

**INTERLOCAL AGREEMENT**

**FOR**

**THE ESTABLISHMENT OF A COMMINGLED INVESTMENT  
POOL**

**BETWEEN**

**BUNCOMBE COUNTY, NORTH CAROLINA**

**AND**

**WAKE COUNTY, NORTH CAROLINA**

## INTERLOCAL AGREEMENT

**THIS INTERLOCAL AGREEMENT** is dated as of the \_\_\_ day of \_\_\_\_\_, 2021 (the “Agreement”), and is by and between **BUNCOMBE COUNTY, NORTH CAROLINA** (“Buncombe”), a local government and body politic and corporate of the State of North Carolina, and **WAKE COUNTY, NORTH CAROLINA** (“Wake”), a local government and body politic and corporate of the State of North Carolina (hereinafter, individually, a “Party” and collectively, the “Parties”).

### **WITNESSETH:**

**WHEREAS**, the provisions of Section 159 of the General Statutes of North Carolina, as amended and as may be further amended from time to time, entitled “The Local Government Finance Act,” enable any local government or public authority of the State of North Carolina (a “Local Government” or “Local Government Unit”) to invest idle funds; and

**WHEREAS**, under N.C. Gen. Stat. § 159-30 (10), moneys may be invested in a commingled investment pool established by interlocal agreement pursuant to N.C. Gen. Stat. § 160A-460 through 160A-464 (a “Local Government Investment Pool” or “LGIP”), so long as the investments of the Local Government Investment Pool are limited to those qualifying for investment under N.C. Gen. Stat. § 159-30(c) or other laws of the State of North Carolina governing the investment of monies of a Local Government Unit (“Permitted Investments”); and

**WHEREAS**, it is the intent of the Parties to create a Local Government Investment Pool, known as the North Carolina Local Government Investment Pool (the “Trust”), and to enter into an Indenture of Trust (the “Indenture”), which shall serve as the agreement for such purpose; and

**WHEREAS**, the Parties will be the initial Local Government Units of the Trust (“Indenture Signatory Local Government Units”) and each Party intends for the Indenture to provide for the investment and deposit of pooled funds in only Permitted Investments by other Local Government Units; and

**WHEREAS**, it is proposed that the beneficial interest in the assets of the trust fund created pursuant to the Indenture shall be divided into non-transferable shares of beneficial interest, which shall be evidenced by a share register maintained by the Trustees or their agent, or by an administrator engaged by the Trustees (the “Administrator”); and

**WHEREAS**, the Indenture Signatory Local Government Units anticipate that other Local Government Units may become participants in the Trust (“Participants”) consistent with the terms of the Indenture; and

**WHEREAS**, pursuant to Articles 3, 12 and 20 of Chapter 160A of the North Carolina General Statutes, the Parties are authorized to enter into this Agreement and the Indenture.

**NOW THEREFORE**, in consideration of the respective rights, powers, duties and obligations hereinafter set forth herein, the Parties agree as follows:

**ARTICLE I  
RECITALS, PURPOSE and LOCAL GOVERNMENT INVESTMENT POOL  
ESTABLISHED**

**1.01 Recitals**

The Recitals are incorporated into this Agreement.

**1.02 Purpose**

The purpose of this Agreement is to establish a commingled investment pool limited to qualifying investments under N.C. Gen. Stat. § 159-30(c) or other laws of the State of North Carolina governing the investment of monies of a Local Government Unit. Pursuant to this Agreement, the Parties intend to enter into an Indenture similar to the Indenture attached hereto as Exhibit A, which shall serve as the agreement for such purpose.

**1.03 Local Government Investment Pool Established**

A. The Parties through this Agreement, the Trust and the Indenture establish a joint agency empowered by the Board of Trustees under the Indenture to provide a surplus funds trust fund in accordance with North Carolina law permitting Local Government Units to pool monies available from idle funds, which are not immediately required to be disbursed, with the same such monies in the treasuries of other Local Government Units, in order to invest them and earn interest in accordance with, and as permitted by, the provisions of the N.C. Gen. Stat. § 159-30 or other laws of the State of North Carolina governing the investment of monies of a Local Government Unit. The governing boards of each Party shall approve and execute a Resolution to create a Local Government Investment Pool per the terms of this Agreement and the Indenture.

B. Only those Local Government Units subject to N.C. Gen. Stat. Chapter 159 *et seq.*, which adopt the Indenture by resolution and have complied with the provisions of the Indenture, may become Participants in the Trust.

C. The composition, organization, powers and operation of the Trust shall be governed by the terms of the Indenture and the By-Laws attached hereto as Exhibit B, including provisions for governance by a Board of Trustees.

D. The manner of appointing the personnel necessary for the execution and operation of the Local Government Investment Pool shall be governed by the Indenture. Such power, shall include granting the Trustees the power to appoint, employ, retain, or contract with any Person of suitable qualifications and high repute to perform designated functions under the supervision of the Trustees.

E. The Indenture contains and includes the method of financing the operation of the Local Government Investment Pool.

F. The formula of ownership of property and assets of the Local Government Investment Pool is contained in the Indenture and includes a designation of the interest of the beneficiaries of the Trust divided into transferable units called Shares without par value. Title to the Trust Property is vested in the Trustees on behalf, and for the beneficial interest, of the Participants

G. After the establishment of the Local Government Investment Pool and execution of the Resolution and Indenture, either Party may resign or withdraw from the Indenture pursuant to the terms of the Indenture with no further responsibility or obligation to the other Party.

H. The Parties have not established a minimum contribution to the Local Government Pool or a minimum obligation with regard to participation in the Local Government Investment Pool.

I. The Finance Officers of the respective Parties shall independently determine whether to invest or withdraw the funds of their respective Local Government Units in accordance with, and as permitted by, that Party's investment policies and the provisions of the N.C. Gen. Stat. § 159-30 or other laws of the State of North Carolina governing the investment of monies of a Local Government Unit.

J. The Local Government Investment Pool and the Indenture shall survive the termination of this Agreement by one or both parties, the purpose of this Agreement being to comply with the requirement of N.C. Gen. Stat. § 159-30(c)(10) to establish a commingled investment pool by interlocal agreement by two or more units of local government pursuant to N.C. Gen. Stat. § 160A-460 through 160A-464.

## **ARTICLE II TERM, AMENDMENT, and TERMINATION**

**2.01 Term.** This Agreement shall become effective upon its execution by both Parties and shall continue until terminated in writing by either party ("Term"). However, the Indenture shall survive termination where other Local Government Units are participants in the Trust.

**2.02 Amendment.** This Agreement may only be amended by a writing signed by the Parties. To propose an amendment to Agreement, either Party may submit the proposed amendment and the reasons for the proposed amendment in writing to the other Party per the Notice provisions in this Article II. If the Parties agree to the proposed amendment, a written amendment to Agreement shall be executed. The Parties may enter into amendments that do not have financial implications for either Party with the approval of and execution by their respective Managers. All other amendments shall require approval by the respective governing boards of the Parties. Notwithstanding the above, no amendment to the Agreement shall be approved that is inconsistent with the terms of the Indenture.

**2.03 Disputes.** Notwithstanding any other provision of this Agreement, either Party may contest any decision, action or inaction of the other Party, or an alleged failure of the other Party to comply with the terms of this Agreement. If any such dispute cannot be informally resolved, then such dispute shall be resolved as provided in Section 4.07.

**2.04 Termination.** Either Party may terminate this Agreement for any reason, or for no reason, by notifying the other Party in writing per the Notice provisions in this Article II. However, the Indenture shall survive termination where other Local Government Units are participants in the Trust. If not sooner terminated, this Agreement shall automatically terminate five (5) years from the date of execution.

**2.05 Notice.** Any notice required by this Agreement shall be in writing and delivered to the Parties at the following addresses:

**For Wake County:** Wake County Manager  
Wake County Justice Center  
301 S. McDowell St.  
Raleigh, NC 27601

With a copy to Wake County Attorney  
Wake County Justice Center  
301 S. McDowell St.  
Raleigh, NC 27601

And

Wake County Finance Director  
Wake County Justice Center  
301 S. McDowell St.  
Raleigh, NC 27601

**For Buncombe County:** Buncombe County Manager  
200 College St., Third Floor  
Asheville, NC 28801

With a copy to Buncombe County Legal Department  
200 College St., Ground Floor  
Asheville, NC 28801

And

Buncombe County Finance Director  
200 College St., Fourth Floor  
Asheville, NC 28801

**2.06 Survive Termination.** Those obligations, which by their nature should survive the termination of this Agreement, shall survive the termination of this Agreement.

### **ARTICLE III EXHIBITS AND RELATED DOCUMENTS**

**3.01 Exhibits**

The following exhibits are attached hereto and incorporated by reference into this Agreement as if fully set forth herein:

- A. Exhibit “A” Indenture of Trust (Draft)
- B. Exhibit “B” By-Laws of the North Carolina Investment Pool (Draft)

**3.02 Related Documents.** The Parties acknowledge that the Indenture must be finalized and shall be executed as soon as reasonably possible and in no event later than the creation of the Trust.

### **ARTICLE IV OTHER PROVISIONS**

**4.01 Ethics Provision.** The Parties acknowledge and shall adhere to the requirements of N.C.G.S. Section 133-32, which prohibits the offer to, or acceptance by, any state or local employee of any gift from anyone with a contract with the governmental entity or from a person seeking to do business with the governmental entity.

**4.02 Governing Law, Venue.** The Parties acknowledge that this Agreement shall be governed by the laws of the State of North Carolina. Venue for any disputes arising under this Agreement shall be in the courts of Wake County, North Carolina.

**4.03 Entire Agreement.** The terms and provisions herein contained constitute the entire agreement by and between the Parties hereto and shall supersede all previous communications, representations or agreements, either oral or written between the Parties hereto with respect to the subject matter hereof.

**4.04 Severability.** If any provision of this Agreement shall be determined to be unenforceable by a court of competent jurisdiction, such determination will not affect any other provision of this Agreement.

**4.05 Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original.

**4.06 Representations and Warranties.** The Parties each represent, covenant and warrant for the other’s benefit as follows:

- A. Each Party has all necessary power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement, and this Agreement has

been authorized by Resolution of each Party's governing board spread upon its minutes. This Agreement is a valid and binding obligation of each Party.

B. Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this Agreement, results in a breach of the terms, conditions and provisions of any agreement or instrument to which either Party is now a party or by which either is bound, or constitutes a default under any of the foregoing.

C. To the knowledge of each Party, there is no litigation or other court or administrative proceeding pending or threatened against such Party (or against any other person) affecting such Party's rights to execute or deliver this Agreement or to comply with its obligations under this Agreement. The Party's execution and delivery of this Agreement, and its compliance with its obligations under this Agreement, does not require the approval of any regulatory body or any other entity the approval of which has not been obtained.

**4.07 Dispute Resolution.** In the event of conflict or default that might arise for matters associated with this Agreement, the Parties agree to informally communicate to resolve the conflict. If any such dispute cannot be informally resolved, then such dispute, or any other matter arising under this Agreement, shall be subject to resolution in a court of competent jurisdiction. Such disputes, or any other claims, disputes or other controversies arising out of, and between the Parties shall be subject to and decided exclusively by the appropriate general court of justice of Wake County, North Carolina.

**4.08 No Waiver of Non-Compliance with Agreement.** No provision of this Agreement shall be deemed to have been waived by any Party hereto unless such waiver shall be in writing and executed by the same formality as this Agreement. The failure of any Party hereto at any time to require strict performance by the other of any provision hereof shall in no way affect the right of the other Party to thereafter enforce the same. In addition, no waiver or acquiescence by a Party hereto of any breach of any provision hereof by another Party shall be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

**4.9 Assignment.** No Party may sell or assign any interest in or obligation under this Agreement without the prior express written consent of the other Party.

**4.10 Liability of Officers and Agents.** No officer, agent or employee of any Party will be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. 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.

**4.11 Execution in Counterparts/Electronic Version of Agreement.** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Any Party may convert a signed

original of this Interlocal Agreement to an electronic record pursuant to a North Carolina Department of Natural and Cultural Resources approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of the Agreement shall be deemed for all purposes to be an original signed Agreement.

**4.12 Headings.** Section and paragraph headings contained in this Agreement are solely for the convenience of the Parties and shall not affect in any way the meaning or interpretation of this Agreement.

**4.13 Regulatory Authority.** Nothing in this Agreement shall restrict or inhibit a Party's police powers or regulatory authority.

**4.14 Further Actions.** The Parties agree to cooperate fully and execute any and all further documents and to take all further actions that may be necessary to give full force and effect to the intent of this Agreement.

**4.15 Authority to Invest.** The Parties authorize their respective finance officers to execute such documents necessary to affect the spirit and intent of this Agreement according to their statutory powers and internal investment policies, including, but not limited to, the execution of the Indenture.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

*{Signature Page Follows}*



<p><b>BUNCOMBE COUNTY, NORTH CAROLINA</b></p> <p>By: _____  County Manager  Buncombe County, North Carolina</p>	<p>This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act.</p> <p>_____  Finance Officer  Buncombe County, North Carolina</p>
<p><b>ATTEST:</b></p> <p>By: _____  Clerk to the Board of Commissioners  Buncombe County, North Carolina</p> <p>[Seal]</p>	<p>This instrument is approved as to form and legal sufficiency.</p> <p>_____  County Attorney/County Staff Attorney  Buncombe County, North Carolina</p>
<p><b>WAKE COUNTY, NORTH CAROLINA</b></p> <p>By: _____  County Manager  Wake County, North Carolina</p>	<p>This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act.</p> <p>_____  Finance Director  Wake County, North Carolina</p>
<p><b>ATTEST:</b></p> <p>By: _____  Clerk to the Board of Commissioners  Wake County, North Carolina</p> <p>[Seal]</p>	<p>This instrument is approved as to form and legal sufficiency.</p> <p>_____  County Attorney  Wake County, North Carolina</p>

**EXHIBIT A**

**Indenture of Trust (Draft)**

# North Carolina Investment Pool

## **INDENTURE OF TRUST**

Dated as of March \_\_, 2021

213 Market Street  
Harrisburg, PA 17101  
Phone (800) 338-3383  
Fax (800) 252-9551

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# INDENTURE OF TRUST

## North Carolina Investment Pool

WITNESSETH:

WHEREAS, the provisions of Section 159 of the General Statutes of North Carolina, as amended and as may be further amended from time to time (“N.C.G.S.”), entitled “The Local Government Finance Act” enable any local government or public authority of the State of North Carolina (a “Local Government” or “Public Authority,” as applicable and together a “Local Government Unit”) to invest moneys in a commingled investment pool established by interlocal agreement pursuant to N.C.G.S. Section 160A-460 through 160A-464 (an “Investment Pool”) if the investments of the Investment Pool are limited to those qualifying for investment under N.C.G.S. (“Permitted Investments”); and,

WHEREAS, it is the intent of the initial Local Government Units signatory hereto (such Local Government Units, the “Signatory Local Government Units”) to create an Investment Pool, known as the North Carolina Investment Pool (the “Trust”) and that this Indenture of Trust (the “Indenture”) shall serve as the agreement for such purpose; and,

WHEREAS, it is the intent and purpose of this Indenture to provide for the investment and deposit of pooled funds in only Permitted Investments by Local Government Units; and,

WHEREAS, by resolutions duly adopted, the Signatory Local Government Units hereby create the Trust as an Investment Pool pursuant to this Indenture, which action serves a governmental purpose for said Local Government Units and is, therefore, in the best interests of said Local Government Units, their officials, officers, and citizens in that such a program will offer professionally managed portfolios to meet investment needs, will result in economies of scale that will create greater purchasing powers, and will thereby lower the costs traditionally associated with the investment of the assets of said Local Government Units; and,

WHEREAS, each of the Signatory Local Government Units has duly undertaken all official actions necessary and appropriate to become a party to this Indenture for the purpose of establishing the Trust, and to perform hereunder, including, without limitation, the establishment of written investment policies and the enactment of any resolutions or the undertaking of other actions required pursuant to the Local Government Finance Act or other applicable law and regulations; and,

WHEREAS, it is proposed that the beneficial interest in the assets of the trust fund created pursuant to the provisions of this Indenture shall be divided into non-transferable Shares of beneficial interest, which shall be evidenced by a share register maintained by the Trustees or their agent, or by the Administrator; and,

WHEREAS, the Signatory Local Government Units anticipate that other Local Government Units may wish to become Participants by adopting this Indenture and becoming a party hereto;

NOW, THEREFORE, the recitals set forth above are adopted and incorporated into this Indenture. In consideration of the mutual promises, covenants and agreements contained herein, the parties hereto, now and hereafter added pursuant to the provisions herein, mutually undertake, promise and agree for themselves, their respective representatives, successors and assigns that all monies, assets, securities, funds and property now or hereafter acquired by the Trustees, their successors and assigns under this Indenture shall be held and managed in trust for the equal and proportionate benefit of the holders of record from time to time of Shares of beneficial interest herein, without privilege, priority or distinction among such holders, and subject to the terms, covenants, conditions, purposes and provisions hereof as follows:

## **ARTICLE I– DEFINITIONS**

For purposes of this Indenture, the following terms shall have the meanings set forth:

“Administrator” means the Trust Administrator appointed by the Trustees pursuant to Section 4.1 hereof and as constituted from time to time by agreement with the Trustees which has, or has been delegated, the responsibility for administering the Trust or any aspects of it.

“Adviser” means the Investment Adviser appointed by the Trustees pursuant to Section hereof and constituted from time to time by agreement with the Trustees which has, or has been delegated, the responsibility to effect purchases, sales, or exchanges of Trust property on behalf of the Trustees and to provide advice to the Trustees regarding the investment of Trust assets.

“Affiliate” means with respect to a Person another Person directly or indirectly controlled, controlled by or under the common control with such Person, or any officer, director, partner or employees of such Person.

“Code” means the Internal Revenue Code and any regulations promulgated pursuant thereto. “Custodian” means a qualified financial institution selected by the Trustees pursuant to a Custodian Agreement for the purpose of receiving and holding Trust assets.

“Custodian Agreement” means the agreement between the Trustees on behalf of the Trust and Custodian.

“Designee” shall mean the individual designated as such by a Participant in writing. Such Designee shall be the legal representative to act on behalf of each Participant. Each Participant may designate Alternate Designees.

“Indenture” has the meaning set forth in the recitals.

“Investment Pool” has the meaning set forth in the recitals.

“Local Government Unit” has the meaning set forth in the recitals.

“N.C.G.S.” has the meaning set forth in the recitals.

“Participants” means the Local Government Units which adopts a Resolution to join and execute this Indenture.



“Permitted Investments” has the meaning set forth in the recitals.

“Person” means any individual, corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any limited liability company or joint stock company), firm or other enterprise, association, organization, entity or Local Government Unit.

“Shares” shall have the meaning ascribed to such term in Section 7.1 hereof.

“Signatory Local Government Unit” has the meaning set forth in the recitals.

“Trust” has the meaning set forth in the recitals.

“Trust Property” means any and all property, real, personal or otherwise, tangible or intangible, which is transferred, conveyed or paid to the Trust and all income, profits and gains therefrom and which, at such time, is owned or held by, for the account of the Trust.

“Trustee” means any member of the Board of Trustees.

“Trustees” means individuals appointed by the Board of Trustees and, unless otherwise provided herein, approved by the Participants to administer and supervise the affairs of the Trust.

## **ARTICLE II– CREATION OF TRUST**

2.1 **Creation of Trust.** By these present, a North Carolina statutory trust is hereby established by this Indenture. The Trust shall be called the “North Carolina Investment Pool”. The Trustees may use such other designations, including “CIP”, as the Trustees deem proper. So far as may be practicable, the Trustees shall conduct the Trust’s activities, execute all documents and sue or be sued under that name or designation, which name or designation (and the word “Trust”) wherever used in this Indenture, except where the context otherwise requires, shall refer to the Trustees in their capacity as Trustees, and not individually or personally, and shall not refer to the officers, agents, employees, counsel, advisers, consultants, or accountants of the Trustee, nor shall such term refer to the Signatory Local Government Units or Participants. Should the Trustees determine that the use of such name or designation is not practicable, legal or convenient, they may use such other designation or they may adopt such other name for the Trust as they deem proper, and the Trust may hold property and conduct its activities under such designation or name. The Trustees shall take such action as they, acting with the advice of counsel, shall deem necessary or appropriate to file or register such name or designation in accordance with the laws of the State of North Carolina or the United States of America so as to protect and reserve the right of the Trust in and to such name or designation.

## 2.2 Contributions to the Trust.

(a) All contributions that a Participant makes to be invested by the Trustees shall be paid and delivered to the Trustees to be held in the Trust.

(b) All payments made by a Participant to the Trust, and all other money or property that lawfully becomes a part of the Trust, together with the income, appreciation or depreciation and expenses, if any, therefrom, shall be held, managed and administered in trust, pursuant to the terms of this Indenture. The Trustees accept this Trust and agree to perform the duties, responsibilities and obligations under this Indenture allocated to them as fiduciaries.

2.3 **Trustees' Duties.** The Trustees shall not have the right and shall not be subject to any duty to demand or collect contributions from the Participants, or from any other Person, or to enforce or attempt to enforce any agreement that may be considered to require contributions to this Trust. The Trustees shall be accountable only for transfers and contributions made to the Trust fund in accordance with the terms of this Indenture.

The powers, rights, and obligations of the Trustees shall be established and governed solely by this Indenture.

2.4 **Qualification of Trust.** This Trust is intended to be exempt from income tax pursuant to Section 115 of the Code, and shall be construed and operated in all respects consistently with that intention. The Trustees shall take no action which would adversely affect the tax-exempt status of the Trust. The Trustees may demand assurances satisfactory to them that any action which they are directed to take will not adversely affect the tax-exempt status of the Trust. The Trustees, or their Designee, shall take any and all actions necessary to ensure that the Trust obtains all appropriate qualifications and determination, to the extent necessary, that it is and continues to be exempt from income tax under Section 115 of the Code.

## 2.5 Purpose; Participant Requirements; Changes of Incumbency.

(a) The purpose of the Trust is to provide a surplus funds trust fund in accordance with North Carolina law permitting Local Government Units to pool monies available idle funds, which are not immediately required to be disbursed, with the same such monies in the treasuries of other Local Government Units, in order to invest them and earn interest in accordance with, and as permitted by, the provisions of the N.C.G.S. Section 159-30 or other laws of the State of North Carolina governing the investment of monies of a Local Government Unit, and as allowed by law. No Participant shall be required to appropriate any funds or levy any taxes to establish or contribute to this Trust. The Trustees may provide for the payment or repayment of any expenses from the earnings of the Trust.

(b) Only those Local Government Units which adopt this Indenture and have complied with the provisions of this section may become Participants. The Designee empowered to invest funds of each Local Government Unit or such other person designated by the Participant to serve in such capacity (an "Alternate Designee"), shall be the legal representative to act for and on behalf of such Local Government Unit for purposes of this Indenture.

(c) Each Local Government Unit adopting this Indenture, and otherwise complying with the provisions hereof, shall become a Participant only upon adopting this Indenture and depositing into the Trust the minimum total investment as that amount is established from time to time by the Trustees. Whenever the balance in a Participant's account is less than the minimum established by the Trustees, the Trustees may redeem the Shares and close the account; provided that thirty (30) days' prior notice shall be given to such Participant and redemption shall only be permitted if the Participant has not restored the balance in the account to the minimum amount established prior to the expiration of such thirty (30) day period which begins with the date of such notice. If the Trustees change the minimum total investment to an amount greater than the investment of any Participant at the time that such change becomes effective, the investment of such Participant shall not be redeemed without such Participant's consent.

(d) In the event that a Designee shall no longer be authorized to act on behalf of such Participant as a Designee, and in the absence of any duly-appointed Alternate Designee, any funds placed in the Trust by such Designee shall be held hereunder for the benefit of the Local Government Unit for which he or she was acting at the time the vacancy or termination of authority occurred. Any Designee assuming office, either to fill a vacancy in such office or to begin a new term following the expiration of the term in office of his or her predecessor, or otherwise becoming authorized to act as Designee on behalf of such Participant, shall become the succeeding legal representative of the Local Government Unit by the Local Government Unit filing written notification of such with the Trustees in a form acceptable to the Trustees.

**2.6 Trustees; Signatory Public Agencies and Participants.** No Signatory Local Government Unit or Participant, nor any or its officers, employees, agents or representatives shall have any liability under this Indenture as a result of service by its Designee as a Trustee.

**2.7 Voting.** Only Participants of record shall be entitled to vote. Each whole Share shall be entitled to one vote as to any matter to which it is entitled to vote and each fractional Share shall be entitled to a fractional vote. A proxy purporting to be executed by or on behalf of a Participant shall be deemed valid unless challenged at or prior to its exercise and the burden of proving invalidity shall rest on the challenger. The Trustees shall determine any such challenge and their decision shall be final. The approval of the holders of at least a majority of the outstanding Shares shall be sufficient to approve any action at a meeting or other election of the Participants except as otherwise expressly required under this Indenture.

### **ARTICLE III - TRUST OPERATIONS**

**3.1 Powers of the Board of Trustees.** Subject to the rights of the Participants as provided herein, the Trustees shall be the investment officer of the Trust and shall have authority over the Trust Property and the affairs of the Trust to administer the operation of the Trust, subject to the requirements, restrictions and provisions of this Indenture, including the power to delegate such functions of administration pursuant to Section 3.16 hereof. The Trustees may do and perform such acts and things as in their judgment and discretion, subject to the requirements and restrictions of this Indenture, as are necessary and proper for conducting the affairs of the Trust or promoting the interest of the Trust and the Participants. The enumeration of any specific power or authority herein shall not be construed as limiting the aforesaid general power or authority or any specific power or authority. The Trustees may exercise any power authorized

and granted to them by this Indenture. Such powers of the Trustees may be exercised without the necessity of any order of, or resort to, any court.

3.2 **Permitted Investments.** The Trustees shall have the following investment powers:

(a) To conduct, operate and provide an investment program for the pooling of idle funds of a Local Government to invest in the Permitted Investments as may be modified from time to time as provided in this Indenture;

(b) For such consideration as they may deem proper and as may be required by law, to subscribe for, assign, transfer, exchange, distribute and otherwise deal in or dispose of Permitted Investments; and

(c) To contract for, and enter into agreements with respect to, the purchase and sale of Permitted Investments.

3.3 **Legal Title.**

(a) Legal title to all of the Trust Property shall be vested in the Trustees on behalf of the Participants, who shall be the beneficial owners except that the Trustees shall have full and complete power to cause legal title to any Trust Property to be held, on behalf of the Participants, by or in the name of the Trust, or in the name of any other Person as nominee, on such terms, in such manner, and with such powers as the Trustees may determine, so long as in their judgment the interest of the Trust is adequately protected.

(b) The right, title and interest of the Trustees in and to the Trust Property shall vest automatically in all persons who may hereafter become Trustees upon their due selection and qualification without any further act. Upon the resignation, disability, removal, adjudication as an incompetent, disqualification pursuant to the terms of this Indenture, or death of a Trustee, he or she (and in the event of his or her death, his or her estate) shall automatically cease to have any right, title or interest in or to any of the Trust Property, and the right, title and interest of such Trustee in and to the Trust Property shall vest automatically in the remaining Trustees without any further act.

3.4 **Disposition of Assets.** In winding up the affairs of the Trust, the Trustees shall have full and complete power to sell, exchange or otherwise dispose of any and all Trust Property free and clear of any and all trusts and restrictions, at public or private sale, for cash or on terms, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as they shall deem proper, and to execute and deliver any deed, power, assignment, bill of sale, or other instrument in connection with the foregoing including giving consents and making contracts relating to Trust Property or its use.

3.5 **Taxes.** The Trustees shall have full and complete power:

(a) To pay all taxes or assessments, of whatever kind or nature, validly and lawfully imposed upon or against the Trust or the Trustees in connection with the Trust Property or upon or against the Trust Property or income or any part thereof;

- (b) To dispute, settle and compromise tax liabilities; and
- (c) For the foregoing purposes to make such returns and do all such other acts and things as may be deemed by the Trustees to be necessary or desirable.

**3.6 Rights as Holders of Trust Property.** The Trustees shall have full and complete power to exercise on behalf of the Participants all of the rights, powers and privileges appertaining to the ownership of all or any Permitted Investments or other property forming part of the Trust corpus to the same extent that any individual might, and, without limiting the generality of the foregoing, to vote or give any consent, request or notice or waive any notice either in person or by proxy or power of attorney, with or without the power of substitution, to one or more persons, which proxies and powers of attorney may be for meetings or actions generally, or for any particular meeting or action, and may include the exercise of discretionary powers.

**3.7 Delegation: Committees.** The Trustees shall have full and complete power (consistent with their continuing exclusive authority over the management of the Trust, the conduct of its affairs, their duties and obligations as Trustees, and the management and disposition of the Trust Property), in addition to the delegation powers set forth in Section 3.16 hereof, to delegate from time to time to such one or more of their number (who may be designated as constituting a Committee of the Trustees) or to officers, employees or agents of the Trust (including, without limitation, the Administrator, the Adviser and the Custodian) the doing of such acts and things and the execution of such instruments, either in the name of the Trust or the names of the Trustees or as their attorney or attorneys, or otherwise as the Trustees may from time to time deem expedient and appropriate in the furtherance of the business affairs and purposes of the Trust.

**3.8 Collection Powers.** The Trustees shall have full and complete power:

- (a) To collect, sue for, receive and receipt for all sums of money or other property due to the Trust including, without limitation, the power to file proofs of claim in any bankruptcy or insolvency matter;
- (b) To consent to extensions of the time for payment, or to the renewal of any securities, investments or obligations;
- (c) To engage or intervene in, prosecute, defend, compromise, abandon or adjust by arbitration or otherwise any actions, suits, proceedings, disputes, claims, demands or things relating to the Trust Property;
- (d) To foreclose any collateral, security or instrument securing any investments, notes, bills, bonds, obligations or contracts by virtue of which any sums of money are owed to the Trust;
- (e) To exercise any power of sale held by the Trustees, and to convey good title thereunder free of any and all trusts, and in connection with any such foreclosure or sale, to purchase or otherwise acquire title to any property;

(f) To be parties to reorganization and to transfer to and deposit with any corporation, committee, voting trustee or other Person any securities, investments or obligations of any Person which form a part of the Trust Property, for the purpose of such reorganization or otherwise;

(g) To participate in any arrangement for enforcing or protecting the interests of the Trustees as the owners or holders of such securities, investments or obligations and to pay any assessment levied in connection with such reorganization or arrangement;

(h) To extend the time (with or without security) for payment or delivery of any debts or property and to execute and enter into releases, agreements and other instruments; and

(i) To pay or satisfy any debts or claims upon any evidence that the Trustees shall deem sufficient.

**3.9 Powers: Payment of Expenses.** The Trustees shall have full and complete power:

(a) To incur and pay charges or expenses which in the opinion of the Trustees are necessary or incidental to or proper for the carrying out any of the purposes of this Indenture;

(b) To reimburse others for the payment therefor; and

(c) To pay appropriate compensation or fees from the funds of the Trust to Persons with whom the Trust has contracted or transacted business.

The Trustees may pay themselves or any one or more of themselves reimbursement for expenses reasonably incurred by themselves or any one or more of themselves on behalf of the Trust.

Notwithstanding any provision of this Indenture to the contrary, in no event shall any expenses of administration of the Trust be payable from any source other than Trust Property.

**3.10 Borrowing and Indebtedness.** The Trustees shall not incur indebtedness on behalf of the Trust, or authorize the Trust to borrow money or incur indebtedness, except as expressly provided in Section 5.2(b) hereof.

**3.11 Deposits.** The Trustees shall have full and complete power to deposit, subject to the provisions of N.C.G.S. Sections 159-31 and 159-32, in such a manner as may now and hereafter be permitted by this Indenture or applicable law, any monies or funds included in the Trust Property and intended to be used for the payment of expenses of the Trust or the Trustees, with one or more banks, trust companies or other banking institutions whether or not such deposits will draw interest. Such deposits are to be subject to withdrawal in such manner as the Trustees may determine, and the Trustees shall have no responsibility for any loss which may occur by reason of the failure of the bank, trust company or other banking institution with which the monies, investments, or securities have been deposited. Each such bank, trust company or other banking institution shall comply, with respect to such deposit, with all

applicable requirements of all applicable laws including, without limitation, with N.C.G.S. Sections 159-31 and 159-32.

**3.12 Valuation.** The Trustees shall have full and complete power to conclusively determine in good faith the value of any of the Trust Property and to revalue the Trust Property as the Trustees deem appropriate consistent with the provisions of this Indenture.

**3.13 Fiscal Year; Accounts.** The Trustees shall have full and complete power to determine the fiscal year of the Trust and the method or form in which its accounts shall be kept and from time to time to change the fiscal year or method or form of accounts. The fiscal year shall be as set forth in the Bylaws.

**3.14 Self-Dealing Prohibited.**

(a) No Trustee, officer, employee or agent of the Trust shall cause or permit the Trust to make any investment or deposit, enter into any contract or other arrangement, or perform any act which confers or might reasonably be expected to confer any special benefit upon such Person or any Affiliate of such Person.

(b) The Trust shall not enter into any investment transaction with any Affiliate of the Trust, or with the Adviser or the Administrator or any Affiliate thereof, or with any other officer, director, employee or agent of the Trust or any Affiliate thereof. Provided, however, the Trust may deposit moneys and purchase and sell Permitted Investments from and to the Custodian or an Affiliate of the Custodian.

**3.15 Investment Program.** The Trustees shall use their best efforts to obtain, through the Adviser or other qualified Persons, a continuing and suitable investment program, consistent with the investment policies and objectives of the Trust, and the Trustees shall be responsible for reviewing and approving or rejecting the investment program presented by the Adviser or such other Persons. Subject to the provisions of this Indenture, the Trustees may delegate functions arising under this Section 3.15 to one or more Trustees or to the Adviser.

**3.16 Power to Contract, Appoint, Retain and Employ.** Subject to the provisions of this Indenture, the Trustees shall have full and complete power to appoint, employ, retain, or contract with any Person of suitable qualifications and high repute to perform any or all of the following functions under the supervision of the Trustees:

(a) Serve as the Trust's investment Adviser administrator or co-administrator pursuant to Article IV;

(b) Furnish reports to the Trustees and provide research, economic and statistical data in connection with the Trust's investments;

(c) Act as consultants, accountants, technical advisers, attorneys, brokers, underwriters, corporate fiduciaries, escrow agents, depositaries, custodians or agents for collection, insurers or insurance agents, registrars for Shares or in any other capacity deemed by the Trustees to be necessary or desirable;

(d) Investigate, select, and, on behalf of the Trust, conduct or engage others to manage relations with Persons acting in such capacities and pay appropriate fees to, and enter into appropriate contacts with, or employ, or retain services performed or to be performed by, any of them in connection with the investments acquired, sold, or otherwise disposed of, or committed, negotiated, or contemplated to be acquired, sold or otherwise disposed of;

(e) Substitute any other Person possessing the same minimum qualifications for any such Person, such replacement to be made in the same manner as the original selection;

(f) Act as attorney-in-fact or agent in the purchase or sale or other disposition of investments, and in the handling, prosecuting or other enforcement of any lien or security securing investments; and

(g) Assist in the performance of such ministerial functions necessary in the management of the Trust as may be agreed upon with Trustees.

**3.17 Indemnification.** Upon advice of counsel, the Trustees shall have full and complete power, to the extent of Trust property (as provided in Section 6.1) and as permitted by applicable laws, to indemnify or enter into agreements with respect to indemnification with any Person with whom the Trust has dealings, to such extent as the Trustees shall determine in accordance with law. The Trust is authorized to purchase insurance to provide such indemnification.

**3.18 Remedies.** Notwithstanding any provision in this Indenture, when the Trustees deem that there is a significant risk that an obligor to the Trust may default or is in default under the terms of any obligation to the Trust, the Trustees shall have full and complete power to pursue any remedies permitted by law which, in their sole judgment, are in the interests of the Trust, and the Trustees shall have full and complete power to enter into any investment, commitment or obligation of the Trust resulting from the pursuit of such remedies as are necessary or desirable to dispose of property acquired in the pursuit of such remedies.

**3.19 Further Powers.** The Trustees shall have full and complete power to take all actions, do all such matters and things and execute all such agreements, documents and instruments as they deem necessary, proper or desirable in order to carry out, promote or advance the interests and purposes of the Trust although such actions, matters or things are not herein specifically mentioned. Any determination as to what is in the best interests of the Trust made by the Trustees in good faith shall be conclusive. In construing the provisions of this Indenture, the presumption shall be in favor of a grant of power to the Trustees. No provision in this Indenture, however, may be interpreted or construed in a manner which alters or reduces the duties of the Trustees to act as fiduciaries of the Trust. The Trustees shall not be required to obtain any court order to deal with the Trust Property.



## ARTICLE IV - INVESTMENT ADVISER AND ADMINISTRATOR

4.1 **Appointment.** The Trustees are responsible for implementing the investment policy and program of the Trust and for supervising the officers, agents, employees, investment advisers, administrators, distributors, and independent contractors of the Trust. The Trustees are not required personally to conduct all of the routine business of the Trust and, consistent with their ultimate responsibility as stated herein, the Trustees may appoint, employ or contract with an Adviser and an Administrator, and may grant or delegate such authority to the Adviser and the Administrator or to any other Person whose services are obtained by the Adviser or the Administrator, as the Trustees may, in their sole discretion, deem to be necessary or desirable for the efficient management of the Trust, without regard to whether such authority is normally granted or delegated by Trustees or other fiduciaries.

4.2 **Duties of the Adviser.** The duties of the Adviser shall be those set forth in an Investment Advisory Agreement to be entered into between the Trust and the Adviser. Such duties may be modified by the Trustees, from time to time, by the amendment of the Investment Advisory Agreement subject to the limitations contained therein. Subject to the terms of this Indenture, the Trustees may authorize the Adviser to effect purchases, sales, or exchanges of Trust Property on behalf of the Trustees or may authorize any officer, employee, agent or Trustee to effect such purchases, sales, or exchanges pursuant to recommendations of the Adviser, all without further action by the Trustees. Any and all of such purchases, sales, and exchanges shall be deemed to be authorized by all the Trustees. The Investment Advisory Agreement may authorize the Adviser to employ other Persons to assist it in the performance of its duties. The Investment Advisory Agreement shall provide that it may be terminated without cause and without the payment of any penalty by the Trust on no less than sixty (60) days' written notice to the Adviser. Nothing in this Indenture or in the Investment Advisory Agreement shall limit or impair the right of the Trustees to terminate the said Investment Advisory Agreement for cause, or to suspend the authority of the Adviser to act for or on behalf of the Trust immediately upon written notice to the Adviser, upon a showing of reasonable cause to believe that the Adviser has committed a material breach of the Investment Advisory Agreement or any of its fiduciary obligations to the Trust.

4.3 **Duties of the Administrator.** The duties of the Administrator shall be those set forth in an Administration Agreement to be entered into between the Trust and the Administrator. Such duties may be modified by the Trustees, from time to time, by the amendment of the Administration Agreement. The Administration Agreement may authorize the Administrator to employ other Persons to assist it in the performance of its duties. The Administration Agreement shall provide that it may be terminated without cause and without the payment of any penalty by the Trust on no less than sixty (60) days' written notice to the Administrator. Nothing in this Indenture or in the Administration Agreement shall limit or impair the right of the Trustees to terminate the said Administration Agreement for cause, or to suspend the authority of the Administrator to act for or on behalf of the Trust immediately upon written notice to the Administrator, upon a showing of reasonable cause to believe that the Administrator has committed a material breach of the Administration Agreement or any of its fiduciary obligations to the Trust.

4.4 **Successors.** In the event that, at any time, the position of Adviser or of Administrator shall become vacant for any reason, the Trustees may appoint, employ or contract with a successor Adviser or Administrator.

## ARTICLE V - INVESTMENTS

5.1 **Statement of Investment Policy and Objective.** Subject to the prohibitions and restrictions contained in Section 5.2 hereof, the general investment policy and objective of the Trustees shall be to provide to the Participants safety of capital, liquidity of funds, and investment income, in that order, by investing in Permitted Investments in accordance with this Indenture and any other applicable provisions of law, as the same may be amended from time to time.

5.2 **Restrictions Fundamental to the Trust.** Notwithstanding anything in this Indenture which may be deemed to authorize the contrary, the Trust:

(a) May not make any investment other than investments authorized by this Indenture, which constitute Permitted Investments and which are consistent with the investment policies and procedures set forth in the Information Statement and which are described therein, as the same shall may be amended from time to time;

(b) May not borrow money or incur indebtedness except as a temporary measure to facilitate withdrawal requests which might otherwise require unscheduled dispositions of portfolio investments, and only as and to the extent permitted by law;

(c) May not make loans, provided that the Trust may make Permitted Investments (which may include securities lending); and

(d) May not hold or provide for the custody of any Trust Property in a manner not authorized by law.

5.3 **Amendment of Restrictions.** The restrictions set forth in Section 5.2 hereof are fundamental to the operation and activities of the Trust and may not be changed without the consent of the Participants holding at least a majority of the Shares, except that such restrictions may be changed by the Trustees, without Participant consent, when necessary to conform the investment program and activities of the Trust to the laws of the State of North Carolina and the United States of America as they may from time to time be amended.

## ARTICLE VI - LIMITATIONS OF LIABILITY

6.1 **Liability to Third Persons.** No Participant shall be subject to any personal liability whatsoever, in tort, contract or otherwise to any Person or Persons other than the Trust in connection with Trust Property or the affairs of the Trust; and no Trustee, officer, employee or agent (including without limitation, the Adviser, the Administrator, and the Custodian) of the Trust shall be subject to any personal liability whatsoever in tort, contract or otherwise, to any Person or Persons other than the Trust in connection with Trust Property or the affairs of the Trust, except that each shall be liable for its, his or her bad faith, willful misconduct, gross negligence or reckless disregard of its, his or her duties or for its, his or her failure to act in

good faith in the reasonable belief that its, his or her action was in the best interests of the Trust, and except that the Adviser and the Administrator shall each have liability for its, his or her failure to take reasonable measures to restrict investments of Trust Property to those permitted by law and this Indenture. All Persons other than the Trust shall look solely to the Trust Property for satisfaction of claims of any nature arising in connection with the affairs of the Trust. If any Participant, Trustee, officer, employee or agent (including, without limitation, the Adviser, the Administrator, and the Custodian) of the Trust is made a party to any suit or proceedings to assert or enforce any such liability, it, he or she shall not on account thereof be held to any personal liability. Provided, further, that notwithstanding anything in the foregoing to the contrary, any vendor, Adviser, consultant, administrator, or other third party, employed by or under contract with the Trust, shall be responsible to the Trust and its Participants as intended beneficiaries, to perform in accordance with the standards imposed in a contract with such party, by operation of law.

**6.2 Liability to the Trust or to the Participants.** No Trustee, officer, employee or agent (including, without limitation, the Adviser, the Administrator and the Custodian) of the Trust shall be liable to the Trust or to any Participant, Trustee, officer, employee or agent (including, without limitation, the Adviser, the Administrator, and the Custodian) of the Trust for any action or failure to act (including, without limitation, the failure to compel in any way any former or acting Trustee to redress any breach of trust) except for its, his or her own bad faith, willful misfeasance, gross negligence or reckless disregard of its, his or her duties, and except that the Adviser shall have liability for the failure to take reasonable measures to restrict investments of Trust Property to those permitted by law and this Indenture; *provided, however*, that the provisions of this Section 6.2 shall not limit the liability of any agent (including, without limitation, the Adviser, the Administrator, and the Custodian) of the Trust with respect to breaches by it of a contract between it and the Trust.

**6.3 Indemnification.**

(a) As used in this Section 6.3:

(1) “Trust Representative” means an individual who is or was a Trustee, officer, employee, or agent (including without limitation the Adviser, the Administrator, and the Custodian).

(2) “Liability” means any obligation to pay a judgment, settlement, penalty, fine, or costs and expenses incurred with respect to a Proceeding (including attorneys’ fees and other professional fees).

(3) “Party” includes an individual who was, is, or is threatened to be named a defendant or respondent in a Proceeding.

(4) “Proceeding” means any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, and whether formal or informal.

(b) Except as provided in subsection (c) hereof, the Trust shall indemnify, defend, protect and hold harmless any Person from and against any and all Liabilities arising out of a Proceeding that such Person is a party to because of such Person's status as a Trust Representative if such Person's conduct was made in good faith, and (i) such Person reasonably believed that such conduct was in the Trust's best interests or, (ii) in the case of a criminal Proceeding, such Person had no reasonable cause to believe such conduct was unlawful.

(c) In no event may the Trust indemnify the Adviser or the Administrator for any Liability arising out of such Person's bad faith, willful misconduct, gross negligence or reckless disregard with respect to the restrictions on investments of the Trust Property. Further, the Trust shall not indemnify any Trust Representative under this Section 6.3 either (i) in connection with a Proceeding by or in the right of the Trust in which the Trust Representative was adjudged liable to the Trust, or (ii) in connection with any Proceeding charging improper personal benefit to such Person, in which such Person was adjudged liable on the basis that such personal benefit was improperly received in connection with a Proceeding by or in the right of the Trust.

(d) Except as provided in subsection (c) of this Section 6.3, the termination of any Proceeding by judgment, order, settlement, or conviction, or upon a plea of *nolo contendere* or its equivalent, is not of itself determinative that the Person did not meet the standard of conduct set forth in subsection (b) of this Section 6.3.

(e) No indemnification shall be made unless and until a specific determination has been made that indemnification is authorized under this Section 6.3. Such determination shall be made by the Trustees by a majority vote of a quorum, which quorum shall consist of Trustees not parties to the Proceeding. If such quorum cannot be obtained, the determination shall be made by a majority vote of a committee of Trustees designated by the Trustees, which committee shall consist of two or more Trustees not party to the Proceeding. Trustees who are parties to the Proceeding may participate in designating Trustees for the committee. If the said quorum cannot be obtained or the committee cannot be established, or if such quorum is obtained or committee is designated and such quorum or committee so directs, the determination may be made by independent legal counsel selected by a vote of the Trustees or the committee as specified above. If independent counsel determines that indemnification is required under this Section 6.3, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by the body that selected such counsel.

(f) The Trust may pay for or reimburse all costs and expenses incurred by a Trust Representative with respect to a Proceeding (including attorneys' fees and other professional fees) in advance of final disposition thereof if (i) the Trust Representative furnishes the Trust a written affirmation of such Person's good faith belief that such Person has met the standard of conduct described in subsection (b) of this Section 6.3 and agreeing to repay the advance if it is ultimately determined that indemnification is not authorized under this Section 6.3, and (ii) it is determined as provided in subsection (e) above that the facts then known would not preclude indemnification under this Section 6.3.

(g) Any indemnification of or advance of expenses to a Trust Representative pursuant to this Section 6.3 shall be reported in writing to the Participants as soon as practicable, if such indemnification of or advance of expenses arises out of a Proceeding by or on behalf of the Trust.

(h) No Trust Representative entitled to indemnification may take or be paid the same except out of the earnings of the Trust, and no Participant shall be personally liable to any such Trust Representative for all or any portion of such indemnity.

6.4 **Surety Bonds.** No Trustee shall, as such, be obligated to give any bond or surety or other security for the performance of any of his duties.

6.5 **Apparent Authority.** No purchaser, seller, transfer agent or other Person dealing with the Trustees or any officer, employee or agent of the Trust shall be bound to make any inquiry concerning the validity of any transaction purporting to be made by the Trustees or by such officer, employee or agent or make inquiry concerning or be liable for the application of money or property paid, transferred or delivered to or on the order of the Trustees or of such officer, employee or agent.

6.6 **Representative Capacity; Recitals.** Any written instrument creating an obligation of the Trust shall be conclusively taken to have been executed by a Trustee or an officer, employee or agent of the Trust only in his capacity as a Trustee under this Indenture or in his or her capacity as an officer, employee or agent of the Trust. Any written instrument creating an obligation of the Trust shall refer to this Indenture and shall contain a recital to the effect that the obligations thereunder are not personally binding upon, nor shall resort be had to the property of, any of the Trustees, Participants, officers, employees or agents of the Trust, and that only the Trust Property or a specific portion thereof shall be bound, and such written instrument may contain any further similar recital which may be deemed appropriate; *provided however*, that the omission of any recital pursuant to this Section 6.6 shall not operate to impose personal liability on any of the Trustees, Participants, officers, employees or agents of the Trust, or to void any obligations created in the instrument.

6.7 **Reliance on Experts.** Each Trustee, officer and employee of the Trust shall, in the performance of his or her duties, be fully and completely justified and protected with regard to any act or any failure to act resulting from reliance in good faith upon the books of account or other records of the Trust, upon an opinion of counsel or upon reports made to the Trust by any of its officers or employees or by the Adviser, the Administrator, the Custodian, accountants, appraisers or other experts or consultants selected with reasonable care by the Trustees or officers of the Trust.

6.8 **Insurance.** The Trustees shall obtain general and official liability and property damage insurance, errors and omission insurance and such other insurance as the Trustees may deem advisable for the protection of the Trust Property and the Trustees, Treasurers officers and employees of the Trust in the operation and conduct of the Trust in such amounts as the Trustees deem adequate to ensure against all claims and liabilities of every nature, to the extent such insurance may be available at reasonable rates. The cost of any and all such insurance shall be paid from Trust property as an expense of administration of the Trust.

## ARTICLE VII - INTERESTS OF PARTICIPANTS

7.1 **Beneficial Interest.** The interest of the beneficiaries hereunder shall be divided into transferable units to be called Shares, all of one series except as permitted by Section 7.10, without

par value. The number of Shares authorized hereunder is unlimited. Except as otherwise permitted under Section 7.10 hereof, each Share shall represent an equal proportionate interest in the net assets of the applicable series within the Trust. All Shares issued hereunder including, without limitation, Shares issued in connection with a dividend in Shares or a split of Shares, shall be fully paid and nonassessable.

**7.2 Title to Trust Property.** Title to the Trust Property of every description and the right to conduct any affairs herein described are vested in the Trustees on behalf, and for the beneficial interest, of the Participants, and the Participants shall have no individual interest therein other than the beneficial interest conferred hereby and measured by their Shares, and they shall have no right to call for any partition or division of any property, profits, rights or interests of the Trust nor can they be called upon to share or assume any losses of the Trust or suffer an assessment of any kind by virtue of the allocation of Shares to them, except as expressly provided in this Indenture. Provided, further, that this provision shall not be interpreted or construed to modify or limit any of the rights of Participants expressed anywhere else in this Indenture or as provided by law. The beneficial interest hereunder measured by the Shares shall not entitle a Participant to preference, preemptive, appraisal, conversion, or exchange rights of any kind with respect to the Trust or the Trust Property, except as the Trustees may determine.

**7.3 Evidence of Investment.** Evidence of each Participant's investment shall be reflected in a Share Register maintained by or on behalf of the Trust in accordance with Section 8.1 hereof, and the Trust shall not be required to issue certificates as evidence of Share allocation.

**7.4 Redemptions.** In case any Participant at any time desires to dispose of its Shares, it may deposit a written request or other such form of request as the Trustees may from time to time authorize, at the office of the Administrator of the transfer agent or at the office of any bank or trust company, either in or outside of North Carolina which is a member of the Federal Reserve System and which the transfer agent has designated by the Trust for that purpose, together with an irrevocable offer in writing in a form acceptable to the Trustees to have the Shares redeemed by the Trust at the net asset value thereof per share, next determined as provided in the Information Statement after such deposit. Payment for redemption shall be made to the Participants within the number of business days specified in the Trust's current Information Statement, unless the date of payment is postponed pursuant to Section 7.5 hereof, in which event payment may be delayed beyond such period.

**7.5 Suspension of Redemption; Postponement of Payment.** Each Participant, by its adoption of this Indenture, agrees that the Trustees may, without the necessity of a formal meeting of the Trustees, temporarily suspend the right of redemption or postpone the date of payment for withdrawal of funds from the Trust for the whole or any part of any period;

(a) During which there shall have occurred any state of war, national emergency, act of God, banking moratorium or suspension of payments by banks in the State of North Carolina or any general suspension of trading or limitation of prices on the New York Stock Exchange or the Nasdaq Stock Market (other than customary week-end and holiday closing); or

(b) During which any emergency situation exists, as a result of which disposal by the Trust of Trust Property is not reasonably practicable because of the substantial losses which might be incurred, or it is not reasonably practicable for the Trust fairly to determine the value of its net assets.

Such suspension or postponement shall not alter or affect a Participant's beneficial interest hereunder or the accrued interest and earnings thereon. Such suspension or payment shall take effect at such time as the Trustees shall specify but not later than the close of business on the business day next following the declaration of suspension, and thereafter there shall be no right of redemption or payment until the Trustees shall declare the suspension or postponement at an end, except that the suspension or postponement shall terminate in any event on the first day on which the period specified in subsection (a) or in this subsection (b) shall have expired, as to which the determination of the Trustees shall be conclusive. In the case of a suspension of the right of redemption or a postponement of payment to a Participant, a Participant may either (i) withdraw its request for redemption or (ii) receive payment based on the net asset value next determined after the termination of the suspension.

**7.6 Redemptions to Reimburse Trust for Loss on Nonpayment for Shares or for Other Charges.** The Trustees shall have the power to redeem Shares owned by any Participant to the extent necessary (i) to reimburse the Trust for any loss it has sustained by reason of the failure of such Participant to make full payment for Shares purchased by such Participant, or (ii) to collect any charge relating to a transaction effected for the benefit of such Participant which is applicable to Shares as provided in the Information Statement. Any such redemption shall be effected at the redemption price determined in accordance with Section 7.4. hereof.

**7.7 Redemptions Pursuant to Constant Net Asset Value Policy.** The following provisions shall apply to any series or portfolio of investments of the Trust during any period that the Trustees, in their discretion, establish a policy of maintaining a constant net asset value per Share. If for any reason the net income of the Trust attributable to such Shares invested in the same portfolio shall, at the time of any determination thereof in accordance with the provisions set forth in the Information Statement be a negative amount, then the Trustees shall have power to cause the number of outstanding Shares of such series or portfolio to be reduced by requiring each Participant to contribute to the capital of the Trust such Participant's proportionate part of the total number of Shares which have an aggregate current net asset value equal as nearly as may be practicable to the amount of the Trust's net loss in respect of such series or portfolio. Each Participant, by becoming a registered holder of Shares, agrees to make any such contribution which may be required.

**7.8 Redemptions in Kind.** Payment for Shares redeemed pursuant to Section 7.4. may, at

the option of the Trustees, or such officer or officers as they may duly authorize for the purpose, in their complete discretion be made in cash, or in kind, or partially in cash and partially in kind. In case of payment in kind, the Trustees, or their delegate, shall have absolute discretion as to what security or securities shall be distributed in kind and the amount of the same, and the securities shall be valued for purposes of distribution at the figure at which they were appraised in computing the net asset value of the Shares.

7.9 **Defective Redemption Requests.** In the event that a Participant shall submit a request for the redemption of a greater amount than is then allocated to such Participant, such request shall not be honored and, each Participant, by its adoption of this Indenture, agrees that the Trustees shall have full and complete power to redeem no more than the proportionate amount allocated to such Participant, at a redemption price determined in accordance with Section 7.4 hereof, sufficient to reimburse the Trust for any fees, expenses, costs or penalties actually incurred by the Trust as a result of such defective redemption request.

7.10 **Series or Class Designations.** The Trustees, in their discretion, may authorize the division of Shares into two or more series, and within a series into two or more classes, and the different series or classes shall be established and designated, and the variations in the relative rights and preferences as between the different series or classes within a series shall be fixed and determined by the Trustees; provided that, all Shares shall be identical except there may be variations so fixed and determined between different series or classes within a series as to purchase price, right of redemption and the price, terms and manner of redemption, special and relative rights as to distributions on liquidation, conversion rights, and conditions under which the several series or classes shall have separate voting rights and separate investment restrictions.

## ARTICLE VIII - RECORD OF SHARES

8.1 **Share Register.** The Share Register shall be kept by or on behalf of the Trustees, under the direction of the Trustees, and shall contain (i) the names and addresses of the Participants (including both a post office address for regular United States mail and a valid electronic mail address), (ii) the number of Shares representing their respective beneficial interests hereunder, and (iii) a record of all allocations and redemptions thereof. Such Share Register shall be conclusive as to the identity of the Participants to which the Shares are allocated. Only Participants whose allocation of Shares are recorded on such Share Register shall be entitled to receive distributions with respect to Shares or otherwise to exercise or enjoy the rights and benefits related to the beneficial interest hereunder represented by the Shares. No Participant shall be entitled to receive any distribution, nor to have notices given to it as herein provided, until it has given its appropriate address to such officer or agent of the Trust who shall keep the Share Register for entry thereon.

8.2 **Registrar.** The Trustees shall have full and complete power to employ a registrar. Unless otherwise determined by the Trustees the Share Register shall be kept by the Administrator which shall serve as the registrar for the Trust. The registrar shall record the original allocations of Shares in the Share Register. Such registrar shall perform the duties usually performed by registrars of certificates and shares of stock in a corporation, except as such duties may be modified by the Trustees.

8.3 **Owner of Record.** No Person becoming entitled to any Shares in consequence of the merger, reorganization, consolidation, bankruptcy or insolvency of any Participant or otherwise, by operation of law, shall be recorded as the Participant to which such Shares are allocated and shall only be entitled to the redemption value of such Shares. Until the Person becoming entitled to such redemption value shall apply for the payment thereof and present any proof of such entitlement as the Trustees may in their sole discretion deem appropriate, the



Participant of record to which such Shares are allocated shall be deemed to be the Participant to which such Shares are allocated for all purposes hereof, and neither the Trustees nor the registrar nor any officer or agent of the Trust shall be affected by any notice of such merger, reorganization, consolidation, bankruptcy, insolvency or other event.

8.4 **No Transfers of Shares.** The beneficial interests measured by the Shares shall not be transferable, in whole or in part, other than to a Local Government, or the Trust itself for purposes of redemption. Any attempted transfer to any other Person shall be void and of no effect.

8.5 **Limitation of Fiduciary Responsibility.** The receipt of the Participant in whose name any Share is recorded or of any party or agent in whose name any Share is recorded for the benefit of the Participant shall be a sufficient discharge for all moneys payable or deliverable in respect of such Shares and from all liability to see to the proper application thereof.

8.6 **Notices.** Any and all notices to which Participants are hereunder entitled and any and all communications shall be deemed duly served or given if (a) mailed, postage prepaid, addressed to Participants of record at their last known post office addresses, or (b) sent by electronic mail addressed to the Participants of record at their last known electronic mail address, in each case as recorded in the Share Register provided for in Section 8.1 hereof. Copies of such notices shall be provided to the Participant's Designee.

## ARTICLE IX – RECORDS AND REPORTS

9.1 **Inspection of Records.** The records of the Trust shall be open to inspection by any Participant at all reasonable business hours. The Trustees shall use their best efforts to communicate administrative and investment decisions to Participants through a website to be established by the Trust.

9.2 **Reports.** The Trustees shall cause to be prepared at least annually: (i) a report or statements of financial operations of the Trust; (ii) an opinion of an independent certified public accountant on such report or financial statements based on an examination of the books and records of the Trust; and (iii) such other information as may be required by N.C.G.S. or by rules and regulations promulgated thereunder. A signed copy of such report and opinion shall be filed with the Trustees within one hundred twenty (120) days after the close of the period covered thereby. The Trustees shall cause copies of the annual report to be delivered to the Participants of record within one hundred twenty (120) days after the close of the period covered thereby. In addition, the Trustees shall furnish to the Participants at least quarterly an interim report containing such information as may be required by statute or regulation.

## ARTICLE X - TRUSTEES AND OFFICERS

### 10.1 **Number, Qualification and Succession of Trustees.**

(a) The governing body of the Trust shall be the Board of Trustees, the membership of which shall be determined as herein provided and as provided in the Bylaws.

(b) The number of Trustees shall be fixed from time to time by resolution of the Trustees; provided that, the number of Trustees shall be at no time less than three (3) or more than seven (7). No reduction in the number of Trustees shall have the effect of removing any Trustee from office prior to the expiration of his or her term.

(c) The Trustees may be comprised of designees of the Participants (“Designees”) and non-designees. Any Trustee who at the time of election or appointment is not a designee of a Participant is referred to herein as a “Non-Designee.” The Trustees shall have the discretion to qualify Non-Designees based upon their professional experience and expected benefit to serving the interests of the Participants. A majority of the Trustees must be Designees. Designees from Participants must have representation from at least one (1) County and one (1) Municipal government. The number and qualifications of Non-Designee Trustees shall be as provided in the Bylaws. If a Designee of a Participant serves as a Trustee, and ceases to be a Designee, such person shall no longer be qualified to serve as a Trustee, and shall not, by virtue of ceasing to qualify as a Designee, be deemed to be a Non-Designee Trustee. The Trustees shall be natural persons.

(d) Trustees shall be elected or appointed as provided in Section 10.4 hereof. No such election or appointment shall become effective, however, until the elected or appointed person qualifies for such office by delivering to the President of the Board of Trustees a writing signed by him or her (i) accepting such election or appointment, and (ii) agreeing to be bound by the terms of this Indenture. Qualification must be completed within twenty (20) days after such person is notified of his or her appointment or election, and failure to meet this requirement shall void the appointment or election.

(e) Whenever a vacancy in the number of Trustees shall occur until such vacancy is filled, the Trustees or Trustee continuing in office, regardless of their number, shall have all the powers granted to the Trustees and shall discharge all the duties imposed upon the Trustees by this Indenture.

(f) Upon the appointment or election and qualification of any person to the office of Trustee, the Trust Property shall vest in such new Trustee without necessity of any further act or conveyance.

**10.2 Signatory Local Government Units and Trustees.** In accordance with Section 10.1(b), by the execution of this Indenture, the Signatory Local Government Units appoint the following persons as initial Trustees (the “Initial Trustees”) for a Term of five (5) years: [Emily Lucas ], and [Don Warn ].

The Initial Trustees shall have all the powers of Trustees provided herein and shall have the power to appoint up to five (5) additional Trustees, to serve until the Board of Trustees has been elected in accordance with Section 10.4 hereof.

### **10.3 Vacancies.**

(a) A Trustee’s office shall be deemed vacant upon the occurrence of any one of the following events:

(i) If a person who was duly appointed or elected fails, neglects or refuses to qualify for office within twenty (20) days after the date he or she is notified of such appointment or election;

(ii) If a person who was duly appointed submits a written resignation to the Board of Trustees;

(iii) If a person who was duly appointed becomes disabled or dies during his or her term of office, or for whom a guardian or conservator has been appointed;

(iv) If a person who was duly appointed ceases to meet the requirements for the office of Trustee, as provided herein and in the Bylaws;

(v) If a person who was duly appointed is convicted of a felony or is or becomes the subject of an Order for Relief entered pursuant to the United States Bankruptcy Code (11 U.S.C. § 101 *et seq.*);

(vi) If a court of competent jurisdiction voids the appointment or removes a person duly appointed for any cause whatsoever, but only after his or her right to appeal has been waived or otherwise exhausted; or

(vii) If the person who was duly appointed is removed from office pursuant to Section 10.5 hereof.

(b) No vacancy in the office of any Trustee shall operate to annul this Indenture or to revoke any existing agency created pursuant to the terms of this Indenture, and title to any Trust Property held in the name of such Trustee and the other Trustees or otherwise, shall, in the event of a vacancy in the office of such Trustee, vest in the continuing or surviving Trustees without necessity of any further act or conveyance. In the case of a vacancy, the majority of the Board of Trustees continuing in office acting by resolution, may fill such vacancy.

#### **10.4 Elections and Appointments; Term of Office.**

(a) Trustees are appointed or elected for overlapping terms of three years by a vote of the Participants holding at least a majority of the outstanding Shares present and entitled to vote at an annual meeting or voting in an annual vote of Participant, herein called an "Annual Election." At any time the Board changes the number of Trustees it shall by the same action specify the number of three-year terms to be filled at the next Annual Election, but shall maintain as nearly equal as possible the number of three-year terms to be filled at each subsequent Annual Election. Trustees may succeed themselves in office. Candidates shall be nominated as provided in the Bylaws. The candidate(s) with the highest number of votes will be elected. The Board of Trustees shall, at the next meeting following the election, review the election returns and declare the appropriate candidate(s) elected.

(b) A Trustee remains in office until a vacancy occurs in his or her office as provided in Section 10.3 hereof, or until his or her successor is duly appointed and qualifies for office.

#### **10.5 Resignation and Removal.**

(a) Any Trustee may resign (without need for prior or subsequent accounting) by an instrument in writing signed by him or her and delivered to the President and such resignation shall be effective upon such delivery or at a later date according to the terms of the notice.

(b) Any Trustee may be removed with or without cause by action of two-thirds of the other Trustees.

(c) Upon ceasing to be a Trustee, such person shall execute and deliver such documents as the remaining Trustees shall require for the purpose of conveying to the Trust or the remaining Trustees any Trust Property held in the name of the resigning or removed Trustee. Upon the incapacity or death of any Trustee, his or her legal representative shall execute and deliver on his or her behalf such documents as the remaining Trustees shall require as provided in the preceding sentence.

**10.6 Officers and Advisers.** The Trustees shall annually designate a President who shall be the Chief Executive Officer of the Trust and a Vice President, who shall have such duties as the Trustees shall deem advisable and appropriate. The Trustees may elect or appoint, from among their number or otherwise, a Treasurer and a Secretary, who shall have such powers, duties and responsibilities as the Trustees may deem to be advisable and appropriate. The Trustees may elect or appoint, from among their number or otherwise, or may authorize the President to appoint, one or more Assistant Secretaries and Assistant Treasurers, and such other officers or agents, who shall have such powers, duties and responsibilities as the Trustees may deem to be advisable and appropriate. Two or more offices, except those of President and Vice President, may be held by the same person.

**10.7 Bylaws; Quorum of Trustees.**

(a) The Trustees may adopt and, from time to time, amend or repeal Bylaws for the conduct of the business of the Trust, and in such Bylaws, among other things, may define the duties of the respective officers, agents, employees and representatives of the Trust. Notwithstanding the foregoing, absent adoption of Bylaws addressing the same, the Trustees may define the duties of the respective officers, agents, employees and representatives of the Trust, and such other matters regarding administration of the Trust not specifically addressed in this Indenture, by resolution of the Board of Trustees.

(b) A quorum for the purposes of any meeting or vote of the Trustees shall consist of a majority of the Trustees entitled to vote at a meeting of the Board of Trustees.

**ARTICLE XI - DETERMINATION OF NET ASSET VALUE AND NET INCOME: DISTRIBUTIONS TO PARTICIPANTS**

**11.1 Net Asset Value.** The net asset value of each allocated Share of the Trust shall be determined by the method and frequency established by the Trustees and shall be set forth in an Information Statement as the same may be amended from time to time. The duty to make the calculations may be delegated by the Trustees to the Adviser, the Administrator, the Custodian or such other person as the Trustees by resolution may designate.

11.2 **Retained Reserves.** The Trustees may retain from the earnings of the Trust such amount as they may deem necessary to pay the debts and expenses of the Trust and to meet other obligations of the Trust, and the Trustees shall also have the power to establish such reasonable reserves from earnings as they believe may be required to protect the Trust and the Participants against contingent liabilities.

## ARTICLE XII – CUSTODIAN

12.1 **Duties.** The Trustees shall employ a bank, savings and loan association or trust company in the State of North Carolina or otherwise in accordance with N.C.G.S. Section 159-31 as Custodian with authority as its agent, but subject to such restrictions, limitations and other requirements, if any, as may be contained in this Indenture, the Bylaws of the Trust or otherwise determined by resolution of the Board of Trustees, to perform the duties set forth in the Custodian Agreement to be entered into between the Trust and the Custodian.

12.2 **Appointment.** The Trustees shall have the power to select and appoint the Custodian for the Trust. The Custodian Agreement may be terminated at any time without cause and without the payment of any penalty by the Trust on not less than sixty (60) days' written notice to the Custodian.

12.3 **Disbursement and Collection Agent.** The Trustees may also authorize the employment of a Disbursement and Collection Agent from time to time to perform acts and services upon such terms and conditions, as may be agreed upon between the Custodian and said agent and approved by the Trustees; *provided, however*, that, in every case, such Disbursement and Collection Agent shall be a bank, savings and loan association or trust company duly organized in the State of North Carolina or otherwise in accordance with N.C.G.S. Section 159-31.

12.4 **Successors.** In the event that at any time the Custodian or the Disbursement and Collection Agent shall resign or shall be terminated pursuant to the provisions of the Custodian Agreement or disbursement and Collection Agreement, the Trustees shall appoint a successor thereto.

## ARTICLE XIII - RECORDING OF INDENTURE

13.1 **Recording.** This Indenture and any amendments hereto shall be filed, registered, recorded or lodged as a document of public record in such place or places and with such official or officials as may be required by law or as the Trustees may deem appropriate. An amended Indenture, containing or restating the original Indenture and all amendments theretofore made, may be executed any time or from time to time by a majority of the Trustees and shall, upon filing, recording or lodging in the manner contemplated hereby, be conclusive evidence of all amendments contained therein and may thereafter be referred to in lieu of the original Indenture and the various amendments thereto.

## ARTICLE XIV - AMENDMENTS TO INDENTURE AND PERMITTED INVESTMENTS LIST; TERMINATION OF TRUST; DURATION OF TRUST

#### 14.1 Amendment to Indenture or Permitted Investments List; Termination.

(a) The provisions of this Indenture may be amended or altered, or the Trust may be terminated, by a vote of the Participants pursuant to Section 2.7 hereof. The Trustees may, from time to time by a two-thirds vote of the Trustees, and after 45 days prior written notice to the Participants, amend or alter the provisions of the Indenture, without the vote or assent of the Participants, which the Trustees, in good faith deem necessary or convenient for the administration and operation of the Trust, to establish and designate additional series or portfolios pursuant to Section 7.10 hereof, or to the extent deemed by the Trustees in good faith to be necessary to conform this Indenture to the requirements of applicable laws or regulations or any interpretation thereof by a court or other governmental agency of competent jurisdiction, but the Trustees shall not be liable for failing so to do. Notwithstanding the foregoing, no amendment may be made pursuant to this Section which would:

(i) change any rights with respect to any allocated Shares of the Trust by reducing the amount payable thereon upon liquidation of the series or portfolio or which would diminish or eliminate any voting rights of the Participants, except with the vote or written consent of Participants holding at least two-thirds of the Participants Shares entitled to vote thereon;

(ii) Cause any of the investment restrictions contained herein to be less restrictive except with the vote or written consent of Participants holding at least a majority of the Participants Shares entitled to vote thereon;

(iii) Change the limitations on personal liability of the Participants and Trustees except with the vote or written consent of Participants holding at least two-thirds of the Shares entitled to vote thereon; or

(iv) Change the prohibition of assessments upon Participants except with the vote or written consent of Participants holding at least two-thirds of the Shares entitled to vote thereon.

A certification signed by a majority of the Trustees setting forth an amendment and reciting that it was duly adopted by the Participants or by the Trustees or a copy of the Indenture, as amended, executed by a majority of the Trustees, shall be conclusive evidence of such amendment.

(b) The Trust may be terminated by the vote of the majority of authorized Trustees, subject to the vote or written consent of Participants holding at least a majority of the Shares. Upon the termination of the Trust pursuant to this Section 14.1(b), (i) the Trust shall carry on no business except for the purpose of winding up its affairs, (ii) the Trustees shall proceed to wind up the affairs of the Trust and all of the powers of the Trustees under this Indenture shall continue until the affairs of the Trust shall have been wound up, including, without limitation, the power to fulfill or discharge the contracts of the Trust, collect its assets, sell, convey, assign, exchange, transfer or otherwise dispose of all or any part of the remaining Trust Property to one or more Persons at public or private sale for consideration which may consist in whole or in part of cash, securities or other property of any kind, discharge or pay its liabilities, and do all other acts appropriate to liquidate its affairs, provided, however, that any sale, conveyance, assignment, exchange, transfer, or other disposition of all or substantially all of the Trust Property shall require approval of the

principal terms of the transaction and the nature and amount of the consideration by affirmative vote of not less than a majority of the Trustees entitled to vote thereon, and (iii) after paying or adequately providing for the payment of all liabilities, and upon receipt of such releases, indemnities and refunding agreements as they deem necessary for their protection, the Trustees may distribute the remaining Trust Property, in cash or in kind or partly in each, among the Participants according to their respective proportionate allocation of Shares.

(c) Upon termination of the Trust and distribution to the Participants as herein provided, a majority of the Trustees shall execute and lodge among the records of the Trust an instrument in writing setting forth the fact of such termination, and the Trustees shall thereupon be discharged from all further liabilities and duties hereunder, and the right, title and interest of all Participants shall cease and be cancelled and discharged.

(d) A certification in recordable form signed by a majority of the Trustees setting forth an amendment and reciting that it was duly adopted by the Trustees as aforesaid or a copy of the Indenture, as amended, in recordable form, and executed by a majority of the Trustees, shall be conclusive evidence of such amendment.

14.2 **Duration.** The Trust shall continue in existence in perpetuity, subject in all respects to the provisions of this Article XIV.

14.3 **Distribution upon Termination.** Upon the termination of the Trust, the Trustees shall, after paying or making provision for the payment of all of the liabilities of the Trust, dispose of all of the assets of the Trust exclusively for the purposes of the Trust, in such manner, or to such organization(s) organized and operated exclusively for charitable or educational purposes as shall at the time qualify as an exempt organization(s) under Section 501(c)(3) of the Code, or the corresponding provisions of any subsequent federal tax laws, as the Trustees shall determine. Any such assets not so disposed of shall be disposed of by the court of general jurisdiction in the county in which the principal office of the Trust is then located, exclusively for such purposes or to such organization or organizations as such court shall determine.

## ARTICLE XV – MISCELLANEOUS

15.1 **Governing Law.** This Indenture is executed by the Signatory Local Government Units and delivered in the State of North Carolina and with reference to the laws thereof, and the rights of all parties and the validity, construction and effect of every provision hereof shall be subject to and construed according to the laws of the State of North Carolina (without regard to its conflicts of law rules). Venue for any dispute, breach or other legal action relating to the interpretation or implementation of this Indenture shall lie in a court of competent jurisdiction in the State of North Carolina.

15.2 **Counterparts.** This Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

15.3 **Reliance by Third Parties.** Any certificate executed by an individual who according to the then current records of the Trust appears to be a Trustee, the Secretary or

the Treasurer of the Trust, certifying to (a) the number or identity of Trustees or Participants, (b) the due authorization of the execution of any instrument or writing, (c) the results of any vote of Trustees or Participants, (d) the fact that the number of Trustees or Participants present at any meeting or executing any written instrument satisfies the requirements of this Indenture, or the form of any Bylaws adopted by, or the identity of any officers or any facts which in any manner relate to the affairs of the Trust, shall be conclusive evidence as to the matters so certified in favor of any Person dealing with the Trustees or any of them or the Trust and the successors of such Person

**15.4 Provisions in Conflict with Law.** The provisions of this Indenture are severable, and if the Trustees shall determine with the advice of counsel that any one or more of such provisions are in conflict with applicable federal or North Carolina laws, those conflicting provisions shall be deemed never to have constituted a part of this Indenture, *provided, however,* that such determination by the Trustees shall not affect or impair any of the remaining provisions of this Indenture or render invalid or improper any action taken or omitted (including, but not limited to, the election of Trustees) prior to such determination.

**15.5 Section Headings.** Any headings preceding the text of the several Articles and Sections of the Indenture and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Indenture nor affect its meaning, construction or effect.

**15.6 Adoption by Local Government Unit; Written Investment Policies of Participants; Resignation and Withdrawal of Participants.**

(a) Any Local Government Unit meeting the requirements hereof may become a Participant of this Trust by (i) taking all required official action to adopt to a Resolution authorizing the execution of this Indenture including, without limitation, adopting or otherwise having in effect a written investment policy consistent with this Indenture and the Permitted Investments list or amending or modifying any existing written investment policy not consistent with this Indenture or the Permitted Investments list, and (ii) furnishing the Trustees with satisfactory evidence that such official action has been taken. A copy of this Indenture may be adopted by executing a written instrument of adoption in such form as may be prescribed by the Trustees. Delivering an acknowledged copy of such instrument shall constitute satisfactory evidence of the adoption contemplated by this Section.

(b) By joining in or adopting this Indenture, each Participant agrees that it will maintain a written investment policy consistent with the provisions of this Indenture and the Permitted Investments list, as each of the same is amended from time to time.

(c) Any Participant may resign and withdraw from the Trust by sending a written notice to such effect to the President of the Trust and the Administrator and by requesting the redemption of all Shares then held by it or in accordance with any other procedure authorized by the Board of Trustees. Such resignation and withdrawal shall become effective upon the receipt thereof by the President of the Trust and the Administrator. No resignation and withdrawal by a Participant shall operate to annul this Indenture or terminate the existence of the Trust.



*[Signatures appear on next page]*

**IN WITNESS WHEREOF**, the undersigned Local Government Units of the State of North Carolina acting in the capacity of Signatory Local Government Units of the Trust have executed this Indenture together with the Trustees by the execution of the addenda, which are attached to this Indenture. By the execution of the addenda, the respective Trustees and Signatory Local Government Units are intending to adopt and be bound by the terms of this Indenture.

[Insert Local Government Unit Signature Blocks]

**IN WITNESS WHEREOF**, the undersigned Trustees have caused this Indenture of Trust to be executed as of the date first herein above set forth.

[Insert Trustee Signature Blocks]

**EXHIBIT B**  
**By-Laws (Draft)**

# North Carolina Investment Pool BYLAWS

Dated as of March \_\_\_, 2021

Established Under an Indenture of Trust

Dated as of March \_\_\_, 2021

213 Market Street  
Harrisburg, PA 17101  
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**BYLAWS**  
**OF THE**  
**NORTH CAROLINA INVESTMENT POOL**

(dated as of March \_\_, 2021)

Established under an Indenture of Trust dated as of March \_\_, 2021

**ARTICLE I. GENERAL**

Section 1. Principal Office.

The Trust shall maintain an office of record in the State of North Carolina and may maintain such other offices or places of business as the Trustees may from time to time determine. The initial office of record of the Trust shall be: North Carolina Investment Pool (“CIP”) in care of the PFM Asset Management LLC/PFM Funds Distributors, 213 Market Street, Harrisburg, Pennsylvania. The office of record may be changed from time to time by resolution of the Trustees, and notice of such change of the office of record shall be given to each Participant.

Section 2. Other Offices.

The Trust may have offices outside of or within the State of North Carolina as the Trustees may from time to time determine.

Section 3. Definitions.

Unless otherwise stated herein, capitalized terms have the meanings assigned by the Indenture of Trust, as amended from time to time.

**ARTICLE II. PARTICIPANTS**

Section 1. Action by Participants.

Any action which may be taken by the Participants may be taken if a majority of the Participants, as may be applicable, entitled to vote thereon (or such larger proportion thereof as shall be required by law, the Indenture of Trust, or these Bylaws for approval of such matter) consent to the action in writing and the written consents are filed with the records of the Trust. Prompt notice shall be given of any Trust action approved by the Participants by less than unanimous written consent to those Participants who did not consent in writing to such action.

Section 2. Record Date.

For the purpose of determining the Participants entitled to participate in any distribution (other than distributions of net income payable as dividends, as set forth in Article IX hereof), or for the purpose of any other action, the Trustees shall fix a date not more than sixty (60) days

prior to the date of any distribution or other action as a record date for the determination of the Participants of record for such purposes.

Section 3. Inspection of Records.

The records of the Trust shall be open to inspection by the Participants at any time during usual business hours of the Trust, upon written demand on the Trust, for a purpose reasonably related to such Participant's interest as a Participant.

**ARTICLE III. TRUSTEES**

Section 1. Meetings of the Trustees.

The Trustees may in their discretion provide for meetings of the Trustees. The notice and agenda of any meeting shall be posted at least twenty-four (24) hours prior to the meeting on the CIP website.

Section 2. Composition of Board of Trustees.

The Trustees may be comprised of designees of the Participants ("Designees") and non-designees. Any Trustee who at the time of election or appointment is not a designee of a Participant is referred to herein as a "Non-Designee." The Trustees shall have the discretion to qualify Non-Designees based upon their professional experience and expected benefit to serving the interests of the Participants. A majority of the Trustees must be Designees and the maximum number of Non-Designees shall be three.

Section 3. Quorum and Manner of Acting.

A majority of the Trustees shall be present in person or by audio or video teleconference at any regular or special meeting of the Trustees in order to constitute a quorum for the transaction of business at such meeting, and (except as otherwise required by law, the Indenture of Trust, or these Bylaws) the act of a majority of the Trustees present at any such meeting, at which a quorum is present, shall be the act of the Trustees. The Trustees present at a duly called meeting at which a quorum is initially present may continue to do business notwithstanding the withdrawal of Trustees, provided any action taken is approved by at least a majority of the required quorum for such meeting. In the absence of a quorum, a majority of the Trustees present may adjourn the meeting to a time and place specified in the order of adjournment.

Action required or permitted to be taken at a meeting of the Trustees may be taken without a meeting if the action is taken by all of the Trustees. The action must be evidenced by one or more unrevoked written consents signed by each Trustee before or after such action describing the action taken, and filed with the records of the Trust.

Section 4. Nomination of Trustees

At least sixty (60) days prior to each annual vote of Participants to elect Trustees, the Trustees, or a nominating committee ("Nominating Committee") established by the Trustees, shall nominate candidates to be approved by Participants at the next annual meeting of Participants. The Trustees or the Nominating Committee, as applicable, shall nominate a slate of candidates which, without further action of the Trustees, shall be endorsed candidates of the Trust for such next annual meeting.



## ARTICLE IV. OFFICERS

### Section 1. General Provisions.

The officers of the Trust shall be a President, Vice President, Treasurer, and Secretary, each of whom shall be appointed by the Trustees. The Trustees may appoint such other officers or agents as the business of the Trust may require, including one or more assistant Vice Presidents, one or more Assistant Treasurers and one or more Assistant Secretaries.

### Section 2. Terms of Office and Qualifications.

Except as otherwise provided by law, the Indenture of Trust, or these Bylaws, all officers shall hold office at the pleasure of the Trustees. Any two or more offices may be held by the same person. The President, Vice President, Treasurer and Secretary shall all be Trustees. Any other officer may be, but is not required to be, a Trustee.

### Section 3. Removal.

The Trustees, at any regular or special meeting of the Trustees, may remove any officer with or without cause.

### Section 4. Powers and Duties of the President.

The President shall be a Trustee. The President may call meetings of the Trustees when they deem it necessary and shall preside at all meetings of the Trustees. The President shall at all times exercise general supervision and direction over the affairs of the Trust. The President shall have: a) the power to employ such subordinate officers, employees, and agents as required to transact the business of the Trust, b) the power to grant, issue, execute or sign such powers of attorney, proxies, or other documents as may be deemed advisable or necessary in furtherance of the interests of the Trust and c) the powers and duties as, from time to time, may be conferred upon or assigned by the Trustees.

### Section 5. Powers and Duties of the Vice Presidents.

In the absence or disability of the President, the Vice President shall perform all the duties and may exercise any of the powers of the President, subject to the control of the Trustees. The Vice President shall perform such other duties as may be assigned from time to time by the Trustees or the President.

### Section 6. Powers and Duties of the Treasurer.

The Treasurer shall be the principal financial and accounting officer of the Trust. The Treasurer shall perform all the duties incident to the office of the Treasurer and such other duties as from time to time may be assigned by the Trustees.

### Section 7. Powers and Duties of the Secretary.

The Secretary shall keep the records of all action of the Participants in proper books provided for that purpose; may have custody of the seal of the Trust; and shall have charge of the Share transfer books, lists, and records unless the same are in the charge of the Administrator. The Secretary shall a) attend to the giving and serving of all notices by the Trust in accordance with the provisions of these Bylaws and as required by law, b) keep the minutes of all meetings

of the Trustees and Committees, and c) perform such other duties and have such other powers in addition to those specified in these Bylaws as the Trustees shall from time to time designate.

Section 8. Powers and Duties of the Assistant Treasurers.

In the absence or disability of the Treasurer, any Assistant Treasurer designated by the Trustees shall perform all the duties, and may exercise any of the powers, of the Treasurer. The Assistant Treasurers shall perform such other duties as from time to time may be assigned to them by the Trustees.

Section 9. Powers and Duties of the Assistant Secretaries.

In the absence or disability of the Secretary, any Assistant Secretary designated by the Trustees shall perform all of the duties, and may exercise any of the powers, of the Secretary. The Assistant Secretaries shall perform such other duties as from time to time may be assigned to them by the Trustees.

Section 10. Reimbursement for Expenses.

No Trustee shall be entitled to compensation arising from his or her position as Trustee. The Trust may, however, advance to the Trustees and officers, or reimburse the Trustees and officers for, all costs and expenses incurred in connection with attendance at meetings of the Trustees and committee meetings.

## **ARTICLE V. CONTRACTS, CHECKS AND DRAFTS**

Section 1. Contracts.

The Trustees may authorize any officer or agent to enter into any contract or to execute and deliver any instrument in the name and on behalf of the Trust, and such authority may be general or confined to specific instances.

Section 2. Checks and Drafts.

All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Trust shall be signed by such officer or officers or agent or agents of the Trust and in such manner as shall from time to time be determined by the Trustees.

## **ARTICLE VI. FISCAL YEAR**

The fiscal year of the Trust shall begin on the first day of January in each year and shall end on the thirty-first day of December in each year, provided, however that the Trustees may from time to time change the Trust's fiscal year.

## **ARTICLE VII. SEAL**

The Trustees shall have full and complete power to adopt and use a seal for the Trust, but, unless otherwise required by the Trustees, it shall not be necessary for the seal to be placed on, and its absence shall not impair the validity of, any document, instrument, or other paper executed and delivered by or on behalf of the Trust.

## **ARTICLE VIII. OPEN RECORDS**

Requests for public records can be made pursuant to the North Carolina Public Records Law, as set forth in North Carolina General Statutes (“N.C.G.S”) Chapter 132. All public records requests may be submitted directly to the Administrator by any person seeking records (the “Applicant”). All public records requests by Applicants must be made in accordance with this Article VIII. Applicants may be charged a fee for each request at a cost greater than the actual cost to the Administrator.

Pursuant to N.C.G.S. Section 132(a), the term “public records” shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer, or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or any county, unit, special district or other political subdivision of government.

-Certain records may be privileged or otherwise confidential and protected from disclosure under North Carolina law and are not public records. Consequently, records that are confidential or privileged will not be disclosed in response to a public records request. Nothing set forth in this Article IX shall be construed to abrogate the right of the Trustees or the custodian of the requested public records to withhold records that are confidential or protected by the privileges expressly contemplated by N.C.G.S. Chapter 132 or otherwise established under North Carolina law.

## **ARTICLE IX. DIVIDENDS AND DISTRIBUTIONS**

The days on which the determination of the net income of each Share shall occur (each such day, a “Business Day”), the time during such Business Day for such determination, the declaration of such net income as a dividend, and the determination of the record date for Participants entitled to receive such dividend shall be as set forth in an information statement delivered by the Trust to any local government or public authority prior to it becoming a Participant, and amended from time to time as deemed necessary or appropriate by the Trustees or as otherwise required by law (the “Information Statement”). The Information Statement shall also provide for the manner in which such dividend is to be paid, including whether such dividend is to be payable in additional Shares, and when such dividend shall be payable. The Information Statement shall provide for the manner in which such net income is to be calculated. Capital distributions, if any, may be made in the manner set forth in the Information Statement. The record date for the determination of Participants entitled to receive payment of any other distribution or an allotment of any other rights shall be such date as is specified by the Trustees or, if no such date is specified, shall be at the close of business on the day on which the Trustees adopt the resolution declaring the distribution or allotment of rights.

**ARTICLE X. POLICIES AND PROCEDURES**

In order to comply with North Carolina General Statute Section 159-30 the North Carolina Investment Pool hereby adopts the applicable North Carolina General Statute's and policies and procedures of the Investment Adviser/Administrator.

**ARTICLE XI. AMENDMENTS**

These Bylaws, or any part of them, may be altered, amended, or repealed, or new Bylaws may be adopted, by a two-thirds vote of the Trustees. The Trustees shall in no event adopt Bylaws which are in conflict with the Indenture of Trust, and any apparent inconsistency shall be construed in favor of the related provisions in the Indenture of Trust.

**CERTIFICATE OF ADOPTION OF BYLAWS**

IN WITNESS WHEREOF, the undersigned has executed this Certificate on March \_ 2021.

\_\_\_\_\_

, President