

**Town of Chapel Hill, North Carolina**

**and**

**Truist Commercial Equity, Inc.**

**Installment Financing Contract**

# **Installment Financing Contract**

**THIS INSTALLMENT FINANCING CONTRACT** (the “Contract”) is dated as of March 28, 2023, and is between the **TOWN OF CHAPEL HILL, NORTH CAROLINA**, a municipal corporation of the State of North Carolina (the “Town”), and **TRUIST COMMERCIAL EQUITY, INC.** (the “Lender”).

## **Introduction**

The Town has determined to carry out a plan (the “Project”) to acquire and finance new buses, and to pay related financing costs. The Lender has agreed to advance funds to the Town for this purpose.

This Contract provides for the Lender’s advance of funds, and the Town’s obligation to repay the funds with interest. In accordance with the Town’s authority under Section 160A-20 of the North Carolina General Statutes, the Town will secure its obligations under this Contract by granting to the Lender a security interest in the Buses.

*Unless the context clearly requires otherwise, capitalized terms used in this Contract and not otherwise defined have the meanings set forth in Exhibit A.*

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants contained in this Contract, the parties agree as follows:

## **ARTICLE I**

### **ADVANCE AND DISBURSEMENT; SECURITY**

**1.1. Advance.** (a) The Lender advances \$8,250,000 (the “Amount Advanced”) to the Town, and the Town accepts the Amount Advanced. The Lender will make this advance as directed by the Town, as to be described in a separate certificate delivered by the Town to the Lender on or prior to the Closing Date. The Town will hold these funds separate and apart from all other Town funds. The account in

which the Town holds these proceeds, and any related investment earnings, from time to time will be referred to in this Contract as the "Project Fund."

(b) The Project Fund is the Town's property, but the Town may withdraw amounts on deposit in the Project Fund only for application from time to time to the payment of Project Costs. Pending application, these amounts are subject to a lien and charge in favor of the Lender to secure the Town's obligations to the Lender. Upon the occurrence and continuance of an Event of Default, the Lender may require any moneys then held in the Project Fund to be applied to prepay the principal component of the Installment Payments.

**1.2. Disbursements.** The Town may withdraw amounts from the Project Fund only with the Lender's prior written consent. The Lender will provide this consent after its receipt and approval of a written disbursement request signed by a Town Representative and substantially in the form of Exhibit D. The Town must also provide copies of invoices, title documentation, and such other documentation as Lender may require.

**1.3. Security for Payment and Performance.** (a) This Contract secures the Town's payment, as and when the same shall become due and payable, of all amounts payable by the Town and the Town's timely compliance with all terms, covenants and conditions of this Contract.

(b) When the Town has paid all the Installment Payments and there are no due and unpaid Additional Payments, the security interests provided for in this Contract terminate. The Lender will then take all action required by law or reasonably requested by the Town to cancel any financing statements, cancel any notations of lien on vehicle titles, or otherwise to evidence the end of the security interests.

(c) *UCC Security Agreement.* This Contract is intended as and constitutes a security agreement pursuant to the UCC with respect to the following:

- (i) the Project Fund, and all moneys on deposit from time to time in the Project Fund; and
- (ii) all property acquired by the Town with funds advanced by the Lender pursuant to this Contract and all personal property obtained in substitution or replacement for any portion of that property, and all

proceeds of the foregoing (collectively, the "Buses"). Exhibit B shows the buses that the Town currently plans to acquire through this financing.

The Town hereby grants to the Lender a security interest in the property described above to secure all amounts payable by the Town and the Town's timely compliance with all terms, covenants and conditions of this Contract. The name and address of the Town, as debtor, and the Lender, as secured party, are set forth in Section 12.1.

The Town agrees to execute, deliver and file, or cause to be filed, in any place or places as may be requested by the Lender, financing statements (including any continuation statements) in such form as the Lender may reasonably request to evidence the security interests provided for in this Section.

(d) *Notations on title.* To the extent any portion of the Buses constitutes motor vehicles subject to the titling requirements of N.C. Gen. Stat. Chapter 20, the Town shall, at the Lender's request, apply for notation of a security interest in favor of the Lender with the North Carolina Division of Motor Vehicles in accordance with the procedures set out in N.C. Gen. Stat. Section 20-58, and take such other steps as may be required to evidence the Lender's security interest in the Buses.

## **ARTICLE II**

### **CONTRACT PAYMENTS**

**2.1. Installment Payments.** The Town will repay the Amount Advanced by making Installment Payments in lawful money of the United States at the times and in the amounts set forth in Exhibit C. As indicated in Exhibit C, the Installment Payments include designated interest components. The Town will make its payments by Federal Reserve wire transfer, or other transfer of immediately available United States funds, in either case sent on the payable date directly to the Lender at such address or bank account in the United States as the Lender may designate from time to time.

**2.2. Additional Payments.** The Town will pay all Additional Payments on a timely basis directly to the person or entity to which it owes the payment in lawful money of the United States. If the Town fails to pay any Additional Payment when due, the Lender may (but is not required to) pay the Additional Payment. The Town

then agrees to reimburse the Lender for any Additional Payment paid by the Lender, together with interest at an annual rate equal to 5.00%.

**2.3. Prepayment.** (a) The Town may prepay the outstanding principal component of the Amount Advanced, in whole or in part on any date, at the Town's option. Any partial prepayment, however, must be for at least \$5,000, and the Town may not make a prepayment more than once in a calendar month. The Town must give the Lender two Business Days' prior notice of any planned prepayment, with the notice stating the intended prepayment date and amount.

(b) All amounts prepaid will be applied (i) first to all Additional Payments then due and payable to the Lender, (ii) then to all interest accrued and unpaid to the prepayment date, and (iii) then to the outstanding principal installments of the Amount Advanced, in the inverse order of the due dates as shown on Exhibit C. In any event, the unpaid principal components of the Installment Payments will continue to be payable on the dates and in the amounts shown in Exhibit C. The Lender will provide the Town with a replacement Exhibit C after any prepayment.

(c) The Town must also pay the Make Whole Prepayment Premium with respect to any amounts applied to prepayment of principal.

**2.4. Interest Rate and Payment Adjustment.** (a) *Event of Taxability.* Upon the occurrence of an Event of Taxability and for as long as any portion of the Amount Advanced remains outstanding, the Interest Rate shall be converted to the Taxable Rate. This adjustment shall survive full payment on the Amount Advanced until such time as the federal statute of limitations under which the interest on the Amount Advanced could be declared taxable under the Code has expired. In addition, upon an Event of Taxability, the Town shall, immediately upon demand, pay to the Lender (or any prior entity that has been in the position of the Lender, if applicable) (i) an additional amount equal to the difference between (A) the amount of interest actually paid on the Amount Advanced during the Taxable Period and (B) the amount of interest that would have been paid during the Taxable Period had the principal component of the Amount Advanced borne interest at the Taxable Rate, and (ii) an amount equal to any interest, penalties and additions to tax (as referred to in Subchapter A of Chapter 68 of the Code) owed by that Lender as a result of the Event of Taxability.

The Lender shall promptly prepare a substitute Exhibit C reflecting the new interest rate and resulting payment schedule, and deliver a copy of the new schedule to the Town.

(b) *Principal Payments Not Affected.* In any event, the principal components of the Installment Payments will continue to be payable on the dates and in the amounts shown in Exhibit C.

**2.5. Default Rate.** While any default by the Town under this Contract is continuing, the Amount Advanced will bear interest (but only during the pendency of the default) at the Default Rate. The Lender shall promptly prepare a substitute Exhibit C reflecting the new interest rate and resulting payment schedule, and deliver a copy of the new schedule to the Town.

**2.6. No Reduction or Abatement.** The Town remains liable for full performance of all its covenants under this Contract (subject to the limitations described in Article XI), notwithstanding the occurrence of any event or circumstances whatsoever, including any of the following:

(a) Any act or omission by the Lender, or the Lender's waiver of any right granted or remedy available to it;

(b) The forbearance or extension of time for payment or performance of any obligation under this Contract, whether granted to the Town or any other person;

(c) The sale or release of all or part of the Buses or the release of any party who assumes all or any part of the Town's performance; or

(d) Another party's assumption of any of the Town's obligations under the Contract.

There will be no abatement or reduction of the Installment Payments or Additional Payments by the Town for any reason, including, but not limited to, any defense, recoupment, setoff, counterclaim, or any claim arising out of or related to the Buses. The Town assumes and will bear the entire risk of loss and damage to the Buses from any cause whatsoever, it being the parties' intention that the Town will make all the Installment Payments in all events unless the Town's obligation is terminated as provided in this Contract.

## **2.7. Appropriations.**

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

(b) (i) If for any Fiscal Year the Town adopts an annual budget that does not appropriate (for that purpose) an amount equal to the Installment Payments and estimated Additional Payments coming due during that Fiscal Year, then the Town will send notice of this failure to the Lender and the North Carolina Local Government Commission (the "LGC") within ten days after the adoption of that budget.

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

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

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

**ARTICLE III**  
**TOWN'S RESPONSIBILITIES**

**3.1. Care and Use of Buses.** The Town will use and operate the Buses for their intended public purposes, and for no other purpose unless required by law. The Town will be solely responsible for the proper and careful operation of the Buses, will not contract with any other person or entity for that operation, and must keep the Buses in good condition, repair, appearance and working order for the purposes intended.

**3.2. Risk of Loss.** The Town bears all risk of loss to the Buses.

**3.3. Lender's Performance of Town's Responsibilities.** The Lender may, but is in no event required to, (a) undertake any performance required of the Town or (b) make any payments required to be made by the Town, in either case for the insurance, maintenance or preservation of the Buses that the Town fails to make or pay. The Town must then reimburse the Lender for any such payments and for any associated costs and expenses, legal or otherwise, together with interest at an annual rate equal to 5.00%, all as Additional Payments under this Contract.

**3.4. Compliance with Requirements.** The Town will promptly and faithfully comply with all requirements of governmental authorities relating to the use or condition of the Buses, the violation of which would adversely affect the use, value or condition of the Buses, whether or not any requirement necessitates material changes or improvements or interferes with the use or enjoyment of the Buses (or be diligently and in good faith contesting those requirements). Unless required by applicable law or unless the Lender has otherwise agreed in writing, the Town will not use the Buses for any purposes other than those for which the property was intended as of the Closing Date.

The Town will in no event use the Buses, or any portion, nor allow any of them to be used, (a) for any unlawful purpose, (b) in violation of any permit, license, or certificate, or (c) in violation of any law, ordinance or regulation.

**3.5. Modification of Buses; Installation of Equipment and Machinery.** The Town has the right to make modifications and improvements to the Buses, at its own cost and expense. These changes, however, must not damage the Buses or re-



sult in the use of the Buses for purposes substantially different from those contemplated on the Closing Date. Further, any Bus, upon completion of the changes, must be of a value not less than the value of that Bus immediately prior to making the changes. All modifications will be included in the security interest in the Buses granted to the Lender in Section 1.4.

The Town may also, from time to time in its sole discretion and at its own expense, install machinery, equipment and other tangible property in or on the Buses. Neither the Lender nor any assignee will have any interest in any such installed property if that property can be removed without damage to the Bus.

**3.6. Taxes and Other Governmental Charges.** If the Buses (or any portion) are, for any reason, deemed subject to taxation, assessments or charges lawfully made by any governmental body, the Town will, during the Contract term, pay the amount of all such taxes, assessments and governmental charges as Additional Payments. With respect to governmental charges that may be lawfully paid in installments over a period of years, the Town is obligated to provide for Additional Payments only for the installments that are required to be paid during the Contract term. The Town must not allow any liens for governmental charges with respect to the Buses (or any portion) to become delinquent (including any taxes levied upon any portion of the Buses which, if not paid, will become a charge on any interest in the Buses, or on the rentals and revenues derived under this Contract or from the Buses).

The Town may, at its own expense and in its own name, in good faith contest any taxes, assessments and utility and other charges. In the event of a contest, the Town may permit the charges to remain unpaid during the period of the contest and any appeal. If, however, the Lender notifies the Town that, in the opinion of independent counsel selected by the Lender the security afforded pursuant to this Contract will be materially endangered by nonpayment of any items, or that the Buses (or any portion) will be subject to loss or forfeiture, then the Town must promptly pay those items (but the payment will not in itself constitute a waiver of the right to continue to contest the charges).

### **3.7. Town's Insurance.**

(a) Property Damage Insurance – The Town must, at its own expense, acquire, carry and maintain broad-form extended coverage property damage insurance with

respect to the Buses in an amount equal to the total of the Amount Advanced. The property damage insurance with respect to the Buses must include coverage in favor of the Lender as a loss payee.

(b) General Liability Insurance – To the extent permitted by law, the Town promises to acquire and maintain general liability insurance in forms and amounts reasonably acceptable to the Lender.

(c) Worker's Compensation Insurance – The Town will, at its own expense, acquire, carry and maintain worker's compensation insurance in the manner required by law.

(d) Additional Provisions:

(i) The Town must maintain the insurance required by this Section with generally recognized responsible insurers. The insurance may carry reasonable deductible or risk-retention amounts. The Town must provide copies of all policies to the Lender upon request.

(ii) In the alternative, but only with the Lender's consent, the Town may maintain the insurance required by subsections (a) and (b) above (A) by one or more blanket or umbrella insurance policies or (B) by means of an adequate self-insurance fund or risk-retention program, or by participation in a group risk pool or similar program.

(e) The Town may settle or adjust insurance claims in its discretion, except that no Town agent or employee will have the power to adjust or settle any property damage loss greater than \$250,000 with respect to the Buses, whether or not covered by insurance, without the Lender's prior written consent. The Lender and the Town will cooperate fully with each other in filing any claim or proof of loss with respect to any insurance policy described in this Contract.

(f) The Lender will not be responsible for the sufficiency or adequacy of any required insurance and will 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.

**ARTICLE IV**  
**TITLE; LIENS**

**4.1. Title.** Title to the Buses and any and all additions, repairs, replacements or modifications thereto will always be in the Town, subject to the lien of this Contract.

**4.2. Encumbrance, Mortgage or Pledge of Buses.**

(a) The Town will not permit any lien to be perfected or remain against the Buses (or any portion). If the Town, however, first notifies the Lender of the Town's intent, the Town may in good faith contest any mechanic's or other lien filed or perfected against the Buses (or any portion). In that event the Town may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal. The Lender will cooperate fully with the Town in any contest, upon the Town's request and at the Town's expense.

(b) Except as provided in subsection (a) above, the Town will not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Buses. The Town will promptly, at its own expense, take such action as may be appropriate to discharge any such mortgage, pledge, lien, charge, encumbrance or claim not excepted above which it will have created, incurred or suffered to exist. The Town will not sell, lease or transfer any of the Buses.

(c) The Town will reimburse the Lender for any expense incurred by it to discharge or remove any such mortgage, pledge, lien, security interest, encumbrance or claim, together with interest at an annual rate equal to 5.00%.

**ARTICLE V**  
**CONDEMNATION OR LOSS OF TITLE;**  
**USE OF NET PROCEEDS**

**5.1. Damage, Destruction or Condemnation.** The Town will promptly notify the Lender if

(a) the Buses (or any portion) are destroyed or damaged by fire or other casualty;

(b) any governmental authority takes, or notifies the Town of any intent to take, title to, or the temporary or permanent use of the Buses (or any portion), or the estate of the Town or the Lender in the Buses (or any portion), under the power of eminent domain;

(c) a material defect in the manufacture or equipping of any Bus becomes apparent; or

(d) title to or the use of all or any portion of the Buses is lost by reason of a defect in title;

and if the Town estimates that any loss or casualty as described in this Section will either cost \$100,000 or more to remedy or will result in a remedial payment to the Town of \$100,000 or more, as the case may be.

Each notice must describe generally the nature and extent of such damage, destruction or taking. The Town will provide any additional information concerning the matter as the Lender may reasonably request.

The Town will file its claims under insurance coverages and claims for awards or payments in the nature of condemnation awards resulting from any such damage, destruction or taking. The Town will prosecute all such claims for such awards or payments in good faith and with due diligence. The Town will use any Net Proceeds it receives as provided in Section 5.2.

## **5.2. Security Interest in Net Proceeds; Deposit and Disbursement.**

(a) If the Net Proceeds arising from any single event, or any single series of related events, is not more than \$100,000, then the Town has no obligation to account to the Lender or any other person or entity with respect to the use of those Net Proceeds. The Town, however, acknowledges that its use of such funds may be constrained by the requirements of the Code and the Town's obligations under Section (i) of Article VI.

(b) If the amount of Net Proceeds received by the Town from any single event or any single series of related events is more than \$100,000, then the Town grants a security interest in the Net Proceeds to the Lender to secure the Town's ob-

ligations under this Contract, subject to the further provisions of this Section. This Contract is intended as and constitutes a security agreement with respect to this security interest. All Net Proceeds remain subject to the security interest provided for in this subsection until expended in compliance with this Contract.

(c) If the amount of Net Proceeds received by the Town from any single event or any single series of related events is more than \$100,000 but less than \$1,000,000, the Town will retain the Net Proceeds and promptly apply those amounts toward the repair, restoration or replacement of the Buses.

(d) If the amount of Net Proceeds received by the Town from any single event or any single series of related events is at least \$1,000,000, the Town will cause those Net Proceeds to be paid to an escrow agent (which must be a bank, trust company or similar entity exercising fiduciary responsibilities and reasonably acceptable to the Lender) for deposit in a special escrow fund to be held by the escrow agent and disbursed by the escrow agent pursuant to requisitions in form and substance reasonably acceptable to the Lender. The Town will then promptly apply those amounts toward the repair, restoration or replacement of the Buses.

(e) In the case of any use of Net Proceeds for repair, restoration or replacement, the Town must act with due diligence and in a commercially reasonable manner to provide for the repair and restoration. After the Town has finished applying Net Proceeds to repair or restoration, the Town will promptly report to the Lender regarding the use of those Net Proceeds.

(f) In any event, the Town may apply any Net Proceeds toward the prepayment of the Amount Advanced subject to the terms of Section 2.3.

(g) The Town is not entitled to any reimbursement of any supplemental funds it provides to make repairs, replacements or restoration under this subsection, nor is the Town entitled to any postponement or diminution of its obligation to make Contract Payments because of any contribution. Any repair or replacement paid for in whole or in part out of Net Proceeds will be the Town's property and will be part of the Buses, and will be subject to the security interest granted under this Contract.

**ARTICLE VI**  
**WARRANTIES, REPRESENTATIONS AND COVENANTS**

**6.1. By the Town, Generally.** The Town makes the following statements of fact, with the understanding and intent that the Lender will rely on these statements in making its decision to enter into this Contract:

(a) The Town is a duly organized and validly existing municipal corporation of the State. The Town has all powers necessary to enter into the transactions and to carry out its obligations contemplated by this Contract.

(b) The Town will take no action that would adversely affect its existence as a municipal corporation in good standing in the State.

(c) The Town has duly and validly authorized, executed and delivered this Contract. Assuming due authorization, execution and delivery by the Lender, this Contract constitutes a valid, legal and binding obligation of the Town, enforceable in accordance with its terms, subject to bankruptcy, insolvency and other similar laws affecting the enforcement of creditors' rights generally and such principals of equity as a court having jurisdiction may impose.

(d) The Town requires no further approval or consent from any governmental authority with respect to the Town's entering into or performing under this Contract.

(e) No Town representation, covenant or warranty in this Contract is false or misleading in any material respect.

(f) The Town Council resolutions relating to the Town's performance of this Contract and the transactions contemplated in those documents have been duly adopted, are in full force and effect, and have not been in any respect modified, revoked or rescinded.

(g) The Town reasonably believes funds will be available to satisfy all of its obligations under this Contract.

(h) The Town has complied with all required public bidding and related procedures regarding the acquisition of the Buses.

(i) The Town will not take or permit, or omit to take or cause to be taken, any action that would cause its obligations under this Contract to be “arbitrage bonds” or “private activity bonds” within the meaning of the Code, or otherwise adversely affect the exclusion from gross income for federal income tax purposes of the designated interest component of Installment Payments to which such components would otherwise be entitled and, if it should take or permit, or omit to take or cause to be taken, any such action, the Town will take or cause to be taken all lawful actions within its power necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

(j) The Town reasonably expects that the complete Project can be completed for a total price within the total amount of funds to be available from the Amount Advanced, income anticipated to be derived from the investment of those funds and other funds expected to be available for such purposes. If those amounts are insufficient to pay all the Project Costs, the Town will pay any excess costs, with no resulting reduction or offset in the amounts otherwise payable by the Town.

(k) The Town expects that the Town will need and use the Buses continuously during the Contract term. The Town does not expect this need or use to diminish in any material respect during the Contract term.

(l) The Town will send the Lender a copy of the Town’s audited financial statements for each Fiscal Year within 30 days of the Town’s acceptance of the statements, but in any event within 270 days of the completion of the Fiscal Year. The Town shall also furnish the Lender, at such reasonable times as the Lender may request, all other financial information (including, without limitation, the Town’s annual budget as submitted or approved) as the Lender may reasonably request.

**6.2. No Advisory or Fiduciary Relationship.** In connection with all aspects of the transaction contemplated under this Contract, the Town acknowledges and agrees, that: (a) (i) the Town has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, (ii) the Town is capable of evaluating, and understands and accepts the terms, risks and conditions of the transactions contemplated hereby, (iii) the Lender is not acting as a municipal advisor or financial advisor to the Town and (v) the Lender has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act to the Town with respect to the transactions contemplated hereby and the discussions, undertakings and proce-

dures leading thereto (irrespective of whether the Lender has provided other services or is currently providing other services to the Town on other matters); (b) (i) the Lender is and has been acting solely as a principal in an arm's-length commercial lending transaction and, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Town, or any other person or entity and (ii) the Lender has no obligation to the Town with respect to the transactions contemplated hereby except those obligations expressly set forth herein; (c) notwithstanding anything herein to the contrary, the Town and the Lender intend that this Contract represents a commercial loan transaction not involving the issuance and sale of a municipal security, and that any bond, note or other debt instrument that may be delivered to the Lender is delivered solely to evidence the repayment obligations of the Town under this Contract; and (d) the Lender may be engaged in a broad range of transactions that involve interests that differ from those of the Town, and the Lender has no obligation to disclose any of such interests to the Town. To the fullest extent permitted by law, the Town hereby waives and releases any claims that it may have against the Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby. If the Town would like a municipal advisor in this transaction that has legal fiduciary duties to the Town, the Town is free to engage a municipal advisor to serve in that capacity. The Lender's participation is pursuant to and in reliance upon the bank exemption and/or the institutional buyer exemption provided under the municipal advisor rules of the Securities and Exchange Commission, Rule 15Ba1-1 et seq., to the extent that such rules apply to the transactions contemplated hereunder.

## **ARTICLE VII**

### **INDEMNIFICATION**

To the extent permitted by law, the Town will indemnify, protect and save the Lender and its officers, employees, and directors harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including legal fees and costs, arising out of, connected with, or resulting directly or indirectly from the Project, the Buses or the transactions contemplated by this Contract, including without limitation the possession, condition, or use of the Buses.

The Town has no obligation to indemnify any indemnified party for the gross negligence or intentional misconduct of the indemnified party or any of its employees or representatives. The Town's obligation to provide indemnification under this



Article continues even after there is no longer any outstanding principal balance of the Amount Advanced and extends to any successor to the Lender.

**ARTICLE VIII**  
**DISCLAIMER OF WARRANTIES**

The Town acknowledges as follows:

- (a) that the Lender has not designed the Buses;
- (b) that the Lender has not supplied any plans or specifications with respect to the Buses;
- (c) that the Lender is not a manufacturer of, nor a dealer in, any of the Buses or any of their component parts;
- (d) that the Lender has not made any recommendation, given any advice nor taken any other action with respect to (i) the choice of any supplier, vendor or designer of, or any other contractor with respect to the Buses 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 Buses or any component part thereof or any property or rights relating thereto at any stage of the acquisition thereof;
- (e) that the Lender has not at any time had physical possession of the Buses or any component part thereof or made any inspection thereof or any property or rights relating thereto; and
- (f) that the Lender has not made any warranty or other representation, express or implied, that the Buses 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 designed, or will accomplish the results which the Town 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 BUSES OR ANY COMPONENT PART THEREOF, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE, and further including the de-

sign or condition thereof; the safety, workmanship, quality or capacity thereof; compliance thereof with the requirements of any law, rule, specification or contract pertaining thereto; any latent defect; the ability of the Buses to perform any function; that the Amount Advanced will be sufficient to pay all Project Costs; or any other characteristic of the Buses; it being agreed that the Town is to bear all risks relating to the Buses, the completion thereof or the transactions contemplated by this Contract, and the Town waives the benefits of any and all implied warranties and representations of the Lender.

The provisions of this Article will survive the Contract's termination.

## **ARTICLE IX**

### **DEFAULT AND REMEDIES**

**9.1. Events of Default.** An "Event of Default" is any of the following:

(a) The Town fails to make any Installment Payment within ten days of the applicable Payment Date.

(b) The occurrence of an Event of Nonappropriation.

(c) The Town breaches or fails to perform or observe any term, condition or covenant of this Contract on its part to be observed or performed, other than as referred to in subsections (a) or (b) above, including payment of any Additional Payment, for a period of 90 days after written notice specifying such failure and requesting that it be remedied has been given to the Town (by any person or entity), unless the Lender agrees in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in the notice cannot reasonably be corrected within the applicable period and the Town institutes corrective action within the applicable period, no Event of Default will be deemed to have occurred so long as the Town diligently pursues the corrective action.

(d) Proceedings under any bankruptcy, insolvency, reorganization or similar law are instituted by or against the Town as a debtor, or a receiver, custodian or similar officer is appointed for the Town or any of its property.

(e) Any lien, charge or encumbrance prior to or affecting the validity of the security interests granted to the Lender under this Contract is found to exist, or pro-

ceedings are instituted to enforce any lien, charge or encumbrance against the Buses and such lien, charge or encumbrance would be prior to the lien of those security interests.

**9.2. Remedies on Default.** During the continuation of any Event of Default, the Lender may, without any further demand or notice, exercise any one or more of the following remedies:

(a) Declare the unpaid principal components of the Installment Payments, and the accrued interest thereon, immediately due and payable;

(b) Proceed by appropriate court action to enforce performance by the Town of the applicable covenants of this Contract or to recover for the breach thereof; and

(c) Avail itself of all other remedies available at law or equity, including foreclosure on the security interests created under this Contract.

The Lender's exercise of remedies is subject to the limitations set forth in Article XI.

**9.3. No Remedy Exclusive; Delay Not Waiver.** All remedies under this Contract are cumulative and may be exercised concurrently or separately. The exercise of any one remedy will not be deemed an election of such remedy or preclude the exercise of any other remedy. If any Event of Default occurs and is thereafter waived, such waiver will be limited to the particular breach so waived and will not be deemed a waiver of any other breach under this Contract.

## **ARTICLE X**

### **ASSIGNMENTS**

**10.1. Town's Assignments.** The Town may not sell or assign any interest in this Contract without the Lender's prior written consent.

**10.2. Lender's Assignment.** The Lender may, at any time and from time to time, assign all or any part of its interest in the Buses or this Contract, including, without limitation, the Lender's rights to receive Installment Payments. Any assignment made by the Lender or any subsequent assignee must not purport to

convey any greater interest or rights than those held by the Lender pursuant to this Contract.

The Town agrees that this Contract may become part of a pool of obligations at the Lender's or its assignee's option. The Lender or its assignees may assign or reassign all or any part of this Contract, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Contract. Any assignment by the Lender may be only to a bank, insurance company, or similar financial institution or any other entity approved by the Town. Notwithstanding the foregoing, no assignment or reassignment of the Lender's interest in the Buses or this Contract will be effective unless and until the Town receives a duplicate original counterpart of the document by which such assignment or reassignment is made disclosing the name and address of each such assignee.

The Town further agrees that the Lender's interest in this Contract may be assigned in whole or in part upon terms which provide in effect that the assignor or assignee will act as a collection and paying agent for any holders of certificates of participation in this Contract, provided the Town receives a copy of such agency contract and such collection and paying agent covenants and agrees to maintain for the full remaining term of this Contract a written record of each assignment and reassignment of such certificates of participation.

The Lender will not provide any disclosure document to any potential assignee providing information with respect to the Town (other than information that is publicly available) unless the Town expressly approves the use of that disclosure document.

The Town agrees to execute any document reasonably required in connection with any assignment. Any assignor must provide notice of any assignment to the Town, and the Town will keep a complete and accurate record of all assignments as required by the Code. After the giving of any such notice, the Town will thereafter make all payments in accordance with the notice to the assignee named therein and will, if so requested, acknowledge such assignment in writing, but such acknowledgment will in no way be deemed necessary to make the assignment effective.

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

## **ARTICLE XI**

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

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

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

No provision of this Contract will be construed to pledge or to create a lien on any class or source of the Town's moneys (other than the Amount Advanced, any other funds in the Project Fund and any Net Proceeds), nor will any provision of this Contract restrict the Town's future issuance of any of its bonds or other obligations payable from any class or source of the Town's moneys (except to the extent this Contract restricts the incurrence of additional obligations secured by the Buses).

To the extent of any conflict between this Article and any other provision of this Contract, this Article takes priority.

## **ARTICLE XII**

### **MISCELLANEOUS**

#### **12.1. Notices.**

(a) Any communication provided for in this Contract must be in English and must be in writing. "Writing" includes facsimile transmission and electronic mail.

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

(c) Any other communication under this Contract will be deemed given on the delivery date shown on a United States Postal Service certified mail receipt, or a delivery receipt (or similar evidence) from a national commercial package delivery service, if addressed as follows:

- (i) if intended for the Town, to Town Manager, Town of Chapel Hill, Attention: Notice under 2023 Financing Contract, 405 Martin Luther King Jr. Blvd., Chapel Hill, NC 27514
- (ii) if to the Lender, to Truist Commercial Equity, Inc., 1414 Raleigh Road, Chapel Hill, NC 27517, Attention: Jeff Stoddard, with a copy to Tax-Exempt Lending Group, Truist Bank, 150 Stratford Road, 2nd Floor, Winston-Salem, NC 27104, Attention: Alex Johnston, but a notice to either of these addresses is effective notice to the Lender.

(d) Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others.

(e) Whenever this Contract requires the giving of a notice, the person entitled to receive the notice may waive the notice, in writing. The giving or receipt of the notice will then not be a condition to the validity of any action taken in reliance upon the waiver.

**12.2. Non-Business Days.** If the date for making any payment or the last day for performance of any act or the exercising of any right is not a Business Day, such payment may be made or act performed or right exercised on or before the next succeeding Business Day.

**12.3. Governing Law.** The parties intend that North Carolina law will govern this Contract and all matters of its interpretation. To the extent permitted by law, the parties agree that any action brought with respect to this Contract must be

brought in the North Carolina General Court of Justice in Orange County, North Carolina.

**12.4. Severability.** If any provision of this Contract is determined to be unenforceable, that will not affect any other provision of this Contract.

**12.5. Amendments.** This Contract may not be modified or amended unless such amendment is in writing and signed by the Town and the Lender.

**12.6. Binding Effect.** Subject to the specific provisions of this Contract, this Contract will be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

**12.7. Third-Party Beneficiaries.** There are no parties intended to be or which will be deemed to be third-party beneficiaries of this Contract.

**12.8. Time.** Time is of the essence of this Contract and each and all of its provisions.

**12.9. Limitation on Liability of Officers and Agents.** No officer, agent or employee of the Town or the Lender will be subject to any personal liability or accountability by reason of the execution of this Contract or any other documents related to the transactions contemplated by this Contract. Such officers, agents or employees will be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section will not relieve any such officer, agent or employee from the performance of any official duty provided by law.

**12.10. Counterparts.** This Contract may be executed in several counterparts, including separate counterparts. Each will be an original, but all of them together constitute the same instrument.

**12.11. Definitions.** Unless the context clearly requires otherwise, capitalized terms used in this Contract and not otherwise defined have the meanings set forth in Exhibit A.

***[The remainder of this page has been left blank intentionally.]***

**IN WITNESS WHEREOF**, the Town and the Lender have caused this instrument to be executed by duly authorized officers as of March 28, 2023.

**ATTEST: (SEAL)**

**Town of Chapel Hill,  
North Carolina**

\_\_\_\_\_  
Sabrina Oliver  
Town Clerk

By: \_\_\_\_\_  
Christopher C. Blue  
Interim Town Manager

**Truist Commercial Equity, Inc.**

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

Printed name: \_\_\_\_\_

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

This instrument has been preaudited  
in the manner required by The Local Government Budget and  
Fiscal Control Act.

\_\_\_\_\_  
Amy K. Oland  
Finance Officer  
Town of Chapel Hill, North Carolina

[Installment Financing Contract dated as of March 28, 2023]

Exhibits –

- A - Definitions
- B - Tentative list of buses to be acquired
- C - Payment schedule
- D - Requisition form



## **EXHIBIT A – Definitions**

For all purposes of this Contract, unless the context requires otherwise, the following terms have the following meanings:

“Additional Payments” means any amounts payable by the Town as a result of its obligations under this Contract (other than its obligation to pay Installment Payments), and any of the Lender’s expenses (including attorneys’ fees) in prosecuting or defending any action or proceeding in connection with this Contract and any taxes or any other expenses, including, but not limited to, the Lender’s administrative or legal costs, licenses, permits, state and local sales and use or ownership taxes or property taxes which the Lender is required to pay as a result of this Contract, and any inspection and reinspection fees (together with interest that may accrue on any of the above if the Town fails to pay the same, as set forth in this Contract).

“Amount Advanced” has the meaning assigned in Article I.

“Business Day” means any day other than a Saturday or Sunday or other day on which the Lender is authorized or required to close.

“Closing Date” means the date on which this Contract is first executed and delivered by the parties, which is expected to be on or about March 28, 2023.

“Code” means the Internal Revenue Code of 1986, as amended, including regulations, rulings and revenue procedures promulgated thereunder or under the Internal Revenue Code of 1954, as amended, as applicable to the Town’s obligations under this Contract. Reference to any specific Code provision will be deemed to include any successor provisions thereto.

“Contract Payments” means Installment Payments and Additional Payments.

“Default Rate” means the lesser of (a) the sum of the Prime Rate plus 2.0% (200 basis points) per annum and (b) the maximum lawful rate.

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

“Event of Nonappropriation” means a failure by the Town Council to include funds for Contract Payments in the Town’s budget for any Fiscal Year, or any reduction or elimination of an appropriation for Contract Payments as further described in Section 2.6.

“Event of Taxability” means that a final decree or judgment of any federal court or a final action of the Internal Revenue Service determining that interest is includable in the gross income of the registered owner of the Town’s obligations to make payments under this Contract for federal income tax purposes as a result of the action or inaction of the Town has been issue; provided, no Event of Taxability shall be deemed to occur unless the Town has been given written notice of the occurrence and, to the extent permitted by law, an opportunity to participate in and seek, at the Town’s own expense, a final administrative determination by the Internal Revenue Service or determination by a court of competent jurisdiction (from which no further right of appeal exists) as to the occurrence of such Event of Taxability. For all purposes of this definition, the effective date of any Event of Taxability will be the first date as of which interest is deemed includable in the gross income of the any such registered owner.

“Financing Costs” means all professional and administrative costs related to the authorization and delivery of this Contract, including legal, accounting, advisory and other fees and expenses. Financing Costs are a subset of Project Costs.

“Fiscal Year” means the Town’s fiscal year beginning July 1, or such other fiscal year as the Town may later lawfully establish, and also includes the period between the Closing Date and June 30, 2023.

“Installment Payments” means the payments payable by the Town pursuant to Section 2.1.

“Interest Rate” means the annual interest rate applicable to the Town’s repayment of the Amount Advanced, as described in Exhibit C.

“Make Whole Prepayment Premium” with respect to a prepayment of the principal component of the Installment Payments, means an amount equal to the present value of the difference between (1) the amount that would have been realized by the Lender on the prepaid amount for the remaining term of the loan at the rate for fixed-rate payers in U.S. Dollar interest rate swaps as quoted by Bloomberg (the “Swap Rate”) for a term corresponding to the repayment term of the Amount

advanced, interpolated to the nearest month, if necessary, that was in effect three Business Days before the Closing Date and (2) the amount that would be realized by the Lender by reinvesting such prepaid funds for the remaining term of the loan at the Swap Rate for fixed-rate payers in U.S. Dollar interest rate swaps, interpolated to the nearest month, that was in effect three Business Days prior to the loan repayment date; both discounted at the same interest rate utilized in determining the applicable amount in (2). Should the present value have no value or a negative value, the Town may repay with no additional fee. Should Bloomberg no longer release rates for fixed-rate payers in U.S. Dollar interest rate swaps, the Lender may substitute the Bloomberg index for rates for fixed-payers in U.S. Dollar interest rate swaps with another similar index as determined by the Lender. The Lender shall provide the Town with a written statement explaining the calculation of the premium due, which statement shall, in absence of manifest error, be conclusive and binding.

Partial prepayments may be made subject to a prepayment charge based upon the same calculation methodology described above. Any partial prepayment shall be applied to installments of principal in the inverse order of maturity and shall not postpone the due dates of, or relieve the amounts of, any scheduled installment payments due hereunder. Any amounts repaid hereunder may not be re-borrowed.

“Net Proceeds” means all payments and proceeds derived from (a) claims made on account of insurance coverages required under this Contract, (b) any exercise of condemnation or eminent domain authority related to all or any portion of the Buses, (c) proceeds of title insurance related to the Buses, or (d) any sale of the Buses, as well as all judgments, settlements or other payments in lieu of any of the foregoing, in any case reduced by the sum of (i) all expenses (including attorneys’ fees and costs) incurred in the collection of such proceeds and (ii) all amounts expended by the Town or the Lender to remedy the event giving rise to such proceeds, all of which amounts will be paid or reimbursed from the gross proceeds.

“Payment Date” means each May 1 and November 1, beginning November 1, 2023.

“Prime Rate” means the per annum rate which the Lender’s affiliate Truist Bank (whether or not that bank or any affiliate at any time is the “Lender” under this Contract) announces from time to time to be its “prime rate,” as in effect from time to time. The prime rate is a reference or benchmark rate, is purely discretionary and does not necessarily represent the lowest or best rate charged to borrowing customers. The Lender’s affiliate Truist Bank may make commercial loans or other

loans at rates of interest at, above or below the prime rate. Each change in the prime rate will be effective from and including the date Truist Bank announces the change as effective.

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

“Project Costs” means all capital costs of the Project as determined in accordance with generally accepted accounting principles and that will not adversely affect the exclusion from gross income for federal income tax purposes of the designated interest component of Installment Payments payable under this Contract, including (a) sums required to reimburse the Town or its agents for advances made for any such costs, (b) sums to pay interest components of Installment Payments not later than 12 months after final delivery of the Buses, and (c) all Financing Costs.

“State” means the State of North Carolina.

"Taxable Period" means the period of time between (a) the date that the interest components of the Town's repayment obligations is deemed to be includable in the gross income of the owner thereof for federal income tax purposes as a result of an Event of Taxability, and (b) the date of the Event of Taxability and after which the applicable interest components bear interest at the Taxable Rate.

"Taxable Rate" means the interest rate per annum that provides the Lender with the same after tax yield that the Lender would have otherwise received had the Event of Taxability not occurred, taking into account the increased taxable income of the Lender as a result of such Event of Taxability. The Lender shall provide the Town with a written statement explaining the calculation of the Taxable Rate, which statement shall, in the absence of manifest error, be conclusive and binding on the Town.

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

“Town Representative” means the Town Manager, Town finance officer or any other person or persons at the time designated, by a written certificate furnished to the Lender and signed on the Town's behalf by the Town Manager or the

Town's Mayor to act on the Town's behalf to perform any act (or any specified act) under this Contract.

All references in this Contract to designated "Sections" and other subdivisions are to the designated sections and other subdivisions of this Contract. The words "hereof" and "hereunder" and other words of similar import refer to this Contract as a whole and not to any particular Section or other subdivision unless the context indicates otherwise. Words importing the singular number will include the plural number and vice versa. The use of the term "including" should be understood to mean "including, but not limited to."

## **EXHIBIT B – Tentative List of Buses To Be Acquired**

[To come from the Town.]

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

Principal is payable in the amounts and on the dates as shown below, subject to prepayment as provided in this Contract. Interest is payable on each May 1 and November 1, beginning November 1, 2023.

Each portion of the Amount Advanced will bear interest from the Closing Date until paid. Interest is calculated at the annual rate of 3.29%, subject to adjustment as provided in this Contract. Interest will be calculated based on a 360-day year consisting of twelve 30-day months. The schedule below shows the expected interest payment amounts.

<b>Payment Date</b>	<b>Principal (\$)</b>	<b>Interest (\$)</b>	<b>Total Payment (\$)</b>

## **EXHIBIT D – Form of Disbursement Request**

under the Installment Financing Contract dated March 28, 2023 (the “Contract”) by and between Truist Commercial Equity, Inc. (the “Lender”) and the Town of Chapel Hill, North Carolina (the “Town”)

In accordance with the terms of Section 1.3 of the Contract, the Town requests the Lender to approve payment to the following persons of the following amounts from the Project Fund for the following purposes:

Payee’s Name and Address	Invoice Number	Dollar Amount	Purpose

The undersigned hereby certifies as follows:

(i) The Town has incurred an obligation in the amount stated above, the obligation is a proper charge against the Project Fund for Project Costs, and the obligation has not been paid.

(ii) Attached hereto is a copy of the original invoice documentation with respect to such obligation, along with additional information appropriate to identify any Buses now being acquired.

(iii) No Event of Default, and no event which with notice or lapse of time, or both, would become an Event of Default, under the Contract has occurred and is continuing at the date hereof.

(iv) The representations, warranties and covenants of the Town set forth in the Contract are true and correct as of today.

(v) Any Buses subject to this Request are insured in accordance with the Contract.

(vi) If this requisition is for funds to pay, or to reimburse the Town for payment of, interest components of Installment Payments, there will remain in the Project Fund sufficient funds to pay the costs of all Buses the Town intends to finance through the Contract.



All capitalized terms used in this Request have the meanings assigned in the Contract.

Dated: \_\_\_\_\_

**TOWN OF CHAPEL HILL,  
NORTH CAROLINA**

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

Printed name: \_\_\_\_\_  
Authorized Town Representative

**Accepted and approved:**

Dated: \_\_\_\_\_

**Truist Commercial Equity, Inc.**

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

Printed name: \_\_\_\_\_

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