

COUNTY OF WAKE, NORTH CAROLINA

and

U.S. BANK, NATIONAL ASSOCIATION,  
as Escrow Agent

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ESCROW DEPOSIT AGREEMENT

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Dated as of January 1, 2019

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## ESCROW DEPOSIT AGREEMENT

THIS ESCROW DEPOSIT AGREEMENT (the "Agreement"), dated as of January 1, 2019, between the COUNTY OF WAKE, NORTH CAROLINA (the "County") and U.S. BANK, NATIONAL ASSOCIATION, as escrow agent (the "Escrow Agent"),

### WITNESSETH:

WHEREAS, the County has heretofore issued its General Obligation Public Improvement Bonds, Series 2009B, dated April 1, 2009 (the "2009B Bonds"), \$150,000,000 principal amount of which are now outstanding and unpaid, maturing in the amounts and on the dates, and bearing interest, all as more particularly described in Exhibit A attached hereto and made a part hereof; and

WHEREAS, the County, pursuant to an order adopted by the Board of Commissioners for the County on December 3, 2018, which order has taken effect, and a resolution adopted by the Board of Commissioners for the County on December 3, 2018, has authorized the issuance of \$\_\_\_\_\_ aggregate principal amount of its General Obligation Refunding Bonds, Series 2019B (the "Refunding Bonds"), for the purpose of refunding all of the outstanding 2009B Bonds, maturing March 1, 2020 to 2025, inclusive (collectively, the "Refunded Bonds"), and paying certain expenses related thereto; and

WHEREAS, a portion of the proceeds derived from the sale of the Refunding Bonds will be applied to the purchase of Federal Securities (hereinafter defined), the principal of and interest on which when due will provide sufficient monies, together with additional monies deposited in the trust created herein and remaining uninvested, to pay when due, at maturity or upon the redemption thereof, all of the principal of and redemption premium, if any, and interest on the Refunded Bonds; and

WHEREAS, in order to provide for the proper and timely application of the monies deposited hereunder and the maturing principal of and interest on the Federal Securities purchased therewith to the payment of the Refunded Bonds, it is necessary for the County to enter into this Agreement with the Escrow Agent;

NOW, THEREFORE, the County, in consideration of the foregoing and the mutual covenants herein set forth and in order to secure the payment of all principal of and redemption premium, if any, and interest on all of the Refunded Bonds according to their tenor, purport and effect, does by these presents hereby grant, warrant, demise, release, convey, assign, transfer, alien, pledge, set over and confirm unto the Escrow Agent and to its successors in the trust hereby created, and to it and its assigns forever, all and singular the property hereinafter described, to wit:

### DIVISION I

All right, title and interest in and to \$\_\_\_\_\_ deposited with the Escrow Agent upon execution and delivery of this Agreement.

## DIVISION II

All right, title and interest in and to the Federal Securities described in Exhibit B attached hereto and made a part hereof, together with the income and earnings thereon.

## DIVISION III

Any and all other property of every kind and nature from time to time hereafter, by delivery or by writing of any kind, conveyed, pledged, assigned or transferred as and for additional security hereunder by the County or by anyone in its behalf to the Escrow Agent for the benefit of the owners of the Refunded Bonds.

## DIVISION IV

All property which is by the express provisions of this Agreement required to be subject to the pledge hereof and any additional property that may, from time to time hereafter, by delivery or by writing of any kind, by the County or by anyone in its behalf, be subject to the pledge hereof.

TO HAVE AND TO HOLD the Trust Estate (hereinafter defined), including all additional property which by the terms hereof has or may become subject to the encumbrances of this Agreement, unto the Escrow Agent and its successors and assigns, forever in trust for the benefit and security of the holders or registered owners of the Refunded Bonds (the "Prior Bondholders"); but if the principal of and redemption premium, if any, and interest on all of the Refunded Bonds shall be fully and promptly paid when due, upon the redemption thereof, in accordance with the terms thereof, then this Agreement shall be and become void and of no further force and effect; otherwise the same shall remain in full force and effect, and upon the trusts and subject to the covenants and conditions hereinafter set forth.

## **ARTICLE I**

### **DEFINITIONS**

Section 1.01. Definitions. In addition to words and terms elsewhere defined in this Agreement, the following words and terms as used in this Agreement shall have the following meanings unless some other meaning is plainly intended.

“Federal Securities” shall mean direct obligations of the United States of America, or portions thereof, or obligations the timely payment of principal of and interest on which is unconditionally guaranteed by the United States of America, none of which permit redemption prior to their stated maturity other than at the option of the holder thereof.

“Trust Estate”, “trust estate” or “pledged property” shall mean the property rights and interests described or referred to under Divisions I, II, III and IV above.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. The word “person” shall include corporations, partnerships, associations, natural persons and public bodies unless the context shall otherwise indicate. Reference to a person other than a natural person shall include its successors.

**ARTICLE II**  
**ESTABLISHMENT OF ESCROW DEPOSIT TRUST FUND;**  
**FLOW OF FUNDS**

Section 2.01. Creation of Escrow Deposit Trust Fund and Deposit of Monies. There is hereby created and established with the Escrow Agent a special and irrevocable trust fund designated "County of Wake, North Carolina, 2019B Refunding Escrow Deposit Trust Fund" (the "Escrow Fund"), to be held by the Escrow Agent and accounted for separate and apart from other funds of the County and, to the extent required by law, of the Escrow Agent. Amounts credited to the Escrow Fund shall be used only for the purposes and in the manner provided in this Agreement.

Concurrently with the delivery of this Agreement, the County herewith deposits or causes to be deposited with the Escrow Agent, and the Escrow Agent acknowledges receipt of immediately available funds in the amount of \$\_\_\_\_\_ derived from the proceeds of the Refunding Bonds and other available funds of the County, and upon receipt thereof the Escrow Agent shall deposit the same to the credit of the Escrow Fund.

Section 2.02. Purchase of Federal Securities. The Escrow Agent is hereby directed immediately to purchase with the proceeds received by the Escrow Agent \$\_\_\_\_\_ aggregate principal amount of Federal Securities, as listed in Exhibit B attached hereto and made a part hereof, which will mature in principal amounts and earn income at such times, as described in Exhibit B, so that sufficient monies will be available to pay, as the same become due, all principal of and redemption premium, if any, and interest on the Refunded Bonds. The Escrow Agent shall have no power or duty to invest any monies held hereunder or to make substitutions of the Federal Securities held hereunder or to sell, transfer or otherwise dispose of the Federal Securities held hereunder, except as provided in this Agreement. The remaining balance in the Escrow Fund of \$0.\_\_\_\_ shall be held uninvested as cash.

The County has determined that the interest on and the principal amounts maturing on the Federal Securities in accordance with their terms and the remaining cash deposit in the Escrow Fund are sufficient to assure that moneys will be available to the Escrow Agent in amounts sufficient to redeem the Refunded Bonds and to pay the interest thereon as described in Exhibit C attached hereto and made a part hereof. If the County shall fail to deposit initially with the Escrow Agent cash and Federal Securities the interest on and principal of which shall be sufficient to make such payments as they become due and payable, the County shall timely deposit in the Escrow Fund such additional amounts as may be required to meet fully the amount so to become due and payable. Notice of any insufficiency shall be given by the Escrow Agent to the County as promptly as possible, but the Escrow Agent shall in no manner be responsible for any insufficiency of funds or the County's failure to make such deposits.

Section 2.03. Irrevocable Trust Created. The deposit of monies and Federal Securities or other property hereunder in the Escrow Fund shall constitute an irrevocable deposit of said monies and Federal Securities and other property hereunder for the benefit of the Prior Bondholders, subject to the provisions of this Agreement. The Prior Bondholders shall, subject

to the provisions of this Agreement, have an express lien on all monies and principal of and earnings on the Federal Securities and other property in the Escrow Fund. The monies deposited in the Escrow Fund and the matured principal of the Federal Securities and other property hereunder and the interest thereon shall be held in trust by the Escrow Agent, and shall be transferred by the Escrow Agent in the necessary amounts as hereinafter set forth to or on behalf of the Chief Financial Officer of the County, as paying agent for the Refunded Bonds (in such capacity, the "Paying Agent"), for the payment of the principal of, redemption premium and interest on the Refunded Bonds as the same become due and payable, as more specifically set forth in Exhibit C.

Section 2.04. Transfers from Escrow Fund to Pay Refunded Bonds. On March 1, 2019, the Escrow Agent shall collect the maturing principal of and interest on the Federal Securities, as specified in Exhibit B, and transfer from the Escrow Fund to, or on behalf of, the Chief Financial Officer of the County, as Paying Agent for the Refunded Bonds, amounts sufficient to pay the principal of, redemption premium and interest on the Refunded Bonds coming due, as specified in Exhibit C.

The County has irrevocably called the Refunded Bonds for redemption on March 1, 2019 at a redemption price of 100% of the principal amount of the Refunded Bonds being redeemed, plus accrued interest to the date of redemption. The County has heretofore caused notice of redemption of the Refunded Bonds, in the form attached hereto as Exhibit D to be filed with the Cede & Co. by legible facsimile transmission, registered or certified mail or overnight express delivery not more than 60 nor less than 30 days prior to the redemption date. The Escrow Agent shall provide such notices to the Municipal Securities Rulemaking Board electronically in accordance with the requirements of Rule 15c2-12 of the United States Securities and Exchange Commission. The Escrow Agent shall promptly inform the County in writing of the giving of such notices.

Section 2.05. Security for Uninvested Monies in Escrow Fund. The Escrow Agent hereby agrees that any monies held uninvested in the Escrow Fund shall be insured by the Federal Deposit Insurance Corporation or, to the extent not so insured, shall be fully collateralized in the manner required by Section 159-31(b) of the General Statutes of North Carolina, as amended.

Section 2.06. Transfer of Funds After All Payments Required by this Agreement are Made. After all of the transfers by the Escrow Agent to or on behalf of the Paying Agent for the Refunded Bonds for payment of the principal of and redemption premium, if any, and interest on the Refunded Bonds have been made, all remaining monies and securities, together with any income and interest thereon, in the Escrow Fund shall be transferred by the Escrow Agent to the County, upon written direction of the County.

### **ARTICLE III**

#### **CONCERNING THE ESCROW AGENT**

Section 3.01. Appointment of Escrow Agent. By execution of this Agreement, the Escrow Agent hereby accepts the duties and obligations imposed upon it hereunder. The Escrow Agent further represents that it has all requisite power and has taken all corporate actions necessary to execute this Agreement and perform its duties hereunder.

Section 3.02. Liability of Escrow Agent. The Escrow Agent shall not be liable for the accuracy of the calculations as to the sufficiency of monies and of the principal amount of the Federal Securities and the earnings thereon to pay the Refunded Bonds. So long as the Escrow Agent applies any monies, Federal Securities and the interest earnings therefrom to pay the Refunded Bonds as provided herein, and complies fully with the terms of this Agreement, the Escrow Agent shall not be liable for any deficiencies in the amounts necessary to pay the Refunded Bonds caused by such calculations.

The Escrow Agent shall have no lien, security interest or right of set-off whatsoever upon any of the monies or investments in the Escrow Fund for the payment of fees or expenses for services rendered by the Escrow Agent under this Agreement.

Time shall be of the essence in the performance of the obligations from time to time imposed on the Escrow Agent under this Agreement.

Section 3.03. Monthly Statements. On or before March 15, 2019, the Escrow Agent shall deliver to the County, to the attention of the Chief Financial Officer, a statement showing the Federal Securities and the cash in the Escrow Fund as of the last day of the month next preceding and the income to the credit of and withdrawals of monies from the Escrow Fund since the last statement furnished pursuant to this Section.

Section 3.04. Reliance; Assignment. This Agreement is between the County and the Escrow Agent only, and in connection therewith, the Escrow Agent is authorized by the County to rely upon the representations of the County with respect to the adequacy of the calculations made by Waters and Company, LLC, Birmingham, Alabama, and the Escrow Agent shall not be liable to any person in any manner for such reliance. The duty of the Escrow Agent hereunder shall only be to the County and the Prior Bondholders. Neither the County nor the Escrow Agent shall assign or attempt to assign or transfer its interest or obligations hereunder or any part hereof except as expressly provided herein. Any such assignment or attempted assignment except as provided hereunder shall be in direct conflict with this Agreement and without effect.

Section 3.05. Notices. Any notice, authorization, request or demand required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given when mailed by registered or certified mail, postage prepaid, addressed as follows:

to the County, if addressed to:

County of Wake, North Carolina  
301 S. McDowell Street  
Raleigh, North Carolina 27601  
Attention: Chief Financial Officer

to the Escrow Agent, if addressed to:

U.S. Bank, National Association  
5540 Centerview Drive  
Suite 200  
Raleigh, NC 27606  
Attention: Corporate Trust Department

Any such addresses may be changed at any time upon written notice of such change sent by registered or certified mail, postage prepaid, to the other party by the party effecting the change.

Section 3.06. Actions Due on Holidays. Whenever under the terms of this Agreement, the performance date of any act to be done hereunder shall fall on a day which is not a legal banking day and upon which the Escrow Agent is not open for business, the performance thereof on the next succeeding business day of the Escrow Agent shall be deemed to be in full compliance with this Agreement.

Section 3.07. Fees of Escrow Agent. The Escrow Agent acknowledges receipt of good and valuable consideration for all of its costs, charges, services and expenses as Escrow Agent for the services rendered or to be rendered pursuant to this Agreement; provided, however, that (1) the County shall bear all costs of publication and mailing of notices required by this Agreement (except for the notice required by Section 3.08) and (2) the County agrees to indemnify, to the extent permitted by law, the Escrow Agent and hold it harmless against any liability which it may incur while acting in good faith in its capacity as Escrow Agent under this Agreement, including, but not limited to, any court costs and reasonable attorneys' fees. Such costs and fees and any other expenses related to such indemnification of the Escrow Agent shall be paid by the County, but in no event shall such costs and fees and any other expenses related to such indemnification give rise to any claim against the Escrow Fund, the monies and Federal Securities in which are solely for the benefit of the Prior Bondholders until the payment in full of the Refunded Bonds. The obligation of the County to make such payments and provide such indemnification required by this Section shall survive termination of this Agreement.

Section 3.08. Resignation of Escrow Agent. The Escrow Agent may resign and thereby become discharged from the trusts hereby created by written notice given by registered or certified mail to the County and the Prior Bondholders as their names appear on the registration books for the Refunded Bonds as of the fifteenth (15<sup>th</sup>) day prior to the mailing of such notice, not less than sixty (60) days before such resignation shall take effect. The Escrow Agent agrees to serve as Escrow Agent until a successor is appointed. Such resignation shall take effect



immediately, however, upon the appointment of a successor Escrow Agent hereunder, if such successor Escrow Agent shall be appointed before the time limited by such notice and shall then accept the trusts thereof. In the event of the resignation of the Escrow Agent prior to the expiration of this Agreement, the Escrow Agent shall rebate to the County a ratable portion of any fee theretofore paid by the County to the Escrow Agent for its services under this Agreement.

Section 3.09. Removal of Escrow Agent. The Escrow Agent or any successor Escrow Agent may be removed at any time by an instrument or concurrent instruments in writing, executed by the holders of a majority in aggregate principal amount of the Refunded Bonds then outstanding, such instruments to be filed with the County, with notice provided by registered or certified mail to the registered owners of the Refunded Bonds not less than sixty (60) days before such removal is to take effect as stated in said instrument or instruments. A photographic copy of any instrument filed with the County under the provisions of this Section shall be delivered by the County to the Escrow Agent or any successor Escrow Agent.

The Escrow Agent or any successor Escrow Agent may also be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provisions of this Agreement with respect to the duties and obligations of the Escrow Agent by any court of competent jurisdiction upon the application of the County or the holders of not less than twenty per centum (20%) in aggregate principal amount of the Refunded Bonds then outstanding.

Section 3.10. Appointment of Successor Escrow Agent. If at any time hereafter the Escrow Agent or any successor Escrow Agent shall resign, be removed, be dissolved or otherwise become incapable of acting, or shall be taken over by any governmental official, agency, department or board, the position of Escrow Agent shall thereupon become vacant. If the position of Escrow Agent shall become vacant for any of the foregoing reasons or for any other reason, the County shall appoint a successor Escrow Agent to fill such vacancy. The County shall provide written notice of any such appointment made by it by registered or certified mail to each of the Prior Bondholders as their names appear on the registration books for the Refunded Bonds as of the fifteenth (15<sup>th</sup>) day prior to the mailing of such notice.

At any time within one year after such appointment by the County, the holders of a majority in aggregate principal amount of the Refunded Bonds then outstanding, by an instrument or concurrent instruments in writing, executed and filed with the County, may appoint a successor Escrow Agent, which shall supersede any Escrow Agent theretofore appointed by the County. A photographic copy of each such instrument shall be delivered promptly by the County to the predecessor Escrow Agent and to the Escrow Agent so appointed by the Prior Bondholders.

If no appointment of a successor Escrow Agent shall be made pursuant to the foregoing provisions of this Section, any Prior Bondholder or any retiring Escrow Agent may apply to any court of competent jurisdiction to appoint a successor Escrow Agent. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Escrow Agent.

Section 3.11. Permitted Acts. The Escrow Agent and its affiliates may become the owner of or may deal in the Refunded Bonds as fully and with the same rights as if it were not the Escrow Agent.

## ARTICLE IV

### MISCELLANEOUS

Section 4.01. Amendments to this Agreement. This Agreement is made for the benefit of the County and the Prior Bondholders and it shall not be repealed, revoked, altered or amended without the written consent of all Prior Bondholders, the Escrow Agent and the County; provided, however, that the County and the Escrow Agent may, without the consent of, or notice to, such Prior Bondholders, enter into such agreements supplemental to this Agreement as shall not adversely affect the rights of such Prior Bondholders and shall not materially be inconsistent with the terms and provisions of this Agreement, for any one or more of the following purposes:

(a) to cure any ambiguity or formal defect or omission in this Agreement; and

(b) to grant to or confer upon the Escrow Agent for the benefit of the Prior Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Escrow Agent.

The Escrow Agent shall be entitled to rely upon the unqualified written opinion of a nationally recognized counsel in the field of law relating to municipal bonds with respect to compliance with this Section.

Section 4.02. Notice of Refunding. The County hereby directs the Escrow Agent, and the Escrow Agent hereby agrees, to cause a copy of the notices attached hereto as Exhibits E and made a part hereof to be mailed to Cede & Co. by legible facsimile transmission, registered or certified mail or overnight express delivery (and otherwise in accordance with the securities depository agreement with respect to that designation of the Refunded Bonds) promptly, and in no event later than thirty (30) days, following the issuance of the Refunding Bonds. The Escrow Agent shall also provide such notices to the Municipal Securities Rulemaking Board electronically in accordance with the requirements of Rule 15c2-12 of the United States Securities and Exchange Commission.

Section 4.03. Severability. If any one or more of the covenants or agreements provided in this Agreement on the part of the County or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenants or agreements shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

Section 4.04. Agreement Binding. All the covenants, promises and agreements in this Agreement contained by or on behalf of the County or by or on behalf of the Escrow Agent shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

Section 4.05. Termination. This Agreement shall terminate when all transfers and payments required to be made by the Escrow Agent under the provisions hereof shall have been made.

Section 4.06. Execution by Counterparts. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

Section 4.07. Action by the County. Any action required to be taken by the County hereunder shall for all purposes be duly taken if taken by the Chief Financial Officer of the County or his designee.

[Signatures to follow]

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its duly authorized officers as of the date first above written.

COUNTY OF WAKE, NORTH CAROLINA

By: \_\_\_\_\_  
Chairman of the Board of Commissioners

[SEAL]

Attest:

\_\_\_\_\_  
Clerk to the Board of Commissioners

U.S. BANK, NATIONAL ASSOCIATION, as  
Escrow Agent

By: \_\_\_\_\_  
Vice President

## EXHIBIT A

### 2009B BONDS

<u>Maturity (March 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2019*	\$26,000,000	5.00%
2020	26,000,000	5.00
2021	26,000,000	5.00
2022	26,000,000	5.00
2023	26,000,000	5.00
2024	13,000,000	5.00
2025	7,000,000	4.50

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\*Not being refunded by the Refunding Bonds.

EXHIBIT B  
INVESTMENT OF ESCROW FUNDS

United States Federal Securities

<u>Type of Security</u>	<u>Maturity Date</u>	<u>First Interest Payment Date</u>	<u>Par Amount</u>	<u>Rate</u>
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EXHIBIT C

PAYMENTS ON REFUNDED BONDS

<u>Payment Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
03/01/2019	\$124,000,000	\$3,082,500	\$127,082,500



## EXHIBIT D

[Notice mailed prior to the execution of Escrow Agreement and  
not less than 30 days prior to March 1, 2019]

### **NOTICE OF REDEMPTION**

**County of Wake, North Carolina  
General Obligation Public Improvement Bonds, Series 2009B  
Dated April 1, 2009**

NOTICE is hereby given, to the holders or registered owners of the County of Wake, North Carolina (the "County") General Obligation Public Improvement Bonds, Series 2009B, dated April 1, 2009 (the "Bonds"), that the following Bonds will be redeemed on March 1, 2019:

<u>Maturity (March 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>CUSIP</u>
2020	\$26,000,000	5.00%	930863 M44
2021	26,000,000	5.00	930863 M51
2022	26,000,000	5.00	930863 M69
2023	26,000,000	5.00	930863 M77
2024	13,000,000	5.00	930863 M85
2025	7,000,000	4.50	930863 M93

The Bonds so called for redemption will be redeemed at a redemption price of 100% of the principal amount thereof, plus accrued interest to the redemption date. The registered owners of the Bonds called for redemption are required to present the same at the office of the Chief Financial Officer of the County (the "Bond Registrar") for payment of the redemption price.

On January 17, 2019 the Local Government Commission of North Carolina sold the County's General Obligation Refunding Bonds, Series 2019B in the aggregate principal amount of \$\_\_\_\_\_ to provide a portion of the funds required to pay the redemption price of the Bonds to be redeemed pursuant to this notice. Such refunding Bonds are scheduled to be delivered on January 31, 2019 in exchange for the purchase price thereof. The redemption of the Bonds described above is conditioned upon the receipt by the County on or prior to the redemption date of moneys sufficient to pay the principal of and interest on the Bonds to be redeemed, and if such moneys are not so received, such notice shall be of no force or effect and such Bond shall not be required to be redeemed. If the proceeds of the refunding Bonds are not received by the County on or prior to the redemption date, the redemption shall not be made and the County shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received and this notice shall be of no force and effect. If the proceeds of the refunding Bonds are so received, this notice of redemption, this notice of redemption shall become irrevocable upon the receipt of such funds.

Under the provisions of the Internal Revenue Code of 1986, as amended, a Bond Registrar making payments of principal on municipal securities may be obligated to withhold a

tax from remittance to individuals who have failed to furnish the Bond Registrar with a valid Taxpayer Identification Number. Holders or registered owners of the above-described Bonds to be redeemed who wish to avoid the imposition of this tax should submit certified Taxpayer Identification Numbers when presenting their Bonds for collection.

County of Wake, North Carolina

By: Emily Lucas  
Chief Financial Officer of the  
County of Wake, North Carolina

NOTE: CUSIP numbers appearing herein have been included solely for the convenience of bondholders. The Bond Registrar shall not be responsible for the selection or use of any such CUSIP number, nor is any representation made as to the correctness of any such number on the Bonds or as indicated herein.

WCSR 4330733v4