

Draft No. 2  
June 4, 2021

INSTALLMENT FINANCING AGREEMENT

Dated as of August 1, 2021

between

COUNTY OF WAKE, NORTH CAROLINA

and

STI INSTITUTIONAL & GOVERNMENT, INC.

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This **INSTALLMENT FINANCING AGREEMENT**, dated as of August 1, 2021 (the “Agreement”), between **COUNTY OF WAKE, NORTH CAROLINA**, a political subdivision duly organized and validly existing under the laws of the State of North Carolina (the “County”), and **STI INSTITUTIONAL & GOVERNMENT, INC.**, a Delaware corporation (the “Lender”);

WITNESSETH:

WHEREAS, the County is a political subdivision duly organized and validly existing under and by virtue of the Constitution and laws of the State of North Carolina;

WHEREAS, pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended, the County may finance the acquisition of property and the construction of fixtures or improvements on real property by contracts that create in the fixtures or improvements, or in all or some portion of the property upon which the fixtures or improvements are located, or in both, a security interest to secure repayment of the moneys advanced or made available for construction;

WHEREAS, after a public hearing and due consideration, the Board of Commissioners for the County determined to finance the costs of acquiring, constructing and equipping certain public school projects on behalf of the Wake County Public School System as more fully described in Exhibit A hereto (the “Project”);

WHEREAS, in order for the County to obtain the funds to pay the costs of the Project, the County has determined to enter into this Agreement whereby the Lender will advance funds to the County to pay the costs of the Project, and the County will repay such advancement with interest in installments pursuant to the terms of this Agreement;

WHEREAS, as security for the performance of its obligations under this Agreement, including the payment of the installment payments, the County will execute and deliver a Deed of Trust, dated as of the date hereof (the “Deed of Trust”), to the Deed of Trust trustee named therein, for the benefit of the Lender, pursuant to which the County granted a lien on the Mortgaged Sites (herein defined), together with all buildings, improvements and fixtures located or to be located thereon;

WHEREAS, the Lender is willing to advance moneys to the County for payment of the cost of the Project, and the County is willing to repay the moneys so advanced by the Lender in installments as more fully provided herein; and

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

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

## ARTICLE I

### DEFINITIONS AND EXHIBITS

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

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

“Adjusted SOFR Rate” means the variable annual interest rate equal to the sum obtained by adding (i) the product of (x) 79% and (y) the SOFR Index plus (ii) the Applicable Spread; provided however, the Adjusted SOFR Rate will in no instance exceed the Ceiling Rate. The Adjusted SOFR Rate shall be rounded upwards to the fifth decimal place. If at any time after the date hereof there should be any change in the Lender Tax Rate, then the Adjusted SOFR Rate in effect hereunder from time to time shall be adjusted (upward or downward, as the case may be), effective as of the effective date of any such change in the Lender Tax Rate, by multiplying the Adjusted SOFR Rate described above by a fraction, the denominator of which is one hundred percent (100%) minus the Lender Tax Rate in effect upon the date hereof, and the numerator of which is one hundred percent (100%) minus the Lender Tax Rate after giving effect to such change.

“Advancement” means the advance of money made from time to time by the Lender to the County pursuant to Section 3.1 of this Agreement.

“Advancement Request” means a written request for an Advancement made by the County to the Lender in the form of Exhibit B.

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

“Applicable Spread” means, the amount set forth in the table below based upon the long term, unenhanced general obligation debt of the County assigned by Moody’s S&P and Fitch, respectively:

<u>Level</u>	<u>Moody’s</u>	<u>S&amp;P</u>	<u>Fitch</u>	<u>Applicable Spread</u>
1	Aa1 to Aaa	AA+ to AAA	AA+ to AAA	0.32%
2	A1 to Aa2	A+ to AA	A+ to AA	0.37
3	Baa1 to A2	BBB+ to A	BBB+ to A	0.42
4	Baa2 or lower	BBB or lower	BBB or lower	Default Rate

In the event that there are ratings at different levels by two or more rating agencies, the lowest assigned rating will apply. Any change in the Applicable Spread shall become effective immediately and without notice to the County from the date of announcement or publication by Moody's, Fitch or S&P of a change in its rating, or in the absence of such announcement or publication, on the effective date of such changed rating.

If one or more of the underlying ratings are withdrawn or suspended for any reason, other than for payment or defeasance of the rated general obligation debt, the interest component of the Installment Payments shall be computed at the Default Rate.

References to the ratings above are to rating categories as determined by the rating agencies. In the event of the adoption of any new or changed rating systems or a "global" rating scale by any such rating agency, the ratings categories shall be adjusted according to a new rating which most closely approximates the ratings currently in effect.

"Bank" means Truist Bank and its successors and assigns.

"Base Rate" means the Prime Rate.

"Board of Commissioners" means the Board of Commissioners for the County.

"Board of Education" means the Wake County Board of Education, a body corporate organized and existing under the laws of North Carolina, which body is vested with general control and supervision of all matters pertaining to public schools within the County.

"Business Day" means a day other than a Saturday, Sunday, legal holiday or any other day when the Bank is authorized or required by applicable law to be closed.

"Calculation Agent" means the Lender or any affiliate of the Lender designated by Lender to be the Calculation Agent, and, if the Lender (or its designated affiliate) declines to continue to act as Calculation Agent and no other affiliate of the Lender is nominated who agrees to act as Calculation Agent, any other person or entity appointed by the County to act as Calculation Agent that is acceptable to the Lender.

"Ceiling Rate" means the lesser of 22% per annum and the maximum rate permitted by applicable law.

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

"Closing Date" means August 10, 2021.

"Code" means the Internal Revenue Code of 1986, as amended.

"Construction and Acquisition Agreement" means the Construction and Acquisition Agreement, dated as of August 1, 2021, between the County and the Board of Education,

pursuant to which the Board of Education will supervise the construction, renovation and equipping of the schools to be located on the Mortgaged Sites.

“County” means the County of Wake, North Carolina, a political subdivision duly organized and validly existing under and by virtue of the Constitution and laws of the State of North Carolina, and any successor entity.

“Default Rate” means a per annum rate of interest equal to the Term Loan Rate plus three percent (3.00%); provided, however, that the Default Rate shall in no event exceed the Ceiling Rate.

“Deed of Trust” means, the Deed of Trust, dated as of August 1, 2021, from the County to the Deed of Trust Trustee, for the benefit of the Lender, securing the Installment Payments and other obligations specified hereunder and thereunder, as supplemented and amended from time to time.

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

“Determination Date” means that date five U.S. Government Securities Business Days prior to the commencement of the Interest Period.

“Determination of Taxability” means a final decree or judgment of any federal court or a final action of the Internal Revenue Service determining or concluding that interest paid or payable on the Series 2021 Note is or was includable in the gross income of the Lender for federal income tax purposes; provided, that no such decree, judgment, or action will be considered final for this purpose unless the County has been given written notice and, if it is so desired and is legally allowed, has been afforded the opportunity to contest the same, either directly or in the name of the Lender, and until the conclusion of any appellate review, of such decree or judgment or Internal Revenue Service determination. A Determination of Taxability does not include and will not be triggered by a change in law by Congress that causes the interest component of the Installment Payments to be includable in the Lender’s gross income.

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

“Event of Default” means, with respect to this Agreement, the occurrence of any of the events specified in Section 9.1.

“Event of Nonappropriation” means (a) the failure by the Board of Commissioners to budget and appropriate in its budget for the ensuing Fiscal Year adopted on or about June 30 of each year moneys sufficient to pay all Installment Payments and any reasonably estimated additional payments under this Agreement coming due in the next ensuing Fiscal Year or (b) the Board of Commissioners’ deletion from its duly adopted budget of any appropriation for the purposes specified in clause (a). In the event that during any Fiscal Year, any additional payments shall become due that were not included in the County’s current budget, and if there



are no moneys available to pay such additional payments prior to the date upon which such additional payments are due, an Event of Nonappropriation shall be deemed to have occurred on the date on which such additional payments were due and unpaid.

“Facility Amount” means, at any time of calculation, \$292,032,500 less any unpaid Advancements, provided that the entire amount of Advancements made hereunder may not exceed \$584,065,000.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average of the quotations for such day on such transactions received by the Calculation Agent from three Federal funds brokers of recognized standing selected by the Calculation Agent.

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

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

“Installment Payments” means the payments required to be paid by the County pursuant to Section 4.1 in order to repay the principal of and all interest on the Advancement.

“Interest Payment Date” means the first Business Day of each calendar month commencing on September 1, 2021 and April 1, 2026.

“Interest Period” means the one month period commencing on the first day of each month and each subsequent period shall commence on the first day of each month; provided, however, that the first Interest Period shall commence on the date of the execution and delivery of this Agreement and end on August 31, 2021.

“Lease” means, the Lease Agreement, dated as of August 1, 2021, between the County and the Board of Education, pursuant to which the County will lease the Mortgaged Sites, together with all buildings, improvements and fixtures located and to be located thereon, to the Board of Education, including any amendment or supplement thereto permitted herein. The Lease shall be subordinate to the Deed of Trust.

“Lender” means STI Institutional & Government, Inc., a Delaware corporation, and any successor thereto.

“Lender Tax Rate” means the maximum marginal rate of federal income tax applicable to the taxable income of the Lender, its successors or assigns.

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

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

“Mortgaged Sites” means the sites of the schools currently known as Hilltop Needmore Elementary School, Swift Creek Elementary School, Woods Creek Elementary School, Fuquay-Varina Middle School and Rex Road Elementary School, five of the public schools included in the Project, as more particularly identified in Exhibit A to the Deed of Trust.

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

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

“Prime Rate” means, for any day, a rate per annum equal to Bank’s announced Prime Rate, and shall change effective on the date any change in Bank’s Prime Rate is publicly announced as being effective; provided that if the Prime Rate would be less than zero percent (0%), then the Prime Rate shall be deemed to be zero percent (0%).

“Project” has the meaning set forth in the recitals of this Agreement and in Exhibit A.

“Related Documents” means this Agreement, the Deed of Trust, the Lease, the Construction and Acquisition Agreement and the Tax Certificate.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“SOFR Index” means, for any Determination Date, the 30-Day Average SOFR rate published on such Determination Date by the SOFR Administrator on the SOFR Administrator’s Website as quoted by Bloomberg Finance L.P., or any quoting service or commonly available source utilized by the Calculation Agent for the Determination Date; provided that if the SOFR Index would be less than zero percent (0%), then the SOFR Index shall be deemed to be zero percent (0%).

If for a Determination Date the Calculation Agent determines in its sole discretion that the Calculation Agent cannot make, fund or maintain a loan based on the SOFR Index, for any reason, including without limitation illegality or the inability to ascertain or determine such rate on the basis provided for herein, and for any length of time (whether by virtue of a temporary unavailability or the cessation of the rate), the reference to “SOFR Index” in the definitions of “Adjusted SOFR Rate” and “Taxable Rate” shall be deemed and interpreted to mean the Federal Funds Rate on the Determination Date plus .50%. The Applicable Spread shall continue to apply. In the event the circumstances giving rise to the use of the Federal Funds Rate have ended, the Calculation Agent shall provide notice of same at which time the interest rate will revert to the prior rate based upon the SOFR Index plus the Applicable Spread.

“State” means the State of North Carolina.

“Tax Certificate” means the agreement or certificate executed by the County upon the Closing Date regarding such things as arbitrage rebate and other restrictions imposed by the Code.

“Taxable Rate” means the variable annual interest rate calculated as of each Determination Date as the amount equal to the sum obtained by adding (i) the SOFR Index (truncated at the 5th decimal place if necessary) plus (ii) the Applicable Spread; provided however, the Taxable Rate will in no instance exceed the Ceiling Rate.

“Term Loan Rate” means, for the first day that the Term Loan Rate is in effect to and including the 180th day, the Base Rate, and thereafter means the Base Rate plus 1%; provided, however, that the Term Loan Rate shall in no event exceed the Ceiling Rate.

“U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

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

Exhibit A:	Description of the Project
Exhibit B:	Form of Advancement Request
Exhibit C:	Conditions Precedent

## ARTICLE II

### REPRESENTATIONS OF THE COUNTY AND THE LENDER

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

(a) The County is a political subdivision duly organized and validly existing under and by virtue of the Constitution and laws of the State of North Carolina.

(b) The Constitution and laws of the State authorize the County to execute and deliver the Related Documents and to enter into the transactions contemplated by and to carry out its obligations under the Related Documents.

(c) The County has duly authorized and executed the Related Documents in accordance with the Constitution and laws of the State.

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

(e) No approval or consent is required from any governmental authority with respect to the entering into or performance by the County the Related Documents and all other documents related thereto and the transactions contemplated hereby and thereby, or if such approval is required, it has been duly obtained.

(f) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or threatened against or affecting the County (i) challenging the validity or enforceability of any of the Related Documents or any other documents relating hereto (ii) the performance of the County's obligations hereunder and thereunder or (iii) which if adversely determined is likely to result in a material adverse change in the business, properties, conditions (financial or otherwise) or operations, present or prospective, of the County.

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

(h) The balance sheet of the County as of June 30, 2020, and the related statement of revenues and expenses and changes in financial position for the year then ended and the auditors' report with respect thereto which have heretofore been furnished to the Lender, are complete and correct and fairly present the financial condition, changes in financial position and results of operations of the County at such date and for such period and were prepared in accordance with generally accepted accounting principles. Since June 30, 2020, there has been no material adverse change in the business, properties, condition (financial or otherwise) or operations, present or prospective, of the County or any increase in its long term debt, except as disclosed to the Lender. All data, certificates, reports, statements, documents or other information furnished to the Lender by or on behalf of the County in connection with this Agreement were, at the time the same were delivered, correct in all material respects and did not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not misleading.

(i) No Event of Default, or event which with the giving of notice or the passage of time or both would constitute an Event of Default, has occurred and is continuing or will occur upon execution and delivery of this Agreement.

(j) The County will not use any part of the proceeds of the Advancement hereunder and has not incurred any indebtedness to be reduced, retired or purchased by the County out of such Advancement, for the purpose of purchasing or carrying any margin stock, and the County does not own and will not acquire any such margin stock.

(k) The County is not entitled to immunity on the grounds of sovereignty as to any of its contractual obligations.

(l) The representations and warranties made by the County in the Related Documents, other than this Agreement, are incorporated herein by this reference, made for the benefit of the Lender and are true and correct in all material aspects.

(m) Neither the County nor any of its affiliates is in violation of any laws relating to terrorism or money laundering ("Anti Terrorism Laws"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order"), and the Patriot Act. (xiii).

(n) Neither County nor any of its affiliates is any of the following:

(1) a person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(2) a person owned or controlled by, or acting for or on behalf of, any person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(3) a person with which the Lender is prohibited from doing business or otherwise engaging in any transaction by any Anti-Terrorism Law;

(4) a person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or

(5) a person that is named as a “specially designated national and blocked person” on the most current list published by the Office of Foreign Asset Control (“OFAC”) or any list of persons issued by OFAC pursuant to the Executive Order at its official website or any replacement website or other replacement official publication of such list;

Neither the County nor any of its affiliates (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in subsection (n)(2) above, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

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

(a) The Lender is organized, existing and in good standing under and by virtue of the laws of the State of Delaware and has the power and authority to enter into this Agreement.

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

### ARTICLE III

#### ADVANCEMENT; ACQUISITION, CONSTRUCTION, RENOVATION AND EQUIPPING OF PROJECT

SECTION 3.1. Advancements. (a) In consideration of the covenants, warranties and representations contained herein, and in consideration of the County's agreement to repay the moneys advanced hereunder and interest thereon, the Lender hereby agrees to advance to the County from time to time prior to April 1, 2026 an aggregate amount of not to exceed FIVE HUNDRED EIGHTY FOUR MILLION SIXTY FIVE THOUSAND DOLLARS (\$584,065,000), subject to the limitations set forth herein. Notwithstanding the foregoing, the Lender shall not be required or obligated to fund any Advancements at any time in excess of the Facility Amount in effect at the time.

(b) Advancements shall be made to the County by the Lender upon delivery to the Lender, at least two Business Days prior to the requested date of the Advancement, of a completed Advancement Request and upon satisfaction of the conditions set forth in Part 2 of Exhibit C. Each such Advancement Request shall state the amount of the Advancement, which shall not be for an amount of less than \$500,000 (except for the first Advancement as provided below), the requested date of the Advancement and such other information as is required by Exhibit B. Each Advancement Request shall be executed by the manual or electronic signature of the County Manager, the Chief Financial Officer, the Debt Manager or any other County employee authorized by the Chief Financial Officer to make an Advancement Request on behalf of the County in an instrument filed with the Lender. A copy of each request shall be submitted to the LGC at the time of submission to the Lender. The County shall not submit more than four Advancement Requests to the Lender per month. Advancement Requests may be submitted via electronic means.

The first Advancement may be for \$\_\_\_\_\_ and shall be made on the date of execution and delivery of this Agreement. The conditions set forth in items (a) and (g) of Exhibit B, Part 2 do not apply to the first Advancement.

(e) The Advancement shall be made by the Lender depositing the Advancement into an account designated by the County in the related Request for Advancement to be applied to pay the Closing Costs and costs of the Project, or to reimburse the County for prior expenditures by the County for such purpose.

SECTION 3.2. Acquisition, Construction, Renovation and Equipping of Project. The County shall cause the Board of Education to enter into one or more contracts or purchase orders providing for the acquisition, construction, renovation and equipping of the Project. The County shall cause the acquisition, construction, renovation and equipping of the Project to be carried on expeditiously in accordance with the plans and specifications therefor and in compliance with all applicable ordinances and statutes and requirements of all regularly constituted authorities having jurisdiction over the same.

SECTION 3.3. Payment of Project Costs and Closing Costs. The County shall be obligated to pay all remaining Project costs and Closing Costs when the same become due and payable.

SECTION 3.4. Termination. The obligation of the Lender to make Advancements shall be terminated on April 1, 2026.

SECTION 3.5. Disclaimer of Lender. The County acknowledges and agrees that the Lender (a) has not made any recommendation, given any advice nor taken any other action with respect to (i) the acquisition, construction or equipping of the Project or any component part thereof or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Project or any component part thereof or any property or rights relating thereto at any stage of the acquisition, construction or equipping thereof, (b) has not at any time had physical possession of the Project or any component part thereof or made any inspection thereof or any property or rights relating thereto, and (c) has not made any warranty or other representation, express or implied, that the Project or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly used, or will accomplish the results which the County intends therefor, or (iii) is safe in any manner or respect.

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



## ARTICLE IV

### REPAYMENT OF THE ADVANCEMENT; SECURITY FOR REPAYMENT

SECTION 4.1. Repayment of the Advancement; Computation of Interest on Advancement. (a) The County shall repay the amount advanced by the Lender hereunder, with interest, in Installment Payments. The principal component of the Installment Payments shall consist of the aggregate principal amount of the Advancements and shall be due and payable on April 1, 2026, unless prepaid earlier as herein provided. If on April 1, 2026 (1) no Event of Default, or any event which with the giving of notice or the passage of time or both would constitute an Event of Default, shall have occurred and be continuing under this Agreement, and (2) the representations and warranties of the County set forth in this Agreement are true and correct in all material respects, then the unpaid principal amount otherwise due on April 1, 2026 shall be due in ten equal semi-annual installments of principal payable on each April 1 and October 1 beginning October 1, 2026. Upon the occurrence of an Event of Default provided in Section 9.2, the principal amount hereof shall be due and payable at the request of the Lender.

(b) The interest component of the Installment Payments shall consist of interest on the unpaid principal components of the Installment Payments, calculated from the time of each Advancement. Except as otherwise provided in this Agreement, the interest components of the Installment Payments shall be calculated at (i) the Adjusted SOFR Rate from the date of the execution and delivery of this Agreement until April 1, 2026, and (ii) the Term Loan Rate after April 1, 2026. Notwithstanding the previous sentence, (i) upon the occurrence and during the continuance of an Event of Default hereunder, the interest components of the Installment Payments shall be computed at the Default Rate, and (ii) upon the occurrence of a Determination of Taxability, the interest components of the Installment Payments shall be computed at the Taxable Rate. If at any time more than one of the interest rates described above shall apply to amounts owed hereunder, the highest applicable rate shall be used to calculate the interest owed on amounts outstanding hereunder. Notwithstanding the foregoing, at no time shall the interest rate hereunder exceed the Ceiling Rate.

(c) The interest component of the Installment Payments shall be paid on each Interest Payment Date, and, during any period that the interest component of the Installment Payments is computed at the Default Rate, upon the demand of the Lender. The interest payable on the Interest Payment Date shall be the interest accrued through the last day of the calendar month preceding the Interest Payment Date. The Calculation Agent shall compute the Adjusted SOFR Rate on each Computation Date, such rate to become effective on the Reset Date next succeeding the Computation Date. Each Advancement shall bear interest from the date of the Advancement until the next Reset Date at the Adjusted SOFR Rate then in effect (and thereafter at the new Adjusted SOFR Rate determined and in effect from time to time as herein provided).

(d) Unless otherwise directed by the Lender, all Installment Payments required to be made to the Lender shall be paid by wire transfer, in accordance with wire instructions provided by the Bank.

(e) In the event of the occurrence of a Determination of Taxability, the interest component of the Installment Payments shall thereafter be computed and paid at the Taxable Rate. In addition, the County shall pay to the Lender an amount equal to the positive difference, if any, between the amount of interest that would have been paid on the principal balances due under this Agreement from the Inclusion Date if interest were computed at the Taxable Rate and the amount actually paid to the Lender computed at the Adjusted SOFR Rate (or other applicable rate). In addition, the County shall reimburse the Lender for any interest, penalties or other charges the Lender is required to incur on account of the Determination of Taxability.

(f) Subject to the provisions of subsections (g) and (h) below, the Lender shall afford the County the opportunity, at the County's sole cost and expense, to contest the validity of any determination which results in a Determination of Taxability, including the right to direct the necessary litigation contesting such challenger (including administrative appeals).

(g) As a condition precedent to the exercise by the County of its right to contest set forth in subsection (f) above, the County shall, on demand, immediately reimburse the Lender, for (i) any and all expenses (including attorneys' fees for services that may be required or desirable, as determined by the Lender in its sole discretion) that may be incurred by the Lender, in connection with any such contest, and (ii) any and all penalties or other charges payable by the Lender for failure to include such interest in its gross income.

(h) The obligations of the County under this Section shall survive the termination of this Agreement but shall be subject to the Enforcement Limitation.

**SECTION 4.2. Budget and Appropriation.** (a) The officer of the County at any time charged with the responsibility for formulating budget proposals shall include in the budget proposals for review and consideration by the Board of Commissioners in any Fiscal Year in which this Agreement shall be in effect, items for all Installment Payments and any additional payments required for such Fiscal Year under this Agreement or the Deed of Trust. Any budget item referred to in this Section shall be deleted from the applicable budget by the Board of Commissioners only by the adoption of a resolution to such effect containing a statement of its reasons therefor, which resolution shall be adopted by roll-call vote and shall be spread upon the minutes of the Board of Commissioners. The County shall furnish the Lender with copies of its annual budget promptly after its adoption, but not later than 30 days after adoption, and copies of any amended budget affecting appropriations for Installment Payments within 30 days of adoption or additional payments required under this Agreement or the Deed of Trust. The County shall promptly provide written notice to the Lender of any Event of Nonappropriation.

(b) NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A DELEGATION OF GOVERNMENTAL POWERS NOR AS A DONATION BY OR A LENDING OF THE CREDIT OF THE COUNTY WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE. THIS AGREEMENT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE COUNTY TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE SOLE DISCRETION OF THE

COUNTY FOR ANY FISCAL YEAR IN WHICH THIS AGREEMENT IS IN EFFECT; PROVIDED, HOWEVER, THAT ANY FAILURE OR REFUSAL BY THE COUNTY TO APPROPRIATE FUNDS WHICH RESULTS IN THE FAILURE BY THE COUNTY TO MAKE ANY PAYMENT COMING DUE HEREUNDER WILL IN NO WAY OBVIATE THE OCCURRENCE OF THE EVENT OF DEFAULT RESULTING FROM SUCH NONPAYMENT. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE COUNTY IN ANY ACTION FOR BREACH OF A CONTRACTUAL OBLIGATION UNDER THIS AGREEMENT AND THE TAXING POWER OF THE COUNTY 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 shall be construed to pledge or to create a lien on any class or source of the County's moneys, nor shall any provision of this Agreement restrict the future issuance of any of the County's bonds or moneys. To the extent of any conflict between this Section and any other provision of this Agreement, this Section shall take priority.

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

The County or the Board of Education may grant easements, licenses, rights of way and other rights or privileges in the nature of easements with respect to any part of the Mortgaged Property, and obtain any instrument necessary or appropriate to grant or release any such interest, easement, license, right of way or other right or privilege as provided in Section 2(a) of the Deed of Trust.

In addition, the County has informed the Lender that it intends to issue or incur new indebtedness from time to time in order to refinance the Advancements made to the County hereunder. The County and the Lender agree that at any time and from time to time, so long as no Event of Default has occurred and is continuing hereunder or under the Deed of Trust, the County shall be entitled to obtain a release of any portion of the Mortgaged Property (including an entire Mortgaged Site of one of the school properties covered by the Deeds of Trust) from the liens and security interests created by the Deed of Trust in order that such released property may be used as security for the refinancing indebtedness when and if the following requirements have been met:

(i) There is filed with the Deed of Trust Trustee and the Lender, a request from the County for the release of such portion of the Mortgaged Property, giving an adequate description of the portion of the Mortgaged Property to be released (a reference to the Site of a specific school constitutes an adequate description) and the portion of the Mortgaged Property that will remain subject to the lien of the Deeds of Trust.

(ii) There is filed with the Deed of Trust Trustee and the Lender a Certificate of the Chief Financial Officer of the County to that effect that the property being released from the Deed of Trust will be pledged as security for indebtedness to be incurred by the County to refinance all or a portion of its current obligations hereunder and the County

has determined that it is necessary to pledge such property as collateral in order to obtain financial terms for the refinancing indebtedness that are acceptable to the County.

(iii) Following any such release, there will remain as collateral under the Deed of Trust at least one Site on which a public school is located to secure the payment of any further Installment Payments to be paid hereunder (it being understood that if this Agreement will terminate at the time of the release and all Installment Payments will be paid and no further Advancements will be made after such release, then all of the properties may be released).

(iv) There is delivered to the Deed of Trust Trustee and the Lender an opinion of Bond Counsel to the County to the effect that the release is permitted by this Agreement and the Deed of Trust, and the release will not cause the interest component of the Installment Payments to be includable in the gross income of the Lender for federal or state income tax purposes.

No such release shall prohibit the County's or Board of Education's ingress, egress and regress to and from the remainder of the Mortgaged Property not being released, or materially interfere with the use of the remainder of the Mortgaged Property not being released, as evidenced by a certificate of a County Representative filed with the Deed of Trust Trustee and the Lender.

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

SECTION 4.5. Fees; Costs and Expenses. The County shall pay within thirty (30) days after demand:

(a) the reasonable fees and out of pocket expenses for counsel or other reasonably required consultants to the Lender in connection with this Agreement or the other Related Documents, including, but not limited to, with respect to advising the Lender as to its rights and responsibilities under this Agreement or the Related Documents or in connection with responding to requests from the County for consents, amendments and waivers; and

(b) Lender's reasonable out of pocket expenses (including, without limitation, fees and expenses of counsel or other reasonably required consultants to the Lender) arising in connection with the enforcement or administration of, or preservation of rights (including in any bankruptcy or insolvency proceeding or any workout) in connection with, this Agreement or the Related Documents.

SECTION 4.6. Computation of Interest and Fees. Interest payable hereunder shall be calculated on the basis of a year of 365/366 days and the actual number of days elapsed.

## ARTICLE V

### INSURANCE

SECTION 5.1. Comprehensive General Liability. The County shall maintain or cause to be maintained throughout the term of this Agreement, a comprehensive general liability policy or policies in protection of the County, its officers, agents and employees. Said policy shall cover such losses and for such amounts and shall have such deductible amounts as shall be satisfactory to the Board of Commissioners and, in the judgment of the Board of Commissioners, shall protect the County against losses not protected under the principles of sovereign immunity. The net proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid. Such insurance policies shall name the Lender as loss payee and additional insured.

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

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

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

shall bear interest at the rate specified in the Agreement, and payment thereof shall be secured by the Deed of Trust.

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

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

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

(b) All insurance policies required by this Article shall be issued by a responsible carrier authorized to do business under the laws of the State.

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

(d) In lieu of obtaining the policies of insurance required by Section 5.1, Section 5.2 and Section 5.3, the County may adopt alternative risk management programs which the County determines to be reasonable, including, without limitation, to self-insure in whole or in part, individually or in connection with other units of local government or other institutions, to participate in programs of captive insurance companies, to participate with other units of local government or other institutions in mutual or other cooperative insurance or other risk management programs, to participate in State or federal insurance programs, to take advantage of State or federal laws now or hereafter in existence limiting liability, or to establish or participate in other alternative risk management programs, all as may be reasonable and appropriate risk management by the County.

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

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

(g) Any agreement herein by the County to provide insurance and to pay the cost thereof may be carried out by the Board of Education with the same force and effect as if carried out by the County.

## ARTICLE VI

### DAMAGE AND DESTRUCTION; USE OF NET PROCEEDS

SECTION 6.1. Obligation of the County to Repair and Replace the Mortgaged Property. Unless applied to the payment in whole or in part of the remaining Installment Payments pursuant to Section 6.2 and Section 10.1, the County shall cause the Net Proceeds of any insurance policies to be deposited in a separate fund maintained by the County. Except as set forth in Section 6.2, all Net Proceeds so deposited shall be applied to the prompt repair, restoration or replacement of the Mortgaged Property. Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of such Net Proceeds shall be the property of the County, subject to the Deed of Trust and Permitted Encumbrances, and shall be included as part of the Mortgaged Property under this Agreement and the Deed of Trust.

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

(b) If the County elects not to apply the Net Proceeds to the repair, restoration or replacement of the Mortgaged Property, the County may apply the Net Proceeds of such insurance policies to the prepayment of the principal component of the Installment Payments in accordance with Article X. In the event the amount of such Net Proceeds exceeds the amount necessary to prepay the principal component of all remaining Installment Payments, plus the interest component of the Installment Payments accrued to the date of prepayment, plus all other amounts owed to Lender hereunder such excess shall be paid to or retained by the County.

Within 90 days following the receipt of Net Proceeds, unless a further extension is approved by the Lender, the County shall commence the repair, restoration or replacement of the Mortgaged Property, or shall elect, by written notice to the Lender, to apply the Net Proceeds to the prepayment of the Installment Payments under the provisions of Article X. For purposes of this subsection, "commence" shall include the retention of an engineer in anticipation of the repair, restoration, modification, improvement or replacement of the Mortgaged Property. In the event that the County shall, after commencing the repair, restoration, modification, improvement or replacement of the Mortgaged Property, determine that the Net Proceeds (plus any amount withheld therefrom by reason of any deductible clause) shall be insufficient for the accomplishment thereof, the County may, subject to the proviso set forth above, elect to apply the Net Proceeds to the prepayment of the Installment Payments under the provisions of Article X.

SECTION 6.3. Cooperation. The Lender and the County shall cooperate fully in filing any proof of loss with respect to any insurance policy covering the events specified in Article V.

## ARTICLE VII

### COVENANTS OF THE COUNTY

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

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

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

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

(c) The County or the Board of Education may, at their own expense and in their name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom; provided, however, that prior to such nonpayment, the County shall furnish to the Lender an opinion of counsel acceptable to the Lender to the effect that, by nonpayment of any such items, the interest of the Lender in the



Mortgaged Property will not be materially endangered and that all or any portion of the Mortgaged Property will not be subject to loss or forfeiture. Otherwise, subject to the Enforcement Limitation, the County shall promptly pay such taxes, assessments or charges or make provisions for the payment thereof.

SECTION 7.4. Modification of the Mortgaged Property. The County and the Board of Education shall have the right, in their sole discretion and at their own expense, to make additions, modifications and improvements to any portion of the Mortgaged Property if such additions, modifications or improvements are necessary or beneficial for the use of the Mortgaged Property. Such additions, modifications and improvements shall not in any way damage any of the Mortgaged Property (unless such damage is to be repaired as provided in Section 6.1) or cause the Mortgaged Property to be used for purposes other than those authorized under the provisions of law, and the Mortgaged Property, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is not less than the value of the Mortgaged Property immediately prior to the making of such additions, modifications and improvements. The Project, as so modified, shall be subject to the lien of the the Deed of Trust.

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

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

SECTION 7.6. Indemnification of the Lender and the Local Government Commission. To the fullest extent permitted by law and subject to the Enforcement Limitation, the County covenants to defend, indemnify and hold harmless the Lender and the LGC and their respective officers, directors, members, employees and agents (collectively, the “Indemnified Party”) against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such Indemnified Party may become subject

under any statute or at law or in equity or otherwise in connection with the transactions contemplated by this Agreement or the other Related Documents and shall reimburse any such Indemnified Party for any legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of the transactions contemplated by this Agreement or the other Related Documents. In particular, without limitation, the County shall and hereby agrees to indemnify and save the Indemnified Party harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of any breach or default on the part of the County in the performance of any of its obligations under this Agreement or the other Related Documents, subject to the Enforcement Limitation.

SECTION 7.7. Financial Statements; Certificate of No Default. (a) The County agrees that it will furnish the Lender, when the same become available, but in no event later than 270 days after the end of the Fiscal Year, its annual audited financial statements. The County also agrees that it will furnish the Lender, at the Lender's request, copies of its annual budget as approved as soon as practicable after such approval but in any event no later than 30 days after adoption. Such documents may be provided to the Lender by electronic delivery.

(b) Promptly upon request by the Lender, copies of any financial statement or report furnished to any other holder of the long term securities of the County which constitute general obligation debt of the County.

(c) Promptly upon request by the Lender, such other information respecting the business, properties, condition or operations, financial or otherwise, of the County as the Lender may from time to time reasonably request.

(d) The obligation of the County to provide the information described in subsection (a) may be satisfied by posting such information on EMMA or to the County's website and notifying the Lender of such posting.

SECTION 7.8. Federal Tax Covenant. The County covenants that, to the extent permitted by the Constitution and laws of the State of North Carolina, it will comply with the requirements of the Internal Revenue Code of 1986, as amended, so that the interest component of the Installment Payments will not be includable in the gross income of the Lender for purposes of federal income taxation.

SECTION 7.9. Additional Assurances. The County shall, upon the request of the Lender, from time to time, execute and deliver and, if necessary, file, register and record such further documents and instruments and take such further action as may be reasonably necessary to effectuate the provisions of this Agreement and the Deed of Trust. Except to the extent it is exempt therefrom, the County will pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of such instruments of further assurance, and all federal or state fees and other similar fees, duties, imposts, assessments and charges, if any, arising out of or in connection with the execution and delivery of this Agreement and such instruments of further assurance.

SECTION 7.10.       Books and Records. The County shall permit the duly authorized representatives of the Lender during normal business hours and upon reasonable notice to enter the premises of the County, or any parts thereof, to examine and copy the County's financial books, records and accounts, and to discuss the affairs, finances, business and accounts of the County with the County's officers and employees.

SECTION 7.11.       Disclosure of Information. The County agrees that the Lender may disclose any information received by the Lender in connection herewith, including without limitation the financial information described in this Section, to any institution that participates in this Agreement.

## ARTICLE VIII

### ASSIGNMENT, LEASING AND AMENDMENT

SECTION 8.1. Assignment by the Lender. The Lender may, at any time and from time to time, assign to any bank, insurance company or similar financial institution or to any other entity approved by the LGC all or any part of its interest in the Mortgaged Property or this Agreement, including, without limitation, the Lender's rights to receive the Installment Payments and any additional payments due and to become due hereunder. Reassignment by any assignee may also only be to (i) a bank, insurance company or similar financial institution, (ii) a qualified institutional buyer as defined in Rule 144A promulgated under the Securities Act of 1933, as amended or (iii) a trust or custodial arrangement established by the Lender or one of its affiliates, the owners of the beneficial interests in which are limited to qualified institutional buyers, that executes and delivers to the County and the LGC an investor letter in the form prescribed by the LGC. In the event of an assignment or reassignment of the Lender's interest in the Mortgaged Property or this Agreement as permitted hereby, the Lender shall deliver to the County a duplicate original counterpart of the document by which such assignment or reassignment is made disclosing the name and address of each assignee. The County covenants and agrees with the Lender and each subsequent assignee of the Lender to maintain for the full term of this Agreement a written record of each such assignment or reassignment. The County agrees to execute any document reasonably required by the Lender in connection with any assignment. Notwithstanding any assignment by the Lender of its interest in this Agreement, the County shall not be obligated to provide any financial or other information to any assignee of the Lender except as set forth in Section 7.7.

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

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

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

(b) The County may lease the Mortgaged Property as provided by the Lease. The County may lease any part of the Project not part of the Mortgaged Property under such terms as

conditions as the County determines, so long as such lease does not cause the County to violate the covenant set forth in Section 7.8.

The Lease and any other lease permitted by this Section 8.2 shall be subordinate to the Deed of Trust.

## ARTICLE IX

### EVENTS OF DEFAULT AND REMEDIES

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

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

(b) The occurrence of an Event of Nonappropriation.

(c) Failure by the County to observe and perform any warranty, covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto or to pay any additional payment other than as referred to in clause (a) or (b) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the County by the Lender; provided, however, that if the failure stated in the notice is subject to cure but cannot be corrected within the applicable period and if corrective action is instituted by the County within the applicable period and diligently pursued, the County shall have such additional period of time to correct the failure as shall be necessary to correct such failure so long as such correction is diligently pursued and in any event such failure is cured within 60 days following the date of the written notice specifying the failure as described above.

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

(e) The occurrence of an event that constitutes an “event of default” under the Deed of Trust.

(f) The County shall fail to pay the principal of or the interest or any redemption premium on any general obligation bonds or notes of the County, or with respect to any indebtedness

incurred by the County under the Act, as required by such bonds or notes or the documents providing for the issuance thereof, or the occurrence of any act or omission by the County under any contract under which any general obligation bonds are issued or incurred which results in such general obligation bonds becoming, or being capable of becoming, immediately due and payable.

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

(h) The long term rating assigned to any of the County's general obligation indebtedness, without regard to liquidity or credit enhancement, is withdrawn or suspended for credit-related reasons, or is reduced below the following ratings, by any one or more of the Rating Agencies: "Baa1" or its equivalent by Moody's, "BBB+" or its equivalent by Fitch, or "BBB+" or its equivalent by S&P.

(i) Failure by the County to pay when due an uninsured, final, non-appealable judgment or order in an amount of \$5,000,000 or more which shall be rendered against the County and such judgment has not been vacated, discharged, satisfied or stayed within 60 days.

(j) Any material provision of this Agreement or any of the other Related Documents shall cease to be valid and binding or shall be declared null and void; or the County or any governmental authority shall contest any such provision; or the County or any agent or trustee on behalf of the County shall deny that it has any further liability under any provision of this Agreement or any of the other Related Documents; or the County shall (A) claim that this Agreement or any of the other Related Documents is not valid or binding on it, (B) repudiate its obligations under this Agreement or any of the other Related Documents, and/or (C) initiate any legal proceedings to seek an adjudication that this Agreement or any of the other Related Documents is not valid or binding on it.

SECTION 9.2. Remedies on Default. Upon the occurrence of any Event of Default under Section 9.1, all amounts owing hereunder shall bear interest at the Default Rate and the Lender may, without any further demand or notice, exercise any one or more of the following remedies:

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

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

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

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

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

SECTION 9.4. Agreement to Pay Attorneys' Fees and Expenses. In the event the County should default under any of the provisions hereof and the Lender should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the County contained herein, the County agrees that it will pay on demand to the Lender, subject to the limitations and provisions of Section 6-21.2 of the General Statutes of North Carolina, as amended, the reasonable fees of such attorneys and such other expenses so incurred by the Lender. For purposes of this Section, the reasonable fees of attorneys shall mean attorneys' fees actually incurred at such attorneys' standard hourly rate for such services and shall not be based on any percentage of the outstanding amount due; provided, however that such attorneys' fees shall not exceed the maximum amount permitted by law.

SECTION 9.5. No Additional Waiver Implied by One Waiver. In the event any provision contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder except as may be provided by law.



## **ARTICLE X**

### **PREPAYMENT OF INSTALLMENT PAYMENTS**

SECTION 10.1. Optional Prepayment of Installment Payments. The County may prepay the outstanding principal balance hereunder, in whole or in part, on any date with two Business Days' prior written notice to the Lender, at a prepayment price equal to 100% of the outstanding principal amount to be prepaid, plus accrued interest to the prepayment date.

## ARTICLE XI

### MISCELLANEOUS

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

If to the County:

County of Wake, North Carolina  
Wake County Justice Center  
301 S. McDowell Street  
Raleigh, NC 27601  
Attention: Debt Manager

If to the Lender:

STI Institutional & Government, Inc.  
434 Fayetteville Street, 4<sup>th</sup> Floor  
Raleigh, NC 27601  
Attention: Steven G. Bullard

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

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

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

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

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

SECTION 11.6. E-Verify. The Lender hereby certifies that the Lender understands that “E-Verify” is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. The Lender uses E-Verify to verify the work authorization of its employees in accordance with Section 64-26(a) of the General Statutes of North Carolina, as amended. The Lender 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.

SECTION 11.7. Patriot Act. The Lender hereby notifies the County that pursuant to the requirements of the Patriot Act it is required to obtain, verify and record information that identifies the County, which information includes the name and address of the County and other information that will allow the Lender to identify the County in accordance with the Patriot Act. The County hereby agrees that it shall promptly provide such information upon request by the Lender.

SECTION 11.8. Payment Set Aside. To the extent that the Lender receives any payment from or on behalf of the County, which payment amount or any part thereof is subsequently invalidated, declared to constitute a fraudulent conveyance or preferential transfer, set aside, or required to be repaid (including pursuant to any settlement entered into by the Lender in its discretion) to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause (collectively, “Set Aside”); then, to the extent of any such Set Aside, the obligations or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment amount had not been received by the Lender.

SECTION 11.9. Applicable Law; Forum. This Agreement shall be construed and governed in accordance with the laws of the State of North Carolina. Each of the Lender and the County hereby waives, to the fullest extent permitted by applicable law, its right to a jury trial in any claim or cause of action arising out of this Agreement. Any disputes or controversies arising under this Agreement to be adjudicated shall be brought in the General Court of Justice of the State of North Carolina.

SECTION 11.10. Closing Date. This Installment Financing Agreement is effective as of the date of its execution and delivery.

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

COUNTY OF WAKE, NORTH CAROLINA

[SEAL]

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

Attest:

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

STI INSTITUTIONAL & GOVERNMENT, INC.

By: \_\_\_\_\_  
Authorized Agent

[Counterpart signature page to the Installment Financing Agreement, dated as of August 1, 2021, between the County of Wake, North Carolina and STI Institutional & Government, Inc.]

CERTIFICATE OF LOCAL GOVERNMENT COMMISSION

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

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

## **EXHIBIT A**

### **DESCRIPTION OF THE PROJECT**

The Project consists of the renovation, rehabilitation and improvement of existing school facilities in the County and construction of additional new public school facilities in the County, including, but not limited to, the renovation and equipping of Baucom Elementary School and Swift Creek Elementary School, the construction and equipping of Woods Creek Elementary School, Hilltop Needmore Elementary School, Rex Road Elementary School, Fuquay-Varina Middle School and Felton Grove High School, the acquisition and installation of technology devices and infrastructure, and property acquisition in connection with such facilities and for other school purposes.

**FORM OF ADVANCEMENT REQUEST**

ADVANCEMENT REQUEST NO. \_\_\_\_

[Date of Request]

STI Institutional & Government, Inc.  
c/o Truist Bank  
434 Fayetteville Street, 4th Floor  
Raleigh, NC 27601  
Attention: Steven G. Bullard  
Telephone: (919) 716-9124  
Email: [steve.bullard@truist.com](mailto:steve.bullard@truist.com)

Tel: \_\_\_\_\_ | Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Re: Installment Financing Agreement, dated as of August 1, 2021 (the “Installment Financing Agreement”), between County of Wake, North Carolina (the “County”) and STI Institutional & Government, Inc. (the “Lender”)

The County hereby requests that the Lender make an Advancement in the amount of \$[\_\_\_\_\_] on [\_\_\_\_\_] pursuant to the Installment Financing Agreement, such amount to be deposited to as follows:

Bank Name: \_\_\_\_\_

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

Account Number \_\_\_\_\_

Capitalized terms used herein and not defined shall have the meanings assigned in the Installment Financing Agreement.

The amounts hereby requested relate to the Project financed under the Installment Financing Agreement.

The County hereby represents and warrants that:

(a) no Event of Default has occurred and is continuing under the Installment Financing Agreement;

(b) the date of the requested Advancement meets the requirements of Section 3.1 of the Installment Financing Agreement;

(c) the amount of the Advancement will not result in all Advancements exceeding the current Facility Amount as provided in the Installment Financing Agreement;

(d) all representations and warranties of the County in the Installment Financing Agreement are true and correct and are deemed to be made on the date hereof; and

(e) all conditions to this Advancement required under the Installment Financing Agreement have been satisfied.

When payment of the Advancement Request is made, please provide confirmation of payment to the undersigned, with copies to the LGC at the addresses specified below.

Very truly yours,

WAKE COUNTY, NORTH CAROLINA

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

Name:

Title:

cc: Tim.Romocki@nctreasurer.com



**EXHIBIT C**  
**CONDITIONS**

Part 1. Conditions to Closing Date. The effectiveness of the Installment Financing Agreement is subject to the conditions precedent that the Lender shall have received, on or before the Closing Date, the items listed below in this Part 1, each dated and in form and substance as is satisfactory to the Lender. Should the Lender execute and deliver the Installment Financing Agreement prior to its receipt and approval of any of the following items, such purchase shall not be deemed to be a waiver of any documentary requirement.

(a) The following:

(i) Copies of the resolutions of the Board of Commissioners approving the execution and delivery of the Installment Financing Agreement and the Related Documents certified by the Clerk to the Board as being true and complete and in full force and effect on the date of the Closing Date;

(ii) Certified copies of all approvals of governmental authorities required for the County's execution, delivery and performance of the Related Documents, including that of the North Carolina Local Government Commission;

(iii) A certificate by the Clerk to the Board certifying the names and signatures of the persons authorized to sign, on behalf of the County, the Related Documents and the other documents to be delivered by it thereunder;

(b) An executed original of the Installment Financing Agreement and each of the Related Documents;

(c) The following opinions, addressed to the Lender or on which the Lender is otherwise expressly authorized to rely:

(i) From counsel to the County, as to the due authorization, execution and delivery of the Installment Financing Agreement and the Related Documents, their validity, binding effect and enforceability, and such other customary matters as the Lender may reasonably request;

(ii) From tax counsel, in customary form, an opinion to the effect that the Installment Financing Agreement has been duly authorized and validly executed and delivered and that the interest will not be included in gross income of the Lender for federal tax purposes; and

(iii) Each other opinion delivered by any Person pursuant to the Installment Financing Agreement Related Documents.

(d) The following additional documents relating to the Project and Mortgaged Property:

(i) An independent flood certification in form and substance satisfactory to the Lender and which supports a finding that none of the Mortgaged Property is in any “special flood hazard area” within the meaning of the Federal Flood Disaster Protection Act of 1973 or evidence of flood insurance in form and amount satisfactory to the Lender if the Mortgaged Property is in any such “special flood hazard area”;

(ii) Such other documentation with respect to the Project as may be reasonably requested by the Lender.

(e) A certificate signed by a principal officer of the County, stating that on and as of the Closing Date (i) the County is in compliance with all of the terms, provisions and conditions of the Related Documents; (ii) all requirements and preconditions to the issuance, execution, delivery and purchase of the Related Documents have been satisfied; (iii) the County has complied with all agreements and covenants and satisfied all conditions stated in this Agreement on its part to be performed or satisfied at or prior to the Closing Date; (iv) each representation and warranty on the part of the County contained in the Related Documents is true and correct as though made on and as of the Closing Date, (v) no default or event of default has occurred and is continuing or would result from the execution or performance of the Related Documents to which the County is a party.

(f) Evidence that the unenhanced long-term rating assigned to the County’s general obligation debt shall be not less than “AAA” in the case of S&P Global Ratings, “AAA” in the case of Fitch, Inc. and “Aaa” in the case of Moody’s Investor’s Service.

(g) Such other instruments, documents and opinions as the Lender shall reasonably require.

## Part 2. Conditions to Advancements.

The obligation of the Lender to make Advancements is subject to satisfaction of the following conditions:

(a) The Lender shall receive a written request for an Advancement Request executed by a duly authorized representative of the County prior to 5:00 p.m., eastern time, at least two (2) Business Days prior to the date on which the requested Advancement is to be made (each, an “Advancement Date”);

(b) No Event of Default shall have occurred and be continuing on the Advancement Date;

(c) The obligation of the Lender to make Advancements shall not have been terminated pursuant to Section 3.4

(d) The County shall be deemed to make all representations and warranties made by the County in this Agreement on the Advancement Date and each such representation and warranty shall be true in all material respects;

(e) The then requested Advancement does not exceed the maximum of four Advancements in a month; and

(f) The aggregate amount of such Advancements, including the then requested Advancement, shall not exceed the then current Facility Amount, and the sum of the requested Advancement and all prior Advancements does not exceed \$584,065,000.