

FIRST AMENDMENT TO INSTALLMENT FINANCING CONTRACT

BETWEEN

PNC BANK, NATIONAL ASSOCIATION

AND

COUNTY OF DURHAM, NORTH CAROLINA

DATED SEPTEMBER __, 2018

FIRST AMENDMENT TO INSTALLMENT FINANCING CONTRACT

THIS FIRST AMENDMENT TO INSTALLMENT FINANCING CONTRACT, dated September __, 2018 (this “Amendment”), is between **PNC BANK, NATIONAL ASSOCIATION** a national banking association duly organized and existing under the laws of the United States of America (the “Bank”), and the **COUNTY OF DURHAM, NORTH CAROLINA**, a body corporate and politic and a political subdivision of the State of North Carolina, under the Constitution and laws of the State of North Carolina (the “County”).

PREAMBLE

WHEREAS, the County has previously financed a portion of the cost of acquiring, constructing and installing the Project (as described in the Original Contract); and

WHEREAS, in order to finance a portion of the cost of the Project, the County and the Bank entered into an Installment Financing Contract dated March 30, 2017 (the “Original Contract,” as amended by this Amendment and as may be further amended from time to time, the “Contract”) under which the Bank advanced funds for such purpose and the County covenanted to make Installment Payments and Additional Payments in consideration thereof; and

WHEREAS, the County previously granted a lien on certain property financed or refinanced with the funds advanced under the Original Contract, then known as the Judicial Building and now known as the Administration Building II (the “Original Mortgaged Property”) pursuant to a Deed of Trust, Security Agreement and Financing Statement, made March 30, 2017, from the County to a deed of trust trustee named therein, for the benefit of the Bank, as beneficiary (the “Original Deed of Trust” and as amended by the Modification of Deed of Trust and as may be further amended from time to time, the “Deed of Trust”); and

WHEREAS, the County wants to modify the Deed of Trust to (a) release the Original Mortgaged Property and (b) add the site and improvements of certain property financed or refinanced with funds advanced under the Original Contract known as the Judicial Annex (the “Mortgaged Property”); and

WHEREAS, the Bank and the County want to amend the Original Contract, pursuant to Section 15.6 thereof, to make those and related changes; and

WHEREAS, capitalized terms used in this Amendment and not defined herein shall have the meanings given such terms in the Original Contract;

NOW, THEREFORE, in consideration of the premises and of the covenants and undertakings herein expressed, the parties hereto agree to amend the Original Contract as follows:

Section 1. The definition of “Construction Contracts” in Section 1.1 of the Original Contract is deleted in its entirety and the following is substituted therefor:

“Construction Contracts” means the contracts between the County and the contractors selected and hired by the County relating to the acquisition, construction and installation of the Judicial Annex Project.

Section 2. The definition of “Deed of Trust” in Section 1.1 of the Original Contract is deleted in its entirety and the following is substituted therefor:

“Deed of Trust” means the Deed of Trust, Security Agreement and Financing Statement made March 30, 2017, from the County to the Deed of Trust Trustee, for the benefit of the Bank, as beneficiary, as amended by the Modification of Deed of Trust dated September __, 2018 between the County and the Bank and as may be further amended or supplemented from time to time.

Section 3. The definition of “Judicial Building Project” in Section 1.1 of the Original Contract is deleted in its entirety and the following is substituted therefor:

“Judicial Annex Project” means the reconstructing and renovating of the existing Judicial Annex of the County and is further described in Exhibit A hereto.

Section 4. Article VI of the Original Contract is hereby amended by deleting each reference to “Judicial Building Project” and substituting “Judicial Annex Project” therefor.

Section 5. Section 5.5 of the Original Contract is hereby amended by deleting each reference to “Judicial Building Project” and substituting “Judicial Annex Project” therefor.

Section 6. Section 5.6 of the Original Contract is hereby amended by deleting each reference to “Judicial Building Project” and substituting “Judicial Annex Project” therefor.

Section 7. Exhibit B to the Original Contract is deleted in its entirety and the Exhibit attached hereto, is substituted in lieu thereof.

Section 8. Ratification. As amended hereby, the Contract is in all respects ratified and confirmed and the Contract as so amended shall be read, taken and construed as one and the same instrument.

Section 9. Notices. All notices, certificates or other communications hereunder shall be given in accordance with 15.4 of the Contract.

Section 10. Governing Law. This Amendment shall be construed and governed in accordance with the laws of the State.

Section 11. Severability. If any portion of this Amendment is determined to be invalid under any applicable law, such provision shall be deemed void and the remainder of this Amendment shall continue in full force and effect.

Section 12. Execution in Counterparts. This Amendment 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 13. E-Verify Covenant. The Bank understands that (1) “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 and (2) Article 2 of Chapter 64 of the General Statutes of North Carolina, as amended (the “E-Verify Statute”), requires employers (as defined in the E-Verify Statute) to verify the work authorization of an employee (as defined in the E-Verify Statute) hired to work in the United States through E-Verify. The Bank and the Bank’s subcontractors under this Installment Financing Agreement shall comply with the requirements of the E-Verify Statute.

Section 14. Companies that Boycott Israel Act Certification. The Bank hereby certifies that it is not on any list created and maintained by the North Carolina Department of State Treasurer pursuant to the Divestment from Companies that Boycott Israel Act, Article 6G, as amended, of Chapter 147 of the General Statutes of North Carolina.

[Signatures to follow.]

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

COUNTY OF DURHAM, NORTH CAROLINA

[SEAL]

By: _____
Wendell Davis
County Manager

ATTEST:

Terri Lea Hugie
Clerk to the Board of Commissioners
for the County

[Signatures Continued on the Following Page]

[Counterpart Signature Page to the First Amendment to Installment Financing Contract]

PNC BANK, NATIONAL ASSOCIATION, as
Bank

By: _____
Casey L. Turner
Vice President

[Signatures Continued on the Following Page]

[Counterpart Signature Page to the First Amendment to Installment Financing Contract,
dated September __, 2018, between PNC Bank, National Association
and the County of Durham, North Carolina]

THIS AMENDMENT HAS BEEN APPROVED UNDER
THE PROVISIONS OF SECTION 159-152 OF THE
GENERAL STATUTES OF NORTH CAROLINA, AS AMENDED

By: _____
Gregory C. Gaskins
Secretary of the Local Government
Commission of North Carolina

EXHIBIT
DESCRIPTION OF THE REAL PROPERTY

The Real Property is described as follows:

[to be inserted.]