

REQUEST FOR BOARD ACTION

**HENDERSON COUNTY
BOARD OF COMMISSIONERS**

PUBLIC HEARING

**WEDNESDAY,
OCTOBER 18, 2006
11:00 A.M.**

**DRAFT FINANCING DOCUMENTS TO FINANCE THE CONSTRUCTION OF
SANITARY SEWER LINES AND TO REFINANCE AN OUTSTANDING FEDERAL
HOME ADMINISTRATION RURAL DEVELOPMENT LOAN**

- ATTACHMENTS:**
- 1) Draft Meeting Extracts**
 - 2) Newspaper Notice and Publisher's Affidavit**
 - 3) Draft Financing Documents**
 - 4) Summary of Public Comments [To be inserted]**

SUMMARY OF REQUEST:

A public hearing to hear comments on the proposed financing documents is required by North Carolina General Statutes when entering into an installment purchase contract for bank financing pursuant to N.C.G.S. 160A-20. The notice of the public hearing shall be published once at least 10 days before the hearing. This notice was duly advertised in the Times-News on Friday, October 6, 2006.

EXTRACT FROM MINUTES OF BOARD OF COMMISSIONERS

A regular meeting of the Board of Commissioners of Henderson County was duly held on October 18, 2006 at 9 o'clock a.m. in the County Administration Building, 100 North King Street, Hendersonville, North Carolina.

Those present were: _____

Absent were: _____

* * * * *

At 11:00 a.m. the Chairman stated that the purpose of the meeting was to hold a public hearing to take public comment on the proposed financing documents to finance the construction of new sanitary sewer lines and to refinance an outstanding Federal Home Administration Rural Development Loan.

The Chairman asked for a motion to open the public hearing. At ____ a.m. Commissioner _____ moved that the public hearing be opened and the motion was unanimously adopted.

The public hearing was opened so that anyone who wished to be heard on the proposed project and the installment financing documents could be heard. The Finance Director presented an affidavit of an officer of the Time News showing publication on October 6, 2006 of a Notice of Public Hearing to be attached to this extract as Exhibit A.

The Finance Director presented drafts of an Installment Financing Contract and related documents to finance the estimated cost of approximately \$3,178,000 to construct new sanitary sewer lines and to refinance an outstanding Federal Home Administration Rural Development Loan. Copies of the financing documents have been on the County's website and on file in the office of the Finance Director.

The Chairman inquired whether there were any persons who wished to speak at the public hearing.

[Attached hereto is a summary of the comments of anyone who appeared, either in person or by attorney, to be heard on such matters.] [The Clerk to the Board of Commissioners announced that no written statement related to such matters has been received.]

Thereupon, Chairman Moyer asked for a motion to go out of public hearing. Commissioner _____ made the motion to go out of public hearing and the motion was unanimously adopted.

Notice of Public Hearing – 10/18/06

\$154.18

Notice Of Public Hearing
on whether the Board of Commissioners for the County of Henderson, North Carolina should approve a proposed installment financing contract to finance the cost of certain projects

PART OF
Times
Company

CERTIFICATION OF PUBLICATION

October 6, 2006

I, Jane Schoff, affirming the following under the penalties of perjury state:

I am employed by Times-News, a subsidiary of the New York Times Company. Times-News, a daily newspaper of general circulation printed and published in the city of Hendersonville, county of Henderson, and state of North Carolina. I hereby certify that the advertisement annexed hereto was published in the editions of The Times-News on the following date or dates:

10/6/06

And that the said newspaper in which such notice, paper, document, or legal advertisement was published was, at the time of each and every publication, a newspaper meeting all of the requirements and qualifications of Section 1-597 of the General Statutes of North Carolina and was a qualified newspaper within the meaning of Section 1-597 of the General Statutes of North Carolina.

This 6th day of September, 2006.

(Signed) Jane Schoff

Sworn to and subscribed before me, this 6th day of September, 2006.

Deborah H. Owen Notary Public
Deborah H. Owen

My Commission Expires March 1, 2011

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NOTICE IS HEREBY GIVEN that the Henderson County Board of Commissioners (the "Board") will hold a public hearing on October 18, 2006 at 11:00 a.m. in the Commissioners' Meeting Room of the County Administration Building, 100 North King Street, Hendersonville, North Carolina for the purpose of considering whether the Board for the County of Henderson, North Carolina (the "County") should approve a proposed installment financing contract and certain related documents under which the County would obtain financing pursuant to North Carolina General Statutes § 160A-20, as amended, to finance the cost of the design and construction of sanitary sewer lines (the "Facilities") and under which the County would secure the repayment of it of moneys advanced pursuant to such installment financing contract by granting a security interest in the Facilities and related sites and property thereof under a deed of trust. The cost of constructing the Facilities is estimated at approximately \$2,000,000. The County will also refinance an outstanding Rural Development loan with a principal balance of \$1,178,000 through the proposed installment financing contract. Drafts of proposed financing documents are available for inspection in the office of the Finance Director. All persons interested in this public hearing are encouraged to attend and express their views.

Elizabeth W. Corn
Clerk to the Board of
Commissioners
Henderson County,
North Carolina

(03548714) 10/6

Charge
\$15 each

DRAFT

EQUIPMENT INSTALLMENT FINANCING AGREEMENT

This Equipment Installment Financing Agreement (the "Agreement") dated as of November __, 2006, and entered into between Banc of America Public Capital Corp, a Kansas corporation ("Lender"), and County of Henderson, North Carolina, a body corporate and politic existing under the laws of the State of North Carolina ("Purchaser").

WITNESSETH:

WHEREAS, Purchaser is a duly and validly created, organized and existing public body politic, duly created and existing under and by virtue of the Constitution and laws of the State of North Carolina; and

WHEREAS, Purchaser has the power, pursuant to Section 160A-20 of the General Statutes of North Carolina, to enter into installment contracts to finance the purchase of personal property, including property to be affixed or attached to real estate as fixtures; and

WHEREAS, Purchaser has requested Lender to advance certain funds to enable Purchaser to finance the purchase and installation of certain Equipment described herein and to refinance the outstanding principal amount of the 1990 USDA Rural Development Loan (the "Prior Loan") from Rural Utilities Service, an agency of the United States Department of Agriculture (the "Prior Lender") to the Purchaser, and Purchaser desires to obtain such advance from Lender and to purchase and install the Equipment and refinance the Prior Loan pursuant to the terms and conditions set forth herein; and

WHEREAS, Purchaser is authorized under the constitution and laws of the State to enter into this Agreement hereto for the purposes set forth herein; and

WHEREAS, the governing body of Purchaser has authorized the execution and delivery of this Agreement pursuant to a resolution adopted by the governing board of the Purchaser on [October 18, 2006];

WHEREAS, the obligation of Purchaser to make Installment Payments (as hereinafter defined) and other payments required under this Agreement shall constitute a limited obligation payable solely from currently budgeted appropriations of Purchaser and shall not constitute a pledge of the faith and credit of Purchaser within the meaning of any constitutional debt limitation or as otherwise prohibited by the North Carolina Constitution; and

WHEREAS, in order to further secure the obligations of Purchaser hereunder, Purchaser desires to grant a security interest in the Equipment for the benefit of the Lender; and

WHEREAS, no deficiency judgment may be rendered against Purchaser in any action for breach of a contractual obligation under this Agreement, and the taxing power of Purchaser is not and may not be pledged in any way, directly or indirectly or contingently to secure any moneys due under this Agreement; and

Now, therefore, for good and valuable consideration, receipt of which is hereby acknowledged, and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.01. Definitions. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

“Acquisition Amount” means the amount specified in the Schedule.

“Acquisition Fund” means the fund established and held by the Acquisition Fund Custodian pursuant to the Acquisition Fund Agreement, if any.

“Acquisition Fund Agreement” means an Acquisition Fund and Account Control Agreement, substantially in the form of Exhibit A attached hereto, in form and substance acceptable to and executed by Purchaser, Lender and the Acquisition Fund Custodian, pursuant to which an Acquisition Fund is established and administered.

“Acquisition Fund Custodian” means the Acquisition Fund Custodian identified in any Acquisition Fund Agreement, and its successors and assigns.

“Acquisition Period” means, with respect to this Agreement, that period stated in the Schedule during which the Proceeds attributable to this Agreement may be expended on Equipment Costs.

“Agreement” means this Equipment Installment Financing Agreement, including the Schedule and the other exhibits hereto, together with any amendments and modifications to the Agreement pursuant to Section 12.05.

“Code” means the Internal Revenue Code of 1986, as amended. Each reference to a Section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder.

“Commencement Date” means the date when Purchaser’s obligation to make Installment Payments commences hereunder, which date shall be the earlier of (i) the date on which the Equipment listed in the Schedule is accepted by Purchaser in the manner described in Section 5.01, and (ii) the date on which the Acquisition Amount is deposited with the Acquisition Fund Custodian.

“Contract Rate” means the rate identified as such in the applicable Schedule.

“Equipment” means the property listed in the Schedule and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.01 or Article V. Whenever reference is made in this Agreement to Equipment, such reference shall be deemed to include all such replacements, repairs, restorations, modifications and improvements of or to such Equipment.

“Equipment Costs” means the total cost of the Equipment listed in the Schedule, including all soft costs such as freight, installation and taxes paid up front by Lender and all capitalizable consulting and training fees approved by Purchaser, legal fees, financing costs, and other costs necessary to vest full, clear legal title to the Equipment in Purchaser, subject to the security interest granted to Lender in this Agreement, and otherwise incurred in connection with the financing of the Equipment as provided herein; provided that (i) any such soft costs on a cumulative basis shall not exceed a percentage of the Equipment Costs approved by Lender and (ii) in no event shall such soft costs relating to the Equipment be included without Lender’s prior consent.

“Event of Default” means an Event of Default described in Section 11.01.

“Expense Fund” means the fund established and held by the Acquisition Fund Custodian pursuant to the Acquisition Fund Agreement, if any.

“Installment Payments” means the basic installment payments payable by Purchaser under this Agreement pursuant to Section 4.01, consisting of a principal component and an interest component.

“Lender” means (a) the entity referred to as Lender in the first paragraph of this Agreement or (b) any assignee or transferee of any right, title or interest of Lender in and to the Equipment under this Agreement (including Installment Payments thereunder) pursuant to Section 10.01, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Lender to perform under this Agreement.

“Material Adverse Change” means (a) prior to the Utilization Period Expiration, a downgrade in Purchaser’s external debt rating of two or more subgrades by either Moody’s Investors Service, Inc. or Standard & Poor’s Ratings Group or any equivalent successor credit rating agency, or any downgrade by either such agency that would cause Purchaser’s credit rating to be below investment grade, and (b) thereafter, any change in Purchaser’s creditworthiness that could have a material adverse effect on (i) the financial condition or operations of Purchaser or (ii) Purchasers’ ability to perform its obligations under this Agreement.

“Optional Prepayment Date” means the date described in Section 4.01(b).

“Original Term” means the period from the Commencement Date for this Agreement until the end of the fiscal year of Purchaser in effect at such Commencement Date.

“Prior Lender” has the meaning assigned to such term in the recitals to this Agreement.

“Prior Loan” has the meaning assigned to such term in the recitals to this Agreement.

“Purchase Price” means, with respect to the Equipment listed on the Schedule, the amount that Purchaser may pay to Lender to prepay the outstanding Acquisition Amount as contemplated in Sections 4.01 and 8.01.

“Purchase Term” means the Original Term and all Renewal Terms herein provided and for this Agreement means the period from the date hereof until this Agreement is terminated.

“Purchaser” means the entity referred to as Purchaser in the first paragraph of this Agreement.

“Renewal Terms” means the renewal terms of this Agreement, each having a duration of one year and a term coextensive with Purchaser’s fiscal year, as specified in the Schedule applicable thereto.

“Schedule” means the Schedule of Property substantially in the form of Exhibit B hereto together with the Installment Payment Schedule attached thereto substantially in the form of Exhibit B-1 hereto.

“State” means the State of North Carolina.

“Utilization Period” means, if this Agreement is not funded under an Acquisition Fund Agreement, the date by which Purchaser must deliver an Acceptance Certificate for the Equipment under this Agreement as indicated in Section 3.04(b).

“Vendor” means the manufacturer or supplier of the Equipment or any other person as well as the agents or dealers of the manufacturer or supplier with whom Purchaser has arranged the acquisition of the Equipment to be financed by Lender pursuant to this Agreement.

ARTICLE II REPRESENTATIONS AND WARRANTIES OF PURCHASER

Section 2.01. Representations and Covenants of Purchaser. Purchaser represents, covenants and warrants for the benefit of Lender on the date hereof as follows:

(a) Purchaser is a public body politic duly created and existing under the laws of the State of North Carolina as a political subdivision of the State of North Carolina, and has all powers necessary to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

(b) Purchaser has duly authorized the execution and delivery of this Agreement by proper action of its governing body at a meeting duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement.

(c) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof.

(d) Purchaser will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic.

(e) Purchaser has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Purchaser of the Equipment as provided herein.

(f) During the Purchase Term, the Equipment will be used by Purchaser only for the purpose of performing essential governmental or proprietary functions of Purchaser consistent with the permissible scope of Purchaser's authority. Purchaser does not intend to sell or otherwise dispose of the Equipment or any interest therein prior to the last Installment Payment (including all Renewal Terms) scheduled to be paid under this Agreement.

(g) Purchaser has kept, and throughout the Purchase Term shall keep, its books and records in accordance with generally accepted accounting principles and practices consistently applied, and shall deliver to Lender (i) annual audited financial statements (including (1) a balance sheet, (2) statement of revenues, expenses and changes in fund balances for budget and actual, (3) statement of cash flows and notes, and (4) schedules and attachments to the financial statements) within 270 days of its fiscal year end, (ii) such other financial statements and information as Lender may reasonably request, and (iii) its annual budget for the following fiscal year when approved but not later than 30 days prior to its current fiscal year end. The financial statements described in subsection (i) shall be accompanied by an unqualified opinion of Purchaser's auditor. Credit information relating to Purchaser may be disseminated among Lender and any of its affiliates and any of their respective successors and assigns.

(h) The Equipment described above is essential to the functions of Purchaser or to the services Purchaser provides its citizens; Purchaser has an immediate need for the Equipment listed on the Schedule and expects to make immediate use of the Equipment listed on the Schedule, which will be used by Purchaser only for the purpose of performing one or more of Purchaser's governmental or proprietary functions consistent with the permissible scope of its authority. Purchaser's need for the Equipment is not temporary and Purchaser does not expect the need for any item of the Equipment to diminish during the Purchase Term to such item. Purchaser expects and anticipates adequate funds to be available for all future payments due hereunder after the current budgetary period.

(i) The payment of the Installment Payments or any portion thereof is not directly or indirectly (x) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property; or (y) on a present value basis, derived from payments (whether or not to Purchaser) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. The Equipment will not be used, directly or indirectly, in any activity carried on by any person other than a state or local governmental unit. No portion of the Equipment Costs for the Equipment will be used, directly or indirectly, to make or finance loans to any person other than Purchaser. Purchaser has not entered into any management or other service contract with respect to the use and operation of the Equipment.

(j) There is no pending litigation, tax claim, proceeding or dispute that may adversely affect Purchaser's financial condition or impairs its ability to perform its obligations hereunder. Purchaser will, at its expense, maintain its legal existence in good standing and do any further act and execute, acknowledge, deliver, file, register and record any further documents Lender may

reasonably request in order to protect Lender's security interest in the Equipment and Lender's rights and benefits under this Agreement.

ARTICLE III PURCHASE OF EQUIPMENT

Section 3.01. Purchase of Equipment. Subject to the terms of this Agreement and the Schedule, Lender agrees to advance the Acquisition Amount to refinance the Prior Loan and to acquire the Equipment. The Purchase Term may be continued, solely at the option of Purchaser, at the end of the Original Term or any Renewal Term for the next succeeding Renewal Term up to the maximum Purchase Term. At the end of the Original Term and at the end of each Renewal Term until the maximum Purchase Term has been completed, Purchaser shall be deemed to have exercised its option to continue this Agreement for the next Renewal Term unless Purchaser shall have terminated this Agreement pursuant to Section 3.03 or Section 4.01(b). The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Installment Payments shall be as provided in the Schedule.

Section 3.02. Continuation of Purchase Term; Appropriation.

Purchaser intends, subject to Section 3.03, to continue the Purchase Term of this Agreement through the Original Term and all Renewal Terms and to pay the Installment Payments thereunder. The Purchaser affirms that sufficient funds are available for the current fiscal year, and the Purchaser reasonably believes that an amount sufficient to make all Installment Payments during the entire Purchase Term can be obtained from legally available funds of Purchaser. The finance officer, manager or other appropriate official of the Purchaser (hereinafter the "Manager") shall include in the initial proposal for each of Purchaser's annual budgets the amount of all Installment Payments due under this Agreement and other payments coming due during the fiscal year to which such budget is applicable. Notwithstanding that the Manager includes an appropriation for Installment Payments and other payments in a proposed budget, Purchaser may terminate all its obligations hereunder and under this Agreement by not appropriating sufficient funds to make the scheduled Installment Payments and other payments. In the event the governing body of Purchaser determines not to appropriate in its budget an amount sufficient to pay all Installment Payments and reasonably estimated other payments coming due in the applicable fiscal year, the governing body of Purchaser shall adopt a resolution specifically deleting such appropriation from the proposed budget for that fiscal year. Such resolution shall state the reasons for such deletion, shall be adopted by a vote identifying those voting for and against and abstaining from the resolution, and shall be recorded in the minutes of the governing body. A copy of such resolution shall be promptly sent to Lender. Such failure to appropriate shall constitute an Event of Default.

Section 3.03. Nonappropriation. (a) The Purchaser is obligated only to pay such Installment Payments as may lawfully be made from funds budgeted and appropriated for that purpose during Purchaser's then current fiscal year. Should Purchaser fail to budget, appropriate or otherwise make available funds to pay Installment Payments following the then current Original Term or Renewal Term, this Agreement shall be deemed terminated at the end of the then current Original Term or Renewal Term. If the amount equal to the Installment Payments

which will be due during the next fiscal year has not been appropriated by Purchaser in its budget, the Manager shall deliver to the Lender, within ten (10) days after the adoption of Purchaser's budget for such fiscal year, but not later than fifteen (15) days after the start of such fiscal year, a certificate from the Manager of Purchaser stating that Purchaser did not make such appropriation. Purchaser agrees to deliver notice to Lender of such termination promptly after any decision to non-appropriate is made, but failure to give such notice shall not extend the term beyond such Original Term or Renewal Term. If this Agreement is terminated in accordance with this Section, Purchaser agrees to peaceably deliver the Equipment to Lender at the location(s) to be specified by Lender.

(b) No provision of this Agreement shall be construed or interpreted as creating a pledge of the faith and credit of Purchaser within the meaning of any constitutional debt limitation. This Agreement shall not directly or indirectly or contingently obligate Purchaser to make any payments beyond the amount appropriated, if any, in the sole discretion of Purchaser for any fiscal year in which this Agreement shall be in effect. Purchaser may at the end of any fiscal year terminate its future Installment Payment obligations under this Agreement if Purchaser has not appropriated sufficient funds to make the next fiscal year's scheduled Installment Payments; however, during each fiscal year, Purchaser shall exercise its best efforts to appropriate funds for Installment Payments due in the next fiscal year. No provision of this Agreement shall be construed to pledge or create a lien on any class or source of Purchaser's moneys other than the Purchase Price, the Equipment or any Acquisition Fund. To the extent of any conflict between this Section and any other provision of this Agreement, this Section shall take priority.

(c) This Agreement constitutes an installment contract and security agreement pursuant to Section 160A-20 and Article 9 of Chapter 25 (the "Uniform Commercial Code - Secured Transactions") of the General Statutes of North Carolina.

Section 3.04. Conditions to Lender's Performance.

(a) As a prerequisite to the performance by Lender of any of its obligations pursuant to this Agreement, Purchaser shall deliver to Lender the following:

(i) A fully completed Schedule, executed by Purchaser;

(ii) An Acquisition Fund Agreement, executed by Purchaser and the Acquisition Fund Custodian, unless Lender pays 100% of the Acquisition Amount directly to the Vendor upon execution of this Agreement, together with an Arbitrage and Tax Certificate in the form attached thereto as Schedule 2, or such other certification to tax matters that is acceptable to Lender and Purchaser's counsel;

(iii) A Certificate executed by the Clerk or Secretary or other comparable officer of Purchaser, in substantially the form attached hereto as Exhibit C, completed to the satisfaction of Lender;

(iv) A certified copy of a resolution, ordinance or other official action of Purchaser's governing body authorizing the execution and delivery of this Agreement and performance by Purchaser of its obligations hereunder;

(v) An opinion of counsel to Purchaser in substantially the form attached hereto as Exhibit D respecting this Agreement and otherwise satisfactory to Lender;

(vi) Evidence of insurance as required by Section 7.02 hereof;

(vii) All documents, including financing statements, affidavits, notices and similar instruments, in form satisfactory to Lender, which Lender deems necessary or appropriate at that time pursuant to Section 6.02;

(viii) A copy of a fully completed and executed Form 8038-G;

(ix) Evidence of approval of this Agreement by the North Carolina Local Government Commission (the "LGC");

(x) Such other items, if any, as are reasonably required by Lender.

(b) In addition, the performance by Lender of any of its obligations hereunder shall be subject to: (i) no material adverse change in the financial condition of Purchaser since the date of this Agreement, (ii) no Event of Default having occurred, and (iii) if no Acquisition Fund has been established, the Equipment must be accepted by Purchaser no later than the date listed as the Utilization Period in the Schedule.

(c) Subject to satisfaction of the foregoing, Lender will pay the Acquisition Amount for Equipment described in the Schedule to the Vendor for the purchase of the Equipment, or any portion thereof, or, if authorized by Purchaser's governing body, will reimburse Purchaser for the prior payment of any such Acquisition Amounts by Purchaser to the Vendor for the purchase of the Equipment, upon receipt of the documents described in Sections 5.01(a) and (b); or if an Acquisition Fund has been established pursuant to an Acquisition Fund Agreement, Lender will deposit the Acquisition Amount for Equipment described in the Schedule with the Acquisition Fund Custodian, to be disbursed in accordance with the terms of the Acquisition Fund Agreement.

ARTICLE IV INSTALLMENT PAYMENTS

Section 4.01. Installment Payments; Prepayments; Prepayment.

(a) Subject to Section 3.03, Purchaser shall promptly pay Installment Payments, in lawful money of the United States of America, to Lender on the dates and in such amounts as provided in the Schedule. Purchaser shall pay Lender a charge on any Installment Payment not paid on the date such payment is due equal to the Contract Rate plus 5% per annum or the maximum amount permitted by law, whichever is less, from such date. Purchaser shall not

permit the federal government to guarantee any Installment Payments. Installment Payments consist of principal and interest payments as more fully detailed on the Schedule.

(b) Purchaser shall have the option to prepay its obligations under this Agreement on and after the date specified as the Optional Prepayment Commencement Date in the Schedule (the "Optional Prepayment Date"), on the Installment Payment Dates specified in such Schedule, upon not less than 30 days' prior written notice, and upon payment in full of the Installment Payments then due under such Schedule, as well as the applicable Purchase Price, which may include a prepayment premium on the unpaid balance as set forth in the Schedule. After payment of all amounts owed with respect to this Agreement, the Purchaser will own the Equipment free and clear of any interest of Lender therein, and Lender's security interests in and to such Equipment will be terminated.

Section 4.02. Interest and Principal Components. A portion of each Installment Payment is paid as, and represents payment of, interest at the rate set forth in the Schedule, and the balance of each Installment Payment is paid as, and represents payment of, principal. The Installment Payment Schedule sets forth the principal and interest components of each Installment Payment payable under this Agreement during the Purchase Term.

Section 4.03. Reserved.

Section 4.04. Tax Covenants.

(a) Purchaser agrees that it will not take any action that would cause the interest component of Installment Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes, nor will it omit to take or cause to be taken, in timely manner, any action, which omission would cause the interest component of Installment Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes.

(b) In the event that Purchaser does not spend the moneys in the Acquisition Fund within six (6) months of the date the deposit is made pursuant to Section 3.04(c), Purchaser will, if required by section 148(f) of the Code to pay rebate: (i) establish a Rebate Account and deposit the Rebate Amount (as defined in Section 1.148-3(b) of the Federal Income Tax Regulations) not less frequently than once per year after the applicable Commencement Date; and (ii) rebate to the United States, not less frequently than once every five (5) years after the applicable Commencement Date, an amount equal to at least 90% of the Rebate Amount and within 60 days after payment of all Installment Payments or the Purchase Price as provided in Section 10.01(a) hereof, 100% of the Rebate Amount, as required by the Code and any regulations promulgated thereunder. Purchaser shall determine the Rebate Amount, if any, at least every year and upon payment of all Installment Payments or the Purchase Price and shall maintain such determination, together with any supporting documentation required to calculate the Rebate Amount, until six (6) years after the date of the final payment of the Installment Payments or the Purchase Price.

(c) The Purchaser represents that the Equipment will not be used in such a manner so as to cause this Agreement to constitute “private activity bonds” as defined in Section 141(a) of the Code and Sections 1.141-0 through 1.141-16 of the Regulations.

(d) This Agreement will not be federally guaranteed within the meaning of Section 149(b) of the Code. The Purchaser shall file, or cause to be filed, the requisite Form 8038-G on or before the 15th day of the second month after the calendar quarter in which this Agreement is executed.

Section 4.05. Event of Taxability. Upon the occurrence of an Event of Taxability, the interest component shall be at a Taxable Rate retroactive to the date as of which the interest component is determined by the Internal Revenue Service to be includible in the gross income of the owner or owners thereof for federal income tax purposes, and Purchaser will pay such additional amount as will result in the owner receiving the interest component at the Taxable Rate identified in this Agreement.

For purposes of this Section, “Event of Taxability” means a determination that the interest component is includible for federal income tax purposes in the gross income of the owner thereof due to Purchaser’s action or failure to take any action.

Section 4.06. Mandatory Prepayment. If the Acquisition Amount is deposited into an Acquisition Fund, any funds remaining in the Acquisition Fund on or after the Acquisition Period and not applied to Equipment Costs, shall be applied by Lender on the next Installment Payment date, pro rata, to the prepayment of the principal component of the outstanding Installment Payments due under the applicable Schedule.

ARTICLE V ACCEPTANCE OF EQUIPMENT

Section 5.01. Delivery, Installation and Acceptance of Equipment.

(a) Purchaser shall order the Equipment, cause the Equipment to be delivered and installed at the location specified in the Schedule and pay any and all delivery and installation costs and other Equipment Costs in connection therewith. When the Equipment listed in the Schedule has been delivered and installed, Purchaser shall promptly accept such Equipment and evidence such acceptance by executing and delivering to Lender an Acceptance Certificate in the form attached hereto as Exhibit E.

(b) Purchaser shall deliver to Lender original invoices and bills of sale (if title to such Equipment has passed to Purchaser) relating to each item of Equipment accepted by Purchaser. With respect to Equipment not purchased through an Acquisition Fund, Lender shall, upon receipt of an Acceptance Certificate from Purchaser, prepare a Schedule of Property and Installment Payment Schedule in the forms attached hereto as Exhibits B-1 and B-2. Purchaser shall execute and deliver such Schedules to Lender within 5 business days of receipt.

Section 5.02. Quiet Enjoyment of Equipment. So long as Purchaser is not in default under this Agreement, neither Lender nor any entity claiming by, through or under Lender, shall interfere with Purchaser’s quiet use and enjoyment of the Equipment during the Purchase Term.

Section 5.03. Location; Inspection. Once installed, no item of the Equipment will be relocated from the base location specified for it in the Schedule without Lender's consent, which consent shall not be unreasonably withheld. Lender shall have the right at all reasonable times during regular business hours to enter into and upon the property of Purchaser for the purpose of inspecting the Equipment.

Section 5.04. Use and Maintenance of the Equipment. Purchaser will not install, use, operate, or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Purchaser shall secure all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Purchaser agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative, or judicial body; provided that Purchaser may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lender, adversely affect the interest (including the reversionary interest) of Lender in and to the Equipment or its interest or rights under this Agreement.

Purchaser agrees that it will maintain, preserve, and keep the Equipment in good repair and working order, in a condition comparable to that recommended by the manufacturer. In all cases, Purchaser agrees to pay any costs necessary for the manufacturer to re-certify the Equipment as eligible for manufacturer's maintenance upon the return of or foreclosure upon the Equipment to Lender as provided for herein.

Purchaser shall not alter any item of Equipment or install any accessory, equipment or device on an item of Equipment if that would impair any applicable warranty, the originally intended function or the value of that Equipment. All repairs, parts, accessories, equipment and devices furnished, affixed to or installed on any Equipment, excluding temporary replacements, shall thereupon become subject to the security interest of Lender.

ARTICLE VI SECURITY INTEREST IN EQUIPMENT

Section 6.01. Title to the Equipment. During the Purchase Term, and so long as Purchaser is not in default under Article XI hereof, all right, title and interest in and to each item of the Equipment shall be vested in Purchaser immediately upon its acceptance of each item of Equipment, subject to the terms and conditions of this Agreement. Purchaser shall at all times protect and defend, at its own cost and expense, its title in and to the Equipment from and against all claims, liens and legal processes of its creditors, and keep all Equipment free and clear of all such claims, liens and processes other than the security interest granted under this Agreement. Upon the occurrence of an Event of Default or upon termination of this Agreement pursuant to Section 3.03 hereof, full and unencumbered legal title to the Equipment shall pass to Lender, and Purchaser shall have no further interest therein. In addition, upon the occurrence of such an Event of Default or such termination, Purchaser shall execute and deliver to Lender such documents as Lender may request to evidence the passage of such legal title to Lender and the termination of Purchaser's interest therein, and upon request by Lender shall deliver possession of the Equipment to Lender in accordance with Section 11.02. Upon final payment of any Installment Payments or prepayment thereof pursuant to Section 4.01(b), Lender's security

interest or other interest in the related Equipment shall terminate, and Lender shall execute and deliver to Purchaser such documents as Purchaser may request to evidence the termination of Lender's security interest in the Equipment.

Section 6.02. Security Interest. To secure the payment of all of Purchaser's obligations under this Agreement, Purchaser grants to Lender a security interest constituting a first lien on (a) the Equipment and in any and all additions, accessions, repairs, replacements, substitutions, and modifications to such Equipment (b) moneys and investments held from time to time in the Acquisition Fund and (c) any and all proceeds of any of the foregoing, including any insurance proceeds paid because of loss or damage to the Equipment to the extent necessary to secure Purchaser's payment obligations to Lender under this Agreement. Purchaser shall cause to be filed, at Purchaser's expense, financing statements and other related documents that are necessary under Article 9 of Chapter 25 (the "Uniform Commercial Code - Secured Transactions") of the General Statutes of North Carolina to perfect a first lien security interest by filing and to maintain that first lien security interest in perfected form. The Lender is authorized to (i) file financing statements as specified by the Uniform Commercial Code to perfect or maintain the Lender's security interest granted hereby and (ii) add, modify or delete any items shown on the financing statement to reflect the actual Equipment purchased by the Purchaser. Purchaser agrees to execute and authorizes Lender to file such other notices of assignment, chattel mortgages, financing statements and other documents, in form satisfactory to Lender, which Lender deems necessary or appropriate to establish and maintain Lender's security interest in the Equipment, the Acquisition Fund and the proceeds thereof. Upon the occurrence of an Event of Default, Purchaser shall execute and deliver to Lender such documents as Lender may request to evidence the passage of such legal title to Lender and the termination of Purchaser's interest therein, and upon request by Lender shall deliver possession of the Equipment to Lender in accordance with Section 11.02. Upon termination of this Agreement and payment and performance in full of all of Purchaser's obligations to Lender thereunder, Lender's security interest or other interest in the Equipment purchased pursuant to this Agreement shall terminate, and Lender shall execute and deliver to Purchaser such documents as Purchaser may request to evidence the termination of Lender's security interest in the Equipment.

To the extent the Equipment consists of any pipes, valves, fittings, wires and poles or any other utility-type property, as well as in all substitutions, replacements and proceeds therefor or thereof (for the purposes of this Section, the "Utility Equipment"). The parties agree and intend that, even if all or any part of the Utility Equipment is installed in or on the ground, all the Utility Equipment shall be and remain personal property subject to the security interest granted in this Section. This Agreement is intended as and constitutes a security agreement pursuant to the Uniform Commercial Code. The Utility Equipment is part of the Equipment. The Utility Equipment includes the sewer collection pipes described in Exhibit B.

The Utility Equipment has been installed over or across property as to which the County owns only an easement interest or some other limited interest, such as rights under an encroachment agreement with the North Carolina Department of Transportation. The County hereby sells and grants to Lender (in connection with effecting remedies on default) such licenses or other rights as may be necessary or desirable for the Lender or its agents to enter the real estate that is subject to such easements and other interests to remove, construct, operate, maintain and inspect the Utility Equipment. The County grants these licenses in connection with

the other interests granted under this Agreement to the Beneficiary with the intent that such licenses thereby qualify as licenses coupled with an interest so as to be irrevocable.

Section 6.03. Personal Property. The Equipment is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Upon the request of Lender, Purchaser will, at Purchaser's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.

ARTICLE VII COVENANTS OR PURCHASER

Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges. Purchaser shall keep the Equipment free of all levies, liens, and encumbrances except those created by this Agreement. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Purchaser and that the Equipment will therefore be exempt from all property taxes. If the use, possession or acquisition of any Equipment is nevertheless determined to be subject to taxation, Purchaser shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to such Equipment. Purchaser shall pay all utility and other charges incurred in the use and maintenance of the Equipment. Purchaser shall pay such taxes or charges as the same may become due; provided that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, Purchaser shall be obligated to pay only such installments as accrue during each Purchase Term.

Section 7.02. Insurance. Purchaser shall during each Purchase Term maintain or cause to be maintained (a) casualty insurance naming Lender and its assigns as loss payee and insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, and any other risks reasonably required by Lender, in an amount at least equal to the then applicable Purchase Price of the Equipment; (b) liability insurance naming Lender as additional insured that protects Lender from liability in all events in form and amount satisfactory to Lender; and (c) worker's compensation coverage as required by the laws of the State; provided that, with Lender's prior written consent, in lieu of policies of insurance written by commercial insurance companies meeting the requirements of this Section, the Purchaser may maintain a program of self-insurance or participate in group risk financing programs, risk pools, risk retention groups, purchasing groups and captive insurance companies, and in state or federal insurance programs. Purchaser shall furnish to Lender evidence of such insurance or self-insurance coverage at least annually throughout the Purchase Term. Purchaser shall not cancel or modify such insurance or other coverage in any way that would affect the interests of Lender without first giving written notice thereof to Lender at least 30 days in advance of such cancellation or modification. Purchaser hereby affirms that it assumes all risk of loss of, or damage to and liability related to injury or damage to persons or property arising from the Equipment from any cause whatsoever, and no such loss of or damage to or liability arising from the Equipment shall relieve Purchaser of the obligation to make the Installment Payments or to perform any other obligation under this Agreement.

Section 7.03. Risk of Loss. Whether or not covered by insurance or self insurance, Purchaser hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Equipment from any cause whatsoever, and no such loss of or damage to or liability arising from the Equipment shall relieve Purchaser of the obligation to make the Installment Payments or to perform any other obligation under this Agreement. Whether or not covered by insurance or self-insurance, Purchaser hereby agrees to reimburse Lender (to the fullest extent permitted by applicable law, but only from legally available funds) and the LGC (if this Agreement requires LGC approval pursuant to Section 3.04(a)(x) hereof) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Lender, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into of this agreement or any of the transactions contemplated hereby, (b) the ordering, acquisition, ownership use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Equipment, (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury or death to any person, and/or (d) the breach of any covenant of Purchaser in connection with this Agreement or any material misrepresentation provided by Purchaser in connection with this Agreement. The provisions of this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Purchase Term for any reason.

In addition, until the Equipment is delivered and accepted by Purchaser, Purchaser shall cause Lender to be named as co-obligee on any performance bond provided by the seller of the Equipment.

Section 7.04. Advances. In the event Purchaser shall fail to keep the Equipment in good repair and working order, Lender may, but shall be under no obligation to, maintain and repair the Equipment and pay the cost thereof. All amounts so advanced by Lender shall constitute additional rent for the then current Original Term or Renewal Term and Purchaser covenants and agrees to pay such amounts so advanced by Lender with interest thereon from the due date until paid at a rate equal to the Contract Rate plus 12% per annum or the maximum amount permitted by law, whichever is less.

ARTICLE VIII DAMAGE, DESTRUCTION AND CONDEMNATION

Section 8.01. Damage, Destruction and Condemnation. If, prior to the termination of the Purchase Term, (a) the Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, Purchaser and Lender will cause the Net Proceeds of any insurance claim or condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Purchaser. Notwithstanding the foregoing, in the event of such damage or destruction, Purchaser shall have

the option to prepay its obligations under this Agreement by prepaying all of the Purchase Price then due under this Agreement on the day specified in Purchaser's notice to Lender of its exercise of the prepayment option (which shall be the earlier of the next Installment Payment Date or 60 days after the event resulting in such damage, destruction or condemnation).

If Purchaser elects to replace any item of the Equipment (the "Replaced Equipment") pursuant to this Section, the replacement equipment (the "Replacement Equipment") shall be of similar type, utility and condition to the Replaced Equipment and shall be of equal or greater value than the Replaced Equipment. Purchaser hereby grants Lender a first priority security interest in any such Replacement Equipment. Purchaser shall represent, warrant and covenant to Lender that each item of Replacement Equipment is free and clear of all claims, liens, security interests and encumbrances, excepting only those liens created by or through Lender, and shall provide to Lender any and all documents as Lender may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Lender evidencing Lender's security interest in the Replacement Equipment. Lender and Purchaser hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute "Equipment" for purposes of this Agreement. Purchaser shall complete the documentation of Replacement Equipment on or before the next Installment Payment date after the occurrence of a casualty event, or be required to exercise the Purchase Option with respect to the damaged equipment.

For purposes of this Article, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys' fees, incurred in the collection thereof.

Section 8.02. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 8.01, Purchaser shall either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) pay or cause to be paid to Lender the amount of the then applicable Purchase Price for the Equipment, and, upon such payment, the applicable Purchase Term shall terminate and Lender's security interest in the Equipment shall terminate as provided in Section 6.01 hereof. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after purchasing such Equipment and such other Equipment shall be retained by Purchaser. If Purchaser shall make any payments pursuant to this Section, Purchaser shall not be entitled to any reimbursement therefor from Lender nor shall Purchaser be entitled to any diminution of the amounts payable under Article IV.

ARTICLE IX WARRANTIES

Section 9.01. Disclaimer of Warranties. THE LENDER MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE EQUIPMENT OR ANY COMPONENT PART THEREOF TO THE PURCHASER OR IN REGARD TO ANY OTHER CIRCUMSTANCE WHATSOEVER WITH RESPECT THERETO, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR

REPRESENTATION WITH RESPECT TO: THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE; THE VALUE, DESIGN OR CONDITION THEREOF; THE SAFETY, WORKMANSHIP OR QUALITY THEREOF; COMPLIANCE THEREOF WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO; ANY LATENT DEFECT; THE TITLE TO OR INTEREST OF THE LENDER THEREIN; THE ABILITY THEREOF TO PERFORM ANY FUNCTION; THAT THE PROCEEDS OF THIS AGREEMENT WILL BE SUFFICIENT (TOGETHER WITH ANY OTHER AVAILABLE FUNDS OF THE PURCHASER) TO PAY THE COST OF ACQUIRING OR INSTALLING THE EQUIPMENT; OR ANY OTHER CHARACTERISTICS OF THE EQUIPMENT, IT BEING AGREED THAT ALL RISKS RELATING TO THE EQUIPMENT, THE INSTALLATION AND OPERATION THEREOF OR THE TRANSACTIONS CONTEMPLATED HEREBY ARE TO BE BORNE BY THE PURCHASER, AND THE BENEFITS OF ANY AND ALL IMPLIED WARRANTIES AND REPRESENTATIONS OF THE LENDER ARE HEREBY WAIVED BY THE PURCHASER. Purchaser's acquisition of the Equipment under this Agreement shall be on an "as is, where is" basis, and with all faults. In no event shall Lender be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, the Equipment or the existence, furnishing, functioning or Purchaser's use of any item, product or service provided for in this Agreement.

Section 9.02. Vendor's Warranties. Lender hereby irrevocably appoints Purchaser its agent and attorney-in-fact during each Purchase Term, so long as Purchaser shall not be in default under this Agreement, to assert from time to time whatever claims and rights (including without limitation warranties, if any) relating to the Equipment that Lender may have against Vendor. Purchaser's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor of the Equipment, and not against Lender. Any such matter shall not have any effect whatsoever on the rights and obligations of Lender with respect to this Agreement, including the right to receive full and timely payments under this Agreement. Purchaser expressly acknowledges that Lender makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties relating to the Equipment.

ARTICLE X ASSIGNMENTS

Section 10.01. Assignment by Lender.

(a) The Lender may, at any time and from time to time, assign all or any part of its interest in the Equipment or this Agreement, including, without limitation, Lender's rights to receive Installment Payments payable to Lender hereunder or thereunder, in accordance with this Section 10.01. Any assignment made by the Lender or any subsequent assignee shall not purport to convey any greater interest or rights than those held by the Lender pursuant to this Agreement. Any assignment by the Lender may be to a bank, insurance company, or similar financial institution or any other entity, provided that any such other entity shall be approved by the LGC if this Agreement requires LGC approval pursuant to Section 3.04(x) hereof. Purchaser agrees that this Agreement may become part of a pool of obligations at the Lender's or its assignee's option. In addition, the Lender or its assignees may assign or reassign all or any part of this

Agreement, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Agreement without the consent of Purchaser or the LGC. Purchaser shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Purchaser may have against Lender or Vendor. Notwithstanding the foregoing, unless to an affiliate controlling, controlled by or under common control with Lender, no assignment or reassignment of the Lender's interest in the Agreement shall be effective unless and until the Purchaser shall receive notice of such assignment or reassignment disclosing the name and address of each such assignee.

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

(c) Purchaser agrees to execute any document reasonably required in connection with any assignment. If Lender notifies Purchaser of its intent to assign this Agreement, Purchaser agrees that it shall execute and deliver to Lender a Notice and Acknowledgement of Assignment substantially in the form of Exhibit F attached to this Agreement within five (5) business days after its receipt of such request. Any assignor must provide notice of any assignment to Purchaser, and Purchaser shall keep a complete and accurate record of all assignments as required by the Code. After the giving of any such notice, Purchaser shall thereafter make all payments in accordance with such notice to the assignee named therein and shall, if so requested, acknowledge such assignment in writing, but such acknowledgment shall in no way be deemed necessary to make the assignment effective.

(d) The Lender represents and warrants that it is familiar with federal and North Carolina legislation, rules and regulations as to limitations upon the public distribution of securities that have not been registered under the Securities Act of 1933, as amended, and that it is entering into this Agreement for its own account and has no present intention of making any sale or other distribution of this Agreement in violation of such legislation, rules or regulations. The Lender represents that it is familiar with the operations and financial condition of the Purchaser, based upon information furnished to the Lender by the Purchaser, and has made such inquiries as it deems appropriate in connection with this Agreement.

Section 10.02. Assignment and Subleasing by Purchaser. None of Purchaser's right, title, and interest in, to and under this Agreement or any portion of the Equipment may be assigned or encumbered by Purchaser for any reason.

ARTICLE XI EVENTS OF DEFAULT

Section 11.01. Events of Default Defined. Any of the following events shall constitute an "Event of Default" under this Agreement:

(a) Failure by Purchaser to pay any Installment Payment or other payment required to be paid under this Agreement within 10 days of the date when due as specified herein;

(b) Failure by Purchaser to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subparagraph (a) above, for a period of 30 days after written notice specifying such failure and requesting that it be remedied is given to Purchaser by Lender, unless Lender shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, Lender will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Purchaser within the applicable period and diligently pursued until the default is corrected;

(c) Any statement, representation or warranty made by Purchaser in or pursuant to this Agreement or its execution, delivery or performance shall prove to have been false, incorrect, misleading, or breached in any material respect on the date when made;

(d) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which Purchaser is an obligor under which there is outstanding, owing or committed an aggregate amount of at least 10% of Purchaser's aggregate current long and short-term indebtedness, if such default consists of (i) the failure to pay any indebtedness when due or (ii) the failure to perform any other obligation thereunder and gives the holder of the indebtedness the right to accelerate the indebtedness;

(e) Purchaser shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Purchaser, or of all or a substantial part of the assets of Purchaser, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Purchaser in any bankruptcy, reorganization or insolvency proceeding;

(f) Purchaser adopts a budget for any fiscal year during the term hereof which does not include moneys sufficient to pay all Installment Payments and any other sums coming due hereunder for that fiscal year, or amends a previously adopted budget to delete the funds to make such payments; or

(g) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator or Purchaser or of all or a substantial part of the assets of Purchaser, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 30 consecutive days.

Section 11.02. Remedies on Default. Whenever any Event of Default exists, Lender shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) By written notice to Purchaser, Lender may declare all Installment Payments payable by Purchaser pursuant to this Agreement and other amounts payable by Purchaser hereunder to the end of the then current Original Term or Renewal Term to be due;

(b) With or without terminating the Purchase Term, Lender may enter the premises where the Equipment listed in this Agreement is located and retake possession of such Equipment or require Purchaser at Purchaser's expense to promptly return any or all of such Equipment to the possession of Lender at such place within the United States as Lender shall specify, and sell or lease such Equipment or, for the account of Purchaser, sublease such Equipment, continuing to hold Purchaser liable, but solely from legally available funds, for the difference between (i) the Installment Payments payable by Purchaser pursuant to this Agreement and other amounts related to this Agreement or the Equipment that are payable by Purchaser to the end of the then current Original Term or Renewal Term, as the case may be, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lender in exercising its remedies hereunder, including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing such Equipment and all brokerage, auctioneer's and attorney's fees), subject, however, to the provisions of Section 3.03. The exercise of any such remedies respecting any such Event of Default shall not relieve Purchaser of any other liabilities hereunder or the Equipment listed therein; and

(c) Proceed by appropriate court action to enforce performance by Purchaser of the applicable covenants of this Agreement or to recover for the breach thereof; provided, however, that nothing herein shall be deemed to allow any judgment for a deficiency or waive any provision of N.C.G.S. § 160A-20 or any defense the Purchaser may otherwise have;

(d) Exercise all the rights and remedies of a secured party or creditor under the Uniform Commercial Code of the State of North Carolina and the general laws of the State of North Carolina with respect to the enforcement of the security interest granted or reserved hereunder, including, without limitation, to the extent permitted by law, take possession of any collateral without any court order or other process of law and without liability for entering the premises and sell, lease, sublease or make other disposition of the same in a commercially reasonable manner for the account of Purchaser, and apply the proceeds of any such sale, lease, sublease or other disposition, after deducting all costs and expenses, including court costs and attorneys' fees, incurred with the recovery, repair, storage and other sale, lease, sublease or other disposition costs, toward the balance due under this Agreement, and, thereafter, shall pay any remaining proceeds to Purchaser;

(e) Terminate this Agreement as to all or any part of the Equipment and use, operate, lease or hold all or any part of the Equipment as Lender in its sole discretion may decide;

(f) Require Purchaser to deliver the Equipment, at Purchaser's sole expense, to any location within the State of North Carolina designated by Lender, and take possession of any proceeds of the Equipment, including Net Proceeds; or

(g) Lender may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Agreement or as a secured party in any or all of the Equipment subject to this Agreement.

Section 11.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lender is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lender to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice other than such notice as may be required in this Article.

ARTICLE XII MISCELLANEOUS

Section 12.01. Notices. All notices, certificates or other communications under this Agreement shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, or delivered by overnight courier, or sent by facsimile transmission (with electronic confirmation) to the parties hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party) and to any assignee at its address as it appears on the registration books maintained by Purchaser.

Section 12.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Lender and Purchaser and their respective successors and assigns.

Section 12.03. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12.04. Amendments, Changes and Modifications. This Agreement (including the Schedule) may only be amended by Lender and Purchaser in writing.

Section 12.05. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.06. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 12.07. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

In Witness Whereof, Lender and Purchaser have caused this Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

LENDER:

Banc of America Public Capital Corp
2059 Northlake Pkwy, 4th Floor
Tucker, Georgia 30084
Attention: Contract Administration
Fax No.: (770) 270-8454

PURCHASER:

County of Henderson, NC
113 N. Main Street
Hendersonville, NC 28792
Attention: James C. McLelland
Fax No.: (828) 697-4569

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

(Seal)

Attest:

By: _____
Name: _____
Title: _____

List of Exhibits:

Exhibit A	--	Acquisition Fund Agreement
Schedule 1	--	Form of Disbursement Request
Schedule 2	--	Arbitrage and Tax Certificate
Exhibit B-1	--	Schedule of Property
Exhibit B-2	--	Installment Payment Schedule
Exhibit C	--	Incumbency Certificate
Exhibit D	--	Opinion of Counsel Form
Exhibit E	--	Acceptance Certificate
Exhibit F	--	Notice and Acknowledgement of Assignment

EXHIBIT A

ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT

This Acquisition Fund and Account Control Agreement, dated as of November __, 2006, by and among Banc of America Public Capital Corp, a Kansas corporation (hereinafter referred to as "Lender"), County of Henderson, North Carolina, a political subdivision of the State of North Carolina (hereinafter referred to as "Purchaser") and Bank of America, N.A. , a national banking association (hereinafter referred to as "Acquisition Fund Custodian").

Reference is made to that certain Equipment Installment Financing Agreement, dated as of November __, 2006 between Lender and Purchaser (the "Purchase Agreement"), covering the acquisition of certain Equipment described therein (the "Equipment"). It is a requirement of the Purchase Agreement that the Equipment Cost of the Equipment (in an amount not to exceed \$3,178,000) (the "Acquisition Amount") be deposited into an escrow under terms satisfactory to Lender, for the purpose of fully funding the Purchase Agreement, and providing a mechanism for the application of such amounts to the purchase of and payment for the Equipment.

The parties agree as follows:

1. Creation of Acquisition Fund.

(a) There is hereby created a special trust fund to be known as the "County of Henderson Acquisition Fund" (the "Acquisition Fund") to be held in trust by the Acquisition Fund Custodian for the purposes stated herein, for the benefit of Lender and Purchaser, to be held, disbursed and returned in accordance with the terms hereof.

(b) The Acquisition Fund Custodian shall invest and reinvest moneys on deposit in the Acquisition Fund in Qualified Investments in accordance with written instructions received from Purchaser. Purchaser shall be solely responsible for ascertaining that all proposed investments and reinvestments are Qualified Investments and that they comply with federal, state and local laws, regulations and ordinances governing investment of such funds and for providing appropriate notice to the Acquisition Fund Custodian for the reinvestment of any maturing investment. Accordingly, neither the Acquisition Fund Custodian nor Lender shall be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to the investment or reinvestment of all or any portion of the moneys on deposit in the Acquisition Fund, and Purchaser agrees to and does hereby release the Acquisition Fund Custodian and Lender from any such liability, cost, expenses, loss or claim. Interest on the Acquisition Fund shall become part of the Acquisition Fund, and gains and losses on the investment of the moneys on deposit in the Acquisition Fund shall be borne by the Acquisition Fund. For purposes of this agreement, "Qualified Investments" means any investments which meet the requirements of North Carolina General Statutes §159-30.

(c) Unless the Acquisition Fund is earlier terminated in accordance with the provisions of paragraph (d) below, amounts in the Acquisition Fund shall be disbursed by the Acquisition Fund Custodian in payment of amounts described in Section 2 hereof upon receipt of written authorization(s) from Lender, as is more fully described in Section 2 hereof. If the

amounts in the Acquisition Fund are insufficient to pay such amounts, Purchaser shall provide any balance of the funds needed to complete the acquisition of the Equipment. Any moneys remaining in the Acquisition Fund after November __, 2007 (the "Acquisition Period") shall be applied as provided in Section 4 hereof.

(d) The Acquisition Fund shall be terminated at the earliest of (i) the final distribution of amounts in the Acquisition Fund or (ii) written notice given by Lender of the occurrence of a default or termination of the Purchase Agreement due to non-appropriation.

(e) The Acquisition Fund Custodian may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Acquisition Fund Custodian shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Acquisition Fund Custodian, and for the disposition of the same in accordance herewith.

(f) Unless the Acquisition Fund Custodian is guilty of gross negligence or willful misconduct with regard to its duties hereunder, to the extent permitted by applicable law, Purchaser agrees to and does hereby release and indemnify the Acquisition Fund Custodian and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Acquisition Fund Custodian under this agreement; and in connection therewith, does to the extent permitted by law indemnify the Acquisition Fund Custodian against any and all expenses; including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim. The Acquisition Fund Custodian shall be vested with a lien on and is hereby granted a security interest in all property deposited hereunder, for indemnification, for reasonable attorneys' fees, court costs, for any suit, interpleader or otherwise, or any other expense, fees or charges of any character or nature, which may be incurred by the Acquisition Fund Custodian by reason of disputes arising between Purchaser and Lender as to the correct interpretation of the Purchase Agreement and instructions given to the Acquisition Fund Custodian hereunder, or otherwise, with the right of Acquisition Fund Custodian, regardless of the instructions aforesaid, to hold the said property until and unless said additional expenses, fees and charges shall be fully paid.

(g) If Purchaser and Lender shall be in disagreement about the interpretation of the Purchase Agreement, or about the rights and obligations, or the propriety of any action contemplated by the Acquisition Fund Custodian hereunder, the Acquisition Fund Custodian may, but shall not be required to, file an appropriate civil action to resolve the disagreement. The Acquisition Fund Custodian shall be reimbursed by Purchaser for all costs, including reasonable attorneys' fees, in connection with such civil action, and shall be fully protected in suspending all or part of its activities under the Purchase Agreement until a final judgment in such action is received.

(h) The Acquisition Fund Custodian may consult with counsel of its own choice and shall have full and complete authorization and protection with the opinion of such counsel. The Acquisition Fund Custodian shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its willful misconduct.

(i) Purchaser shall reimburse the Acquisition Fund Custodian for all reasonable costs and expenses, including those of the Acquisition Fund Custodian's attorneys, agents and employees incurred for extraordinary administration of the Acquisition Fund and the performance of the Acquisition Fund Custodian's powers and duties hereunder in connection with any Event of Default under the Purchase Agreement, or in connection with any dispute between Lender and Purchaser concerning the Acquisition Fund.

2. Acquisition of Property.

(a) Acquisition Agreements. Purchaser will arrange for, supervise and provide for, or cause to be supervised and provided for, the acquisition of the Equipment, with moneys available in the Acquisition Fund. Purchaser represents the estimated costs of the Equipment are within the funds estimated to be available therefor, and Lender makes no warranty or representation with respect thereto. Lender shall have no liability under any of the acquisition or construction contracts. Purchaser shall obtain all necessary permits and approvals, if any, for the acquisition, equipping and installation of the Equipment, and the operation and maintenance thereof.

(b) Authorized Acquisition Fund Disbursements. Disbursements from the Acquisition Fund shall be made for the purpose of paying (including the reimbursement to Purchaser for advances from its own funds to accomplish the purposes hereinafter described) the cost of acquiring the Equipment.

(c) Requisition Procedure. No disbursement from the Acquisition Fund shall be made unless and until Lender has approved such requisition. Prior to disbursement from the Acquisition Fund there shall be filed with the Acquisition Fund Custodian a requisition for such payment in the form of Disbursement Request attached hereto as Schedule 1, stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is due. Each such requisition shall be signed by an authorized representative of Purchaser (an "Authorized Representative") and by Lender, and shall be subject to the following:

1. Delivery to Lender of a certificate of Purchaser to the effect that:

(i) an obligation in the stated amount has been incurred by Purchaser, and that the same is a proper charge against the Acquisition Fund for costs relating to the Equipment identified in the Purchase Agreement, and has not been paid; (ii) the Authorized Representative has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made; (iii) such requisition contains no item representing payment on account, or any retained percentages which Purchaser is, at the date of such certificate, entitled to retain; and (iv) the Equipment is insured in accordance with the Purchase Agreement.

2. Delivery to Lender of an Acceptance Certificate executed by Purchaser, together with any purchase agreement assignment or bill of sale and invoice therefor as required by Sections 3.04 and 5.01 of the Purchase Agreement referenced above;

3. The disbursement shall occur during the Acquisition Period set forth in the Schedule;

4. There shall exist no Event of Default (nor any event which, with notice or lapse of time or both, would become an Event of Default); and

5. No material adverse change in Purchaser's or any guarantor's financial condition shall have occurred since the date of the Purchase Agreement.

3. Deposit to Acquisition Fund. Upon satisfaction of the conditions contemplated in the Purchase Agreement, Lender will cause the Acquisition Amount to be deposited in the Acquisition Fund. Purchaser agrees to pay any costs with respect to the Equipment in excess of amounts available therefor in the Acquisition Fund.

4. Excessive Acquisition Fund. Following the final disbursement from the Acquisition Fund at the end of the Acquisition Period, or termination of the Acquisition Fund as otherwise provided herein, the Acquisition Fund Custodian shall transfer any remainder from the Acquisition Fund to Lender for application to amounts of the principal component of Installment Payments owed under the Purchase Agreement.

5. Security Interest. The Acquisition Fund Custodian and Purchaser acknowledge and agree that the Acquisition Fund and all proceeds thereof are being held by Acquisition Fund Custodian for disbursement or return as set forth herein. Purchaser hereby grants to Lender a first priority perfected security interest in the Acquisition Fund, and all proceeds thereof, and all investments made with any amounts in the Acquisition Fund. If the Acquisition Fund, or any part thereof, is converted to investments as set forth in this agreement, such investments shall be made in the name of Acquisition Fund Custodian and the Acquisition Fund Custodian hereby agrees to hold such investments as bailee for Lender so that Lender is deemed to have possession of such investments for the purpose of perfecting its security interest.

6. Control of Acquisition Account. In order to perfect Lender's security interest by means of control in (i) the Acquisition Fund established hereunder, (ii) all securities entitlements, investment property and other financial assets now or hereafter credited to the Acquisition Fund, (iii) all of Purchaser's rights in respect of the Acquisition Fund, such securities entitlements, investment property and other financial assets, and (iv) all products, proceeds and revenues of and from any of the foregoing personal property (collectively, the "Collateral"), Lender, Purchaser and Acquisition Fund Custodian further agree as follows:

(a) All terms used in this Section 6 which are defined in the Commercial Code of the state of North Carolina ("Commercial Code") but are not otherwise defined herein shall have the meanings assigned to such terms in the Commercial Code, as in effect on the date of this Agreement.

(b) Acquisition Fund Custodian will comply with all entitlement orders originated by Lender with respect to the Collateral, or any portion of the Collateral, without further consent by Purchaser.

(c) Acquisition Fund Custodian hereby represents and warrants (a) that the records of Acquisition Fund Custodian show that Purchaser is the sole owner of the Collateral, (b) that Acquisition Fund Custodian has not been served with any notice of levy or received any notice of any security interest in or other claim to the Collateral, or any portion of the Collateral, other than Lender's claim pursuant to this Agreement, and (c) that Acquisition Fund Custodian is not presently obligated to accept any entitlement order from any person with respect to the Collateral, except for entitlement orders that Acquisition Fund Custodian is obligated to accept from Lender under this Agreement and entitlement orders that Acquisition Fund Custodian, subject to the provisions of paragraph (e) below, is obligated to accept from Purchaser.

(d) Without the prior written consent of Lender, Acquisition Fund Custodian will not enter into any agreement by which Acquisition Fund Custodian agrees to comply with any entitlement order of any person other than Lender or, subject to the provisions of paragraph (e) below, Purchaser, with respect to any portion or all of the Collateral. Acquisition Fund Custodian shall promptly notify Lender if any person requests Acquisition Fund Custodian to enter into any such agreement or otherwise asserts or seeks to assert a lien, encumbrance or adverse claim against any portion or all of the Collateral.

(e) Except as otherwise provided in this paragraph (e) and subject to Section 1(b) hereof, Acquisition Fund Custodian may allow Purchaser to effect sales, trades, transfers and exchanges of Collateral within the Acquisition Fund, but will not, without the prior written consent of Lender, allow Purchaser to withdraw any Collateral from the Acquisition Fund except to disburse funds in accordance with Section 2(c) hereof. Acquisition Fund Custodian acknowledges that Lender reserves the right, by delivery of written notice to Acquisition Fund Custodian, to prohibit Purchaser from effecting any withdrawals (including withdrawals of ordinary cash dividends and interest income), sales, trades, transfers or exchanges of any Collateral held in the Acquisition Fund. Further, Acquisition Fund Custodian hereby agrees to comply with any and all written instructions delivered by Lender to Acquisition Fund Custodian (once it has had a reasonable opportunity to comply therewith) and has no obligation to, and will not, investigate the reason for any action taken by Lender, the amount of any obligations of Purchaser to Lender, the validity of any of Lender's claims against or agreements with Purchaser, the existence of any defaults under such agreements, or any other matter.

(f) Purchaser hereby irrevocably authorizes Acquisition Fund Custodian to comply with all instructions and entitlement orders delivered by Lender to Acquisition Fund Custodian.

(g) Acquisition Fund Custodian will not attempt to assert control, and does not claim and will not accept any security or other interest in, any part of the Collateral, and Acquisition Fund Custodian will not exercise, enforce or attempt to enforce any right of setoff against the Collateral, or otherwise charge or deduct from the Collateral any amount whatsoever.

(h) Acquisition Fund Custodian and Purchaser hereby agree that any property held in the Acquisition Fund shall be treated as a financial asset under such section of the Commercial Code as corresponds with Section 8-102 of the Uniform Commercial Code, notwithstanding any contrary provision of any other agreement to which Acquisition Fund Custodian may be a party.

(i) Acquisition Fund Custodian is hereby authorized and instructed, and hereby agrees, to send to Lender at its address set forth in Section 7 below, concurrently with the sending thereof to Purchaser, duplicate copies of any and all monthly Acquisition Fund statements or reports issued or sent to Purchaser with respect to the Acquisition Fund.

7. Miscellaneous. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Purchase Agreement. This agreement may not be amended except in writing signed by all parties hereto. This agreement may be executed in one or more counterparts, each of which shall be deemed to be an original instrument and each shall have the force and effect of an original and all of which together constitute, and shall be deemed to constitute, one and the same instrument. Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below:

If to Lender: Banc of America Public Capital Corp
2059 Northlake Pkwy., 4th Floor
Mail Code: CA-5-705-04-01
Tucker, CA 30084
Attn: Contract Administration
Fax: (415) 765-7373

If to Purchaser: County of Henderson, NC
113 N. Main Street
Hendersonville, NC 28792
Attn: Cary McLelland
Fax: (828) 697-4569

If to Acquisition
Fund Custodian: Bank of America, N.A.
113 West Broad Street
Statesville, NC 28677
Attn: Jan Keller
Phone: (704) 838-4031
Fax: (704) 838-4035

In Witness Whereof, the parties have executed this Acquisition Fund and Account Control Agreement as of the date first above written.

Banc of America Public Capital Corp,
as Lender

County of Henderson, North Carolina,
as Purchaser

By: _____

By: _____

Title: _____

Title: _____

Bank of America, N.A.,
as Acquisition Fund Custodian

By: _____

Title: _____

SCHEDULE 1

TO ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT

FORM OF DISBURSEMENT REQUEST

Re: Equipment Installment Financing Agreement, dated as of November __, 2006 by and between Banc of America Public Capital Corp, as Lender and County of Henderson, North Carolina, as Purchaser (the "Purchase Agreement")

In accordance with the terms of the Acquisition Fund and Account Control Agreement, dated as of November __, 2006 (the "Acquisition Fund and Account Control Agreement") by and among Banc of America Public Capital Corp ("Lender"), County of Henderson, North Carolina ("Purchaser") and Bank of America, N.A. (the "Acquisition Fund Custodian"), the undersigned hereby requests the Acquisition Fund Custodian pay the following persons the following amounts from the Acquisition Fund created under the Acquisition Fund and Account Control Agreement (the "Acquisition Fund") for the following purposes.

Payee's Name and Address	Invoice Number	Dollar Amount	Purpose

The undersigned hereby certifies as follows:

(i) An obligation in the stated amount has been incurred by Purchaser, and the same is a proper charge against the Acquisition Fund for costs relating to the Equipment identified in the Purchase Agreement, and has not been paid. Attached hereto is the original invoice with respect to such obligation.

(ii) The undersigned, as Authorized Representative, has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made.

(iii) This requisition contains no item representing payment on account, or any retained percentages which Purchaser is, at the date hereof, entitled to retain.

(iv) The Equipment is insured in accordance with the Purchase Agreement.

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

(vi) The disbursement shall occur during the Acquisition Period set forth in the Schedule applicable to such Equipment.

(vii) No material adverse change in Purchaser's or any guarantor's financial condition shall have occurred since the date of the Purchase Agreement.

Dated: _____

COUNTY OF HENDERSON, NORTH
CAROLINA

By: _____
Authorized Representative

Disbursement of funds from the Acquisition
Fund in accordance with the foregoing
Disbursement Request hereby is authorized

BANC OF AMERICA PUBLIC CAPITAL CORP
as Lender under the Purchase Agreement

By: _____
Vice President

SCHEDULE 2

ARBITRAGE AND TAX CERTIFICATE

We, the undersigned _____ and _____ of the County of Henderson, North Carolina (the "Purchaser"), do hereby certify that this Certificate is issued pursuant to Sections 1.141-1 through 1.141-16, 1.148-0 through 1.148-11, 1.150-1 and 1.150-2 of the Treasury Regulations (the "Regulations") promulgated pursuant to the Internal Revenue Code of 1986, as amended (the "Code"), to set forth the Purchaser's reasonable expectations on the date of execution and delivery (the "Closing Date") of that certain Purchase Agreement (as hereinafter defined) and as to future events regarding the amount and use of the proceeds thereof.

The Purchase Agreement

1. Each of the undersigned is charged, together with other officials and officers, with the responsibility for entering into the \$3,178,000 Equipment Installment Financing Agreement dated as of November __, 2006, including the Schedule of exhibits thereto (the "Purchase Agreement") between the Purchaser and Banc of America Public Capital Corp, an affiliate of Bank of America, N.A. (the "Lender"), which is authorized pursuant to Section 160A-20 of the North Carolina General Statutes, and a resolution adopted by the Purchaser on [October __, 2006] (the "Resolution"). This certificate shall constitute a document related to the Purchase Agreement. This certificate is given with the understanding that it may be relied upon by Hunton & Williams LLP in rendering its opinion of even date herewith with respect to the exclusion of the interest portion of the Installment Payments (as defined herein) from gross income for federal tax purposes.

2. The Purchase Agreement is being entered into to finance the cost of certain Equipment described in the Purchase Agreement. As contemplated by the Purchase Agreement, the Lender will advance the Equipment Cost to the Acquisition Fund Custodian described in that certain Acquisition Fund and Account Control Agreement dated as of the date hereof between Purchaser and Lender (the "Acquisition Fund Agreement") in order for the Purchaser to purchase the Equipment, and the Purchaser will agree to make installment payments under the Purchase Agreement (the "Installment Payments") to the Lender. The Equipment will be used for a public purpose of the Purchaser.

Proceeds

3. The Purchaser will receive from the Lender as a result of the financing of the Equipment as contemplated by the Purchase Agreement \$3,178,000 (the "Equipment Proceeds"). Pursuant to the Acquisition Fund Agreement, and for the purpose of meeting their obligations under the Purchase Agreement and assuring Purchaser the availability of moneys needed to pay the Equipment Costs when due, the Purchaser and the Lender have entered into the Acquisition Fund Agreement. The Acquisition Fund Agreement provides that Lender shall deposit the "Equipment Proceeds" into the Acquisition Fund to be held, invested and disbursed as provided therein. Purchaser will pursue the acquisition of the Equipment and the expenditure of the Equipment Proceeds with due diligence. Completion of the acquisition of the Equipment is expected to occur prior to November 1, 2007. Purchaser has entered into, or will enter into

within six months after the date hereof, binding contracts or commitments obligating the expenditure of at least five percent (5%) of the Equipment Proceeds. At least eighty-five percent (85%) of the Equipment Proceeds will be expended to acquire the Equipment within three years after the date hereof.

4. The total cost of the Equipment is anticipated to be equal to the Equipment Proceeds. It is not anticipated that any proceeds from the issue will be used to pay the expenses of issuing the Purchase Agreement obligations.

Equipment

5. The Equipment Proceeds and anticipated investment earnings on such proceeds do not exceed the amount necessary to complete the acquisition of the Equipment.

6. All Equipment financed by the Purchase Agreement will be owned by the Purchaser in accordance with Section 141 of the Code. The Purchaser represents and covenants that while the Purchase Agreement is in effect, it will not sell, lease or otherwise dispose of any portion of the Equipment (except that a portion of the Equipment may be disposed of in the normal course such as by reason of obsolescence and normal wear and tear) without providing to the Lender an opinion of bond counsel that such sale, lease or other disposition will not adversely affect the exclusion of the interest portion of the Installment Payments made under the Purchase Agreement from the gross income of the Lender for federal income tax purposes.

Yield

7. The Purchaser represents that no other obligations of the Purchaser (1) were or will be sold within 15 days of the Closing Date of the Equipment as contemplated by the Purchase Agreement; (2) are being sold pursuant to a plan of financing common with the sales contemplated by the Purchase Agreement; and (3) are payable from substantially the same source of funds as the Purchase Agreement.

8. For purposes of this Certificate, "yield" means yield computed by the actuarial method using a 360-day year and semi-annual compounding, resulting in a discount rate which, when used in computing the present worth of all payments of principal and interest to be paid on an obligation, produces an amount equal to the issue price, fair market value, present value or purchase price thereof, as applicable, and is determined in all respects in accordance with Section 148 of the Code and the Regulations.

9. As of the Closing Date, the Purchaser expects that the purchase price of \$3,178,000 is the issue price of the obligations under the Purchase Agreement to the public (excluding bond houses, brokers and other intermediaries). Based upon such price, the Purchaser expects the yield on the Purchase Agreement to be computed as _____%.

Arbitrage Certifications

10. No sinking fund has been established in connection with the payment of the principal of and interest under the Purchase Agreement, and no other similar fund or reserve or replacement fund has or will be created or established, nor does the Purchaser expect to create or

establish such a fund. The Purchaser will pay Installment Payments directly to the Lender on the due dates thereof.

11. The Purchase Agreement has a weighted average maturity of _____ years. As of the Closing Date, the Purchaser expects that the term of the Purchase Agreement is not longer than reasonably necessary for the governmental purpose of the Purchase Agreement. As of the Closing Date, the Purchaser does not expect to have available amounts (within the meaning of Section 1.148-1(c)(4) of the Regulations) during the period in which the Purchase Agreement is in effect.

12. The Purchaser acknowledges its rebate obligations under Section 148 of the Code. The Purchaser will maintain such records as to the investments and earnings on the Equipment Proceeds as may be necessary and appropriate to determine the amount, if any, that it is required to rebate to the U.S. Treasury because the earnings on such investments exceed the amount that would have been earned if such proceeds had been invested at the yield payable as the interest portion of the Installment Payments on the Purchase Agreement. In the event that the Purchaser invests any of the Equipment Proceeds or any investment proceeds in investments that have a yield in excess of the yield on the Purchase Agreement, the Purchaser agrees to retain a rebate advisor to assist the Purchaser in complying with Section 148 of the Code. The Purchaser will make the calculations of its liability, file such reports and make any required payments at the time or times as are now or may hereafter be prescribed under Section 148 (or a successor provision) of the Code.

13. Except as expressly permitted hereunder, the Purchaser will not use any gross proceeds of the Purchase Agreement to acquire investments with a yield considered as a class higher than the yield payable as the interest portion of the Installment Payments on the Purchase Agreement or to replace funds which are used to directly or indirectly acquire investments with a yield higher than the yield payable as the interest portion of the Installment Payments on the Purchase Agreement.

14. The Purchase Agreement is not and will not be part of a transaction or series of transactions that attempts to circumvent the provisions of Section 148 of the Code or the Regulations (a) enabling the Purchaser to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage; or (b) overburdening the market for tax-exempt obligations.

Miscellaneous

15. At least 85% of the net Equipment Proceeds of the Purchase Agreement will be allocated to expenditures relating to the Equipment no later than three years from the date hereof and therefore not more than 50% of the proceeds of the Purchase Agreement will be invested in nonpurpose investments (as defined in Section 148(f)(6)(A) of the Code) having a substantially guaranteed yield for four years or more.

16. The Purchaser has not received notice of deficiency or other notice from the Internal Revenue Service, the Department of Treasury or any other governmental agency or department challenging or questioning in any way the status of the interest portion of the

Installment Payments as being excludable from gross income for federal income tax purposes, nor has the Purchaser been notified of any listing or proposed listing of it by the Internal Revenue Service as an issuer that may not enter into the type of transaction as contemplated by the Purchase Agreement.

On the basis of the foregoing facts, estimates and circumstances in existence on the date hereof it is not expected that the proceeds of the Purchase Agreement will be used in a manner that would cause the Purchase Agreement to be “arbitrage bonds” under Section 148 of the Code and the Regulations. To the best of our knowledge and belief there are no other facts, estimates or circumstances which would materially change such expectations.

Dated this ____ day of November, 2006, the same being the date of delivery of and payment for the Purchase Agreement.

County of Henderson, North Carolina

By: _____

Name: _____

Title: _____

EXHIBIT B

SCHEDULE OF PROPERTY

Re: Equipment Installment Financing Agreement, dated as of November __, 2006, between Banc of America Public Capital Corp as Lender, and County of Henderson, North Carolina, as Purchaser

1. Defined Terms. All terms used herein have the meanings ascribed to them in the above-referenced Equipment Installment Financing Agreement (the "Agreement").

2. Equipment. The following items of Equipment are hereby included under this Schedule to the Agreement.

The installation of sewer line improvements, including the installation of sewer lines, valves, fittings and other utility type property, located in the Cane Creek Water and Sewer District.

3. Payment Schedule.

(a) Installment Payment Schedule. The Purchase Price for the Equipment is \$2,000,000. The Installment Payments shall be in such amounts and payable on such dates as set forth in the Installment Payment Schedule attached to this Schedule as Schedule B-1. Installment Payments shall commence on the date on which the Equipment listed in this Schedule is accepted by Purchaser, as indicated in an Acceptance Certificate substantially in the form of Exhibit E to the Agreement or the date on which sufficient moneys to purchase the Equipment are deposited for that purpose with an Acquisition Fund Custodian, whichever is earlier.

(b) Purchase Price Schedule. The Purchase Price on each Installment Payment date for the Equipment listed in this Schedule shall be the amount set forth for such Installment Payment date in the "Purchase Price" column of the Installment Payment Schedule attached to this Schedule (including the Installment Payment shown on the same line in the Installment Payment Schedule).

4. Representations, Warranties and Covenants. Purchaser hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Agreement are true and correct as though made on the date of commencement of Installment Payments on this Schedule.

5. The Purchase Agreement. The terms and provisions of the Agreement are hereby incorporated into this Schedule by reference and made a part hereof.

6. Agreement Proceeds. The Acquisition Amount which Lender shall pay to the Acquisition Fund Custodian is \$3,178,000, of which \$1,178,000 is to be paid directly to Rural Utilities Service, an agency of the United States Department of Agriculture as repayment of the Prior Loan, and \$2,000,000 is for deposit to the Acquisition Fund. It is expected that by [six (6)] [twelve (12)] [eighteen (18)] months from the date of the Agreement, Purchaser will have taken possession of all items of Equipment shown above and that a Purchaser's Acceptance Certificate, or Acceptance Certificates, will be signed by Purchaser and delivered to Lender on or before [six (6)] [twelve (12)] [eighteen (18)] months from the date of the Agreement.

7. Acquisition Period. The Acquisition Period shall end at the conclusion of the twelve (12) months following the date hereof.

8. Optional Prepayment Date. For purposes of Section 4.01(b) of the Agreement, the Optional Prepayment Commencement Date is any Interest Payment Date.

Dated: _____

LENDER:

Banc of America Public Capital Corp
2059 Northlake Pkwy, 4th Floor
Tucker, Georgia 30084
Attention: Contract Administration
Fax: (770) 270-8454

PURCHASER:

County of Henderson, North Carolina
113 N. Main Street
Hendersonville, North Carolina 28792
Attention: James C. McLelland
Fax: (828) 697-4569

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

(Seal)

Attest:

By: _____
Name: _____
Title: _____

Counterpart No. ____ of ____ manually executed and serially numbered counterparts. To the extent that the Agreement and this Schedule constitute chattel paper (as defined in the Uniform Commercial Code), no security interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

EXHIBIT B-2

INSTALLMENT PAYMENT SCHEDULE

Re: Equipment Installment Financing Agreement, dated as of November __, 2006, between Banc of America Public Capital Corp, as Lender, and County of Henderson, North Carolina, as Purchaser

Purchaser: County of Henderson, North Carolina
Purchase Term: 10 years
Purchase Price: \$3,178,000
Interest Rate: 3.73%

<u>Installment Payment Date</u>	<u>Installment Payment Amount</u>	<u>Interest Portion</u>	<u>Principal Portion</u>	<u>Purchase Price</u>

Prepayment Premium for purposes of Section 4.01(b) is 0%.

For purposes of this Agreement, "Taxable Rate," with respect to the interest component of Installment Payments, means an annual rate of interest equal to ____%.

PURCHASER:

By: _____
Name: _____
Title: _____

EXHIBIT C

INCUMBENCY CERTIFICATE

The undersigned, a duly elected and acting _____ Clerk of the County of Henderson, North Carolina (“Purchaser”) certifies as follows:

A. The following listed persons are duly elected and acting officials of Purchaser (the “Officials”) in the capacity set forth opposite their respective names below and that the facsimile signatures are true and correct as of the date hereof;

B. The Officials are duly authorized, on behalf of Purchaser, to negotiate, execute and deliver the Equipment Installment Financing Agreement dated as of November __, 2006 and the Schedule thereunder (the “Agreement”) by and between Purchaser and Banc of America Public Capital Corp, and the Agreement is a binding and authorized Agreement of Purchaser, enforceable in all respects in accordance with its terms.

<u>Name of Official</u>	<u>Title</u>	<u>Signature</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Dated: _____

By: _____
Name: _____
Title: _____

(The signer of this Certificate cannot be listed above as authorized to execute the Agreement.)

EXHIBIT D

OPINION OF COUNSEL TO PURCHASER

Banc of America Public Capital Corp
2059 Northlake Pkwy, 4th Floor
Tucker, Georgia 30084

Re: Equipment Installment Financing Agreement, dated as of October 13, 2006, between Banc of America Public Capital Corp, as Lender, and County of Henderson, North Carolina, as Purchaser

Ladies and Gentlemen:

As legal counsel to County of Henderson, North Carolina (“Purchaser”), I have examined (a) an executed counterpart of the Equipment Installment Financing Agreement, dated as of November __, 2006, and Exhibits thereto by and between Banc of America Public Capital Corp (“Lender”) and Purchaser (the “Agreement”), which, among other things, provides for the financing of certain property listed in the Schedule (the “Equipment”) and a certain Acquisition Fund and Account Control Agreement among Lender, Purchaser, and Bank of America, N.A. as Acquisition Fund Custodian, dated November __, 2006 (“Account Fund Agreement”), (b) an executed counterpart of the ordinances or resolutions of Purchaser which, among other things, authorize Purchaser to execute the Agreement and the Schedule and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. The Agreement and the Schedule, together with the Installment Payment Schedule attached to the Schedule, are herein referred to collectively as the “Agreement”, and the Agreement and the Acquisition Fund Agreement are referred to collectively as the “Transaction Documents.”

Based on the foregoing, I am of the following opinions:

1. Purchaser is a public body corporate and politic, duly organized and existing under the laws of the State, and is a political subdivision of the State of North Carolina.
2. Purchaser has the requisite power and authority to acquire and finance the Equipment and to execute and deliver the Transaction Documents and to perform its obligations under the Agreement.
3. The Transaction Documents have been duly authorized, approved, executed and delivered by and on behalf of Purchaser and the Transaction Documents are valid and binding obligations of Purchaser enforceable in accordance with their respective terms.
4. The authorization, approval, execution and delivery of the Transaction Documents and all other proceedings of Purchaser relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state or federal laws.

5. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Transaction Documents or the security interest of Lender or its assigns, as the case may be, in the Equipment or other collateral thereunder.

All capitalized terms herein shall have the same meanings as in the Transaction Documents unless otherwise provided herein. Lender and its successors and assigns, and any counsel rendering an opinion on the tax-exempt status of the interest components of the Installment Payments, are entitled to rely on this opinion.

Printed Name: _____
Firm: _____
Address: _____
Telephone No.: _____

Signature: _____
Dated: _____

EXHIBIT E

ACCEPTANCE CERTIFICATE

Banc of America Public Capital Corp
2059 Northlake Pkwy, 4th Floor
Tucker, Georgia 30084

Re: Equipment Installment Financing Agreement, dated as of November __, 2006, between Banc of America Public Capital Corp, as Lender, and County of Henderson, North Carolina, as Purchaser

Ladies and Gentlemen:

In accordance with the Equipment Installment Financing Agreement (the "Agreement"), the undersigned Purchaser hereby certifies and represents to, and agrees with Lender as follows:

1. All of the Equipment (as such term is defined in the Agreement) listed in the above-referenced Schedule of Property (the "Schedule") has been delivered, installed and accepted on the date hereof.

2. Purchaser has conducted such inspection and/or testing of the Equipment listed in the Schedule as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.

3. Purchaser is currently maintaining the insurance coverage required by Section 7.02 of the Agreement.

4. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists at the date hereof.

Date: _____

COUNTY OF HENDERSON, NORTH CAROLINA

By: _____
Name: _____
Title: _____

(Seal)

EXHIBIT F

NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT

Dated _____

BANC OF AMERICA PUBLIC CAPITAL CORP (“Assignor”) hereby gives notice that it has assigned and sold to [_____] (“Assignee”) all of Assignor’s right, title and interest in, to and under the Equipment Installment Financing Agreement and related Schedule (“Agreement”) dated as of November __, 2006, between Assignor and County of Henderson, North Carolina (“Purchaser”).

For purposes of this Notice and Acknowledgment of Assignment (the “Acknowledgment”), “Agreement” means collectively the Agreement identified above, together with all exhibits, schedules, addenda and attachments related thereto, and all certifications and other documents delivered in connection therewith. Each capitalized term used but not defined herein has the meaning set forth in the Agreement described above.

1. [Pursuant to the authority of Resolution _____ adopted on _____,] Purchaser hereby acknowledges the effect of the assignment of the Agreement and absolutely and unconditionally agrees to deliver to Assignee all rental payments and other amounts coming due under the Agreement in accordance with the terms thereof on and after the date of this Acknowledgment.

2. Purchaser hereby agrees that: (i) Assignee shall have all the rights of Lender under the Agreement and all related documents, including, but not limited to, the rights to issue or receive all notices and reports, to give all consents or agreements to modifications thereto, to receive title to the equipment in accordance with the terms of the Agreement, to declare a default and to exercise all remedies thereunder; and (ii) except as provided in Section [_____] of the Agreement, the obligations of Purchaser to make rental payments and to perform and observe the other covenants and agreements contained in the Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense.

3. Purchaser agrees that, as of the date of this Acknowledgment, the following information about the Agreement is true, accurate and complete:

Number of Installment Payments Remaining	–	_____
Amount of Each Installment Payment	–	\$ _____
Total Amount of Rents Remaining	–	\$ _____
Frequency of Installment Payments	–	_____
Next Installment Payment Due	–	_____
Funds Remaining in Escrow Fund	–	\$ _____

4. The Agreement remains in full force and effect, has not been amended and no nonappropriation or event of default (or event which with the passage of time or the giving of notice or both would constitute a default) has occurred thereunder.

5. Any inquiries of Purchaser related to the Agreement and any requests for escrow disbursements, if applicable, and all rental payments and other amounts coming due pursuant to the Agreement on and after the date of this Acknowledgment should be remitted to Assignee at the following address (or such other address as provided to Purchaser in writing from time to time by Assignee):

ACKNOWLEDGED AND AGREED:

PURCHASER: COUNTY OF HENDERSON, NORTH CAROLINA
[FOR EXHIBIT PURPOSES ONLY]

By: _____
Name: _____
Title: _____

ASSIGNOR: BANC OF AMERICA PUBLIC CAPITAL CORP
[FOR EXHIBIT PURPOSES ONLY]

By: _____
Name: _____
Title: _____

SUMMARY OF PUBLIC COMMENTS

[TO BE INSERTED]