

**REQUEST FOR BOARD ACTION**

**HENDERSON COUNTY  
BOARD OF COMMISSIONERS**

**PUBLIC HEARING  
TO CONSIDER**

**PROPOSED REFINANCING OF SERIES 1999 DETENTION CENTER CERTIFICATES  
OF PARTICPATION (COPs) WITH BRANCH BANKING AND TRUST COMPANY  
MARCH 18, 2009 11:00 A.M.**

- ATTACHMENTS:**
- 1) Newspaper Notice
  - 2) Current Savings Analysis
  - 3) Draft Financing Documents

**SUMMARY OF REQUEST:**

A public hearing to hear comments on the proposed financing documents is required by the State of North Carolina when entering into an installment purchase contract for bank financing pursuant to N.C.G.S. 160A-20(g). 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, March 6, 2009.

**BOARD ACTION REQUESTED:**

Upon closing the public hearing, move to approve the installment financing. Final Board action to approve the refinancing will be presented at the April 6<sup>th</sup> regularly scheduled meeting.

**I move to approve the installment re-financing of the Series 1999 Detention Center Certificates of Participation (COPs) with Board action to approve the final financing documents to be taken at the April 6<sup>th</sup> regularly scheduled meeting.**

**EXTRACTS FROM MINUTES OF BOARD OF COMMISSIONERS**

The Board of Commissioners of the County of Henderson (the “County”) held a meeting in the Commissioners’ Meeting Room at One Historic Courthouse Square in Hendersonville, North Carolina on March 18, 2009 at 9:00 am. The following Commissioners were:

Present: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Absent: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

The Chairman announced that this was the hour, day and place fixed for the public hearing for the purpose of considering whether the Board of Commissioners for the County (the “Board”) should: approve a proposed installment financing contract and certain related documents under which the County would obtain financing pursuant Section 160A-20 of the North Carolina General Statutes, as amended, to provide for the refinancing of the acquisition, construction, installation and equipping of the County detention facilities located at 375 First Avenue, East in Hendersonville, North Carolina (the “Detention Facilities”), which includes the refunding of the outstanding \$9,065,000 Certificates of Participation, Series 1999 (Henderson County Project) Evidencing Proportionate Undivided Interests in Rights to Receive Revenues Pursuant to an Installment Financing Contract with the County, as described in the notice of public hearing that was published on March 6, 2009 in the *Times-News* and under which the County would secure the repayment by it of moneys advanced pursuant to such installment financing contract by granting a security interest in the Detention Facilities and certain related property.

The Finance Director then described the Detention Facilities and presented a draft of an Installment Financing Contract between the County and Branch Banking and Trust Company, as well as certain other related documents, including a draft of a Deed of Trust and Security Agreement between the County and a deed of trust trustee. Copies of these and other related documents have been on file with the Finance Director. The Finance Director presented a refunding analysis that showed the County realizing approximately \$240,000 in net present value savings.

The Chairman then announced that the Board would immediately hear anyone who might wish to be heard on such matters.

[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 had been received.]

Thereupon, the Chairman asked for a motion to close the public hearing. Commissioner \_\_\_\_\_ moved that the public hearing be closed and the installment financing approved. The motion was adopted by the following vote:

AYES:

NAYS:

**0001 LEGAL NOTICES**

ville, North Carolina. The cost of refinancing the project is estimated at approximately \$5,400,000. Drafts of proposed refinancing 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.

/s/ Elizabeth W. Corn  
Clerk, Board of  
Commissioners  
Henderson County,  
North Carolina  
Published:  
March 6, 2009

( 3/6 )

N000029522

**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  
REFINANCE THE  
COST OF COUNTY  
DETENTION  
FACILITIES**

NOTICE IS HEREBY GIVEN pursuant to sections 160a-20 of the General Statutes of North Carolina, as amended, that the Henderson County Board of Commissioners (the "Board") will hold a public hearing on March 18, 2009 at 11:00 a.m. in the Commissioners' Meeting Room of the Historic Courthouse, 1 Historic Courthouse Square, 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 refinance the cost of the project hereinafter described 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 project and related site and property thereof under a deed of trust. The project consisted of the acquisition, construction, installation and equipping of county detention facilities located at 375 First Avenue, East, Henderson-

SAVINGS

Henderson County, North Carolina  
 Installment Financing Contract - Refunding (1999 Bds)  
 Series 2009  
 Preliminary and Subject to Change

Date	Prior Debt Service	Refunding Debt Service	Savings	Present Value to 04/14/2009 @ 3.6407216%
06/30/2009	585,775.00	544,820.86	40,954.14	40,761.68
06/30/2010	693,800.00	670,189.20	23,610.80	23,257.87
06/30/2011	671,050.00	647,025.60	24,024.40	22,778.03
06/30/2012	648,300.00	624,044.00	24,256.00	22,138.95
06/30/2013	620,550.00	597,244.40	23,305.60	20,496.79
06/30/2014	598,050.00	574,772.40	23,277.60	19,709.15
06/30/2015	575,550.00	551,482.40	24,067.60	19,605.95
06/30/2016	551,250.00	527,410.80	23,839.20	18,683.72
06/30/2017	525,937.50	502,594.00	23,343.50	17,594.29
06/30/2018	500,625.00	477,068.40	23,556.60	17,066.57
06/30/2019	475,312.50	451,870.40	23,442.10	16,324.78
	6,446,200.00	6,168,522.46	277,677.54	238,417.81

Savings Summary

PV of savings from cash flow	238,417.81
Plus: Refunding funds on hand	607.57
Net PV Savings	<u>239,025.38</u>

**INSTALLMENT FINANCING CONTRACT**

**BETWEEN**

**BRANCH BANKING AND TRUST COMPANY**

**AND**

**COUNTY OF HENDERSON, NORTH CAROLINA**

**DATED APRIL \_\_, 2009**

**INSTALLMENT FINANCING CONTRACT**

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This instrument has been pre-audited  
in the manner required by  
The Local Government Budget and  
Fiscal Control Act

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J. Carey McLelland  
Finance Director

## INSTALLMENT FINANCING CONTRACT

**THIS INSTALLMENT FINANCING CONTRACT**, dated April \_\_, 2009 (this "Contract"), is between **BRANCH BANKING AND TRUST COMPANY**, a North Carolina state banking corporation (the "Lender"), and the **COUNTY OF HENDERSON, NORTH CAROLINA**, a political subdivision of the State of North Carolina (the "County"), under the Constitution and laws of the State of North Carolina (the "State").

### PREAMBLE

**WHEREAS**, the County has the power, pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended, to (i) finance the purchase of real and personal property by installment contracts that create in the property purchased a security interest to secure payment of the purchase price to the entity advancing moneys for such transaction and (ii) finance or refinance the construction of fixtures or improvements on real property by contracts that create in such fixtures or improvements and in the real property on which such fixtures or improvements are located a security interest to secure repayment of moneys advanced or made available for such construction;

**WHEREAS**, the County has determined to refinance the cost of acquisition, construction, installation and equipping of the County Detention facilities located at 375 First Avenue, East in Hendersonville, North Carolina (the "Project");

**WHEREAS**, proceeds of the \$9,065,000 Certificates of Participation, Series 1999 (Henderson County Project) Evidencing Proportionate Undivided Interests in Rights to Receive Revenues Pursuant to an Installment Financing contract (the "1999 Contract") with the County (the "1999 Certificates") were used to finance the Project;

**WHEREAS**, in order to refinance the cost of the Project and refund the 1999 Certificates, the Board of Commissioners for the County (the "Board of Commissioners") has determined that it is in the best interests of the County to enter into this Contract with the Lender under which the Lender will advance funds for such purpose and the County will make Installment Payments and Additional Payments (as each such term is hereinafter defined) in consideration thereof;

**WHEREAS**, the obligation of the County to make Installment Payments and Additional Payments under this Contract shall constitute a limited obligation of the County, payable solely from then currently budgeted appropriations of the County, and shall not constitute a direct or indirect pledge of the faith and credit or taxing power of the County within the meaning of the Constitution of the State;

**WHEREAS**, in order to secure the obligations of the County under this Contract, the County has entered into a Deed of Trust (as hereinafter defined) with the deed of trust trustees named therein for the benefit of the Lender creating a lien on all of the right, title and interest of the County in and to the Mortgaged Property (as hereinafter defined);

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

**WHEREAS**, the execution, delivery and performance of this Contract have been authorized, approved and directed by the Board of Commissioners by a resolution passed by the Board of Commissioners on April 6, 2009; and

**WHEREAS**, the execution, delivery and performance of this Contract by the Lender have been authorized, approved and directed by all necessary and appropriate action of the Lender;

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

## **ARTICLE I**

### **DEFINITIONS**

Section 1.1 Definitions. The following terms have the meanings specified below unless the context clearly requires otherwise:

“Additional Payments” means the reasonable and customary expenses and fees of the Lender, any expenses of the Lender in defending any action or proceeding in connection with this Contract and any taxes or any other expenses, including, but not limited to, licenses, permits, state and local income, sales and use or ownership taxes, property taxes and other expenses in connection with the maintenance of the Mortgaged Property that the Lender is expressly required to pay as a result of this Contract (together with interest that may accrue thereon in the event that the County shall fail to pay the same, as set forth in this Contract).

“Amount Advanced” means the aggregate principal amount of \$5,400,000 advanced by the Lender on the date hereof to enable the County to finance costs of the Project.

“Board of Commissioners” means the duly elected governing Board of Commissioners for the County or any successor to its functions.

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

“Closing Date” means the date on which this Contract is executed and delivered in consideration of the deposit of the Amount Advanced into the Escrow Fund as provided herein.

“Code” means the Internal Revenue Code of 1986, as amended, including any temporary, proposed or final Treasury Regulations promulgated thereunder.

“County” means the County of Henderson, North Carolina or any successor to its functions.

“County Representative” means (i) the Chairman of the Board of Commissioners, Clerk to the Board of Commissioners, County Manager of the County, Finance Director of the County or such other person or persons at the time designated to act on behalf of the County for the purpose of performing any act under this Contract by a written certificate furnished to the Lender containing the specimen signatures of such person or persons and signed on behalf of the County by the County Manager of the County, or (ii) if any or all of the County’s rights and obligations are assigned under this Contract, the person or persons at the time designated to act on behalf of the County and the assignee by a written certificate similarly furnished and of the same tenor.

“Deed of Trust” means the Deed of Trust, Security Agreement and Financing Statement, made April \_\_, 2009, from the County to the Deed of Trust Trustee for the benefit of the Lender, as beneficiary.

“Deed of Trust Trustee” means \_\_\_\_\_, as trustee named in the Deed of Trust, and any successor trustee thereto.

“Determination of Taxability” means and shall be deemed to have occurred on the date when (a) the County shall receive notice from the Lender that the Internal Revenue Service has assessed as includable in the gross income of the Lender for federal income tax purposes the interest components of the Installment Payments made by the County under this Contract due to the occurrence of an Event of Taxability, (b) the County or the Lender shall receive notice from the Commissioner or any District Director of the Internal Revenue Service that the interest components of the Installment Payments made by the County under this Contract are includable in the gross income of the Lender for federal income tax purposes due to the occurrence of an Event of Taxability or (c) the Lender shall receive an opinion of nationally recognized bond counsel, which concludes that the interest components of the Installment Payments are includable in the gross income of the Lender for federal income tax purposes due to the occurrence of an Event of Taxability.

“Engineer” means any engineer, engineering consultant or architect, or firm thereof, hired by or employed by the County, licensed in the State and experienced in the work for which retained.

“Escrow Agent” means First-Citizens Bank & Trust Company or its successors and assigns, acting in its capacity for the County as the 1999 Certificates Trustee and escrow agent for the Escrow Fund.

“Event of Default” means one or more events of default as defined in Section 13.1.

“Event of Taxability” means the occurrence or existence of any fact, event or circumstance caused by the failure of the County to comply with any covenants in this Contract or any document or certificate executed by the County in connection with the transactions

contemplated by this Contract which has the effect of causing the interest components of the Installment Payments made by the County under this Contract to be includable in the gross income of the Lender for federal income tax purposes.

“Inclusion Date” means the effective date that the interest components of the Installment Payments made by the County under this Contract are includable in the gross income of the Lender for federal income tax purposes as a result of a Determination of Taxability.

“Installment Payment Dates” means the dates on which Installment Payments are due and payable as set forth in the Payment Schedule attached hereto.

“Installment Payments” means those payments to be made by the County to the Lender as described in Article III and in the Payment Schedule attached hereto.

“Interest Rate” means 3.64% per annum calculated on the basis of a 360-day year of twelve 30-day months.

“Lender” means Branch Banking and Trust Company or its successors and assigns.

“Mortgaged Property” means the Real Property and all existing improvements located on the Real Property as of the date hereof, the Project, all other additions, alterations, enlargements, extensions, improvements and fixtures made a part of the Real Property or the improvements thereon and all appurtenances of any nature whatsoever, less all property released pursuant to this Contract or the Deed of Trust.

“Net Proceeds,” when used with respect to any proceeds of insurance policies, payment bonds, performance bonds, condemnation awards or moneys received as a consequence of default under a construction contract or otherwise made available by reason of any occurrence described in Section 5.4 or 8.1, means the amount remaining after deducting from the gross proceeds thereof all expenses (including, without limitation, attorneys’ fees and costs) incurred in the collection of such proceeds.

“Payment Schedule” means the document attached hereto and incorporated herein by reference which sets forth the Installment Payments to be made by the County hereunder, as the same may be revised from time to time in accordance with this Contract.

“Permitted Encumbrances” means

(1) easements, exceptions or reservations (i) for the purpose of pipelines, telephone lines, cable television lines, telegraph lines, power lines and substations, roads, streets, alleys, highways, parking, railroad purposes, drainage and sewerage purposes, dikes, canals, laterals, ditches, transportation of oil, gas or other materials, removal of oil, gas or other materials, and other like purposes, or (ii) for the joint or common use of real property, facilities and equipment, which exist on the Closing Date or arise under the provisions of Section 3.9 of the Deed of Trust and which, in the case of either (i) or (ii), in the aggregate do not materially interfere with or impair the operation of the Mortgaged Property for the purposes for which it is or may reasonably be expected to be used;

- (2) the rights of the Lender under this Contract;
- (3) the lien of the Deed of Trust and any other liens and encumbrances listed in Exhibit B thereto;
- (4) any lease by the County in conformity with the provisions of Section 6.11; and
- (5) any other liens, encumbrances, charges and restrictions on the Real Property described in Schedule B of the commitment of the issuer of the Title Policy to issue the Title Policy or approved in writing by the Lender.

“Plans and Specifications” means the plans and specifications prepared by one or more Engineers relating to the acquisition, construction and installation of the components of the Project.

“Project” is defined in the Preamble hereto.

“Real Property” means the sites of the following components of the Project, as set forth and described in the Deed of Trust.

“State” means the State of North Carolina.

“Title Policy” means the policy of title insurance issued pursuant to Section 6.5.

## **ARTICLE II**

### **AMOUNT ADVANCED**

Section 2.1 Advance of Amount Advanced. The Lender hereby makes an advance to the County of the Amount Advanced, and the County hereby accepts from the Lender the Amount Advanced to be applied in accordance with the terms and conditions of this Contract. The proceeds of the Amount Advanced will be used to prepay the 1999 Contract and refund the outstanding 1999 Certificates.

## **ARTICLE III**

### **INSTALLMENT PAYMENTS; ADDITIONAL PAYMENTS**

Section 3.1 Amounts and Times of Installment Payments and Additional Payments.

(a) The County shall repay the Amount Advanced in installments, together with interest thereon at the Interest Rate, as provided in this Contract and the Payment Schedule. Each installment shall be deemed an Installment Payment and shall be paid in the amount and at the time set forth in the Payment Schedule, except as otherwise provided in this Contract.

(b) The County acknowledges that the Lender is providing the Amount Advanced at the Interest Rate based on the premise that the interest components of the Installment Payments received by the Lender under this Contract are excludable from the gross income of the Lender for purposes of federal income taxation and exempt from all State of North Carolina income taxes based on federal and State laws in effect as of the date hereof. The Lender understands, however, that the interest components of the Installment Payments may be taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on certain corporations. In the event of a Determination of Taxability, the Interest Rate, from and after the Inclusion Date, shall be adjusted to preserve the Lender's after-tax economic yield with respect to the interest components of the Installment Payments, taking into account any interest expense deductions lost by the Lender as a direct or indirect result of the County's actions. In addition, the County shall pay to the Lender (i) an amount necessary to reimburse the Lender for any interest, penalties or other charges assessed by the Internal Revenue Service and the Department of Revenue by reason of the Lender's failure to include the interest components of the Installment Payments in its gross income for federal income tax purposes, and (ii) upon request of the Lender, additional interest as a result of such increase in the Interest Rate with respect to all previous Installment Payments made by the County after the Inclusion Date, provided that the County has not already paid or will not otherwise pay such additional interest as a consequence of such increase in the Interest Rate. In the event of a Determination of Taxability, the Lender shall provide the County with a new Payment Schedule which reflects the new Interest Rate and will replace the Payment Schedule attached hereto.

(c) The County agrees to give prompt written notice to the Lender upon the County's receipt of any notice or information from any source whatsoever to the effect that an Event of Taxability or a Determination of Taxability shall have occurred.

(d) The County shall pay Additional Payments on a timely basis directly to each person or entity to which any Additional Payments are owed.

(e) The Lender shall have the right to require the County to pay a late payment charge for each Installment Payment or any other amount due from the County to the Lender hereunder which is not paid within ten (10) days of the date when due in an amount equal to the lesser of five percent (5%) of each late payment or the legal maximum. This subsection is only applicable to the extent that it does not affect the validity of this Contract.

Section 3.2 Place of Payments. All payments required to be made to the Lender under this Contract shall be made to the Lender at the address set forth in the Payment Schedule in immediately available funds or as may be otherwise directed in writing by the Lender.

Section 3.3 No Abatement. There will be no abatement or reduction of the Installment Payments or Additional Payments by the County for any reason, including, but not limited to, any failure by the County to appropriate funds to the payment of the Installment Payments or Additional Payments, any defense, recoupment, setoff, counterclaim or any claim (real or imaginary) arising out of or related to the acquisition, construction and installation of the Project.

The County assumes and shall bear the entire risk of loss and damage to the Project from any cause whatsoever, it being the intention of the parties hereto that the Installment Payments shall be made in all events unless the obligation to make the Installment Payments is terminated as otherwise provided in this Contract.

Section 3.4 Prepayment of Amount Advanced.

(a) The County shall not have the option to prepay this Contract prior to April \_\_, 2014. The County shall have the option to prepay or provide for the prepayment of the outstanding principal components of the Installment Payments in whole or in part on any Installment Payment Date on or after April \_\_, 2014 at a prepayment price equal to one hundred percent (100%) of such principal components, plus accrued interest thereon to the date of such prepayment.

[(b) In the event of any loss or damage to or condemnation of the Mortgaged Property, if (i) the resulting Net Proceeds of any insurance policies (plus any amount withheld therefrom by reason of any deductible clause) or condemnation awards are insufficient to pay in full the cost of any repair, restoration, modification, improvement or replacement of the Mortgaged Property as required under Section 8.2, (ii) the County determines not to apply such Net Proceeds to the repair, restoration, modification, improvement or replacement of the Mortgaged Property as permitted by Section 8.3(b) and (iii) the County has otherwise performed all of its obligations under this Contract, then the County shall cause such Net Proceeds to be applied, with any other available funds, to prepay the outstanding principal components of the Installment Payments in whole on any date (A) on or before April \_\_, 2014 at a prepayment price equal to one hundred and one percent (101%) of such principal components, plus accrued interest thereon to the date of such prepayment and (B) after April \_\_, 2014 at a prepayment price equal to one hundred percent (100%) of such principal components, plus accrued interest thereon to the date of such prepayment, in either case upon not less than thirty (30) days prior written notice of such prepayment to the Lender.]

**ARTICLE IV**

**APPLICATION OF PROCEEDS**

Section 4.1 Refunding of 1999 Certificates. On April \_\_, 2009, the Lender shall wire, in immediately available federal funds, to the 1999 Certificates Trustee the Amount Advanced. The 1999 Certificates Trustee shall then deposit such amount, together with \$\_\_\_\_\_, in an escrow fund established pursuant to an Escrow Deposit Agreement dated as of April 1, 2009, among the County, the 1999 Certificates Trustee, as Escrow Agent, and the Henderson County Governmental Financing Corporation. Pursuant to the Escrow Deposit Agreement, the 1999 Certificates Trustee shall pay the Amount Advanced to the Owners of the outstanding 1999 Certificates on June 1, 2009 to prepay the outstanding 1999 Certificates.



**ARTICLE V**

**RESERVED**

**ARTICLE VI**

**RESPONSIBILITIES OF THE COUNTY**

Section 6.1 Care and Use. The County shall use the Mortgaged Property, or cause the Mortgaged Property to be used, in a careful and proper manner, in compliance with all applicable laws and regulations, and, at its sole cost and expense, shall service, repair and maintain the Mortgaged Property, or cause the Mortgaged Property to be serviced, repaired and maintained, so as to keep the Mortgaged Property in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear excepted, and shall replace or restore, or cause to be replaced or restored, any part of the Mortgaged Property as may from time to time become worn out, unfit for use, destroyed or damaged. Any and all repairs or replacements of the Mortgaged Property shall constitute accessions to the Mortgaged Property and shall be subject to all the terms and conditions of this Contract and included in the term “Mortgaged Property” as used in this Contract.

In any instance where the County determines that any part of the Mortgaged Property has become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary, the County may remove such part and sell, trade-in, exchange or otherwise dispose of it without any responsibility or accountability to the Lender therefor, provided that the County shall either:

(a) substitute or cause to be substituted (by direct payment of the costs thereof or by designating as a part of the Mortgaged Property other equipment, machinery or other personal property) and install other equipment, machinery or other personal property having equal or greater value and utility (but not necessarily serving the same function) in the operation of the Mortgaged Property or

(b) not make any such substitution and installation, provided that (i) the appraised, tax or insured value of the remaining Mortgaged Property will not be less than the aggregate outstanding Installment Payments and (ii) upon the request of the Lender, which request may be made from time to time, the County will provide or cause to be provided to the Lender reasonable evidence of the appraised, tax or insured value of the Mortgaged Property at the time of such request.

The County may also, upon the loss of or damage to any portion of the Mortgaged Property that is to be protected against by insurance required or permitted by Section 6.6 and in lieu of making any claim upon such insurance, substitute and install or cause to be substituted and installed other equipment, machinery or other personal property having equal or greater value and utility (but not necessarily serving the same function) in the operation of the Mortgaged Property for such lost or damaged property. In any instance in which the County so elects to substitute or cause to be substituted any property for any damaged property, the County may remove the damaged property from the Mortgaged Property and dispose of it without any further responsibility or accountability to the Lender therefor.

All substituted equipment, machinery or other personal property installed pursuant to this Section shall be free of all liens and encumbrances (other than Permitted Encumbrances) and shall become a part of the Mortgaged Property. The Lender will cooperate with the County in implementing the County's rights to dispose of property pursuant to this Section and will execute any and all conveyances, releases or other documents necessary or appropriate in connection therewith and with the release of property from the lien of the Deed of Trust or any other documents evidencing a security interest therein in favor of the Lender.

Section 6.2 Inspection. The Lender has the right on reasonable prior notice to the County to enter upon the Mortgaged Property to inspect the Mortgaged Property and observe its use during normal business hours.

Section 6.3 Utilities. The County shall pay, or cause to be paid, all charges for gas, water, steam, electricity, light, heat or power, telephone or other utility service furnished to or used on or in connection with the Mortgaged Property. There shall be no abatement of any portion of the Installment Payments on account of interruption of any such services.

Section 6.4 Taxes. The County shall pay, or cause to be paid, when due any and all taxes relating to the Mortgaged Property and the County's obligations under this Contract including, but not limited to, all license or registration fees, gross receipts tax, sales and use tax, if applicable, license fees, documentary stamp taxes, rental taxes, assessments, charges, ad valorem taxes, excise taxes, and all other taxes, licenses and charges imposed on the ownership, possession or use of the Mortgaged Property by any governmental body or agency, together with any interest and penalties.

Section 6.5 Title Insurance. The County agrees to obtain, at its own cost and expense, an American Land Title Association policy of title insurance, in form satisfactory to the Lender, effective as of the date of execution and delivery of this Contract, in an amount not less than the Amount Advanced naming the Lender as insured mortgagee. Such policy shall insure the fee title of the County to the Real Property, subject only to Permitted Encumbrances, and shall be issued by a title insurance company qualified to do business in the State of North Carolina and acceptable to the Lender. On or before the Closing Date, the County shall provide the Lender with a copy of the commitment of the issuer of such policy to issue such policy and, within thirty (30) days after the Closing Date, the County shall provide the Lender with a copy of such policy.

Section 6.6 Insurance. The County shall maintain, or cause to be maintained, except as hereinafter provided, insurance with respect to its property and business against such casualties and contingencies in amounts not less than is customary in similar activities and similarly situated. Without limiting the foregoing, the County shall maintain, or cause to be maintained, except as hereinafter provided, the following insurance:

- (a) Insurance against loss and/or damage to the Mortgaged Property under a policy or policies covering such risks as are ordinarily insured against for similar property. Such insurance shall be in an amount not less than the full replacement cost of the Mortgaged Property, but any such policy may have a deductible amount of not more than \$250,000. No such policy of insurance shall be so written that the proceeds thereof will produce less than the minimum coverage required by the preceding sentence, by

reason of co-insurance provisions or otherwise, without the prior written consent thereto by the Lender. The term “full replacement cost” shall mean the actual replacement cost of the Mortgaged Property, without deduction for physical depreciation. Each such policy shall contain a replacement cost endorsement.

(b) Comprehensive general liability insurance protecting the County and the Lender as their interests may appear, against liability for injuries to persons and/or property, occurring on, in or about the Mortgaged Property, in the minimum amount of \$100,000 liability to any one person for property damage, \$2,000,000 liability for personal injury for any one occurrence and an aggregate annual liability limit of not less than \$2,000,000, with a deductible amount of not more than \$250,000.

(c) Workers’ compensation insurance respecting all employees of the County working at the Mortgaged Property in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the County may be self-insured with respect to all or any part of its liability for workers’ compensation.

Each policy of insurance obtained pursuant to this Section shall (i) be issued by a generally recognized and responsible insurance company qualified under the laws of the State or the United States of America to assume the risks covered by such policy, (ii) name the County and the Lender as insureds, as their respective interests may appear, (iii) with respect to policies contained in paragraph (a) contain standard mortgagee clauses naming the Lender as mortgagee; and (iv) unless unavailable from the insurer, provide that such policy shall not be cancelled or modified in any way adverse to any insured without at least thirty (30) days’ prior written notice to each insured named therein. The County shall have the right to receive the proceeds from any insurance maintained pursuant to this Section, subject, however, to the provisions of this Article VI and Article VIII.

All such policies shall be deposited with the Lender, provided that in lieu of such policies there may be deposited with the Lender a certificate or certificates of the respective insurers or other evidence satisfactory to the Lender to the effect that the insurance required by this Section is in full force and effect. Prior to the expiration of any such policy, the County shall furnish to the Lender evidence satisfactory to the latter that the policy has been renewed or replaced or is no longer required by this Contract.

In lieu of separate policies the County may maintain or cause to be maintained blanket or umbrella policies if such policies provide the same coverage as required by this Section with protection against each risk not reducible by claims for other risks to amounts less than that specified in this Section and the County deposits with the Lender a certificate or certificates of the respective insurers evidencing such coverage and stating, as required, the amount of coverage with respect to the Mortgaged Property or any part thereof.

Section 6.7 Rating and Insurance. The Lender reserves the right to have this transaction rated and/or insured by a qualified rating agency and/or insurer at the Lender’s sole cost at any time during the Contract. The County agrees to cooperate with the Lender and the

agency/insurer in providing any requested financial or non-financial information that may be material to obtaining the rating/insurance.

Section 6.8 Risk of Loss. The County shall bear all risk of loss or damage to and condemnation of the Project. In the event of loss or damage to or condemnation of the Project resulting in Net Proceeds of any insurance policies or condemnation awards, such Net Proceeds shall be applied in accordance with the provisions of Section 8.2 and, if applicable, Section 8.3.

Section 6.9 Performance by the Lender of the County's Responsibilities. Any performance required of the County or any payments other than Installment Payments required to be made by the County may, if not timely performed or paid, be performed or paid by the Lender, and, in that event, the Lender shall be immediately reimbursed by the County for such payments or other performance by the Lender together with interest at a rate per annum equal to the Prime Rate, as hereinafter defined, from the date of the advance of funds by the Lender in connection with the payments or other performance to the date of reimbursement. "Prime Rate" means the Prime Rate consisting of the base rate posted by seventy-five percent (75%) of the largest United States banks as reported in *The Wall Street Journal* on the day of any such advance of funds by the Lender.

Section 6.10 Financial Statements. On request, the County shall send to the Lender (i) a copy of the County's audited financial statements for each fiscal year within thirty (30) days of the County's acceptance of such statements, but in any event within two hundred ten (210) days of the completion of such fiscal year and (ii) a copy of the County's annual budget ordinance promptly after adoption, as well as any amendments to the adopted budget that affect the appropriation for Installment Payments, along with excerpts from the County's line-item budget providing evidence satisfactory to the Lender that an appropriation of funds sufficient to satisfy current Installment Payments is included in the adopted budget.

The County shall furnish to the Lender, at such reasonable times as the Lender shall request, all other financial information (including, without limitation, the County's annual budget as submitted or approved) as the Lender may reasonably request. The County shall permit the Lender or its agents and representatives to inspect the County's books and records and make extracts therefrom.

The County represents and warrants to and covenants with the Lender that all financial statements which have been or may be delivered to the Lender reflect or will reflect fairly and accurately the County's financial condition and that, except as the County may notify the Lender otherwise, there has been and will be no material adverse change in the County's financial condition as reflected in the financial statements since the respective dates thereof.

Section 6.11 Leasing by County. The County may lease any portion of the Mortgaged Property subject to all of the following conditions:

(a) This Contract and the obligation of the County to make Installment Payments and Additional Payments hereunder shall remain obligations of the County.

(b) The County shall obtain the prior consent of the Lender, which consent shall not be unreasonably withheld, to any lease and, within thirty (30) days after the

execution of any lease, furnish or cause to be furnished to the Lender a true and complete copy of such lease.

(c) No lease shall cause the interest components of the Installment Payments to be includable in gross income for purposes of federal income taxation, which shall be established in an opinion of nationally recognized counsel.

(d) Any lease shall be subject to the provisions of this Contract and the Deed of Trust and be subordinate to the lien of the Deed of Trust.

## **ARTICLE VII**

### **TITLE; LIENS; PERSONAL PROPERTY**

Section 7.1 Title. Title to the Mortgaged Property shall be in the County from and after the date of execution and delivery of this Contract subject to the Permitted Encumbrances. Simultaneously with the execution and delivery of this Contract, the County shall deliver to the Lender the Deed of Trust in form satisfactory to the Lender. Upon payment in full of all of the County's obligations hereunder, including the Amount Advanced, interest accrued thereon, all Additional Payments and all other payments due hereunder, the Lender, at the County's request, shall release and cancel the Deed of Trust.

Section 7.2 Liens. The County shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, security interest, charge, encumbrance or claim on or with respect to the Mortgaged Property or any interest therein (except for Permitted Encumbrances) without the prior written consent of the Lender. The County shall promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, security interest, charge, encumbrance or claim if the same shall arise at any time. The County shall reimburse the Lender for any expense incurred by it (including reasonable attorneys' fees and reasonable expenses), after prior notice to the County, in order to discharge or remove any such mortgage, pledge, lien, security interest, charge, encumbrance or claim.

Section 7.3 Personal Property. The County at any time and from time to time, in its sole discretion and at its own expense, may install or permit to be installed items of equipment or other personal property in or upon any portion of the Mortgaged Property. All such items that constitute fixtures shall become a part of the Mortgaged Property. All such items that are not deemed to be fixtures shall remain the sole personal property of the County in which the Lender shall not have any interest, and may be modified or removed by the County at any time, provided that the County shall repair and restore, or cause to be repaired and restored, any and all damage to the Mortgaged Property resulting from the installation, modification or removal of any such items.

## **ARTICLE VIII**

### **DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS**

Section 8.1 Damage, Destruction or Condemnation. If, during the term hereof, (i) the Project or any portion thereof is destroyed or is damaged by fire or other casualty, (ii) title to or

the temporary or permanent use of the Project or any portion thereof or the estate of the County, the Lender or its assignee in the Project or any portion thereof is taken under the power of eminent domain by any governmental authority other than the County or (iii) a material defect in the acquisition, construction and installation of the Project becomes apparent, then the County shall continue to be obligated, subject to the provisions of Section 8.2, to pay the amounts specified in Section 3.1 at the respective times required regardless of whether the documentation provided for in Section 5.3 has been delivered.

Except as otherwise provided in this Contract, if any part of the Mortgaged Property is destroyed or damaged by fire or other casualty, then the County will promptly cause the Mortgaged Property to be restored to the equivalent of its condition immediately prior to such casualty, and, if any part of the Mortgaged Property or its use is damaged or restricted by any exercise of the power of eminent domain, then the County will promptly cause the Mortgaged Property to be restored, repaired or modified in a manner satisfactory to the Lender.

Section 8.2 Obligation to Repair or Replace the Mortgaged Property. Subject to the provisions of Section 8.3, the County shall cause the Net Proceeds of any insurance policies, payment bonds, performance bonds, condemnation awards or moneys received as a consequence of default under a Construction Contract or otherwise made available by reason of any occurrence described in Section 5.4 or 8.1 relating to the Mortgaged Property to be deposited in the Project Fund, if received before the Completion Date, or, if received thereafter, to be deposited in a separate fund held by the County. Except as provided in Section 8.3, all Net Proceeds so deposited shall be applied by the County to the prompt repair, restoration, modification, improvement or replacement of the Mortgaged Property. Any repair, restoration, modification, improvement or replacement of the Mortgaged Property paid for in whole or in part out of such Net Proceeds shall be the property of the County, subject to the Deed of Trust, and shall be included as part of the Mortgaged Property under this Contract.

Section 8.3 Insufficiency of Net Proceeds. If the applicable Net Proceeds (plus any amount withheld therefrom by reason of any deductible clause) relating to the Mortgaged Property are insufficient to pay in full the cost of any repair, restoration, modification, improvement or replacement of the Mortgaged Property as required under Section 8.2, the County may elect to proceed under either of the following; provided that the option set forth in subparagraph (b) below will only be available in the event that such Net Proceeds equal or exceed two-thirds (2/3) of the aggregate principal components of the Installment Payments then outstanding:

- (a) The County may complete the work and pay any cost in excess of the amount of such Net Proceeds, and the County agrees that, if by reason of any such insufficiency of such Net Proceeds, the County shall make any payments pursuant to the provisions of this subparagraph (a), the County will not be entitled to any reimbursement therefor from the Lender nor will the County be entitled to any diminution of the amounts payable under Section 3.1.
- (b) The obligation of the County to repair or replace the Mortgaged Property under Section 8.2 may, at the option of the County, be discharged by causing such Net Proceeds to be applied to the prepayment of all of the then outstanding principal

components of the Installment Payments in accordance with Section 3.4. If such Net Proceeds exceed the then outstanding principal components of the Installment Payments to be prepaid in accordance with Section 3.4, such excess shall be paid to or retained by the County.

Within one hundred twenty (120) days of the occurrence of an event specified in Section 8.1, the County shall commence the repair, restoration, modification, improvement or replacement of the Mortgaged Property, or shall elect, by notice to the Lender, to proceed under the provisions of subparagraph (b) above. For purposes of this Section, “commence” shall include the retention of an Engineer in anticipation of repair, restoration, modification, improvement or replacement of the Mortgaged Property. If the County shall, after commencing the repair, restoration, modification, improvement or replacement of the Mortgaged Property, determine that the applicable Net Proceeds (plus any amount withheld therefrom by reason of any deductible clause) are insufficient for the accomplishment thereof, the County may elect to proceed under subparagraph (b) above.

Section 8.4 Cooperation of Lender. The Lender shall cooperate fully with the County in filing any proof of loss with respect to any insurance policy covering the events described in Section 8.1. In no event shall the Lender or the County voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim with respect to the Mortgaged Property without the written consent of the other.

## **ARTICLE IX**

### **REPRESENTATIONS OF THE COUNTY AND LENDER**

Section 9.1 Representations, Covenants and Warranties of the County. The County represents, covenants and warrants to the Lender as follows:

(a) The County is a political subdivision organized and existing under the Constitution and laws of the State.

(b) The Constitution and laws of the State authorize the County to (i) execute and deliver this Contract and the Deed of Trust, (ii) enter into the transactions contemplated hereby and thereby and (iii) carry out its obligations hereunder or thereunder.

(c) The County has duly authorized the execution and delivery of this Contract and the Deed of Trust in accordance with the Constitution and laws of the State.

(d) Neither the execution and delivery of this Contract or the Deed of Trust nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions or any charter provision or restriction or any agreement or instrument to which the County is now a party or by which the County is bound, or constitutes a default under any of the foregoing.

(e) Other than building permits or other procedural requirements which are a prerequisite to the construction of the Project and which are expected to be obtained in due course, no approval or consent is required from any governmental authority with respect to the entering into or performance by the County of this Contract, the Deed of Trust or any other documents related hereto or thereto and the transactions contemplated hereby and thereby, or if such approval is required, it has been duly obtained.

(f) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or threatened against or affecting the County challenging the validity or enforceability of this Contract, the Deed of Trust or any other documents relating hereto or thereto and the performance of the County's obligations hereunder and thereunder.

(g) The Project is essential to the County and will permit the County to carry out public functions that it is authorized by law to perform.

(h) The County Manager or Finance Director of the County shall include the Installment Payments and reasonably estimated Additional Payments coming due in each fiscal year in the corresponding annual budget request and exercise due diligence to have the Board of Commissioners include funds for the payment thereof in the corresponding final budget of the County. Any deletion of such funds from the County's final budget shall be made only pursuant to an express resolution of the Board of Commissioners which explains the reason for such action. Subject to applicable law, the actions required of the County and its officers and of the Board of Commissioners pursuant to this paragraph shall be deemed to be and shall be construed to impose ministerial duties and it shall be the duty of each and every public official of the County to take such action and do such things as are required by law in the performance of the official duty of such official to enable the County to carry out and perform the actions required pursuant to this paragraph and its other agreements in this Contract. Nothing contained in this paragraph obligates the County to appropriate the moneys so budgeted or is to be construed to conflict with the provisions of Article XV.

Section 9.2 Representations, Covenants and Warranties of the Lender. The Lender represents, covenants and warrants to the County as follows:

(a) The Lender is a North Carolina state banking corporation and has the power and authority to enter into this Contract.

(b) Neither the execution and delivery of this Contract nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of the organizational documents of the Lender or any restriction or any agreement or instrument to which the Lender is now a party or by which the Lender is bound.



## ARTICLE X

### TAX COVENANTS

Section 10.1 Tax Covenants. The County covenants that, to the extent permitted by law, it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income for federal income tax purposes of the interest components of the Installment Payments under Section 103 of the Code. The County will not directly or indirectly use or permit the use of any proceeds of the Project Fund or any other funds of the County, or take or omit to take any other action, that would cause the obligation of the County to make Installment Payments created by this Contract to be an “arbitrage bond” within the meaning of Section 148(a) of the Code. To that end, the County has executed the Tax Certificate, dated as of the Closing Date (the “Tax Certificate”), and will comply with all requirements of Section 148 of the Code to the extent applicable. The County further covenants that this Contract is not a “private activity bond” as defined in Section 141 of the Code.

The County will maintain books on which will be recorded (i) the Lender or (ii) any assignee of the Installment Payments due under this Contract as the registered owner of the Installment Payments.

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

Notwithstanding any provision of this Article, if the County shall provide to the Lender an opinion of nationally recognized bond counsel to the effect that any action required under this Section or the Tax Certificate is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of the interest components of the Installment Payments pursuant to Section 103 of the Code, the County and the Lender may rely conclusively on such opinion in complying with the provisions of this Article.

## ARTICLE XI

### INDEMNIFICATION

Section 11.1 Indemnification. To the fullest extent permitted by law, including the provisions of Section 160A-20 of the North Carolina General Statutes, as amended, the County hereby agrees to indemnify, protect and save the Local Government Commission of North Carolina, the Lender and the Deed of Trust Trustee and their respective officers, employees, directors, members and agents (collectively, the “Indemnitees”) harmless from all liabilities, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys’ fees, that (i) arise in tort, in contract, under 42 U.S. Code §1983 or under the public bidding laws of the State or (ii) arise out of, are connected with, or result, directly or

indirectly, from the Project or any portion thereof, including, without limitation, the manufacture, selection, acquisition, delivery, possession, condition, construction, improvement, environmental or other condition, lease, use, operation or return of the Project or any portion thereof, or the transactions contemplated by this Contract; provided, however, that the right to indemnification shall not apply to losses arising from (A) the negligence and willful misconduct of any Indemnitee and (B) the exercise of the right of the County not to appropriate moneys for the payment of Installment Payments. The indemnification arising under this Article shall continue in full force and effect notwithstanding the payment in full of all obligations under this Contract, subject only to the remedies allowable under Section 160A-20 of the North Carolina General Statutes, as amended.

## **ARTICLE XII**

### **DISCLAIMER OF WARRANTIES**

Section 12.1 No Representations by the Lender. The County acknowledges and agrees that it has selected or will select the Real Property and the components of the Project, the vendors of any equipment acquired and the Engineers and contractors for the acquisition, construction and installation of the Project based on its own judgment and disclaims any reliance on any statements or representations by the Lender with respect thereto.

Section 12.2 Disclaimer by the Lender. THE LENDER MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROJECT OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROJECT.

## **ARTICLE XIII**

### **DEFAULT AND REMEDIES**

Section 13.1 Definition of Event of Default. The County shall be deemed to be in default under this Contract upon the happening of any of the following events of default (each, an “Event of Default”):

(a) The County fails to make any Installment Payment or pay any other amount hereunder when due.

(b) (i) The County fails to budget and appropriate moneys sufficient to pay all Installment Payments and the reasonably estimated Additional Payments coming due in any fiscal year of the County; or (ii) the County deletes from its duly adopted budget any appropriation for the purposes specified in clause (i) above.

(c) The County fails to perform or observe any term, condition or covenant of this Contract on its part to be observed or performed, other than as referred to in subparagraph (a) or (b) above, or of the Deed of Trust on its part to be observed or performed, or breaches any warranty by the County herein contained, other than as referred to in subparagraph (e) of this Section, for a period of thirty (30) days after

written notice specifying such failure or breach and requesting that it be remedied has been given to the County by the Lender; provided, however, that if such failure or breach cannot with due diligence be cured within such thirty (30)-day period and the County has promptly commenced and diligently worked to cure such failure or breach within such thirty (30)-day period, the County will have an additional period of ninety (90) days to cure such failure or breach and, further, that if such failure or breach cannot with due diligence be cured within such ninety (90)-day period and the County has diligently continued to work to cure such failure or breach within such ninety (90)-day period, then, upon consent of the Lender as to such matter, the County will have an additional reasonable period of time to cure such failure or breach as long as the County diligently continues to work to cure such failure or breach.

(d) Any bankruptcy, insolvency or reorganization proceedings or similar litigation is instituted by the County, or a receiver, custodian or similar officer is appointed for the County or any of its property, and such proceedings or appointments are not vacated or fully stayed within ninety (90) days after the institution or occurrence thereof.

(e) Any warranty, representation or statement made by the County in this Contract, the Deed of Trust or any other document executed or delivered in connection herewith or therewith is found to be incorrect or misleading in any material respect on the date made.

(f) An attachment, levy or execution of a security interest or lien is levied on or against any portion of the Mortgaged Property.

(g) The occurrence of a Determination of Taxability.

Section 13.2 Remedies on Default. On the occurrence of any Event of Default, the Lender may exercise any one or more of the following remedies as the Lender, in its sole discretion, shall elect:

(a) Declare the entire outstanding principal components of the Installment Payments plus the interest component of the next due Installment Payment accrued to the date of such declaration to be immediately due and payable without notice to or demand on the County.

(b) Proceed by appropriate court action to enforce performance by the County of the applicable covenants of this Contract or to recover for the breach thereof (other than a failure to pay Installment Payments or any other payment hereunder).

(c) Subject to the provisions of Article XV, exercise all the rights and remedies of a secured party or creditor under the general laws of the State with respect to the enforcement of the security interest granted under the Deed of Trust, including, without limitation, to the extent permitted by law, reenter and take possession of the Mortgaged Property 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 the County, 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, sale, lease, sublease or other disposition of the Mortgaged Property, toward the obligations due under this Contract and, thereafter, pay any remaining proceeds to the County.

(d) Enforce its security interest or direct the Deed of Trust Trustee to institute foreclosure proceedings under the Deed of Trust and sell the Mortgaged Property.

NOTWITHSTANDING ANY OTHER PROVISIONS IN THIS CONTRACT, IT IS THE INTENT OF THE PARTIES HERETO TO COMPLY WITH SECTION 160A-20 OF THE GENERAL STATUTES OF NORTH CAROLINA, AS AMENDED. NO DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST THE COUNTY IN FAVOR OF THE LENDER IN VIOLATION OF SECTION 160A-20 OF THE GENERAL STATUTES OF NORTH CAROLINA, AS AMENDED, INCLUDING, WITHOUT LIMITATION, ANY DEFICIENCY JUDGMENT FOR AMOUNTS THAT MAY BE OWED UNDER THIS CONTRACT WHEN THE SALE OF ALL OR ANY PORTION OF THE MORTGAGED PROPERTY IS INSUFFICIENT TO PRODUCE ENOUGH MONEY TO PAY IN FULL ALL OUTSTANDING OBLIGATIONS UNDER THIS CONTRACT.

Section 13.3 Further Remedies. Subject to the provisions of Article XV, this Contract shall remain in full force and effect and the County shall be and remain liable for the full performance of all its obligations under this Contract. All remedies of the Lender are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy.

## ARTICLE XIV

### ASSIGNMENT; DEFEASANCE

Section 14.1 Assignment by the County. Except as provided in the Deed of Trust, the County will not sell, assign, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance on or against any interest in this Contract or the Mortgaged Property (except for the Permitted Encumbrances) without the prior written consent of the Lender.

Section 14.2 Assignment by the Lender. The Lender may, at any time and from time to time, assign to any bank, insurance company or similar financial institution or to any other entity approved by the Local Government Commission of North Carolina all or any part of its interest in the Mortgaged Property or this Contract, including, without limitation, the Lender's rights to receive the Installment Payments and any Additional Payments due and to become due hereunder. Reassignment by any assignee may also only be to a bank, insurance company or similar financial institution or to any other entity approved by the Local Government Commission of North Carolina. The County agrees that this Contract may become part of a pool of obligations at the Lender's or its assignee's option. The Lender or its assignees may assign or reassign either the entire pool or any partial interest herein. Notwithstanding the foregoing, no assignment or reassignment of the Lender's interest in the Mortgaged Property or this Contract shall be effective unless and until the County shall receive a duplicate original counterpart of the

document by which such assignment or reassignment is made disclosing the name and address of each assignee. The County covenants and agrees with the Lender and each subsequent assignee of the Lender to maintain for the full term of this Contract a written record of each such assignment or reassignment. The County agrees to execute any document reasonably required by the Lender in connection with any assignment. Notwithstanding any assignment by the Lender of its interest in this Contract, the County shall not be obligated to provide any financial or other information to any assignee of the Lender except as set forth in Section 6.10.

After the giving of notice described above to the County, the County shall thereafter make all payments in accordance with the notice to the assignee named therein and shall, if so requested, acknowledge such assignment in writing, but such acknowledgement shall in no way be deemed to make the assignment effective.

The Lender covenants that any disclosure document circulated by it or an assignee in connection with the sale of the Lender's rights in this Contract will contain a statement to the effect that the County has not reviewed and is not responsible for the disclosure document. The Lender covenants to defend, indemnify and hold harmless the County and its officers, employees and agents against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such indemnified party may become subject on account of any statement included in a disclosure document, or failure to include a statement in a disclosure document, unless the County shall have expressly approved the use of such disclosure document.

Section 14.3 Defeasance. The County may discharge its obligation to the Lender under this Contract by setting aside with a bank or trust company acceptable to the Lender and the Local Government Commission of North Carolina an amount of cash or direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America, or both, which are sufficient to provide for the payment or prepayment of the principal components of the remaining Installment Payments, plus the applicable prepayment penalty, if any, and interest accrued thereon to the date of such payment or prepayment. The form of any escrow deposit agreement entered into for such purpose shall be subject to the review and approval of the Lender and its counsel, which approval shall not be unreasonably withheld. In connection with giving such approval, the Lender may require the County to provide to the Lender an opinion of nationally recognized bond counsel to the effect that the proposed discharge of the County's obligation to the Lender under this Contract would not adversely affect the exclusion from gross income for federal income tax purposes of the interest components of the Installment Payments under Section 103 of the Code. The adequacy of the funds and securities set aside for such purpose shall be subject to verification by a firm of independent certified public accountants or another consultant reasonably acceptable to the Lender and the Local Government Commission of North Carolina.

## **ARTICLE XV**

### **LIMITED OBLIGATION OF THE COUNTY**

Section 15.1 Limited Obligation of the County. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF

THE FAITH AND CREDIT OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A DELEGATION OF GOVERNMENTAL POWERS NOR AS A DONATION BY OR A LENDING OF THE CREDIT OF THE COUNTY WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE. THIS CONTRACT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE COUNTY TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE SOLE DISCRETION OF THE COUNTY FOR ANY FISCAL YEAR IN WHICH THIS CONTRACT IS IN EFFECT; PROVIDED, HOWEVER, THAT ANY FAILURE OR REFUSAL BY THE COUNTY TO APPROPRIATE FUNDS WHICH RESULTS IN THE FAILURE BY THE COUNTY TO MAKE ANY PAYMENT COMING DUE UNDER THIS CONTRACT WILL IN NO WAY OBIVATE THE OCCURRENCE OF THE EVENT OF DEFAULT RESULTING FROM SUCH NONPAYMENT. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE COUNTY IN ANY ACTION FOR BREACH OF A CONTRACTUAL OBLIGATION UNDER THIS CONTRACT, AND THE TAXING POWER OF THE COUNTY IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY MONEYS DUE UNDER THIS CONTRACT. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED TO PLEDGE OR TO CREATE A LIEN ON ANY CLASS OR SOURCE OF THE COUNTY'S MONEYS, NOR SHALL ANY PROVISION OF THIS CONTRACT RESTRICT THE FUTURE ISSUANCE OF ANY OF THE COUNTY'S BONDS OR OBLIGATIONS PAYABLE FROM ANY CLASS OR SOURCE OF THE COUNTY'S MONEYS. TO THE EXTENT OF ANY CONFLICT BETWEEN THIS ARTICLE AND ANY OTHER PROVISION OF THIS CONTRACT, THIS ARTICLE SHALL TAKE PRIORITY.

## ARTICLE XVI

### MISCELLANEOUS

Section 16.1 Waiver. No covenant or condition of this Contract can be waived except by the written consent of the Lender. Any failure of the Lender to require strict performance by the County or any waiver by the Lender of any terms, covenants or contracts in this Contract shall not be construed as a waiver of any other breach of the same or any other term, covenant or contract in this Contract.

Section 16.2 Severability. If any portion of this Contract is determined to be invalid under any applicable law, such provision shall be deemed void and the remainder of this Contract shall continue in full force and effect.

Section 16.3 Governing Law. This Contract shall be construed and governed in accordance with the laws of the State.

Section 16.4 Notices. Except as provided otherwise in this Contract, any and all notices, requests, demands and other communications given under or in connection with this Contract are effective only if in writing and either personally delivered or mailed by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the County:

County of Henderson,  
North Carolina  
113 North Main Street  
Hendersonville, NC 28792  
Attention: Finance Director

If to the Lender:

Branch Banking and Trust Company  
5130 Parkway Plaza Boulevard, Building 9  
Charlotte, North Carolina 28217

The County and the Lender may, by written notice to the other, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 16.5 Section Headings. All section headings contained in this Contract are for convenience of reference only and are not intended to define or limit the scope of any provision of this Contract.

Section 16.6 Entire Contract. This Contract, together with the schedules and exhibits hereto, constitutes the entire agreement between the parties and this Contract shall not be modified, amended, altered or changed except as the County and the Lender may subsequently agree in writing.

Section 16.7 Binding Effect. Subject to the specific provisions of this Contract, this Contract is binding on and inures to the benefit of the parties and their respective successors and assigns (including expressly any successor of the Lender).

Section 16.8 Time. Time is of the essence of this Contract and each and all of its provisions.

Section 16.9 If Payment or Performance Date Not a Business Day. If the date for making payment, or the last date for performance of any act or the exercising of any right, as provided in this Contract, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Contract, and no interest shall accrue for the period after such nominal date.

Section 16.10 Covenants of County not Covenants of Officials Individually. No covenant, stipulation, obligation or agreement contained in this Contract shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, agent or employee of the Board of Commissioners or the County in his individual capacity, and neither the members of the Board of Commissioners nor any other officer of the Board of Commissioners or the County shall be subject to any personal liability or accountability by reason of the execution and delivery of this Contract. No member of the Board of

Commissioners or any agent or employee of the County shall incur any personal liability in acting or proceeding or in not acting or not proceeding, in good faith, reasonably and in accordance with the terms of this Contract.

Section 16.11 Execution in Counterparts. This Contract may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 16.12 Proposal Letter. The terms of this Contract shall supersede the terms of the proposal letter from the Lender to the County dated \_\_\_\_\_, 2009. To the extent of any conflict between this Contract and such proposal letter, this Contract will take priority.

Section 16.13 Limitation on Liability; Waiver of Punitive Damages. EACH OF THE PARTIES HERETO, INCLUDING THE LENDER BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS CONTRACT, THE DEED OF TRUST OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN THEM AND RELATED HERETO OR THERETO OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER PARTY FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES IT MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE.



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

**COUNTY OF HENDERSON, NORTH CAROLINA**

[SEAL]

By: \_\_\_\_\_  
William L. Moyer  
Chairman of the Board of Commissioners  
for the County

ATTEST:

\_\_\_\_\_  
Elizabeth W. Corn  
Clerk to the Board of Commissioners  
for the County

APPROVED AS TO FORM:

\_\_\_\_\_  
Charles Russell Burrell  
County Attorney

[Signatures Continued on the Following Page]

[Counterpart Signature Page to the \$[\_\_\_\_\_] Installment Financing Contract,  
dated April \_\_, 2009, between Branch Banking and Trust Company  
and the County of Henderson, North Carolina]

**BRANCH BANKING AND TRUST  
COMPANY,**  
as Lender

By: \_\_\_\_\_  
Name:  
Title:

[Signatures Continued on the Following Page]

[Counterpart Signature Page to the \$[\_\_\_\_\_] Installment Financing Contract,  
dated April \_\_, 2009, between Branch Banking and Trust Company  
and the County of Henderson, North Carolina ]

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

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

T. Vance Holloman  
Secretary of the Local Government  
Commission of North Carolina

**PAYMENT SCHEDULE**

<u>PERIOD</u>	<u>DATE</u>	<u>PAYMENT</u>	<u>PRINCIPAL</u>	<u>INTEREST</u>	<u>PRINCIPAL BALANCE</u>	<u>PREPAYMENT AMOUNT</u>
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[TO BE PROVIDED]

<b>GRAND TOTAL</b>	<u>\$</u>	<u>\$</u>	<u>\$</u>
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Unless otherwise instructed by the Lender, the County shall make Installment Payments as required hereunder, by 5:00 p.m. at least one (1) Business Day prior to the Installment Payment Date, by wire transfer to the following account:

Prepared by:  
Peter A. Baumgaertner, Esq.  
Dewey & LeBoeuf LLP  
1301 Avenue of the Americas  
New York, NY 10019

Return to:  
Charles Russell Burrell, Esq.  
Henderson County Attorney  
1 Historic Courthouse Square, Suite 5  
Hendersonville, North Carolina 28792

**STATE OF NORTH CAROLINA**

**COUNTY OF HENDERSON**

**DEED OF TRUST, SECURITY AGREEMENT AND FINANCING STATEMENT**

This **DEED OF TRUST, SECURITY AGREEMENT AND FINANCING STATEMENT**, made and entered into this \_\_\_<sup>th</sup> day of April, 2009 (this "Deed of Trust"), from the **COUNTY OF HENDERSON, NORTH CAROLINA**, a political subdivision of the State of North Carolina, whose organization number is 56-6000307, as grantor (the "Grantor"), to \_\_\_\_\_, as trustee (the "Trustee"), for the benefit of **Branch Banking and Trust Company**, a North Carolina state banking corporation (the "Lender" and, together with its successors and assigns, the "Beneficiary");

**WITNESSETH:**

**WHEREAS**, the Grantor and the Lender have entered into an Installment Financing Contract dated as of even date herewith (the "Installment Financing Contract"), pursuant to which (i) the Lender has agreed to advance certain moneys to enable the Grantor to refinance costs of the Project (as defined in the Installment Financing Contract) and (ii) the Grantor has agreed to make the Installment Payments and Additional Payments (as each such term is defined in the Installment Financing Contract) to the Lender;

**WHEREAS**, this Deed of Trust has been executed and delivered to secure (i) the obligations of the Grantor to make the Installment Payments and Additional Payments and (ii) the performance of all of the other liabilities and obligations, whether now existing or hereafter arising, of the Grantor to the Lender under the Installment Financing Contract (all such

obligations and liabilities described in (i) or (ii) above being hereinafter collectively called the “Indebtedness”); and

**WHEREAS**, the Grantor wants to secure (i) the payment of the Indebtedness and any renewals, modifications or extensions thereof, in whole or in part, and (ii) the additional payments hereinafter agreed to be made by or on behalf of the Grantor, by a conveyance of the lands and security interests hereinafter described;

**NOW, THEREFORE**, in consideration of the above preambles and for the purposes aforesaid, and in further consideration of the sum of Ten Dollars (\$10.00) paid to the Grantor by the Trustee and other valuable consideration, receipt of which is hereby acknowledged, the Grantor has given, granted, bargained, sold and conveyed, and by these presents does give, grant, bargain, sell and convey, unto the Trustee, its heirs, successors and assigns, the following property (collectively, the “Premises”):

### **COLLATERAL IS OR INCLUDES FIXTURES**

(a) The real property lying and being in the County of Henderson, North Carolina and described below in the legal description attached as Exhibit A hereto (collectively, the “Real Property”):

SEE EXHIBIT A ATTACHED HERETO FOR THE REAL  
PROPERTY DESCRIPTION, WHICH EXHIBIT A IS  
SPECIFICALLY INCORPORATED HEREIN BY REFERENCE.

(b) All buildings, structures, additions and other improvements of every nature whatsoever now or hereafter situated on or about the Real Property (collectively, the “Improvements”).

(c) All gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, fire extinguishers and any other safety equipment required by governmental regulation or law, washers, dryers, water heaters, mirrors, mantels, air conditioning apparatus, refrigerating plants, refrigerators, cooking apparatus and appurtenances, window screens, awnings and storm sashes and other machinery, equipment or other tangible personal property, which are or shall be so attached to the Improvements, including all extensions, additions, improvements, betterments, renewals, replacements and substitutions, or proceeds from a permitted sale of any of the foregoing, as to be deemed to be fixtures under North Carolina law (collectively, the “Fixtures”) and accessions to the Real Property and a part of the Premises as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the Indebtedness. The location of the collateral described in this paragraph is also the location of the Real Property, and the record owner of the Real Property is the Grantor.

(d) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter

located on the Real Property or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversion and reversions, remainder and remainders, whatsoever, in any way belonging, relating or appertaining to the Premises or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Grantor.

(e) All leases affecting the Premises or any part thereof and all income, rents and issues of the Premises and the Improvements now or hereafter located thereon from time to time accruing (including, without limitation, all payments under leases or tenancies, proceeds of insurance, condemnation payments, tenant security deposits whether held by the Grantor or in a trust account, and escrow funds), and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Grantor of, in and to the same; reserving only the right to the Grantor to collect and apply the same so long as the Grantor is not in Default hereunder.

**SUBJECT, HOWEVER,** to such of the Permitted Encumbrances (as defined in Exhibit B hereto and specifically incorporated herein by reference) as are superior to the security created by this Deed of Trust, all other property excluded from the lien or security interest of the Lender under the Installment Financing Contract and all property released pursuant to the provisions of the Installment Financing Contract or this Deed of Trust.

**TO HAVE AND TO HOLD,** the Premises unto the Trustee, its heirs, successors and assigns, in fee simple forever, upon the trusts, terms and conditions and for the uses and purposes hereinafter set out;

And the Grantor covenants with the Trustee that the Grantor is lawfully seized of the Premises in fee simple and has the right to convey the same in fee simple; that, except for Permitted Encumbrances, the same are free and clear of all encumbrances, and that the Grantor will warrant and defend the title to the same against the claims of all persons whomsoever arising by, under or through the Grantor.

**THIS CONVEYANCE IS MADE UPON THIS SPECIAL TRUST** that, if the Grantor shall pay the Indebtedness in accordance with the terms of the Installment Financing Contract, together with interest thereon, and any renewals or extensions thereof in whole or in part, and shall comply with all the covenants, terms and conditions of this Deed of Trust, then this conveyance shall be null and void and may be cancelled of record at the request of the Grantor.

**TO PROTECT THE SECURITY OF THIS DEED OF TRUST,** the Grantor hereby further covenants and agrees as follows:

## ARTICLE I

Section 1.1. **Payment of Indebtedness.** The Grantor will pay the Indebtedness and all other sums now or hereafter secured hereby promptly as the same shall become due as provided in the Installment Financing Contract and as permitted by law.



Section 1.2. **Taxes, Liens and Other Charges.**

(a) The Grantor will pay, or cause to be paid, before the same become delinquent, all taxes, liens, assessments and charges of every character including all utility charges, whether public or private, already levied or assessed or that may hereafter be levied or assessed upon or against the Premises; and will furnish the Beneficiary, on or before the final date whereon the same can be paid without penalty, evidence of the due and punctual payment of all such taxes, liens, assessments and charges. Nothing contained herein shall require the payment or discharge of any such tax, lien, assessment or charge by the Grantor for so long as the Grantor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings provided that such proceedings shall prevent (i) the collection thereof or other realization thereof and the sale or forfeiture of the Premises or any part thereof to satisfy the same or (ii) the enforcement thereof, against the Grantor, the Trustee, the Beneficiary and the Premises and so long as the Grantor first deposits with the Beneficiary in escrow such sums or other security as the Beneficiary may reasonably require to assure Beneficiary of the availability of sufficient monies to pay such tax, lien, assessment or charge if and when the same is finally determined to be due.

(b) The Grantor will not suffer any mechanic's, materialman's, laborer's, statutory or other lien to be created and to remain outstanding upon all or any part of the Premises. The Grantor shall be entitled to discharge such liens by bonds or to contest any such liens pursuant to the same procedure as the Grantor is entitled to contest taxes in the preceding subsection 1.2(a).

Section 1.3. **Insurance.** The Grantor shall obtain and maintain, or cause to be obtained and maintained, during the term of this Deed of Trust the insurance coverage specified in the Installment Financing Contract.

The net proceeds from any related insurance policy or policies shall be applied as provided in the Installment Financing Contract. The Beneficiary shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure if it has complied with Section 8.4 of the Installment Financing Contract.

In the event of the foreclosure of this Deed of Trust or any other transfer of title to the Premises in extinguishment of the Indebtedness secured hereby, all right, title and interest of the Grantor in and to all insurance policies then in force shall pass to the purchaser or Beneficiary, as appropriate.

Section 1.4. **Condemnation.** Any award for the taking of, or damage to, all or any part of the Premises or any interest therein upon the lawful exercise of the power of eminent domain shall be payable and applied as provided in the Installment Financing Contract. The Grantor shall give immediate notice to the Lender of the institution of any action or proceeding to condemn any part of the Premises or any interest therein of which the Grantor receives notice.

Section 1.5. **Care of Premises.**

(a) The Grantor will keep the buildings, parking areas, roads and walkways, recreational facilities, landscaping and all other Improvements of any kind now or hereafter

erected on the Real Property or any part thereof in good condition and repair (ordinary wear and tear excepted), will not commit or suffer any waste, and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Premises or any part thereof.

(b) Except in the ordinary course of its business or as provided in Section 6.1 of the Installment Financing Contract, the Grantor will not remove, demolish or alter or permit to be removed, demolished or altered the structural character of any Improvement located on the Real Property or any Fixture without the prior written consent of the Beneficiary.

(c) If the Premises or any part thereof is damaged by fire or any other cause, the Grantor will give immediate notice thereof to the Beneficiary and the Trustee.

(d) Upon reasonable prior notice to the Grantor, the Beneficiary or its representative is hereby authorized to enter upon and inspect the Premises at any time during normal business hours. The Beneficiary agrees that any confidential information about the Grantor obtained in the exercise of its rights under this subsection shall, except as otherwise required by law or regulation applicable to the Beneficiary, be maintained in a confidential manner and shall be used by the Beneficiary only for the protection of its rights and interests hereunder.

(e) The Grantor will comply promptly with all present and future laws, ordinances, rules and regulations of any governmental authority (including, but not limited to, all environmental and ecological laws and regulations) affecting the Premises or any part thereof.

**Section 1.6. Leases Affecting Premises.** The Grantor may lease any portion of the Premises only as provided in the Installment Financing Contract.

**Section 1.7. Security Agreement and Financing Statement.** With respect to the Fixtures, this Deed of Trust is hereby made and declared to be a security agreement in favor of the Beneficiary encumbering each and every item of such property included herein as a part of the Premises, and the Grantor hereby grants a security interest to the Beneficiary in and to all of such Fixtures. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Deed of Trust shall be (i) as prescribed herein or (ii) as prescribed by general law, at the Beneficiary's sole election.

This Deed of Trust shall constitute a financing statement filed as a fixture filing in accordance with Section 25-9-502 of the North Carolina General Statutes (or any amendment thereto).

**Section 1.8. Further Assurances.** At any time, and from time to time, upon request by the Beneficiary, the Grantor will make, execute and deliver or cause to be made, executed and delivered, to the Beneficiary and/or the Trustee and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Beneficiary, any and all such other and further deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the opinion of the Beneficiary, be necessary or desirable in order to effectuate, complete, or perfect, to continue and preserve or to give notice of (a) the obligations of the Grantor under the Installment Financing Contract or this Deed of Trust and (b) the lien of this Deed of Trust as a first and prior lien,

subject to Permitted Encumbrances, upon and security title in and to all of the Premises, whether now owned or hereafter acquired by the Grantor. Upon any failure by the Grantor so to do, the Beneficiary may make, execute, record, file, re-record and/or refile any and all such deeds of trust, security agreements, financing statements, continuation statements, instruments, certificates, and documents for and in the name of the Grantor and the Grantor hereby irrevocably appoints the Beneficiary as its agent and attorney-in-fact to do so.

Section 1.9. **Expenses.** The Grantor will pay or reimburse the Beneficiary and the Trustee, upon demand therefor, for all reasonable attorneys' fees, costs and expenses actually incurred by the Beneficiary and the Trustee in any suit, action, legal proceeding or dispute of any kind in which the Beneficiary and/or the Trustee is made a party or appears as party plaintiff or defendant, affecting the Indebtedness secured hereby, this Deed of Trust or the interest created herein, or the Premises, including, but not limited to, the exercise of the power of sale contained in this Deed of Trust, any condemnation action involving the Premises or any action to protect the security hereof, but excepting therefrom any negligence or willful misconduct by the Beneficiary or any breach of this Deed of Trust by the Beneficiary; and all such amounts paid by the Beneficiary shall be added to the Indebtedness.

Section 1.10. **Estoppel Affidavits.** The Grantor upon ten (10) days' prior written notice, shall furnish the Beneficiary a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Indebtedness and whether or not any offsets or defenses exist against the payment of such principal and interest.

Section 1.11. **Subrogation.** The Beneficiary shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the Indebtedness.

Section 1.12. **Books, Records, Accounts and Annual Reports.** The Grantor will keep and maintain or will cause to be kept and maintained proper and accurate books, records and accounts relating to the Premises. The Beneficiary shall have the right from time to time at all times during normal business hours to examine such books, records and accounts at the office of the Grantor or such other person or entity maintaining such books, records and accounts and to make copies or extracts thereof as the Beneficiary shall desire.

Section 1.13. **Limit of Validity.** If from any circumstances whatsoever fulfillment of any obligation pursuant to any provision of this Deed of Trust or the Installment Financing Contract, at the time performance of such obligation shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then ipso facto the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Deed of Trust or the Installment Financing Contract that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity.

Section 1.14. **Changes in Ownership.** The Grantor hereby acknowledges to the Beneficiary that (a) the identity and expertise of the Grantor were and continue to be material circumstances upon which the Beneficiary has relied in connection with, and which constitute valuable consideration to the Beneficiary for, the extending to the Grantor of the Indebtedness and (b) any change in such identity or expertise could materially impair or jeopardize the

security for the payment of the Indebtedness granted to the Beneficiary by this Deed of Trust. The Grantor therefore covenants and agrees with the Beneficiary, as part of the consideration for the extending to the Grantor of the Indebtedness, that the entire Indebtedness shall, at the option of the Beneficiary, become immediately due and payable, should the Grantor further encumber, pledge, convey, transfer or assign any or all of its interest in the Premises or any portion thereof without the prior written consent of the Beneficiary or except as otherwise permitted herein or in the Installment Financing Contract.

**Section 1.15. Use and Management of the Premises.** The Grantor shall not alter or change the use of the Premises or abandon the Premises without the prior written consent of the Beneficiary or except as otherwise permitted herein or in the Installment Financing Contract.

**Section 1.16. Acquisition of Collateral.** The Grantor shall not acquire any portion of the personal property, if any, covered by this Deed of Trust, subject to any security interest, conditional sales contract, title retention arrangement or other charge or lien taking precedence over the security title and lien of this Deed of Trust without the prior written consent of the Beneficiary.

**Section 1.17. Hazardous Material.**

(a) The Grantor represents, warrants and agrees that, except as previously disclosed to the Lender in writing: (i) the Grantor has not used or installed any Hazardous Material (as hereinafter defined) in violation of applicable Environmental Laws (as hereinafter defined) on, from or in the Premises and, to the best of the Grantor's actual knowledge, no other person has used or installed any Hazardous Material on, from or in the Premises, except as a necessary incident to the normal operation and maintenance of the Premises by the Grantor as facilities for the provision of governmental services and by the previous owner as banking facilities; (ii) to the best of the Grantor's actual knowledge, no other person has violated any applicable Environmental Laws relating to or affecting the Premises; (iii) to the best of the Grantor's actual knowledge, the Premises are presently in compliance with all applicable Environmental Laws, and there are no facts or circumstances presently existing upon or under the Premises, or relating to the Premises, which may violate any applicable Environmental Laws, and there is not now pending or threatened any action, suit, investigation or proceeding against the Grantor or the Premises (or against any other party relating to the Premises) seeking to enforce any right or remedy against the Grantor or the Premises under any of the Environmental Laws; (iv) the Premises shall be kept free of Hazardous Materials to the extent required by applicable Environmental Laws, and shall not be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, or process Hazardous Materials, except as a necessary incident to the normal operation and maintenance of the Premises by the Grantor as facilities for the provision of governmental services and any additional Improvements on the Real Property; (v) the Grantor shall not cause or permit the installation of Hazardous Materials in, on, over or under the Premises or a Release (as hereinafter defined) of Hazardous Materials unto or from the Premises or suffer the presence of Hazardous Materials in, on, over or under the Premises in violation of applicable Environmental Laws; (vi) the Grantor shall comply with Environmental Laws applicable to the Premises, all at no cost or expense to the Beneficiary or the Trustee; (vii) the Grantor has obtained and the Grantor will at all times continue to obtain and/or maintain all licenses, permits and/or other governmental or regulatory actions necessary for the Premises

to comply with applicable Environmental Laws (the “Permits”) and the Grantor will be and at all times remain in full compliance with the terms and provisions of the Permits; (viii) to the best of the Grantor’s actual knowledge, there has been no Release of any Hazardous Materials on or from the Premises in violation of applicable Environmental Laws, whether or not such Release emanated from the Premises or any contiguous real estate, which has not been abated and any resulting violation of applicable Environmental Laws abated; (ix) the Grantor shall immediately give the Beneficiary oral and written notice in the event that the Grantor receives any notice from any governmental agency, entity, or any other party with regard to Hazardous Materials on, from or affecting the Premises and the Grantor shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Premises in accordance with all applicable Environmental Laws.

(b) To the extent permitted by law, including the provisions of Section 160A-20 of the General Statutes of North Carolina, as amended (“G.S. § 160A-20”), the Grantor hereby agrees to indemnify the Beneficiary and the Trustee and hold the Beneficiary and the Trustee harmless from and against any and all liens, demands, defenses, suits, proceedings, disbursements, liabilities, losses, litigation, damages, judgments, obligations, penalties, injuries, costs, expenses (including, without limitation, reasonable attorneys’ and experts’ fees) and claims of any and every kind whatsoever paid, incurred, suffered by, or asserted against the Beneficiary, the Trustee and/or the Premises for, with respect to, or as a direct or indirect result of: (i) the presence of Hazardous Materials in, on or under the Premises, or the escape, seepage, leakage, spillage, discharge, emission or Release on or from the Premises of any Hazardous Materials regardless of whether or not caused by or within the control of the Grantor; (ii) the violation of any Environmental Laws applicable to the Premises or the Grantor, whether or not caused by or within the control of the Grantor; (iii) the failure by the Grantor to comply fully with the terms and provisions of this Section; (iv) the violation of any of the Environmental Laws in connection with any other property owned by the Grantor, which violation gives or may give rise to any rights whatsoever in any party with respect to the Premises by virtue of any of the Environmental Laws, whether or not such violation is caused by or within the control of the Grantor; or (v) any warranty or representation made by the Grantor in subsection (a) of this Section being false or untrue in any material respect.

(c) In the event the Beneficiary has a reasonable basis to suspect that the Grantor has violated any of the covenants, warranties, or representations contained in this Section, or that the Premises are not in compliance with the applicable Environmental Laws for any reason, the Grantor shall take such steps as the Beneficiary reasonably requires by notice to the Grantor in order to confirm or deny such occurrences, including, without limitation, the preparation of environmental studies, surveys or reports. In the event that the Grantor fails to take such action, the Beneficiary may take such action as the Beneficiary reasonably believes necessary to protect its interest, and the cost and expenses of all such actions taken by the Beneficiary, including, without limitation, the Beneficiary’s reasonable attorneys’ fees, shall be added to the Indebtedness.

(d) For purposes of this Deed of Trust: (i) “Hazardous Material” or “Hazardous Materials” means and includes, without limitation, (a) solid or hazardous waste, as defined in the Resource Conservation and Recovery Act of 1980, or in any applicable state or local law or

regulation, (b) hazardous substances, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), or in any applicable state or local law or regulation, (c) gasoline, or any other petroleum product or by-product, (d) toxic substances, as defined in the Toxic Substances Control Act of 1976, or in any applicable state or local law or regulation or (e) insecticides, fungicides, or rodenticides, as defined in the Federal Insecticide, Fungicide, and Rodenticide Act of 1975, or in any applicable state or local law or regulation, as each such Act, statute or regulation may be amended from time to time; (ii) “Release” shall have the meaning given such term in the Environmental Laws, including, without limitation, Section 101(22) of CERCLA; and (iii) “Environmental Law” or “Environmental Laws” shall mean any “Super Fund” or “Super Lien” law, or any other federal, state or local statute, law, ordinance or code, regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials as may now or at any time hereafter be legally in effect, including, without limitation, the following, as same may be amended or replaced from time to time, and all regulations promulgated and officially adopted thereunder or in connection therewith: the Super Fund Amendments and Reauthorization Act of 1986 (“SARA”); CERCLA; The Clean Air Act (“CAA”); the Clean Water Act (“CWA”); The Toxic Substance Control Act (“TSCA”); the Solid Waste Disposal Act (“SWDA”), as amended by the Resource Conservation and Recovery Act (“RCRA”); the Hazardous Waste Management System; and the Occupational Safety and Health Act of 1970 (“OSHA”). The obligations and liabilities of the Grantor under this Section which arise out of events or actions occurring prior to the satisfaction of this Deed of Trust shall survive the exercise of the power of sale under or foreclosure of this Deed of Trust, the delivery of a deed in lieu of foreclosure of this Deed of Trust, the cancellation or release of record of this Deed of Trust, and/or the payment in full of the Indebtedness.

(e) The parties expressly agree that an event under the provisions of this Section which may be deemed to be a default under this Deed of Trust shall not be a default until the Grantor has received notice of such event. Further, in terms of compliance with future governmental laws, regulations or rulings applicable to environmental conditions, the Grantor shall be permitted to afford itself of any defense or other protection against the application or enforcement of any such law, regulation or ruling.

## ARTICLE II

Section 2.1. **Events of Default.** The terms “Default”, “Event of Default” or “Events of Default”, wherever used in this Deed of Trust, shall mean any one or more of the following events:

(a) Failure by the Grantor to pay when due, any Installment Payment as required by the Installment Financing Contract or by this Deed of Trust.

(b) Failure by the Grantor to duly observe or perform after notice and lapse of any applicable grace period any other term, covenant, condition or agreement of this Deed of Trust.

(c) Any warranty of the Grantor contained in this Deed of Trust proves to be untrue or misleading in any material respect.

(d) The occurrence of any “Event of Default” under the Installment Financing Contract.

**Section 2.2. Acceleration upon Default, Additional Remedies.** In the event an Event of Default shall have occurred and is continuing, the Beneficiary may declare all Indebtedness to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter, the Beneficiary may take any one or more of the following actions:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court as hereinafter provided and without regard to the adequacy of its security, enter upon and take possession of the Premises, or any part thereof, in its own name or in the name of the Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Premises, or part thereof or interest therein, increase the income therefrom or protect the security hereof, and, with or without taking possession of the Premises, sue for or otherwise collect the rents and issues thereof, including those rents and issues past due and unpaid, and apply the same, less costs and expenses of operation and collection including attorney’s fees, upon any Indebtedness, all in such order as the Beneficiary may determine. The entering upon and taking possession of the Premises, the collection of such rents and issues and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of Event of Default hereunder or invalidate any act done in response to such Default or pursuant to such notice of Default and notwithstanding the continuance in possession of the Premises or the collection, receipt and application of rents and issues, the Trustee or the Beneficiary shall be entitled to exercise every right provided for in any instrument securing or relating to the Indebtedness or by law upon occurrence of any Event of Default, including the right to exercise the power of sale.

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver as hereinafter provided, specially enforce any of the covenants hereof, or cause the Trustee to foreclose this Deed of Trust by power of sale.

(c) Exercise any or all of the remedies available to a secured party under any applicable laws.

Notwithstanding any provision to the contrary in this Deed of Trust, no deficiency judgment may be rendered against the Grantor in any action to collect any of the Indebtedness secured by this Deed of Trust in violation of G.S. § 160A-20, including, without limitation, any deficiency judgment for amounts that may be owed under the Installment Financing Contract or this Deed of Trust when the sale of all or any portion of the Premises is insufficient to produce enough money to pay in full all remaining Indebtedness under the Installment Financing Contract or this Deed of Trust, and the taxing power of the Grantor is not and may not be pledged directly or indirectly or contingently to secure any moneys due or secured under this Deed of Trust.

**Section 2.3. Foreclosure by Power of Sale.** Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall notify the Trustee and

shall deposit with the Trustee this Deed of Trust and such receipts and evidence of expenditures made and secured hereby as the Trustee may require.

Upon application of the Beneficiary, it shall be lawful for and the duty of the Trustee, and the Trustee is hereby authorized and empowered, to expose to sale and to sell the Premises at public auction for cash, after having first complied with all applicable requirements of laws of the State of North Carolina with respect to the exercise of powers of sale contained in deeds of trust, and upon such sale the Trustee shall convey title to the purchaser in fee simple. After retaining from the proceeds of such sale just compensation for the Trustee's services and all expenses incurred by the Trustee, including the Trustee's commission not exceeding one percent (1%) of the bid and reasonable attorneys' fees for legal services actually performed, the Trustee shall apply the residue of the proceeds first to the payment of all sums expended by the Beneficiary under the terms of this Deed of Trust; second, to the payment of the Indebtedness secured hereby; and the balance, if any, shall be paid to the Grantor. The Grantor agrees that in the event of sale hereunder, the Beneficiary shall have the right to bid thereat. The Trustee may require the successful bidder at any sale to deposit immediately with the Trustee cash or certified check in an amount not to exceed twenty-five percent (25%) of the bid, provided notice of such requirement is contained in the advertisement of the sale. The bid may be rejected if the deposit is not immediately made and thereupon the next highest bidder may be declared to be the purchaser. Such deposit shall be refunded in case a resale is had; otherwise, it shall be applied to the purchase price.

**Section 2.4. Performance by the Beneficiary on Defaults by the Grantor.** If the Grantor shall default in the payment, performance or observance of any term, covenant or condition of this Deed of Trust, the Beneficiary may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by the Beneficiary in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by the Grantor to the Beneficiary with interest thereon at the rate provided in the Installment Financing Contract. The Beneficiary shall be the sole judge of the necessity for any such actions and of the amounts to be paid but no such action shall be taken unreasonably. The Beneficiary is hereby empowered to enter and to authorize others to enter upon the Premises or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to the Grantor or any person in possession holding under the Grantor.

**Section 2.5. Receiver.** If an Event of Default shall have occurred and is continuing and such Event of Default as to Events of Default occurring under subsections (b), (c) and (d) of Section 2.1 continues uncured for a period of thirty (30) days or more after notice of such Event of Default is given by the Beneficiary to the Grantor, the Beneficiary, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right without notice and without regard to the adequacy or value of any security for the Indebtedness secured hereby or the solvency of any party bound for its payment, to the appointment of a receiver or receivers to take possession of and to operate the Premises and to collect and apply the rents and issues thereof. The Grantor hereby irrevocably consents to such appointment, provided the Grantor receives notice of any application therefor. Any such receiver or receivers shall have all of the rights and powers permitted under the laws of the State of North Carolina and all the powers and duties of the Beneficiary in case of entry as provided in subsection (a) of Section 2.2, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Premises unless



such receivership is sooner terminated. Subject to the provisions of Section 2.2, the Grantor will pay to the Beneficiary upon demand all reasonable expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions of this Section; and all such expenses shall be secured by this Deed of Trust.

**Section 2.6. Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws.** The Grantor agrees, to the full extent permitted by law, that in case of a Default hereunder, neither the Grantor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension, homestead, exemption or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, or the absolute sale of the Premises, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and the Grantor, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien hereof.

**Section 2.7. Leases.** The Beneficiary and the Trustee, or either of them, at their option and to the extent permitted by law, are authorized to foreclose this Deed of Trust subject to the rights of any tenants of the Premises, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by the Grantor, a defense to any proceedings instituted by the Beneficiary and the Trustee to collect the sums secured hereby.

**Section 2.8. Discontinuance of Proceedings and Restoration of the Parties.** In case the Beneficiary and the Trustee, or either of them, shall have proceeded to enforce any right, power or remedy under this Deed of Trust by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Beneficiary and the Trustee, or either of them, then and in every such case the Grantor and the Beneficiary and the Trustee, and each of them, shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Beneficiary and the Trustee, and each of them, shall continue as if no such proceeding had been taken.

**Section 2.9. Remedies Not Exclusive.** Subject to Article XV of the Installment Financing Contract and Section 2.2 of this Deed of Trust, the Trustee and the Beneficiary, and each of them, shall be entitled to enforce payment and performance of any Indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or any other agreement securing or relating to the Indebtedness secured hereby or any laws now or hereafter in force, notwithstanding some of the Indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect the Trustee's or the Beneficiary's right to realize upon or enforce any other security now or hereafter held by the Trustee or the Beneficiary, it being agreed that the Trustee and the Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by the Beneficiary or the Trustee in

such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to the Trustee or the Beneficiary is intended to be exclusive of any other remedy herein or by law provided or preclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every lawful power or remedy given by any instrument securing or relating to the Indebtedness secured hereby to the Trustee or the Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Trustee or the Beneficiary and either of them may pursue inconsistent remedies.

Section 2.10. **Waiver.** No delay or omission of the Beneficiary or the Trustee to exercise any right, power or remedy accruing upon any Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such Default, or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary and the Trustee, and each of them, may be exercised from time to time and as often as may be deemed expedient by the Beneficiary and the Trustee, and each of them. No consent or waiver, expressed or implied, by the Beneficiary to or of any breach or Default by the Grantor in the performance of the obligations thereof hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or Default in the performance of the same or any other obligations of the Grantor hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary of its rights hereunder or impair any rights, powers or remedies consequent on any breach or Default by the Grantor.

Section 2.11. **Suits to Protect the Premises.** The Beneficiary and the Trustee, and each of them, shall have the power (a) to institute and maintain such suits and proceedings as they may deem expedient to prevent any impairment of the Premises by any acts which may be unlawful or in violation of this Deed of Trust, with notice of commencement of such suits and proceedings to be given to the Grantor, (b) to preserve or protect their interest in the Premises and in the rents and issues arising therefrom, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Beneficiary.

Section 2.12. **The Beneficiary May File Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Grantor, its creditors or its property, the Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Beneficiary allowed in such proceedings for the entire amount due and payable by the Grantor under this Deed of Trust at the date of the institution of such proceedings and for any additional amount which may become due and payable by the Grantor hereunder after such date.

Section 2.13. **Waiver of Rights.** By execution of this Deed of Trust and to the extent permitted by law, the Grantor expressly: acknowledges the right to accelerate the Indebtedness and the power of sale given herein to the Trustee to sell the Premises by foreclosure under power

of sale upon default by the Grantor and without any notice other than such notice (if any) as is specifically required to be given by law or under the provisions of this Deed of Trust; waives any and all rights of the Grantor to appraisal, dower, curtesy and homestead rights to the extent permitted by applicable law; acknowledges that the Grantor has read this Deed of Trust and any and all questions regarding the legal effect of this Deed of Trust and its provisions have been explained fully to the Grantor and the Grantor has consulted with counsel of its choice prior to executing this Deed of Trust; and acknowledges that all waivers of the aforesaid rights of the Grantor have been made knowingly, intentionally and willingly by the Grantor as part of a bargained for transaction.

### ARTICLE III

Section 3.1. **Successors and Assigns.** This Deed of Trust shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, legal representatives, successors and assigns. Whenever a reference is made in this Deed of Trust to the Grantor, the Trustee or the Beneficiary such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of the Grantor, the Trustee or the Beneficiary, respectively.

Section 3.2. **Terminology.** All personal pronouns used in this Deed of Trust, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and articles in this Deed of Trust are for convenience only and neither limit nor amplify the provisions of this Deed of Trust itself, and all references herein to articles, sections or subsections shall refer to the corresponding articles, sections or subsections of this Deed of Trust unless specific reference is made to articles, sections or subsections of another document or instrument.

Section 3.3. **Severability.** If any provision of this Deed of Trust or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Deed of Trust and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Section 3.4. **Governing Law.** This Deed of Trust shall be construed and governed according to the laws of the State of North Carolina.

Section 3.5. **Notices, Demands and Requests.** All notices, demands or requests provided for or permitted to be given pursuant to this Deed of Trust must be in writing and shall be deemed to have been properly given if served or given by personal delivery or by being deposited in the United States Mail, postage prepaid, registered or certified return receipt requested, and addressed to the addresses as follows: (a) if to the Grantor, County of Henderson, North Carolina, 113 North Main Street, Hendersonville, North Carolina 28792, Attention: Finance Director, (b) if to the Beneficiary, Branch Banking and Trust Company, 5130 Parkway Plaza Boulevard, Building 9, Charlotte, North Carolina 28217.

All notices, demands and requests shall be effective upon personal delivery or upon being deposited in the United States Mail. However, the time period in which a response to any notice,

demand or request must be given, if any, shall commence to run from the date of receipt of the notice, demand or request by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent. By giving at least thirty (30) days' written notice thereof, the Grantor, the Trustee or the Beneficiary shall have the right from time to time and at any time during the term of this Deed of Trust to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

**Section 3.6. Appointment of Successor to the Trustee.** The Beneficiary shall at any time have the irrevocable right to remove the Trustee herein named without notice or cause and to appoint a successor thereto by an instrument in writing, duly acknowledged, in such form as to entitle such written instrument to be recorded in the State of North Carolina, and in the event of the death or resignation of the Trustee named herein, the Beneficiary shall have the right to appoint a successor thereto by such written instrument, and any Trustee so appointed shall be vested with the title to the Premises and shall possess all the powers, duties and obligations herein conferred on the Trustee in the same manner and to the same extent as though such were named herein as the Trustee .

**Section 3.7. The Trustee's Powers.** At any time, or from time to time, without liability therefor and without notice, upon written request of the Beneficiary and presentation of this Deed of Trust, and without affecting the personal liability of any person for payment of the Indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of the Premises, the Trustee may (i) reconvey any part of the Premises, (ii) consent in writing to the making of any map or plat thereof, (iii) join in granting any easement therein, or (iv) join in any extension agreement or any agreement subordinating the lien or charge hereof.

**Section 3.8. The Beneficiary's Powers.** Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Premises not then or theretofore released as security for the full amount of all unpaid obligations, the Beneficiary may, from time to time and without notice (i) release any person so liable, (ii) extend the maturity or alter any of the terms of any such obligation, (iii) grant other indulgences, (iv) cause to be released or reconveyed at any time at the Beneficiary's option, any parcel, portion or all of the Premises, (iii) take or release any other or additional security for any obligation herein mentioned, or (iv) make compositions or other arrangements with debtor in relation thereto. The provisions of Section 45-45.1 of the General Statutes of North Carolina, as amended, or any similar statute hereafter enacted in replacement or in substitution thereof shall be inapplicable to this Deed of Trust.

**Section 3.9. Release of Premises.**

(a) If no Event of Default under this Deed of Trust shall have occurred and shall continue to exist, the Grantor may at any time or times grant easements, licenses, rights of way and other rights or privileges in the nature of easements with respect to any part of the Premises, and the Grantor may release existing interests, easements, licenses, rights of way and other rights or privileges with or without consideration, and the Beneficiary agrees that it shall execute and

deliver and will cause, request or direct the Deed of Trust Trustee to execute and deliver any instrument necessary or appropriate to grant or release any such interest, easement, license, right of way or other right or privilege but only upon receipt of (i) a copy of the instrument of grant or release, (ii) a written application signed by the Grantor requesting such instrument and (iii) a certificate executed by the Grantor and reasonably acceptable to the Beneficiary to the effect that the grant or release (A) is not detrimental to the effective use of the Premises or the proper conduct of the operations of the Grantor at the Premises and (B) will not impair the value of the security under this Deed of Trust in contravention of the provisions hereof.

(b) Upon the Grantor exercising its rights to dispose of any Fixtures in accordance with the provisions of Section 6.1 of the Installment Financing Contract, the Beneficiary and the Trustee will execute all releases or other documents necessary to effectuate the release of the respective Fixtures from the lien of this Deed of Trust.

**Section 3.10. Acceptance by the Trustee.** The Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made of public record as provided by law.

**Section 3.11. Miscellaneous.** The covenants, terms and conditions herein contained shall bind, and the benefits and powers shall inure to the respective heirs, executors, administrators, successors and assigns of the parties hereto. Whenever used herein, the singular number shall include the plural, the plural the singular, and the term “Beneficiary” shall include any payee of the indebtedness hereby secured and any transferee or assignee thereof, whether by operation of law or otherwise.

**IN WITNESS WHEREOF**, the Grantor has caused this Deed of Trust to be executed under seal the day and year first above written.

**COUNTY OF HENDERSON, NORTH CAROLINA**

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

William L. Moyer  
Chairman of the Board of Commissioners for  
the County of Henderson, North Carolina

[SEAL]

ATTEST:

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



**EXHIBIT A**

**REAL PROPERTY DESCRIPTION**

All of those certain tracts or parcels of land and improvements thereon located in Henderson County, North Carolina, and being more particularly described as follows:

[Please see Attached]



**EXHIBIT B**  
**PERMITTED ENCUMBRANCES**

Permitted encumbrances (the "Permitted Encumbrances") are as follows:

(1) easements, exceptions or reservations (i) for the purpose of pipelines, telephone lines, cable television lines, telegraph lines, power lines and substations, roads, streets, alleys, highways, parking, railroad purposes, drainage and sewerage purposes, dikes, canals, laterals, ditches, transportation of oil, gas or other materials, removal of oil, gas or other materials, and other like purposes, or (ii) for the joint or common use of real property, facilities and equipment, which exist on the Closing Date (as defined in the Installment Financing Contract) or arise under the provisions of Section 3.9 of this Deed of Trust and which, in the case of either (i) or (ii), in the aggregate do not materially interfere with or impair the operation of the Premises for the purposes for which they are or may reasonably be expected to be used;

(2) the rights of the Lender under the Installment Financing Contract;

(3) the lien of this Deed of Trust;

(4) any lease by the Grantor in conformity with the provisions of Section 6.11 of the Installment Financing Contract; and

(5) any other liens, encumbrances, charges and restrictions on the Real Property described in Schedule B of the commitment of the issuer of the title insurance policy required pursuant to Section 6.5 of the Installment Financing Contract to issue such policy or approved in writing by the Lender.