

Loan Agreement – North Carolina Central University

The Board of Governors is authorized to issue special obligation bonds for capital improvements projects that have been approved by the General Assembly. Although a specific source of funding is used by a campus when retiring these bonds, special obligation bonds are generally payable from all campus revenues excluding tuition, State appropriations, and restricted reserves.

North Carolina Central University has requested that the Board enter into a loan for the purpose of (1) refunding a portion of the Series 2004B University of North Carolina System Pool Revenue Bonds issued for the benefit of North Carolina Central University that result in sufficient savings, and (2) paying the costs incurred in connection with entering into this loan. The loan agreement and note to refund the remaining portion of prior revenue bonds or special obligation bonds issued on behalf of NCCU will not exceed \$5,200,000 and 10 years. It is possible that no bonds will be refunded with this transaction if market conditions at the time of pricing do not produce sufficient savings.

Often campuses will issue special obligation bonds for refinancing but there are a number of fixed costs with issuing bonds in the public market. In addition, the loan amount and expected term are relatively small and short in duration which would probably lead to a higher interest rate and provide less volume to spread the fixed issuance costs if publicly sold. As a result, a tax free loan agreement and note provided by a commercial bank on a private placement basis are expected to be the most cost effective method to refinance.

## APPENDIX B

No credit rating will be obtained for the loan. North Carolina Central University's parity obligations are rated "A3" with a "stable" outlook by Moody's Investors Service. After entering into this loan, it is expected NCCU will maintain its rating.

North Carolina Central University expects to place the loan competitively. Parker Poe is serving as bond counsel; First Tryon Advisors is serving as the financial advisor.

It is recommended that the Chancellor of North Carolina Central University be authorized to enter into a loan between the December 5, 2014 and December 31, 2014 through the following resolution:

## APPENDIX B

### **RESOLUTION OF THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA AUTHORIZING NORTH CAROLINA CENTRAL UNIVERSITY TO ENTER INTO A LOAN TO REFUND OBLIGATIONS WITH RESPECT TO SPECIAL OBLIGATION BOND PROJECTS FOR NORTH CAROLINA CENTRAL UNIVERSITY**

**WHEREAS**, by Chapter 116 of the General Statutes of North Carolina, the Board of Governors (the “*Board*”) of the University of North Carolina (the “*University*”) is vested with general control and supervision of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University (“*NCCU*”), North Carolina State University, The University of North Carolina at Asheville, The University of North Carolina at Chapel Hill, The University of North Carolina at Charlotte, The University of North Carolina at Greensboro, The University of North Carolina at Pembroke, The University of North Carolina at Wilmington, The University of North Carolina School of the Arts, Western Carolina University and Winston-Salem State University and other institutions; and

**WHEREAS**, the Board is authorized by Chapter 116D of the General Statutes of North Carolina (the “*Act*”) to issue, subject to the approval of the Director of the Budget, at one time or from time to time, (1) special obligation bonds of the Board for the purpose of paying all or any part of the cost of acquiring, constructing, or providing special obligation projects and (2) refunding bonds for the purpose of refunding any bonds by the Board under the Act or under any Article of Chapter 116 of the General Statutes of North Carolina, including the payment of any redemption premium on them and any interest accrued or to accrue to the date of redemption of the bonds refunded; and

**WHEREAS**, Board has issued its System Pool Revenue Bonds, Series 2004B (the “*2004B Bonds*”) in the aggregate principal amount of \$11,595,000, of which \$4,945,000 is currently outstanding and a portion of the proceeds of which were loaned to NCCU to refinance certain outstanding indebtedness which financed the costs of constructing and equipping of a residence known as Childley Hall on the campus of NCCU and the renovation of and improvements to Annie Day Shepard Hall, Baynes Hall, Eagleson Hall, Latham Hall, McLean Hall and Rush Hall on the campus of NCCU authorized by Chapter 665 of the 1993 Session Laws of the North Carolina General Assembly and Chapter 686 of the 1996 Session Laws of the North Carolina General Assembly (collectively, the “*Special Obligation Projects*”);

**WHEREAS**, NCCU has advised the Board that it is able to refund the 2004B Bonds and reduce its debt service costs in each Fiscal Year through the final maturity of the 2004B Bonds and proposes to obtain the funds to do so by entering into a loan agreement dated as of December 17, 2014 between NCCU and a financial institution to be determined by the Vice Chancellor for Administration and Finance of NCCU (the “*Loan Agreement*”) and execute and deliver a promissory note to such financial institution (the “*Note*”); and

**WHEREAS**, the obligations under the Loan Agreement and Note are payable solely from any legally available funds of NCCU, or of the Board held for NCCU, in each Fiscal Year, but excluding (1) appropriations by the General Assembly of the State from the State General Fund,

## APPENDIX B

(2) tuition payments by NCCU students, (3) funds whose purpose has been restricted by the gift, grant or payee thereof, (4) revenues generated by Special Facilities, and (5) funds restricted by law (the “*Available Funds*”); and

**WHEREAS**, there have been made available to the Board form of the Loan Agreement and Note which the Board proposes to approve, ratify and authorize NNU to execute and deliver to effectuate the refinancing; and

**WHEREAS**, the execution and delivery of the Loan Agreement and Note does not directly or indirectly or contingently obligate the State or any agency or political subdivision of the State to levy or to pledge any taxes to pay the cost, in whole or in part, of the Special Obligation Bond Projects in compliance with Section 116D-23 of the Act;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Governors of the University of North Carolina as follows:

Section 1. ***Sufficiency of Available Funds.*** That the Board hereby finds that sufficient Available Funds are available to pay the principal of and interest on the Loan Agreement and Note.

Section 2. ***Authorization of Loan Agreement and Note.*** That the form and content of the Loan Agreement and Note are and the same hereby are in all respects authorized, approved and confirmed, and the Chancellor and Vice Chancellor for Administration and Finance of NCCU be and they hereby are each authorized, empowered and directed to execute and deliver the Loan Agreement and Note for and on behalf of NCCU, including necessary counterparts, in substantially the form and content presented to the Board and in an amount not to exceed \$5,200,000, but with such changes, modifications, additions or deletions therein as to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of the Board’s approval of any and all such changes, modifications, additions or deletions therein.

Section 3. ***General Authority.*** From and after the execution and delivery of the Loan Agreement and Note, the President and the Senior Vice President-Finance and Chief Operating Officer of the University and the Secretary of the University and the Chancellor and Vice Chancellor for Administration and Finance of NCCU are each hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of said documents as executed, and are further authorized to take any and all further actions to execute and deliver any and all other documents as may be necessary to the issuance and on-going administration of the Loan Agreement and Note.

Section 4. ***Conflicting Provisions.*** All resolutions or parts thereof of the Board in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

## APPENDIX B

Section 5. *Effective Date.* This Resolution is effective immediately on the date of its adoption.

The foregoing Resolution was duly adopted by the Board at a regular meeting of the Board held on the 5<sup>th</sup> day of December, 2014, and that the same was passed and adopted by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

*PASSED, ADOPTED, AND APPROVED* this 5<sup>th</sup> day of December, 2014.

APPENDIX B

STATE OF NORTH CAROLINA	)		SECRETARY'S
	)	SS:	CERTIFICATE
COUNTY OF ORANGE	)		OF AUTHENTICATION

I, Ann Lemmon, Secretary of the University of North Carolina, *DO HEREBY CERTIFY* that (1) the foregoing is a full, true and correct copy of the approving resolution adopted by the Board of Governors of the University of North Carolina at its regular meeting on December 5, 2014 and appearing in the minutes of such meeting, (2) notice of the meeting of the Board of Governors of the University of North Carolina held on December 5, 2014 was sent to each member of the Board, and (3) a quorum was present at the meeting on December 5, 2014 at which time the foregoing Resolution was adopted.

**WITNESS**, my hand and the seal of the University of North Carolina this 5<sup>th</sup> day of December, 2014.

[SEAL]

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Ann Lemmon, Secretary  
The University of North Carolina

**LOAN AGREEMENT**

BETWEEN

**NORTH CAROLINA CENTRAL UNIVERSITY,**  
AS BORROWER,

AND

**[NAME OF BANK],**  
AS LENDER

DATED AS OF  
DECEMBER 17, 2014

RELATING TO:

***[\$AMOUNT]***  
***NORTH CAROLINA CENTRAL UNIVERSITY***  
***PROMISSORY NOTE***

## APPENDIX B

### LOAN AGREEMENT

This **LOAN AGREEMENT** is made and entered into as of December 17, 2014, between **NORTH CAROLINA CENTRAL UNIVERSITY** ("**NCCU**"), a constituent institution of The University of North Carolina (the "**University**"), governed by its Board of Governors (the "**Board of Governors**"), a body politic and corporate of the State of North Carolina, and [**NAME OF BANK**], a [state banking corporation with its principal place of business in \_\_\_\_\_, North Carolina] (the "**Bank**").

### **PREAMBLES**

**WHEREAS**, North Carolina Central University ("**NCCU**") wishes to refund The University of North Carolina System Pool Revenue Bonds, Series 2004B (the "**2004B Bonds**"), maturing on and after April 1, 2015, the payment for which NCCU is responsible; and

**WHEREAS**, NCCU used the proceeds of the 2004B Bonds loaned to it by the Board to refinance certain outstanding indebtedness which financed the costs of constructing and equipping of a residence known as Childley Hall on the campus of NCCU and the renovation of and improvements to Annie Day Shepard Hall, Baynes Hall, Eagleson Hall, Latham Hall, McLean Hall and Rush Hall on the campus of NCCU authorized by Chapter 665 of the 1993 Session Laws of the North Carolina General Assembly and Chapter 686 of the 1996 Session Laws of the North Carolina General Assembly (the "**Special Obligation Bond Projects**"); and

**WHEREAS**, NCCU wishes to borrow from the Bank a loan in the amount of \$[Amount] (the "**Loan**"), such Loan to be evidenced by NCCU's promissory note dated the date of its execution and delivery in the principal amount of the Loan (the "**Note**"), to finance the costs of refunding the 2004B Bonds now outstanding; and

**WHEREAS**, under Article 3, Section 116D-26(b) General Statutes of North Carolina, the Board of Trustees of NCCU in a resolution adopted on February 18, 2004, has approved the Special Obligation Bond Projects as a condition precedent to the issuance of the 2004B Bonds;

**WHEREAS**, NCCU will pay the principal of and interest on the Note and other obligations due under this Agreement and Note solely from Available Funds (as defined herein);

**WHEREAS**, the obligation of NCCU to make the payments of the principal of and interest on the Note shall constitute a special obligation of NCCU, payable solely from Available Funds, and shall not constitute a general obligation or other indebtedness of NCCU, or constitute a direct or indirect pledge of the faith and credit or taxing power of NCCU, within the meaning of the Constitution of the State; and

**WHEREAS**, in reliance on the representations made by NCCU, the Bank has agreed to make the Loan to NCCU in the principal amount of \$[Amount], in exchange for NCCU's Note to refund the 2004B Bonds on such terms and conditions as set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the premises and the terms, provisions, conditions and covenants hereinafter set forth, the parties hereto agree as follows:

## DEFINITIONS

**Definitions.** The following terms have the meanings specified below unless the context clearly requires otherwise:

**“Act”** means, collectively, Article 3 of Chapter 116D of the General Statutes of North Carolina and Chapter 665 of the 1993 Session Laws and Chapter 686 of the 1996 Session Laws of the North Carolina General Assembly.

**“Agreement”** means this Loan Agreement, dated as of December 17, 2014, between NCCU and the Bank.

**“Arbitrage and Tax Regulatory Certificate”** means the Arbitrage and Tax Regulatory Certificate of NCCU executed as of the Closing Date.

**“Available Funds”** means any legally available funds of NCCU, or of the Board of Governors held for NCCU, in each Fiscal Year, but excluding (1) appropriations by the General Assembly of the State from the State General Fund, (2) tuition payments by NCCU students, (3) funds whose purpose has been restricted by the gift, grant or payee thereof, (4) revenues generated by Special Facilities and (5) funds restricted by law.

**“Bank”** means [Name of Bank], a [state banking corporation], and its successors and assigns.

**“Bank Representative”** means any person or persons at the time designated to act on behalf of the Bank for purposes of performing any act on behalf of the Bank under this Agreement by a written certificate furnished to NCCU containing the specimen signatures of such person or persons and signed on behalf of the Bank by an authorized officer of the Bank.

**“Business Day”** means a day on which the Bank, at its principal corporate offices, is not required or authorized by law to remain closed.

**“Closing Date”** means December 17, 2014, the date of execution and delivery of this Agreement and the Note.

**“Code”** means the Internal Revenue Code of 1986, as amended, including regulations promulgated thereunder.

**“Event of Default”** means one or more events of default as defined in Section 9.1.

**“General Closing Certificate”** means the general closing certificate executed by NCCU and dated as of the Closing Date.

**“Insurance Consultant”** means an organization or individual which (1)(a) does not have any direct financial interest (except for the contractual right to receive payment in connection with the performance of the services as an Insurance Consultant or for other professional services) in NCCU and (b) is not connected with NCCU; (2) is appointed by NCCU and, (3) qualified to pass on questions relating to insurance affairs of facilities of the type or types operated by NCCU, and has a favorable reputation for skill and experience in the financial affairs of such facilities as determined by NCCU.

***“Interest Payment Date”*** means each April 1 and October 1, commencing April 1, 2015.

***“Interest Rate”*** means [     ]%, calculated on the basis of a 360-day year of 12 thirty-day months.

***“Loan”*** means the principal amount of \$[Amount], loaned by the Bank to NCCU to refinance the 2004B Bonds and pay the costs of issuance of this Loan under the terms of this Agreement, as evidenced by the Note.

***“Note”*** means the promissory note issued on December 17, 2014, to evidence the indebtedness under this Agreement.

***“NCCU”*** means North Carolina Central University, a constituent institution of The University of North Carolina and governed by the Board of Governors, a body politic and corporate of the State of North Carolina, or any successor to its functions.

***“NCCU Representative”*** means the person or persons at the time designated to act on behalf of NCCU for the purpose of performing any act under this Agreement by a written certificate furnished to the Bank containing the specimen signatures of such person or persons and signed on behalf of NCCU by an authorized official of NCCU, or if any or all of NCCU’s rights and obligations are assigned under this Agreement, the person or persons at the time designated to act on behalf of NCCU and the assignee by a written certificate similarly furnished and of the same tenor.

***“Other Indebtedness”*** means capital leases, installment financing agreements or other contracts used to provide capital improvements to NCCU not evidenced by Parity Debt or Subordinate Debt.

***“Parity Debt”*** means obligations of NCCU or the Board of Governors with respect to NCCU other than the Note which are payable on a parity basis with the Note from Available Funds.

***“Special Facilities”*** mean facilities financed with obligations issued under authorizing legislation other than North Carolina General Statutes Sections 116D-21 *et seq.*, as supplemented and amended, such as NCCU facilities financed for or leased by nongovernmental persons or by the United States Government or its agencies or facilities financed for entities subordinate or related to NCCU and revenues from which are used to repay such obligations.

***“State”*** means the State of North Carolina.

***“Subordinate Indebtedness”*** means debt incurred by or on behalf of NCCU, the payment of the principal and interest on which is payable from Available Funds after payment of the principal of and interest on the Note and Parity Debt.

***“2004B Bonds”*** means The University of North Carolina System Pool Revenue Bonds, Series 2004B maturing on and after April 1, 2015 currently outstanding, the payment for which NCCU is responsible.

## **LOAN; ISSUANCE OF NOTE; DETAILS OF NOTE**

***Loan.*** The Bank agrees to lend NCCU the principal amount of \$[Amount], to be used to refund the 2004B Bonds and pay the costs of issuance of the Loan and for no other purpose. NCCU hereby

## APPENDIX B

accepts the Loan and, as evidence of its obligation to repay the Loan, simultaneously issues and delivers to the Bank the Note. NCCU shall repay the Loan in accordance with the provisions of the Note and this Agreement. NCCU acknowledges that the proceeds of the Loan will be advanced on the Closing Date, \$[ ] of which will be transferred directly by the Bank to U. S. Bank National Association, as trustee for the 2004B Bonds, and the balance of which will be transferred to the State Treasurer by the Bank, each in accordance with NCCU's instructions to the Bank.

***Issuance of Note; Details.*** The principal amount advanced under this Agreement of \$[Amount] will be evidenced by the Note made payable to the order of the Bank in the principal amount of \$[Amount].00. The Note will be issued as a single fully registered note initially in the denomination of \$[Amount], dated the Closing Date and numbered R-1. Principal and interest on the Note are payable in lawful money of the United States of America, solely from Available Funds, in immediately available funds delivered by NCCU to the Bank on each payment date when due. NCCU shall issue the Note in substantially the form of Exhibit A attached to this Agreement, with such appropriate variations, omissions and insertions as permitted or required by this Agreement.

***Advances under Loan.*** The Bank shall advance the entire principal amount under this Agreement to NCCU as provided in Section 2.1.

***Interest; Payment of Principal and Interest.*** The outstanding principal amount of the Loan under this Agreement, as evidenced by the Note, shall bear interest (computed on the basis of a 360-day year of twelve 30-day months) at the Interest Rate. Interest shall accrue on the outstanding principal amount of the Note from the Closing Date. Principal of the Note is due in annual installments on April 1 of the years and in the amounts set forth below:

<u>YEAR</u>	<u>PRINCIPAL AMOUNT</u>	<u>YEAR</u>	<u>PRINCIPAL AMOUNT</u>
2015		2020	
2016		2021	
2017		2022	
2018		2023*	
2019			

\*Maturity

***Late Payments.*** Interest on the principal of the Note shall continue to accrue at the Interest Rate until paid. In addition, if NCCU fails to pay the interest on or principal of the Note when due, such payment shall accrue interest at the Interest Rate until paid. If a payment or principal of or interest on the Note is due on a day which is not a Business Day, such payment is due on the next succeeding Business Day and NCCU shall make such payment on such Business Day with no additional interest due thereon.

***Place of Payments.*** All payments required to be made to the Bank under this Agreement and the Note are to be made to the Bank at the address set forth in Section 10.3 in immediately available funds or as may be otherwise directed in writing by the Bank.

***Prepayment of Note.*** On each Interest Payment Date, NCCU has the option to prepay the outstanding principal amount of the Note in whole, but not in part, at the prepayment price of [ ]% of the principal amount to be prepaid. NCCU shall also pay the accrued and unpaid interest on such principal amount prepaid on the day of such prepayment.

***Execution of Note.*** The Note is to be executed on behalf of NCCU by its Chancellor by manual signature, have impressed on it NCCU's official seal and be attested by the Vice Chancellor for

Administration and Finance of NCCU. If any officer whose signature appears on the Note ceases to be such officer before the delivery of the Note, such signature is nevertheless valid and sufficient for such purposes, the same as if such person had remained in office until delivery.

**Registration and Exchange of Note.** The transfer of the Note will be registered on books maintained for that purpose by the NCCU. Before due presentment for registration of transfer, NCCU shall treat the registered owner of the Note as the person exclusively entitled to payment of the principal of and interest on and the exercise of all other rights and powers of the owner of the Note.

**No Set-Off.** The obligation of NCCU to make the payments of principal of and interest on the Note and all other required payments under this Agreement and the Note and to perform and observe the other agreements contained in this Agreement is absolute and unconditional. NCCU will pay without abatement, reduction, diminution or deduction (whether for taxes or otherwise) all such amounts regardless of any cause or circumstance whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim that NCCU may have or assert against the Bank or any other person. NCCU assumes and shall bear the entire risk of loss, damage to and condemnation of the Special Obligation Bond Projects from any cause whatsoever, it being the intention of the parties that the payments of principal of and interest on the Note shall be made in all events unless the obligation to make such payments is terminated as otherwise provided in this Agreement.

## SPECIAL OBLIGATION

**Payment Obligation.** NCCU shall apply Available Funds to the payment of principal of and interest on the Note and any additional obligations secured by Available Funds as the same become due.

**Special Obligation.** The Note is a special obligation of NCCU, payable solely from Available Funds. The Note shall not be deemed to constitute a debt or liability of the State or any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision. Neither the State nor any political subdivision or instrumentality thereof shall be obligated to pay the same or the interest thereon except from the sources described herein, and neither the faith and credit nor the taxing power of the State or of any political subdivision or instrumentality thereof is pledged to the payment of the principal of or the interest on the Note. The Note does not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any taxes whatsoever therefor. NCCU shall pay promptly, as provided herein, the principal of and interest on the Note, together with any other payments due with respect to the Note hereunder, but such amounts are payable solely from Available Funds.

## CONDITIONS PRECEDENT TO MAKING LOAN

**Conditions Precedent to Making Loan.** The obligation of the Bank to make the Loan and to advance the principal amount of \$[Amount] to NCCU under this Agreement and the Note is subject to the following conditions precedent:

This Agreement and the Note, in form satisfactory to the Bank, have been authorized, executed and delivered by the authorized officials of NCCU to the Bank.

## APPENDIX B

The Bank has received evidence satisfactory to the Bank of the due authorization, execution and delivery of this Agreement and the Note, together with an opinion of counsel to NCCU, satisfactory to the Bank, with respect to NCCU's power and authority to undertake the Loan, to execute and deliver this Agreement and the Note, to undertake the transactions contemplated hereunder and thereunder, and as to the validity and enforceability thereof.

The Bank has received an opinion of Parker Poe Adams & Bernstein LLP, as special counsel, satisfactory to the Bank, to the effect that the interest on the Note is excludable from gross income of the recipient thereof for federal income tax purposes.

As of the Closing Date, NCCU is in compliance with all the terms and provisions set forth in this Agreement on its part to be observed or performed, and no Event of Default specified in this Agreement, nor any event which on notice or lapse of time or both would constitute such an Event of Default, has occurred and is continuing.

No material adverse change has occurred in the financial condition of NCCU.

The Bank has received a General Closing Certificate and Arbitrage and Tax Regulatory Certificate from NCCU acceptable to the Bank.

### REPRESENTATIONS AND WARRANTIES

***Representations and Warranties of NCCU.*** NCCU warrants and represents to the Bank, all such representations and warranties to be continuing and which shall survive the making of the Loan, this Agreement and the Note, as follows:

NCCU is a constituent institution of The University of North Carolina, a body politic and corporate of the State, validly organized and existing under the laws of the State, and has all powers necessary to enter into the transactions contemplated by this Agreement and the Note and to carry out its obligations hereunder and thereunder;

NCCU agrees that during the term of this Agreement, to the extent it may in good faith reasonably do so, it will take no action that would adversely affect its existence as a constituent institution of The University of North Carolina, cause NCCU to be consolidated with or merge into a political subdivision of the State or permit one or more political subdivisions of the State to consolidate with or merge into it, unless NCCU is the surviving political subdivision or the political subdivision of the State created thereby expressly assumes in writing NCCU's obligations under this Agreement and the Note;

NCCU is authorized by the Act to borrow the Loan for the purpose of refunding the 2004B Bonds and paying the costs of issuance of the Loan and to repay the Loan from Available Funds;

The execution and delivery of this Agreement and the Note and the issuance of the Note in the principal amount of \$[Amount] to refund the 2004B Bonds and pay the costs of issuance of the Loan were authorized by the Board of Governors of the University of North Carolina at a

## APPENDIX B

public meeting, during which a quorum was present and acting throughout, held on December 17, 2014;

The proceeds of the Note, together with the funds provided by NCCU, will be sufficient to discharge the 2004B Bonds;

This Agreement, the Note and all other documents relating to this Agreement and the performance of NCCU's obligations hereunder and thereunder have been duly and validly authorized, executed and delivered by NCCU and approved under all laws, regulations and procedures applicable to NCCU including, but not limited to, compliance with public meeting and bidding requirements, and, assuming due authorization, execution and delivery thereof by the other parties thereto, constitute valid, legal and binding obligations of NCCU, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency and other laws affecting the enforcement of creditors' rights generally and such principles of equity as a court having jurisdiction may impose;

Neither the execution and delivery of this Agreement or the Note or the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement or the Note conflicts with or results in a breach of the terms, conditions, or provisions of any restriction or any agreement or instrument to which NCCU is now a party or by which NCCU is bound or constitutes a default under any of the foregoing, nor conflicts with or results in a violation of any provision of applicable law or regulation governing NCCU and no representation, covenant and warranty in this Agreement is false, misleading or erroneous in any material respect;

There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best of NCCU's knowledge, threatened, against or affecting NCCU, challenging the validity or enforceability of this Agreement, the Note or any other documents relating to this Agreement, and the performance of NCCU's obligations hereunder and thereunder, and compliance with the provisions hereof or thereof, under the circumstances contemplated hereby or thereby, does not and will not in any material respect conflict with, constitute on the part of NCCU a breach of or default under, or result in the creation of a lien or other encumbrance on any property of NCCU (except as contemplated herein or therein) pursuant to any agreement or other instrument to which NCCU is a party, or any existing law, regulation, court order or consent decree to which NCCU is subject;

No approval or consent is required from any governmental authority with respect to the entering into or performance by NCCU of this Agreement, the Note and all other documents related thereto and the transactions contemplated hereby and thereby or if such approval is required, it has been duly obtained;

The resolution relating to the performance by NCCU of this Agreement, the Note and the transactions contemplated hereby and thereby, has been duly adopted, is in full force and effect, and has not been in any respect modified, revoked or rescinded;

The financial statements, if any, which NCCU has submitted to the Bank to induce the Bank to make the Loan are correct and complete, and accurately present the financial condition of NCCU on the dates thereof, including the amount of Available Funds, and the results of NCCU's operations for the periods then ended;

## APPENDIX B

NCCU is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is party; and

NCCU shall take all action and do all things which it is authorized by law to take and do in order to perform and observe all covenants and agreements on its part to be performed and observed under this Agreement and the Note and in order to provide for and to assure payment of the Note and the interest thereon when due, but solely in accordance with and subject to the limitations contained in the Note and this Agreement.

***No Representations by the Bank.*** NCCU acknowledges and agrees that it has selected the property constituting the Special Obligation Bond Projects based on its own judgment and disclaims any reliance on any statements or representations by the Bank with respect thereto.

### SPECIAL COVENANTS

***Insurance.*** NCCU covenants that it will maintain or cause to be maintained insurance of such type, against such risks and in such amounts, with insurance companies, captive insurance companies or by means of self-insurance, as are customarily carried by public universities located in the State and of a nature or geographic location similar to NCCU. If NCCU is unable to procure applicable coverage from North Carolina admitted companies because it determines that such coverage cannot be acquired, or cannot be acquired at reasonable rates or on reasonable conditions, then NCCU will immediately retain an Insurance Consultant who shall determine what coverage can be acquired at reasonable rates or on reasonable conditions. NCCU shall procure any such coverages required by the determination of the Insurance Consultant; but if the Insurance Consultant determines that no such coverage can be acquired at reasonable rates or on reasonable conditions, NCCU shall, subject to applicable laws concerning self-insurance or insurance pools, provide coverage by a program of self-insurance or through an insurance pool, including other governmental entities.

***No Additional Debt Under Existing Documents; Additional Debt; Liens or Charges.*** NCCU covenants that neither it nor the Board of Governors on its behalf:

- (1) will issue any other obligations under any existing bond resolution, trust indenture or other financing document which authorizes the issuance of debt obligations secured by revenues or net revenues from any NCCU enterprise;
- (2) will issue any obligations payable from Available Funds, unless such obligations constitute Parity Debt, Subordinate Indebtedness or Other Indebtedness; and
- (3) will create any lien or charge on the Available Funds.

The Board of Governors need not pay or cause to be discharged or make provision for any lien or charge as long as the validity thereof is being contested in good faith by appropriate legal proceedings. Neither NCCU nor the Board of Governors on its behalf will permit a lien to be placed on NCCU property, except in connection with the issuance of Other Indebtedness.

***Financial Statements.*** NCCU shall furnish the Bank, (1) within 210 days after the close of each fiscal year, annual unaudited financial statements and (2) as soon as they are available, annual financial

statements on an audited basis, prepared by the North Carolina State Auditor. NCCU represents and warrants to and covenants with the Bank that all financial statements which have been or may be delivered to the Bank fairly and accurately reflect NCCU's financial condition as of the date thereof and there has been and will be no material adverse change in NCCU's financial condition as reflected in the financial statements since the respective dates thereof. NCCU shall furnish the Bank, at such reasonable times as the Bank shall request, all other financial information as the Bank may reasonably request.

**Taxes.** NCCU will pay when due any and all taxes relating to NCCU's obligations under this Agreement including, but not limited to, all license or registration fees, gross receipts tax, sales and use tax, if applicable, license fees, documentary stamp taxes, rental taxes, assessments, charges, ad valorem taxes, excise taxes, and all other taxes and charges imposed on the ownership, possession or use of its properties by any governmental body or agency, together with any interest and penalties.

**Access to Books and Records.** NCCU will allow the Bank, or its agents, at all reasonable times to have unrestricted access to the records, accounting books and financial statements of NCCU, and the Bank shall have the right to make copies thereof.

## TAX COVENANTS AND REPRESENTATIONS

**General Tax Covenants and Representations.** NCCU covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Note under Section 103 of the Code. NCCU will not directly or indirectly use or permit the use of any proceeds of any fund created under this Agreement or any funds of NCCU, or take or omit to take any action that would cause the Note to be an "*arbitrage bond*" within the meaning of Section 148(a) of the Code. NCCU will maintain books on which will be recorded the Bank and any assignee of the Note as the registered owner of the Note. To that end, NCCU has executed the Arbitrage and Tax Regulatory Certificate and will comply with all requirements of Section 148 of the Code to the extent applicable. NCCU further covenants that this Agreement and the Note is not a "*private activity bond*" as defined in Section 141 of the Code. Notwithstanding any provision of this Article, if NCCU provides to the Bank an opinion of nationally recognized bond counsel to the effect that any action required under this Section or the Arbitrage and Tax Regulatory Certificate is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of the interest on the Note pursuant to Section 103 of the Code, NCCU and the Bank may rely conclusively on such opinion in complying with the provisions of this Article.

**Rebate Amounts.** Without limiting the generality of the foregoing, NCCU agrees that there shall be paid from time to time all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code and any temporary, proposed or final Treasury Regulations as may be applicable to the obligation created by this Agreement from time to time. This covenant shall survive the termination of this Agreement.

**Not Bank Qualified.** NCCU and the Bank acknowledge that the Note is not a "*qualified tax-exempt obligation*" and therefore is not eligible for the exception from the disallowance of the deduction of interest by financial institutions allocable to the cost of carrying tax-exempt obligations permitted by the provisions of Section 265(b)(3) of the Code.

## EVENTS OF DEFAULT; REMEDIES

***Events of Default.*** The term “*Event of Default*” means any one or more of the following events:

NCCU fails to pay, or cause to be paid, in full any payments of principal of or interest on the Note required under this Agreement and the Note when due, whether at maturity, redemption, acceleration or otherwise pursuant to the terms of this Agreement or the Note;

NCCU fails to pay, or cause to be paid, in full any payments of principal of or interest on any other debt obligations payable from Available Funds when due, whether at maturity, redemption, acceleration or otherwise pursuant to the terms of such debt obligations;

NCCU fails to pay, or cause to be paid, in full any payments under this Agreement when due or fails duly to perform, observe or comply with any covenant, condition or agreement on its part under this Agreement (other than a failure to make any payment under Section 8.1(a)) or the Arbitrage and Tax Regulatory Certificate, and such failure continues for a period of 30 days after the date on which written notice of such failure, requiring the same to be remedied, has been given to NCCU by the Bank, but if such performance, observation or compliance requires work to be done, action to be taken, or conditions to be remedied, which by their nature cannot reasonably be done, taken or remedied, as the case may be, within such 30 day period, no Event of Default will be deemed to have occurred or to exist if, and so long as, NCCU commences such performance, observation or compliance within such period and diligently and continuously prosecutes the same to completion, such additional period not to extend an additional 90 days, unless the Bank consents, such consent not to be unreasonably withheld or delayed;

Any representation or warranty made in this Agreement shall prove to be false or misleading in any material respect;

Any report, certificate, financial statement or other instrument furnished in connection with this Agreement or the Note shall prove to be false or misleading in any material respect;

The entry of a decree or order for relief against NCCU, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of NCCU under the United States Bankruptcy Code or any other applicable federal or state law, or appointing a receiver, liquidator, custodian, assignee, or sequestrator (or other similar official) of NCCU or of any substantial part of its Property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 90 consecutive days; or

The institution by NCCU of proceedings for an order for relief, or the consent by it to an order for relief against, or the filing by it of a petition or answer or consent seeking reorganization, arrangement, adjustment, compensation or relief under the United States Bankruptcy Code or any other similar applicable federal or state law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, custodian, assignee, trustee or sequestrator (or other similar official) of NCCU or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due.

***Remedies.*** When an Event of Default has happened and is continuing, the Bank, by written notice to NCCU, may declare the entire outstanding principal amount of the Note, together with all interest accrued thereon to the date of such acceleration, to be immediately due and payable and such principal and interest shall then become and be immediately due and payable, both as to principal and interest, without presentment, demand, protest, or other notice of any kind, all of which are hereby expressly waived, anything contained in this Agreement or in the Note to the contrary notwithstanding. When an Event of Default under this Agreement has happened and is continuing, the Bank may terminate any further action under this Agreement, take whatever action at law or in equity is necessary or desirable to collect the payments then due under the Agreement and the Note or to enforce the performance, observance or compliance by NCCU with any covenant, condition or agreement by NCCU under this Agreement or the Note.

***No Remedy Exclusive.*** No remedy herein conferred on or reserved to the Bank is intended to be exclusive of any other available remedy or remedies, but each and every such remedy is cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing on default shall impair any such right or power or 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. The remedies provided in this Article IX are in addition to other remedies provided by law and provided in this Agreement or the Note.

***Agreement to Pay Attorneys' Fees and Expenses.*** When an Event of Default has occurred and is continuing, if the Bank employs attorneys or incurs other expenses for the collection of amounts payable under this Agreement or the Note or the enforcement of the performance or observance of any covenants or agreements on the part of NCCU herein contained, whether or not suit is commenced, NCCU agrees that it will on demand therefor pay to the Bank the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Bank, to the extent permitted by law or as ordered by a court of competent jurisdiction.

***NCCU to Give Notice of Default.*** NCCU will promptly give the Bank written notice of any Event of Default under this Agreement of which it has actual knowledge or written notice.

***Sums Expended by the Bank.*** Any sums expended by the Bank under this Article VIII shall become part of the indebtedness secured by the Note, shall bear interest from date of disbursement at the rate provided in the Note and shall be payable on demand.

## MISCELLANEOUS PROVISIONS

***No Third Party Beneficiaries.*** The terms, provisions, conditions and requirements made and set forth in this Agreement are for the benefit of the parties to this Agreement and to better define the terms of the Loan, and in no event is the Bank to be construed to be NCCU's agent, and in no event is the Bank assuming NCCU's responsibility for proper payments to a contractor and others. It is specifically further intended that no party will be a third party beneficiary under this Agreement except and unless it is specifically provided in this Agreement that any provision shall operate or inure to the use and benefit of a third party, *i.e.*, no contractor, sub-contractor or material supplier shall have any rights under this Agreement against the Bank, or be entitled to protection of any of the covenants contained in this Agreement, although such parties may have recourse to NCCU.

***Waiver.*** No covenant or condition of this Agreement can be waived except by the written consent of the Bank. Any failure of the Bank to require strict performance by NCCU or any waiver by

## APPENDIX B

the Bank of any terms, covenants or contracts in this Agreement shall not be construed as a waiver of any other breach of the same or any other term, covenant or contract in this Agreement.

**Notices.** Any and all notices, requests, demands, and other communications given under or in connection with this Agreement are effective only if in writing and are conclusively deemed to have been received by a party to this Agreement and effective on the day on which delivered to such party at the address set forth below (or at such other address as such party shall specify to the other party in writing) or if sent by certified or registered mail, on the third business day after the day on which mailed, addressed to such party at said address:

If to NCCU at: North Carolina Central University  
P.O. Box 27514  
Durham, North Carolina 28372-1510  
Attention: Vice Chancellor for Administration and Finance

If to the Bank at: [Name of Bank]

Attention:

**Assignability.** NCCU will not sell, assign, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance on or against any interest in this Agreement without the prior written consent of the Bank. NCCU's interest in this Agreement may not be assigned or transferred by operation of law. The Bank may transfer and assign its interests in this Agreement to another financial institution, bank or insurance company on written notice to NCCU or to any other party with the written approval of NCCU, which approval will not be unreasonably withheld or delayed. Any such assignee has all of the rights of the Bank under this Agreement and the Note. NCCU agrees to acknowledge in writing any such assignment if so requested.

**Consents and Approvals.** Whenever the written consent or approval of the Bank or NCCU is required under this Agreement, such consent or approval will not be unreasonably withheld or delayed.

**Covenants of NCCU not Covenants of Officials Individually.** No covenant, stipulation, obligation or agreement contained in this Agreement will be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, agent or employee of NCCU in his individual capacity, and none of the officers or employees of NCCU is subject to any personal liability or accountability by reason of the issuance of the Note. No agent or employee of NCCU shall incur any personal liability in acting or proceeding or in not acting or not proceeding, in good faith, reasonably and in accordance with the terms of this Agreement.

**Termination of Agreement.** When NCCU has paid the principal of and interest on the Note in full and all other obligations required under this Agreement, this Agreement shall terminate and the Bank shall contemporaneously cancel the Note and deliver it to NCCU.

**Section Headings.** All section headings contained in this Agreement are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

**Entire Contract.** This Agreement, together with any exhibits hereto, constitutes the entire contract between the parties and this Agreement may not be modified, amended, altered or changed except as NCCU and the Bank may subsequently agree in writing.

***Binding Effect.*** Subject to the specific provisions of this Agreement, this Agreement is binding on and inures to the benefit of the parties and their respective successors and assigns, including expressly any successor of the Bank.

***Severability.*** If any one or more of the covenants, agreements or provisions of this Agreement is determined by a court of competent jurisdiction to be invalid, the invalidity of such covenants, agreements and provisions in no way affects the validity or effectiveness of the remainder of this Agreement, and this Agreement shall continue in force to the fullest extent permitted by law.

***Governing Law.*** This Agreement and the Note is to be construed, interpreted and enforced in accordance with the laws of the State of North Carolina.

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

***Modification of Agreement.*** No modification, amendment or waiver of any provision of this Agreement or the Note, nor consent to any departure by NCCU therefrom is in any event effective unless the same is in writing and signed by the Bank and then such waiver or consent is effective only in the specific instance and for the purpose for which given. No notice to or demand on NCCU in any case entitles NCCU to any other or further notice or demand in the same, similar or other circumstances.

***Indemnification.*** Without waiving its sovereign immunity, to the fullest extent permitted by law and subject to application statutory and constitutional limitations, NCCU hereby agrees to indemnify, protect and save the Bank and its officers, employees, directors, members and agents harmless from all liabilities, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including attorneys' fees that (1) arise in tort, in contract, under Section 1983 of Title 42 of the United States Code or under the public bidding laws of the State or (2) arise out of, are connected with, or result, directly or indirectly from, the Special Obligation Bond Projects or any portion thereof, including, without limitation, the manufacture, selection, acquisition, delivery, possession, condition, construction, improvement, environmental or other condition, lease, use operation or return of the Special Obligation Bond or any portion thereof. The indemnification arising under this Section 9.15 shall continue in full force and effect notwithstanding the payment in full of all obligations under this Agreement and the Note. Notwithstanding the foregoing, nothing in this Section 9.15 shall be deemed to enlarge or affect in any way the liability of NCCU for injuries and/or damages compensable under the North Carolina Tort Claims Act, Section 143-291, *et seq.*, of the General Statutes of North Carolina, as amended.