as defined below) with such payment and performance,

the Town 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) the property described in Exhibit A and any real property later acquired by the Town in exchange for, or in consideration of the exchange of, or with the proceeds from any disposition of, all or any part of any property described in this paragraph, and in all cases together with all easements, rights, rights-of-way and appurtenances belonging to any of that property (collectively, the "Site"); and

(b) all buildings and other improvements and fixtures (including any "Fixtures," as defined in Section 2.05) now or later attached to or used in or on those improvements or the Site, including (i) all renewals, replacements, and additions, (ii) all articles in substitution, (iii) all building materials for construction, improvement, modification or repair of 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 the 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 "Facility"); and

**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 Existing Encumbrances (as defined herein);

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

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

**THE TOWN 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

**1.01. Defined Terms.** Unless the context clearly requires otherwise, capitalized terms used in this Agreement and not otherwise defined shall have the following meanings:

“Additional Payments” means any of Truist’s reasonable and customary fees and expenses related to the transactions contemplated by this Agreement, any of Truist’s expenses (including attorneys’ fees) in prosecuting or defending any action or proceeding in connection with this Agreement, 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 Agreement, inspection and re-inspection fees, and any other amounts payable by the Town (or paid by Truist on the Town’s behalf) as a result of its covenants under this Agreement (together with interest that may accrue on any of the above if the Town shall fail to pay the same, as set forth in this Agreement).

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

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

“Closing Date” means May 10, 2022.

“Event of Default” means one or more events of default as defined in Section 9.01.

"Event of Nonappropriation" means a failure or refusal by the Town Council to include funds for Required Payments in the Town’s budget for any Fiscal Year, or any reduction or elimination of an appropriation for Required Payments, all as further described in Section 3.06.

“Existing Encumbrances” means the encumbrances on the Town’s title to the Site existing as of the Closing Date.

“Finance Officer” means the Town’s statutory finance officer, however designated.

“Fiscal Year” means the Town’s fiscal year beginning each July 1, or such other fiscal year as the Town may later lawfully establish, and includes the period between the Closing Date and June 30, 2022.

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

“Net Proceeds,” when used with respect to any amounts derived from claims made on account of insurance coverages required under this Agreement, any condemnation award arising out of the condemnation of all or any portion of the Mortgaged Property, 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 legal fees and costs) incurred in the collection of such proceeds, and after reimbursement to the Town or Truist for amounts previously expended to remedy the event giving rise to such payment or proceeds.

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

“Permitted Encumbrances” means, as of any particular time, (a) the Existing Encumbrances, (b) interest in Orange County, North Carolina, as contemplated in Section 2.08(a), (c) liens for taxes and assessments not then delinquent, (d) the “WCOM Lease,” as described in Section 2.08(b), and (e) 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 Town’s intended use of the Mortgaged Property.

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

“Project” has the meaning assigned in the Introduction to this Agreement.

“Project Costs” means all capital or capitalizable costs related to the

acquisition, construction, equipping and general carrying-out of the Project and placing the Facility in service, as determined in accordance with generally accepted accounting principles, including (a) sums required to reimburse the Town or its agents for advances made for any such costs, and (b) all costs related to the financing of the Project through this Agreement and all related transactions.

“Required Payments” means Installment Payments and Additional Payments.

“State” means the State of North Carolina.

“Town” means Town of Carrboro, North Carolina, and its successors.

“Town Certificate” means any written document (in whatever form, however designated) executed and delivered by a Town Representative.

“Town Council” means the Town’s governing Town Council as from time to time constituted.

“Town Representative” means the Town Manager or the Town’s statutory finance officer, or any other officer or representative designated to Truist by a certificate signed by the Town Manager or the presiding officer of the Town Council to act on the Town’s behalf for any purpose (or any specified purpose) under this Agreement.

**1.02. Interpretation.** All references in this Agreement to designated “Sections” and other subdivisions are to the designated sections and other subdivisions of this Agreement. The words “hereof” and “hereunder” and other words of similar import refer to this Agreement 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. All uses of the term “including” should be understood to mean “including, but not limited to.”

## ARTICLE II

### SECURITY PROVIDED BY THIS CONTRACT; ADVANCE; OBLIGATIONS OF THE BORROWER

**2.01. Security for Payment and Performance.** This Agreement secures the Town's payment, as and when the same become due and payable, of all Required Payments and the Town's timely compliance with all terms, covenants and conditions of this Agreement (together, the "Obligations").

**2.02. Advance.** Truist advances \$12,578,000 (the "Amount Advanced") to the Town. Truist will disburse the full Amount Advanced (less a fee of \$6,500 to be paid directly by Truist to its legal counsel) on the Closing Date as described in Section 4.01. This transaction will therefore be fully funded at closing.

**2.03. 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 Mortgaged Property, except as expressly provided in this Agreement. The Town assumes and bears the entire risk of loss and damage to the Site, the Facility or any component of the Mortgaged Property, from any cause whatsoever. The Town shall make the Installment Payments in all events unless the Town's obligation to make Installment Payments is terminated as otherwise provided in this Agreement.

**2.04. Town's Continuing Obligations.** The Town remains liable for full performance of all its covenants under this Agreement, 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 Agreement, whether granted to the Town, a subsequent owner of the Facility 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 Agreement);

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

(f) Another party's assumption of the Town's obligations under this Agreement.

**2.05. Security Interest in Fixtures.** This Agreement is intended to be a security agreement pursuant to the Uniform Commercial Code as in effect in North Carolina for the "Fixtures," as defined below. The Town grants to Truist and the Deed of Trust Trustee a security interest in the Fixtures to secure the Obligations.

The Town agrees to execute, deliver and file, or cause to be filed, in such place or places as may be requested by Truist or the Deed of Trust Trustee, financing statements (including any continuation statements) in whatever form either party may reasonably request to evidence the security interest provided for in this Section. Upon the occurrence of an Event of Default under this Agreement, Truist or the Deed of Trust Trustee is entitled to exercise all rights and remedies of a secured party under the Uniform Commercial Code as in effect in North Carolina and may proceed as to the Fixtures in the same manner as provided in this Agreement for the real property.

The "Fixtures" are all items of personal property attached or affixed to the Facility in such a manner that removing the items would cause damage to the Facility. The Fixtures may include plumbing, heating, lighting, electrical, laundry, ventilating, refrigerating, incinerating, air-conditioning, fire and theft protection and sprinkler equipment, including all renewals and replacements thereof and all additions thereto, and all articles in substitution thereof, and all proceeds of all the foregoing in whatever form.

The Town is not obliged to renew, repair or replace any undesirable or unnecessary Fixture. If the Town determines that any Fixture has become



undesirable or unnecessary, the Town may remove that Fixture from the Facility and sell, trade-in, exchange or otherwise dispose of it (as a whole or in part), with an amount equivalent to the fair market value of the Fixture as removed becoming Net Proceeds and subject to the provisions of Section 6.09.

With respect to those items of the Mortgaged Property that are or are to become Fixtures, this Agreement constitutes a financing statement filed as a fixture filing. The Town agrees that the security interest in the Fixtures granted in this Section is in addition to, and not in lieu of, any security interest in the Fixtures acquired by real property law. The fixtures are located on the land described on Exhibit A, and the Town is the record owner of that land. The name and address of the Town, as debtor, and Truist, as secured party, are set forth in Section 12.01.

#### **2.06. Releases; Grants of Easements and Other Transfers.**

(a) So long as no Event of Default is continuing, Truist and the Deed of Trust Trustee are required, upon the Town's request and at any time, to execute and deliver all documents necessary to effect the release of all or a portion of the Mortgaged Property from the lien of this Deed of Trust upon the Town's compliance with the requirements of this Section.

(b) In connection with the release of a portion (but less than all) of the Mortgaged Property, the Town must file with Truist and the Deed of Trust Trustee evidence that the value of the portion of the Mortgaged Property that is proposed to remain subject to the lien of this Deed of Trust will not be less than 75% of the aggregate principal component of the Amount Advanced outstanding at the time the release is effected.

(c) In the case of a proposed release of all the Mortgaged Property without full repayment of the Amount Advanced, the Town must comply with the requirements of Section 2.07.

(d) In any event, the Town must file with Truist and the Deed of Trust Trustee (i) a Town Certificate stating the purpose for which the Town desires the release, giving a brief and general description of the portion of the Mortgaged Property to be released and requesting the release, (ii) a copy of the proposed

instrument of grant or release, including a complete legal description of the property to be released, (iii) a Town Certificate requesting the execution and delivery of the instrument and certifying to the effect that (A) that no Event of Default is continuing and (B) the grant or release will not materially impair the intended use of the Facility.

(e) In addition to the provisions for release described above, the Town may from time to time grant easements, licenses, rights-of-way and other similar rights with respect to any part of the Mortgaged Property, and the Town may release similar interests, with or without consideration. The Town must send notice of any grant or release to Truist, along with a Town Certificate to the effect that the grant or release will not materially impair the intended use of the Facility.

(f) In all cases, the Town's written representation as to value will be measured at the time of the release or exchange, and the Town may establish value by reference to appraised, taxable or insured value (and the Town may use different criteria for different portions of the Mortgaged Property).

**2.07. Release upon Defeasance.** Truist will release the lien of this Deed of Trust but only upon the Town's compliance with the requirements of this Section. No consent or acknowledgment by the Deed of Trust Trustee is required for any release under this Section.

(a) To obtain a release, the Town must pay to Truist, or to some other fiduciary reasonably acceptable to Truist, an amount (A) that is sufficient to provide for the full and timely payment of the outstanding Amount Advanced and (B) that is required to be used for that payment. This payment may rely for its sufficiency on earnings from United States government securities provided to the fiduciary at the time of the deposit. The sufficiency of the deposit must be evidenced or verified by a certificate or other writing, in form and substance reasonably satisfactory to Truist, of a person or entity experienced in making these calculations as the Town may select.

(b) The Town must also provide Truist with an opinion of counsel reasonably satisfactory to Truist to the effect that the payment or deposit of cash or securities will not cause the Town's obligations to pay principal or interest to become "arbitrage bonds" within the meaning of the Code and that the release will not adversely affect the exclusion from gross income for federal income tax purposes of

the interest component of Installment Payments.

## **2.08. Other Transfers and Encumbrances.**

(a) *County's Interest.* The Town and Orange County, North Carolina (the "County"), have entered into an agreement dated \_\_\_\_\_, 2022. The Town has provided a copy of this agreement to Truist. Under this agreement, the County is paying a portion of the Project Costs and in return, the Town will convey a condominium interest in the Facility. Truist agrees that the Town may convey this interest to the County as provided in that agreement, free of the lien of this Agreement. Truist agrees to execute and deliver appropriate documents to evidence the free transfer of that interest to the County. The Town will notify Truist of any changes to that agreement and provide copies of the changes with the notice.

(b) *WCOM Lease.* The Town may enter into any lease or similar agreement for the use of a portion of the Facility comprising not more than \_\_\_\_\_ square feet (plus any right to use common areas of the Facility), so long as (i) the lease will not materially impair the Town's intended use of the Facility and (ii) the lease is with a corporation recognized under Code Section 501(c)(3). The Town intends to enter into a lease like this with [WCOM], which operates a community radio station. The Town may not have more than one lease of this type in effect for the Facility at any one time.

## **ARTICLE III**

### **BORROWER'S PAYMENT OBLIGATION AND RELATED MATTERS**

**3.01. Installment Payments.** The Town 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 B, except as otherwise provided in this Agreement. As indicated in Exhibit B, the Installment Payments reflect the repayment of the Amount Advanced and include designated interest components, with interest accruing at the annual rate of 2.82%, subject to adjustment as provided in this Agreement.

**3.02. Additional Payments.** The Town 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 Town may prepay the outstanding principal component of the Amount Advanced, at its option, in whole but not in part, at any time on or after April 5, 2032 (but not before), by paying (a) all Additional Payments then due and payable, (b) all interest accrued and unpaid to the prepayment date, and (c) 100% of the outstanding principal amount, without premium or penalty.]

**3.04. Late Payments.** If the Town fails to pay any Installment Payment when due, the Town 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. Interest Rate and Payment Adjustment.** (a) “Rate Adjustment Event” means (i) any action by the Internal Revenue Service (including the delivery of a deficiency notice) or any other federal court or administrative body determining, or (ii) receipt by Truist of a Bond Counsel Opinion to the effect that the interest component of Installment Payments related to the Amount Advanced, or any portion thereof, is includable in the gross income for federal income tax purposes of any counterparty to this Agreement as a result of any misrepresentation by the Town or as a result of any action the Town 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 as shown on Exhibit B, but (ii) the interest components of the Installment Payments shall be recalculated, at an interest rate equal to an annualized interest rate equal to the Prime Rate plus 2% (200 basis points), to the date (retroactively, if need be) determined pursuant to the Rate Adjustment Event to be the date interest became includable in any counterparty’s gross income for federal income tax purposes. Truist shall provide to the Town a restated schedule of payments.

(c) The Town shall pay interest at such adjusted rate (subject to credit for interest previously paid) to each affected counterparty, notwithstanding the fact that any particular counterparty may not necessarily be a counterparty to this Agreement on the date of a Rate Adjustment Event. The Town shall additionally pay to all affected

counterparties any interest, penalties or other charges assessed against or payable by such counterparty and attributable to a Rate Adjustment Event, notwithstanding the prior repayment of the entire Amount Advanced or any transfer to another beneficiary.

### **3.06. Appropriations.**

(a) The Town will cause the officer who prepares the draft Town budget initially submitted for Town Council consideration to include in the initial proposal each year the amount of all Installment Payments and estimated Additional Payments coming due during the Fiscal Year to which the budget applies. Notwithstanding that the initial proposed budget includes an appropriation for Required Payments, the Town Council may determine not to include the appropriation (in whole or in part) in the final Town budget for any Fiscal Year or may amend an adopted budget to reduce or delete an approved appropriation.

(b) (i) If for any Fiscal Year the Town adopts an annual budget that does not appropriate (for that purpose) an amount equal to the Installment Payments and estimated Additional Payments coming due during that Fiscal Year, then the Town will send notice of this failure to Truist and the LGC within fifteen days after the beginning of such Fiscal Year.

(ii) If for any Fiscal Year the Town has not adopted an annual budget that appropriates (for that purpose) an amount equal to the Installment Payments and estimated Additional Payments coming due during that Fiscal Year within 15 days after the beginning of any Fiscal Year, then the Town will send notice of this failure to Truist and the LGC within an additional ten days.

(iii) Similarly, if at any time the Town amends the annual budget to reduce the amounts appropriated for Required Payments below the amounts expected to be required for the remainder of that Fiscal Year, then the Town will send notice of this amendment to Truist and the LGC within ten days.

(iv) The Town shall send notices intended for the LGC to the attention of its Secretary, at 3200 Atlantic Avenue, Longleaf Building, Raleigh NC 27604.

## ARTICLE IV

### PROJECT FUND

**4.01. Project Fund.** As described Section 2.02, on the Closing Date, Truist shall deposit \$12,571,500 (that is, the full \$12,578,000 of the Amount Advanced less \$6,500 paid by Truist on the Closing Date directly to its counsel for this transaction) into the Project Fund, which shall be a special account of the Town at Truist to be designated “2022-00009 Town of Carrboro Project Fund.” The Project Fund will be held separate and apart from all other funds or accounts of the Town. The Project Fund is the Town’s property, but the Town may withdraw amounts on deposit in the Project Fund only as provided herein and only for application from time to time to the payment of Project Costs or otherwise as permitted by Section 4.03. Pending such application, such amounts shall be subject to a lien and charge in favor of Truist to secure the Town’s obligations hereunder.

**4.02. Requisitions from Project Fund.** The Town may withdraw funds from the Project Fund only after authorization from Truist. Truist shall authorize the disbursement of funds from the Project Fund only to the Town and only upon its receipt of one or more written requisitions in the form set forth in Exhibit C signed by a Town Representative. The Town shall submit its signed requisitions in (.pdf) format by electronic transmission at the email address contained in the requisition form.

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

**4.03. Disposition of Project Fund Balance.** (a) Promptly after the Facility has been completed to the point that it is suitable for carrying out substantially all the purposes it is to serve for the Town, and the Town has withdrawn from the Project Fund all of the funds needed to complete the Project, the Town shall deliver to Truist a Town Certificate stating that (i) the Project has been completed, (ii) there are no

mechanic's or other liens against the Mortgaged Property for labor or materials furnished in connection with the Project, and (iii) no further funds will be requisitioned from the Project Fund to pay Project Costs. Truist may then withdraw any balance remaining in the Project Fund (and not required to be retained to pay Project Costs incurred but not yet paid) and apply such amount as provided in subsection (d) of this Section.

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

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

(d) Truist may apply any amounts withdrawn from the Project Fund pursuant to this Section in the following order: (i) to the payment of any Additional Payments then due to Truist under this Agreement, (ii) to the payment of any interest accrued to the Project Fund disposition date that is then due and payable, (iii) to the payment of any principal amount then due and payable, (iv) to the prepayment of principal and accrued interest in accordance with the prepayment provisions of this Agreement, and (v) to the payment of future Installment Payments in inverse order of maturity; provided, however, that at Truist's option, Truist may deliver funds held in the Project Fund to the Town to be applied to additional Project Costs or future debt service payments. Any prepayment pursuant to this Section shall not affect any other Town payment obligation hereunder. Truist shall notify the Town of any withdrawal from the Project Fund made under this Section, in the notice shall describe its application of the funds so withdrawn, and shall provide the Town with a substitute Exhibit B.

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

(b) Investment obligations acquired with money in the Project Fund shall be deemed at all times to be part of the Project Fund. The interest accruing thereon, and any profit or loss realized upon the disposition or maturity of any such investment, will be credited to or charged against the Project Fund.

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

## ARTICLE V

### BORROWER'S COVENANTS, REPRESENTATIONS AND WARRANTIES

**5.01. Warranties of Title; Marketability.** The Town covenants with the Deed of Trust Trustee and Truist that the Town 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 Permitted Encumbrances, that title to the Mortgaged Property is marketable, and that the Town will forever warrant and defend title to the Mortgaged Property against the claims of all persons.

**5.02. Other Warranties and Representations.** The Town makes the following promises and statements of fact, with the intention that Truist will rely on them in making its decision to enter into the transactions contemplated by this Agreement.

(a) *No Leases; Access.* No parcel comprising a portion of the Mortgaged Property is subject to an existing lease. Each parcel comprising a portion of the Mortgaged Property is accessible from a public road.

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

(c) *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 Town's part to have been obtained or completed as of today in



connection with the authorization, execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the carrying out of the Project 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.

(d) *No Breach of Law or Agreement.* Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, (i) to the best of the Town's knowledge, constitutes a violation of any provision of law governing the Town or (ii) results in a breach of the terms, conditions or provisions of any contract, agreement or instrument or order, rule or regulation to which the Town is a party or by which the Town is bound.

(e) *No Litigation.* There is no litigation or any governmental administrative proceeding to which the Town (or any official thereof in an official capacity) is a party that is pending or, to the best of the Town's knowledge after reasonable investigation, threatened with respect to (i) the Town's organization or existence, (ii) its authority to execute and deliver this Agreement or to comply with the terms of this Agreement, (iii) the validity or enforceability of this Agreement or the transactions contemplated hereby, (iv) the title to office of any Town Council member or any other Town officer, (v) any authority or proceedings relating to the Town's execution or delivery of this Agreement, or (vi) the undertaking of the transactions contemplated by this Agreement.

(f) *No Current Default or Violation.* (i) The Town is not in violation of any existing law, rule or regulation applicable to it, (ii) the Town is not in default under any contract, other agreement, order, judgment, decree or other instrument or restriction of any kind to which the Town is a party or by which it is bound or to which any of its assets are subject, including this Agreement, and (iii) no event or condition has happened or existed, or is happening or existing, under the provisions of any such instrument, including this Agreement, which constitutes or which, with notice or lapse of time, or both, would constitute an event of default hereunder or thereunder, in any event of (i), (ii) or (iii) that would have a material adverse effect on the Project, the Town's interest in the Mortgaged Property or the Town's ability to satisfy the Obligations.

(g) *No Misrepresentation.* No representation, covenant or warranty by the Town in this Agreement is false or misleading in any material respect.

**5.03. Environmental Warranties.** (a) The Town warrants and represents to Truist as follows:

(i) The Town 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, Public Law No. 96-510, 94 Stat. 2767, 42 USC 9601 *et seq.*, and the Superfund Amendments and Reauthorization Act of 1986, Public Law No. 99-499, 100 Stat. 1613.

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

**5.04. Maintenance of Existence.** The Town shall maintain its existence, shall continue to be a municipal corporation validly organized and existing under State law, and shall not consolidate with or merge into another governmental entity, unless the resulting entity assumes the Town's obligations under this Agreement.

**5.05. Further Instruments.** Upon Truist's request, the Town shall execute, acknowledge and deliver such further instruments reasonably necessary or desired by Truist to carry out more effectively the purposes of this Agreement 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 Agreement.

**5.06. Truist's Advances for Performance of Town's Obligations.** If the Town fails to perform any of its obligations under this Agreement, Truist is authorized, but not obligated, to perform the 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 Agreement. The Town promises to pay all such amounts to Truist immediately upon demand.

**5.07. Taxes and Other Governmental Charges.** The Town 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 Agreement. With respect to special assessments or other governmental charges which may be lawfully paid in installments over a period of years, the Town shall be obligated to provide for Additional Payments only for such installments as are required to be paid during the term of this Agreement. The Town 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).

**5.08. Town's Insurance.** (a) From and after the time of substantial completion of the Facility, the Town 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 Facility in an amount equal to the estimated replacement cost of those improvements. This property damage insurance shall include standard mortgagee coverage in favor of Truist. The Town shall provide evidence of such coverage to Truist, upon Truist's request, promptly upon substantial completion. Any Net Proceeds of the insurance required by this subsection (a) shall be payable as provided in Section 6.09.

(b) To the extent permitted by law, the Town promises that from and after the Closing Date the Town 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 Agreement has been determined to be in a “Special Flood Hazard” area, as defined by Truist’s flood determination vendor, the Town, at its own expense, must acquire, carry, and 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 this 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 Town of the reclassification. If, within forty-five 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 Town has not provided sufficient evidence of flood insurance, Truist is mandated under federal law to purchase flood insurance on behalf of the Town.

(d) The Town shall maintain all this insurance with generally recognized responsible insurers in accordance with State law. The policies may carry reasonable deductible or risk-retention amounts.

(e) Truist is not 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.

(f) Upon Truist’s request, the Town shall deliver to Truist a certificate stating the property coverage required by this Agreement is in effect, and stating the carrier, policy number and coverage amount.

**5.09. Financial Information.** The Town will send Truist a copy of the Town’s audited financial statements, for each Fiscal Year within 30 days of the Town’s acceptance of the statements, but in any event within 270 days of the completion of each Fiscal Year. However, the Town need not send a copy of the current audited financial statements for each fiscal year if the statements are posted to the MSRB’s Electronic Municipal Market Access (“EMMA”) website or are readily accessible from the Town’s own website. The Town shall also furnish Truist, at such reasonable times as Truist may request, all other financial information (including, without limitation, the Town’s annual budget as submitted or approved) as Truist may reasonably request. The Town shall permit Truist or its agents and representatives to inspect the Town’s books and records and make extracts therefrom.

## ARTICLE VI

### CARE AND USE OF FACILITY

**6.01. Compliance with Requirements.** (a) The Town 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 Facility or any portion thereof or (ii) any insurance company writing a policy covering the Facility 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.

(b) The Town shall not 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.

**6.02. Maintenance and Repairs; Additions.** (a) The Town 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 Town 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 Town 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 Trust's rights under this Agreement.

(c) Any and all additions to or replacements of the Facility and all parts thereof shall constitute accessions to the Facility and shall be subject to all the terms

and conditions of this Agreement and included in the “Facility” for the purposes of this Agreement.

**6.03. Utilities.** The Town shall pay all charges for utility services furnished to or used on or in connection with the Site and the Facility.

**6.04. Risk of Loss.** The Town shall bear all risk of loss to and condemnation of the Site and the Facility.

**6.05. Condemnation.** (a) The Town shall immediately notify Truist if any governmental authority shall institute, or shall notify the Town 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 Town 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 Town’s name or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claims. If the Town receives any Net Proceeds arising from any such action, the Town shall apply these Net Proceeds as provided in Section 6.09.

(b) If any of the real or personal property acquired or improved by the Town (in whole or in part) using any portion of the Amount Advanced consists of or is located on any real property acquired by the Town 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 Agreement the Town 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.

**6.06. Title.** Title to the Site and the Facility and any and all additions, repairs, replacements or modifications thereto shall at all times be in the Town, subject to the lien of this Agreement and the other Permitted Encumbrances. Upon the Town’s payment in full of all Required Payments, Truist, at the Town’s expense and request, shall cancel this Agreement.

**6.07. Right of Entry and Inspection.** Truist and its representatives and agents shall have the right to enter upon the Site and inspect the Facility from time to time, and the Town shall cause any vendor, contractor or sub-contractor to cooperate with Truist and its representatives and agents during such inspections.

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

**6.08. No Encumbrance, Mortgage or Pledge of Site or Facility.** (a) The Town 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 Town 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 Town 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 at the Prime Rate.

**6.09. Damage and Destruction; Use of Net Proceeds.** (a) The Town shall promptly notify Truist if any of the following events (a "Collateral Loss Event") occurs:

(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 Mortgaged Property becomes 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) If the Net Proceeds arising from any single Collateral Loss Event, or any single substantially related series of Collateral Loss Events, is not more than \$100,000, the Town shall retain the Net Proceeds and apply the same to the prompt completion, repair or restoration of the Mortgaged Property, and shall promptly thereafter report to Truist regarding the use of such Net Proceeds.

(c) If the Net Proceeds arising from any single Collateral Loss Event, or any single substantially related series of Collateral Loss Events, is more than \$100,000, then the Town shall cause the Net Proceeds to be paid to an escrow agent (which shall be a bank, trust company or similar entity exercising fiduciary responsibilities) designated by Truist for deposit in a special escrow fund to be held by that escrow agent. The Town shall thereafter apply Net Proceeds (i) to the prompt 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. The Town shall promptly report to Truist regarding the use of Net Proceeds.

(d) Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of Net Proceeds shall be the Town's property and shall be part of the Mortgaged Property.

## **ARTICLE VII**

### **INDEMNIFICATION**

To the extent permitted by law, the Town will indemnify, protect and save

(a) the Deed of Trust Trustee,

(b) Truist and its officers, employees, and directors, and



(c) the LGC's members and employees,

in all cases harmless from all liability and losses, including expenses and legal fees, expenses and costs, arising out of, connected with, or resulting directly or indirectly

(A) from or relating to the Mortgaged Property or the transactions contemplated by this Agreement, including without limitation the possession, condition, installation, construction or use of the Mortgaged Property.

(B) as a result of any warranty or representation made by the Town in Section 5.03 being false or untrue in any material respect, or any requirement under any law or regulation which requires the elimination or removal of any hazardous materials, substances, wastes or other environmentally regulated substances by Truist, the Town or any transferee or assignee of the Town or Truist.

The Town has no obligation to indemnify any indemnified party for the gross negligence or intentional misconduct of the indemnified party or any of its employees or representatives. The Town's obligation to provide indemnification under this Article continues even after there is no longer any outstanding principal balance of the Amount Advanced and extends to any successor to Truist. The parties intend that the LGC is a third-party beneficiary of the Town's obligations under this Article VII.

## ARTICLE VIII

### THE DEED OF TRUST TRUSTEE

**8.01. Deed of Trust Trustee's Liability.** The Deed of Trust Trustee will suffer no liability by virtue of its 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 Agreement.

**8.02. Substitute Trustees.** If the Deed of Trust Trustee, or any successor, dies, becomes incapable of acting or renounces its trust, or if for any reason Truist desires to replace the Deed of Trust Trustee, then Truist has 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 Agreement is recorded. Any removal or appointment may be made at any time without notice, without specifying any reason therefor and without any court approval. Any appointee becomes vested with title to the Mortgaged Property and with all rights, powers and duties conferred upon the Deed of Trust Trustee by this Agreement 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 IX**

### **DEFAULTS AND REMEDIES; FORECLOSURE**

**9.01. Events of Default.** An “Event of Default” is any of the following:

- (a) The Town’s failing to make any Installment Payment when due.
- (b) The occurrence of an Event of Nonappropriation.
- (c) The Town’s breaching or failing to perform or observe any term, condition or covenant of this Agreement 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 Town 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 Town as a debtor, or the appointment of a receiver, custodian or similar officer for the Town 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 Town in this Agreement 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 Agreement is found to exist, or proceedings are instituted against the Town 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 Agreement.

**9.02. 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 Town's performance of the applicable covenants of this Agreement or to recover for the breach thereof; and

(c) Avail itself of all available remedies under this Agreement, including execution and foreclosure as provided in Sections 9.03 and 9.04, and recovery of attorneys' fees and other expenses.

**9.03 County's Right to Cure.** (a) Truist agrees that Orange County, North Carolina, has the right to cure any default under this Agreement that can be cured by the payment of money. Truist must notify the County of the nature of the default and the amount necessary to cure the default. The notice must also reference this Agreement, state that the County has 25 days from the effective date of the notice to make the curative payment, and provide instructions for payment. Truist may not take any remedial action until the end of the 25-day notice period unless the County provides notice sooner that it will waive its right to cure.

(b) Notice to the County is subject to the provisions of Section 12.01. Notices are to be sent to Orange County, North Carolina, Attention: Finance Officer, Re: Default Notice under Carrboro 203 Financing Agreement, Post Office Box 8181, Hillsborough, North Carolina 27878.

(c) Truist and the Town intend that the County is a third-party beneficiary under this Agreement for the purposes of its right to cure.

**9.04. 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 the 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 Town 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) *Truist's bid.* Truist may bid and become the purchaser at any sale under this Agreement, 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 Agreement (unless the Mortgaged Property is sold subject to such liens and assessments, as provided by State law).

(c) *Town's bid.* The Town may bid for all or any part of the Mortgaged Property at any foreclosure sale; provided, however, that the price bid by the Town 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 Agreement. 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 Town.

**9.05. Possession of Mortgaged Property.** During the continuation of an Event of Default, the Town 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 Town (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 Agreement.

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 Town's account and in reduction of the Town'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.

**9.06. Due on Sale Provision; Acceleration.** Truist may, at its option, require the immediate repayment in full of the Amount Advanced and payment all other sums secured by this 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 (a) any creation of lien or encumbrance, whether or not subordinate to the lien created pursuant to this Agreement, (b) the creation of any easement, right-of-way or similar, or (c) the grant of any leasehold or similar interest or any option to purchase, right of first refusal or similar interest. This option does not apply, however, in the case of the creation of any Permitted Encumbrance.

**9.07. No Remedy Exclusive; Delay Not Waiver.** All remedies under this Agreement 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 occurs and is thereafter waived by the other parties, that waiver shall be limited to the particular breach so waived and shall not be deemed a waiver of any other breach under this Agreement.

**9.08. Payment of Legal Fees and Costs.** 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 Agreement, to enforce collection of the Required Payments or to enforce compliance by the Town with any of the provisions of this Agreement, the Town agrees to pay reasonable legal fees and costs that may reasonably be incurred (whether or not any suit or proceeding is commenced), and those fees and costs (together with interest at the Prime Rate) are secured as Required Payments.

## **ARTICLE X**

### **WIRE TRANSFER REQUIREMENTS**

In order to prevent unauthorized or fraudulent wire transfers through cyberfraud and other means, Truist and the Town hereby agree to the provisions of this Article X.

**10.01. Wire Transfer Requirements.** In the event a wire transfer is made by Truist to disburse funds as contemplated by this Agreement (a "Disbursement"), said wire transfer shall be delivered as directed in a written "Disbursement Authorization" provided to Truist by a Town Representative. Any person previously designated as a Town Representative for this purpose may revoke the authorization of any other designated person at any time.

**10.02. Verification Procedures.** Prior to making any Disbursement pursuant to a Disbursement Authorization not delivered to Truist in person by a Town Representative, Truist shall verify such Disbursement Authorization verbally

via telephone communication with a Town Representative. The Town shall ensure that a Town Representative will provide such verification to Truist. The Town 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 Town accepts the risk of such third party knowledge of the security procedures. If the Town 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 Town shall notify Truist immediately.

**10.03. Payee Identification.** The Town is solely responsible for accurately identifying the wire transfer information contained in the Disbursement Authorization delivered to Truist by a Town Representative, 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 Town 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 Town assumes the risk of any loss resulting therefrom.

**10.04. Duty to Reconcile Written Confirmation.** Upon request from a Town Representative, Truist shall use its best efforts to send a Town Representative written confirmation of the Disbursement in the form of a reference number, beneficiary name and wire amount. A Town Representative 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 Town 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 Town 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.

**10.05.        Unauthorized Payments.** Notwithstanding any other provision herein, if a Disbursement has been verified by a Town Representative pursuant to Section 10.02, it shall be binding on the Town if Truist acted in good faith in making such Disbursement.

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

**10.07.        Indemnification and Hold Harmless.** If Truist complies with the provisions of this Article X, the Town agrees that Truist shall not be responsible for any communication or miscommunication by a Town Representative, and the Town 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 Agreement.

**10.08.        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 Town regarding that wire transfer order are governed by Regulation J of the Federal Reserve Board.

## **ARTICLE XI**

### **TOWN'S LIMITED OBLIGATION**

Notwithstanding any other provision of this Agreement, the parties intend that this transaction comply with North Carolina General Statutes Section 160A-20. No deficiency judgment may be entered against the Town in violation of such Section 160A-20.

No provision of this Agreement should be construed or interpreted as creating a pledge of the Town's faith and credit within the meaning of any constitutional debt



limitation. No provision of this Agreement should be construed or interpreted as an illegal delegation of governmental powers or as an improper donation or lending of the Town's credit within the meaning of the North Carolina constitution. The Town's taxing power is not and may not be pledged directly or indirectly or contingently to secure any moneys due under this Agreement.

No provision of this Agreement should be construed to pledge or to create a lien on any class or source of the Town's moneys (other than the Amount Advanced and any Net Proceeds). No provision of this Agreement restricts the Town's future issuance of any of its bonds or other obligations payable from any class or source of the Town's moneys (except to the extent this Agreement restricts the incurrence of additional obligations secured by the Mortgaged Property).

To the extent of any conflict between this Article and any other provision of this Agreement, this Article takes priority. Nothing in this Article is intended to impair or prohibit foreclosure upon occurrence of an Event of Default under this Agreement.

## **ARTICLE XII**

### **ADDITIONAL PROVISIONS**

**12.01. Notices.** (a) Any communication provided for in this Agreement must be in English and must be in writing, and “writing” includes facsimile transmission and electronic mail.

(b) For the purposes of this Agreement, any communication sent by facsimile transmission or electronic mail will be deemed to have been given on the date the communication is similarly acknowledged by a Town Representative (in the case of the Town) or other authorized representative (in the case of any other party). No such communication will be deemed given or effective without such an acknowledgment.

(c) Any other communication under this Agreement will be deemed given on the delivery date shown on a United States Postal Service certified mail receipt, or

a delivery receipt (or similar evidence) from a national commercial package delivery service, if addressed as follows:

(i) if to the Town, to Town Manager, Town of Carrboro, Attention: Notice under 2022 Financing Agreement, 301 West Main Street, Carrboro, North Carolina 27510

(ii) if to the Deed of Trust Trustee, to 2320 Cascade Point Boulevard, Suite 600, Charlotte, North Carolina 28208, Attention: Governmental Finance

(iii) if to Truist, to 2320 Cascade Point Boulevard, Suite 600, Charlotte, North Carolina 28208, 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.

**12.02. No Assignments by Town.** The Town shall not sell or assign any interest in this Agreement.

**12.03. 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 Facility or this Agreement, 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 Agreement.

The Town agrees that this Agreement 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 Agreement, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Agreement. 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 Agreement shall be effective unless and until the Town 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 Town further agrees that Truist's interest in this Agreement 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 Agreement, provided the Town 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 Agreement a written record of each assignment and reassignment of such certificates of participation.

The Town agrees to execute any document reasonably required in connection with any assignment. Any assignor must provide notice of any assignment to the Town, and the Town shall keep a complete and accurate record of all assignments as required by the Code. After the giving of any such notice, the Town 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.

Notwithstanding any of the foregoing, in no event will the Town ever be required to make Installment Payments to more than one person or entity on any Payment Date.

**12.04. Amendments.** No term or provision of this Agreement may be amended, modified or waived without the prior written consent of the Town and Truist.

**12.05. No Marshalling.** To the extent permitted by law, the Town hereby waives any and all rights to require marshalling of assets in connection with the exercise of any remedies provided in this Agreement or as permitted by law.

**12.06. Governing Law.** The parties intend that North Carolina law will govern this Agreement and all matters of its interpretation.

**12.07. Liability of Officers and Agents.** No officer, agent or employee of the Town shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions

contemplated hereby. Those 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 Town from the performance of any official duty provided by law.

**12.08. Covenants Run with the Land.** All covenants contained in this Agreement run with the real estate encumbered by this Agreement.

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

**12.10. 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.

**12.11. Entire Agreement.** This Agreement constitutes the Town's entire agreement with respect to the general subject matter covered hereby.

**12.12. Binding Effect.** Subject to the specific provisions of this Agreement, and in particular Section 12.03, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

**12.13. E-Verify.** Truist 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. Truist 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. Truist will require that any subcontractor that it uses in connection with the transactions contemplated by this Agreement certify to such subcontractor's compliance with E-Verify.

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

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

**(SEAL)**

**ATTEST:**

**TOWN OF CARRBORO,  
NORTH CAROLINA**

\_\_\_\_\_  
Wesley Barker  
Town Clerk

By: \_\_\_\_\_  
Richard J. White III, ICMA-CM  
Town Manager

\* \* \* \* \*

**STATE OF NORTH CAROLINA;  
ORANGE COUNTY**

I, a Notary Public of such County and State, certify that Richard J. White III and Wesley Barker personally came before me this day and acknowledged that they are the Town Manager and the Town Clerk, respectively, of the Town of Carrboro, North Carolina, and that by authority duly given, the foregoing instrument was signed in the Town's name by such Town Manager sealed with its corporate seal and attested by such Clerk.

**WITNESS** my hand and official stamp or seal, this \_\_\_\_\_ day of May, 2022.

**[SEAL]**

\_\_\_\_\_  
Notary Public  
Notary's printed name: \_\_\_\_\_

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

[Financing Agreement and Deed of Trust  
From the Town of Carrboro, North Carolina  
dated as of May 10, 2022]

**TRUIST BANK**

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

Andrew G. Smith

Senior Vice President

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 the Town of Carrboro, North Carolina  
dated as of May 10, 2022]

## **EXHIBIT A – Site Description**

BEING all of that property consisting of 0.883 acres, more or less, surveyed as “Fakhoury Property” per “Recombination Map of Fakhoury Property” surveyed by Kenneth Close, Inc. recorded in Book of Maps 94, Page 24, Orange County Registry.

## **EXHIBIT B – Schedule of Installment Payments**

Each portion of the Amount Advanced will bear interest from the Closing Date until paid. Principal is payable on dates and in amounts as shown below. Interest is calculated at the annual rate of 2.82%, subject to adjustment as provided in this Agreement and payable on each March 1 and September 1, beginning September 1, 2022. Interest will be calculated based on a 360-day year consisting of twelve 30-day months. The schedule below shows the expected interest payment amounts.

This Agreement carries Truist contract number 9933000653-00009.

| Payment Date | Principal | Interest   | Total Payment |
|--------------|-----------|------------|---------------|
| 9/1/2022     |           | 109,365.71 | 109,365.71    |
| 3/1/2023     |           | 177,349.80 | 177,349.80    |
|              |           |            |               |
| 9/1/2023     |           | 177,349.80 | 177,349.80    |
| 3/1/2024     | 662,000   | 177,349.80 | 839,349.80    |
|              |           |            |               |
| 9/1/2024     |           | 168,015.60 | 168,015.60    |
| 3/1/2025     | 662,000   | 168,015.60 | 830,015.60    |
|              |           |            |               |
| 9/1/2025     |           | 158,681.40 | 158,681.40    |
| 3/1/2026     | 662,000   | 158,681.40 | 820,681.40    |
|              |           |            |               |
| 9/1/2026     |           | 149,347.20 | 149,347.20    |
| 3/1/2027     | 662,000   | 149,347.20 | 811,347.20    |
|              |           |            |               |
| 9/1/2027     |           | 140,013.00 | 140,013.00    |
| 3/1/2028     | 662,000   | 140,013.00 | 802,013.00    |
|              |           |            |               |



|          |         |            |            |
|----------|---------|------------|------------|
| 9/1/2028 |         | 130,678.80 | 130,678.80 |
| 3/1/2029 | 662,000 | 130,678.80 | 792,678.80 |
|          |         |            |            |
| 9/1/2029 |         | 121,344.60 | 121,344.60 |
| 3/1/2030 | 662,000 | 121,344.60 | 783,344.60 |
|          |         |            |            |
| 9/1/2030 |         | 112,010.40 | 112,010.40 |
| 3/1/2031 | 662,000 | 112,010.40 | 774,010.40 |
|          |         |            |            |
| 9/1/2031 |         | 102,676.20 | 102,676.20 |
| 3/1/2032 | 662,000 | 102,676.20 | 764,676.20 |
|          |         |            |            |
| 9/1/2032 |         | 93,342.00  | 93,342.00  |
| 3/1/2033 | 662,000 | 93,342.00  | 755,342.00 |
|          |         |            |            |
| 9/1/2033 |         | 84,007.80  | 84,007.80  |
| 3/1/2034 | 662,000 | 84,007.80  | 746,007.80 |
|          |         |            |            |
| 9/1/2034 |         | 74,673.60  | 74,673.60  |
| 3/1/2035 | 662,000 | 74,673.60  | 736,673.60 |
|          |         |            |            |
| 9/1/2035 |         | 65,339.40  | 65,339.40  |
| 3/1/2036 | 662,000 | 65,339.40  | 727,339.40 |
|          |         |            |            |
| 9/1/2036 |         | 56,005.20  | 56,005.20  |
| 3/1/2037 | 662,000 | 56,005.20  | 718,005.20 |
|          |         |            |            |
| 9/1/2037 |         | 46,671.00  | 46,671.00  |

|          |         |           |            |
|----------|---------|-----------|------------|
| 3/1/2038 | 662,000 | 46,671.00 | 708,671.00 |
|          |         |           |            |
| 9/1/2038 |         | 37,336.80 | 37,336.80  |
| 3/1/2039 | 662,000 | 37,336.80 | 699,336.80 |
|          |         |           |            |
| 9/1/2039 |         | 28,002.60 | 28,002.60  |
| 3/1/2040 | 662,000 | 28,002.60 | 690,002.60 |
|          |         |           |            |
| 9/1/2040 |         | 18,668.40 | 18,668.40  |
| 3/1/2041 | 662,000 | 18,668.40 | 680,668.40 |
|          |         |           |            |
| 9/1/2041 |         | 9,334.20  | 9,334.20   |
| 3/1/2042 | 662,000 | 9,334.20  | 671,334.20 |

## **EXHIBIT C – Form of Project Fund Requisition**

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

### **PROJECT FUND REQUISITION**

[Date] \_\_\_\_\_

Email requisitions to: GFProjectfunds@bbandt.com

#### **Requisition Team**

Truist Bank

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

RE: Request for disbursement of funds from the Project Fund related to Agreement No. 9933000653-00009 with the Town of Carrboro, North Carolina, dated as of May 10, 2022

To Whom It May Concern,

Pursuant to the terms and conditions of the Financing Agreement and Deed of Trust, dated as of May 10, 2022 (the “Agreement”), from the Town of Carrboro, North Carolina (the “Town”) for the benefit of Truist Bank, the Town requests the disbursement of funds from the Project Fund established under the Agreement for the following Project Costs:

This is requisition number \_\_\_\_ from the Project Fund.

#### **Disbursements will be to the Town of Carrboro, North Carolina**

Amount: \$\_\_\_\_\_

Attach copies of applicable vendor invoices or spreadsheet of expenditures to requisition when submitting.

Project Description:

Location of Equipment/Project:

To receive funds via wire transfer please include:

ABA Routing Number:

Account Number:

Physical address of Town: Town of Carrboro, North Carolina, Town Manager, Town of Carrboro, Attention: Notice under 2022 Financing Agreement, 301 West Main St., Carrboro, NC 27510

The Town makes this requisition pursuant to the following representations:

1. The Town has appropriated in its current fiscal year funds sufficient to pay the Installment Payments and estimated Additional Payments due in the current Fiscal Year.
2. The purpose of this disbursement is for partial payment of the Project costs provided for under the Agreement referenced above.
3. The requested disbursement has not been subject to any previous requisition.
4. No notice of any lien, right to lien or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable herein to any of the persons, firms or corporations named herein has been received, or if any notice of any such lien, attachment or claim has been received, such lien, attachment or claim has been released or discharged or will be released or discharged upon payment of this requisition.
5. This requisition contains no items representing payment on account of any percentage entitled to be retained on the date of this requisition.
6. No Event of Default is continuing under the Agreement, and no event or condition is existing which, with notice or lapse of time or both, would become an Event of Default.
7. The Town shall allow Truist to deliver and file, or cause to be filed, any Uniform Commercial Code financing statements with respect to the Project or portion of the Project that Truist may request to evidence its security interest.

8. The Town has in place insurance on this portion of the Project that complies with the insurance provisions of the Agreement.
9. Each amount requested for payment in this requisition either (a) represents a reimbursement to the Town for a Project Cost expenditure previously made, or (b) will be used by the Town promptly upon the receipt of funds from Truist to make payments for Project Costs to third parties described in this requisition.

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

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

IF REQUEST IS FINAL REQUEST, CHECK HERE ☐.

**Town of Carrboro,  
North Carolina**

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

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

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

**EXHIBIT D –**  
**Certificate Designating Borrower Representatives**  
**And Official Custodian**

In accordance with the terms of the Financing Agreement and Deed of Trust dated as of May 10, 2022 (the “Agreement”) granted by the Town of Carrboro, North Carolina (the “Town”), for the benefit of Truist Bank, the Town designates the following persons as Town Representatives authorized to sign requisitions to withdraw funds from the Project Fund account (as such terms are defined in the Agreement):

| <u>Printed Name:</u>               | <u>Signature:</u> |
|------------------------------------|-------------------|
| Richard J. White III, Town Manager | _____             |
| Arche L. McAdoo, Finance Officer   | _____             |

The Town may designate additional Town Representatives to sign requisitions upon written notification to Truist as provided in the Agreement.

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

|                        |            |   |                 |
|------------------------|------------|---|-----------------|
| Printed Name:          | Signature: | Last 4 Numbers<br>of SSN <sup>1</sup> : | Date of Birth:  |
| <u>Arche L. McAdoo</u> | _____      | 8913_____                               | _4/29/1950_____ |

Upon written notification to Truist, the Town may update the Official Custodian.

---

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

<sup>1</sup> The last 4 digits of the official custodian's social security number will be used only to differentiate the official custodian from other Truist account holders with the same name.