

REQUEST FOR BOARD ACTION

**HENDERSON COUNTY
BOARD OF COMMISSIONERS**

**PUBLIC HEARING
TO CONSIDER**

APPROVAL OF THE EXECUTION AND DELIVERY OF AN INSTALLMENT FINANCING CONTRACT TO PAY FOR THE CAPITAL COSTS OF CERTAIN IMPROVEMENTS AT BLUE RIDGE COMMUNITY COLLEGE, THE CONSTRUCTION OF A CLASSROOM BUILDING SERVING APPLE VALLEY MIDDLE SCHOOL AND NORTH HENDERSON HIGH SCHOOL AND OTHER PROJECT RELATED IMPROVEMENTS, AND THE REFINANCING OF CERTAIN PRIOR INSTALLMENT PAYMENT OBLIGATIONS OF THE COUNTY

APRIL 5, 2010 7:00 P.M.

- ATTACHMENTS:**
- 1) Extract of Public Hearing Minutes
 - 2) Newspaper Notice/Publisher's Affidavit
 - 3) Summary of Refinancing Opportunity
 - 4) FY2010 Capital Projects Financing Summary
 - 5) Draft Installment Financing Contract and Deed of Trust

SUMMARY OF REQUEST:

A public hearing to hear comments on the execution and delivery of a proposed installment financing contract is required by the State of North Carolina pursuant to N.C.G.S. 160A-20. A 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 19, 2010.

The proposed contract being considered is to finance the capital costs of certain repair and renovation projects at Blue Ridge Community College, the construction of a new classroom building to serve both Apple Valley Middle School and North Henderson High School to include certain cafeteria and locker room improvements, and the refinancing of certain "prior" installment financing obligations of the County due to favorable current market rates producing positive savings.

Final financing documents will be presented to the Board of Commissioners at the May 3, 2010 regularly scheduled meeting for consideration and approval.

BOARD ACTION REQUESTED:

No Board action required.

Motion Suggested:

No motion necessary.

EXTRACTS FROM MINUTES OF THE BOARD OF COMMISSIONERS

A Regular Meeting of the Board of Commissioners (the "*Board of Commissioners*") of the County of Henderson, North Carolina (the "*County*") was held on Monday, April 5, 2010 at 7:00 p.m. in the Commissioners' Meeting Room, Henderson County Historic Courthouse, 1 Historic Courthouse Square, Hendersonville, North Carolina.

Commissioners Present:

Commissioners Absent:

* * * * *

The Chairman of the Board (the "*Chairman*") reported to the Board that notice of a public hearing to receive public comments on the proposed execution and delivery by the County of (1) an Installment Financing Contract (the "*Contract*") to pay the capital costs of (a) improvements at Blue Ridge Community College consisting of (i) replacement of the Spearman Building roof and (ii) construction, repair and renovation projects at various buildings to provide HVAC/energy efficiency and safety/ADA, (b) construction of a classroom building serving both Apple Valley Middle School and North Henderson High School, including related site improvements therefor, a cafeteria addition and locker room renovations (collectively, the "*Projects*"), and (c) refinancing its installment payment obligations under (i) an installment financing contract dated as of January 15, 2001 between the County and the Corporation (the "*2001 Contract*"), (ii) a financing agreement and deed of trust dated as of February 10, 2000 (the "*2000 Contract*"), (iii) a financing agreement and deed of trust dated as of April 10, 2002 (the "*2002 Contract*"), (iv) an installment financing contract dated as of November 27, 2006 (the "*2006 Contract*," and (v) an installment financing contract dated as of May 10, 2007 (the "*2007 Contract*," and collectively with the 2001 Contract, the 2000 Contract, the 2002 Contract and the 2006 Contract, the "*Prior Contracts*") and (2) a deed of trust and security agreement to create a security interest in the real property on which Apple Valley Middle School or North Henderson High School or both are located and the improvements thereon was published on March 19, 2010 stating that the Board would hold a public hearing thereon on April 5, 2010 at 7:00 p.m.

The Chairman then announced that the Board would hear anyone who wished to be heard on the questions of the proposed Contract and the Projects and Prior Contracts to be financed and refinanced thereby.

The following people spoke at the public hearing:

Commissioner _____ moved that the public hearing be closed and the motion was unanimously adopted.

HELD the 5th day of April, 2010.

Clerk to the Board of Commissioner
County of Henderson, North Carolina

Notice of Public Hearing
Resolution adopted at March 1, 2010 meeting

\$266.73

CERTIFICATION OF PUBLICATION

March 19, 2010

I, Jan Sullivan, affirming the following under the penalties of perjury state:

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

03/19/10

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

This 19th day of March, 2009.

(Signed) Jan Sullivan

Sworn to and subscribed before me, this 19th day of March, 2010.

Deborah H. Owen Notary Public
Deborah H. Owen

My Commission Expires March 1, 2011

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NOTICE OF PUBLIC HEARING

At its March 1, 2010 meeting, the Board of Commissioners (the "Board of Commissioners") of the County of Henderson, North Carolina (the "County") adopted a resolution which

1. Authorized the County to proceed to pay the capital costs of (a) improvements at Blue Ridge Community College consisting of (i) replacement of the Spearman Building roof and (ii) construction, repair and renovation projects at various buildings to provide HVAC energy efficiency and safety/ADA, (b) construction of a classroom building serving both Apple Valley Middle School and North Henderson High School including related site improvements therefor, a cafeteria addition and locker room renovations (collectively, the "Projects"), and (c) refinancing its installment payment obligations under (i) an installment financing contract dated as of January 15, 2001 between the County and the Corporation (the "2001 Contract"), (ii) a financing agreement and deed of trust dated as of February 10, 2000 (the "2000 Contract"), (iii) a financing agreement and deed of trust dated as of April 10, 2002 (the "2002 Contract"), (iv) an installment financing contract dated as of November 27, 2006 (the "2006 Contract"), and (v) an installment financing contract dated as of May 10, 2007 (the "2007 Contract," and collectively with the 2001 Contract, the 2000 Contract, the 2002 Contract and the 2006 Contract, the "Prior Contracts"), pursuant to an installment financing contract (the "Contract"), in a principal amount not to exceed \$30,000,000 under which the County will make certain installment payments in order to make the Projects and the projects financed under the Prior Contracts available to the County;

2. Authorized the County to proceed to provide, in connection with the Contract, as grantor, a deed of trust and security agreement (the "Deed of Trust")

property on which Apple Valley Middle School or North Henderson High School or both are located (collectively, the "Sites"), as set forth below together with such other property as may be required (the "Mortgaged Property"), will be mortgaged by the County to create a lien thereon for the benefit of the entity or its assigns, providing the funds to the County under the Contract.

Apple Valley Middle School is located at 43 Fruitland Road, Hendersonville, North Carolina. North Henderson High School is located at 35 Fruitland Road, Hendersonville, North Carolina. The Mortgaged Property will be subject to the mortgage provided in the Deed of Trust. On payment by the County of all installment payments due under the Contract, the Deed of Trust and any lien created thereunder will terminate and the County's title to the Mortgaged Property will be unencumbered.

NOTICE IS HEREBY GIVEN pursuant to Sections 160A-20 of the General Statutes of North Carolina that on April 15, 2010 at 7:00 p.m. in the Commissioners Meeting Room, Henderson County Historic Courthouse, Historic Courthouse Square, Hendersonville, North Carolina, a public hearing will be conducted concerning the approval of the execution and delivery of the Contract and the County's acquisition of the Projects. All interested parties are invited to present comments at the public hearing regarding the execution and delivery of the Contract and the Projects and the Prior Projects to be financed and refinanced thereby.

/s/ Teresa Wilson
Clerk to the Board of Commissioners
County of Henderson,
North Carolina

(3/19)
N000047426

Summary of Refinancing Opportunity

- Due to the low current market rates, the County has the opportunity to refinance certain outstanding debt and produce positive savings
- The refinancing will be combined with the County's new money issue to finance the work at Apple Valley Middle School, N. Henderson High School and the Community College
- **Proposed Refinancing Structure:**
 - The County will issue new Limited Obligation Bonds under NC General Statute 160A-20 to refinance some or all of the following issues:
 - Series 2001 Clear Creek and Etowah Elementary Schools COPs (maturities 2012 – 2021)
 - 2000 Fletcher Elementary School Installment Financing Contract
 - 2002 Middle School Installment Financing Contract
 - 2006 Cane Creek Sewer Installment Financing Contract
 - 2007 Etowah Library Installment Financing Contract
 - The County will not sell any refinancing bonds unless they achieve 3% aggregate present value savings
- **Net Present Value Savings:**
 - Savings reflect current market conditions as of March 29th
 - \$497,635 or 3.11%
 - Annual savings of approximately \$46,080 per year for fiscal years 2011 - 2021

HENDERSON COUNTY

FY2010 CAPITAL PROJECTS FINANCING SUMMARY

A)

Funding Completed:

\$4,270,400 (issued Qualified School Construction Bonds, "QSCBs", in December 2009)

Project Expenditures:

\$2,192,500 (part of the \$4M in school repair/renovation projects approved for FY2010 funding)

\$2,077,900 (\$1,595,900 AVM/North High HVAC project; \$482,000 AVM/North Classroom Bldg)

\$4,270,400

B)

New Funding to be Completed:

\$ 1,807,500 (Qualified Zone Academy Bonds, "QZABs", to be issued in FY2010)

\$ 2,000,000 (Recovery Zone Economic Development Bonds, "RZEDBs", to be issued in FY2010)

\$ 6,505,000 (Recovery Zone Economic Development Bonds, "RZEDBs", to be issued in FY2010)

\$10,312,500

Project Expenditures:

\$ 1,807,500 (balance of the \$4M in school repair/renovation projects approved for FY2010)

\$ 2,000,000 (BRCC campus-wide facility repair and renovation projects approved for FY2010)

\$ 6,505,000 (balance required for the AVM/North High Classroom Bldg project)

\$10,312,500

INSTALLMENT FINANCING CONTRACT

between

HENDERSON COUNTY GOVERNMENTAL FINANCING CORPORATION

and

COUNTY OF HENDERSON, NORTH CAROLINA

Dated as of
June 1, 2010

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.

J. Carey McLelland
Finance Director
County of Henderson, North Carolina

INSTALLMENT FINANCING CONTRACT

THIS INSTALLMENT FINANCING CONTRACT, dated as of June 1, 2010 (this "*Contract*"), is between **HENDERSON COUNTY GOVERNMENTAL FINANCING CORPORATION** (the "*Corporation*"), a nonprofit corporation duly created, existing and in good standing under the laws of the State of North Carolina (the "*State*"), and the **COUNTY OF HENDERSON, NORTH CAROLINA** (the "*County*"), a political subdivision validly existing under the Constitution, statutes and laws of the State.

WITNESSETH:

WHEREAS, the County is a duly created and validly existing political subdivision, organized under and by virtue of the Constitution and laws of the State;

WHEREAS, the County has the power, pursuant to Section 160A-20 of the General Statutes of North Carolina, to enter into installment contracts to finance the purchase of real or personal property;

WHEREAS, the Board of Commissioners of the County (the "*Board*") has previously determined, and hereby further determines that it is in the best interest of the County to (1) finance (a) improvements at Blue Ridge Community College consisting of (i) replacement of the Spearman Building roof and (ii) construction, repair and renovation projects at various buildings to provide HVAC/energy efficiency and safety/ADA, (b) construction of a classroom building serving both Apple Valley Middle School and North Henderson High School, including related site improvements therefor, a cafeteria addition and locker room renovations (collectively, the "*Projects*") and (2) refinance its installment payment obligations under (i) an installment financing contract dated as of January 15, 2001 between the County and the Corporation (the "*2001 Contract*"), (ii) a financing agreement and deed of trust dated as of February 10, 2000 between the County and Branch Banking and Trust Company (the "*2000 Contract*"), (iii) a financing agreement and deed of trust dated as of April 10, 2002 between the County and Branch Banking and Trust Company (the "*2002 Contract*"), (iv) an installment financing agreement dated as of November 27, 2006 between the County and Banc of America Public Capital Corp (the "*2006 Contract*") and (v) an installment financing agreement dated as of May 10, 2007 between the County and Banc of America Public Capital Corp (the "*2007 Contract*," and collectively with the 2001 Contract, the 2000 Contract, the 2002 Contract and the 2006 Contract, the "*Prior Contracts*");

WHEREAS, to obtain funds to finance the Projects and refinance the Prior Contracts, the County has entered into this Contract with the Corporation under which it will make Installment Payments and Additional Payments (as such terms are defined herein) in consideration thereof;

WHEREAS, there will be executed and delivered pursuant to a certain Indenture of Trust dated as of June 1, 2010 (the "*Indenture*") between the Corporation and U.S. Bank National Association, as trustee (the "*Trustee*"), Limited Obligation Bonds (County of Henderson, North Carolina) in one or more series (the "*Bonds*") evidencing proportionate undivided interests in rights to receive certain Revenues (as defined below) under this Contract;

WHEREAS, pursuant to the Indenture, the Corporation has assigned the Trust Estate (as defined in the Indenture) to the Trustee;

WHEREAS, the Bonds evidence proportionate undivided interests in the rights to receive certain Revenues and shall be payable solely from the sources provided in the Indenture;

WHEREAS, the execution, performance and delivery of this Contract have been authorized, approved and directed by the Board by a resolution passed and adopted by the Board on May 3, 2010;

WHEREAS, the execution, delivery and performance of this Contract by the Corporation, and the assignment by the Corporation to the Trustee, pursuant to the Indenture, of the Trust Estate, have been authorized, approved and directed by all necessary and appropriate action of the Corporation;

WHEREAS, the obligation of the County to make Installment Payments and Additional Payments shall not constitute a general obligation or other indebtedness of the County within the meaning of the Constitution of the State; 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, to secure further the obligation of the County hereunder, the County has entered into a certain Deed of Trust, Security Agreement and Fixture Filing dated as of June 1, 2010 (the "*Deed of Trust*") with the deed of trust trustee named therein for the benefit of the Corporation and its assignee; and

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 or indirectly or contingently to secure any moneys due under this Contract;

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

ARTICLE I DEFINITIONS

All words and phrases defined in Article I of the Indenture have the same meaning in this Contract. In addition, 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 Trustee and the Corporation, any expenses of the Corporation in defending an action or proceeding in connection with this Contract or the Indenture and any taxes or any other expenses, including, but not limited to, licenses, permits, state and local income, sales and use or ownership taxes or property taxes which the County or the Corporation is expressly required to pay as a result of this Contract (together with interest that may accrue thereon in the event that the County fails to pay the same).

"Code" means the Internal Revenue Code of 1986, as amended, including regulations promulgated thereunder.

"Corporation" means Henderson County Governmental Financing Corporation or any successor thereto.

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

"County Representative" means (1) the Finance Director or the 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 Trustee and the Corporation containing the specimen signatures of such person or persons and signed on behalf of the County by the County Manager and the Finance Director of the County, or (2) if any or all of the County's rights and obligations are assigned hereunder, 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 Fixture Filing dated as of June 1, 2010 from the County to the deed of trust trustee named therein for the benefit of the Corporation or its assignees, all of the terms, definitions, conditions and covenants of which are incorporated herein by reference and are made a part of this Contract as if fully set forth herein.

"Fiscal Year" means a twelve-month period commencing on the first day of July of any year and ending on the 30th day of June of the succeeding year, or such other twelve-month period which may subsequently be adopted as the Fiscal Year of the County.

"Indenture" means the Indenture of Trust dated as of June 1, 2010 between the Corporation and the Trustee, as amended or supplemented from time to time, pursuant to which the Bonds are executed and delivered.

"Installment Payments" means those payments made by the County to the Corporation as described in Article III and in the Payment Schedule attached hereto.

"Net Proceeds," when used with respect to any (1) proceeds from policies of insurance which are payable to the Corporation or the Trustee, (2) proceeds of any condemnation award arising out of the condemnation of all or any portion of the Premises or the (3) proceeds from any sale or lease of the Premises pursuant to the Deed of Trust or otherwise subsequent to an Event of Default, 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, collectively, the documents attached hereto and incorporated herein by reference, which set forth the County's Installment Payments.

"Premises" has the meaning given to such term in the Deed of Trust.

"Prior Contracts" means (a) an installment financing contract dated as of January 15, 2001 between the County and the Corporation, (b) a financing agreement and deed of trust dated as of February 10, 2000 between the County and Branch Banking and Trust Company, (c) a financing agreement and deed of trust dated as of April 10, 2002 between the County and Branch Banking and Trust Company, (d) an installment financing agreement dated as of November 27, 2006 between the County and Banc of America Public Capital Corp and (e) an installment financing agreement dated as of May 10, 2007 between the County and Banc of America Public Capital Corp.

“Projects” means (a) improvements at Blue Ridge Community College consisting of (i) replacement of the Spearman Building roof and (ii) construction, repair and renovation projects at various buildings to provide HVAC/energy efficiency and safety/ADA and (b) construction of a classroom building serving both Apple Valley Middle School and North Henderson High School, including related site improvements therefor, a cafeteria addition and locker room renovations.

“Purchase Price” means the amount of \$[] advanced by the Corporation to enable the County to finance the Projects and refinance the Prior Contracts under the terms of this Contract, as such price may be adjusted in connection with the issuance of Additional Bonds under Section 2.11 of the Indenture.

“Revenues” means (a) all Net Proceeds not applied to the replacement of the Premises; (b) all Installment Payments; and (c) all investment income on all funds and accounts created under the Indenture (other than the Rebate Fund).

“State” means the State of North Carolina.

[End of Article I]

ARTICLE II
ADVANCE OF PURCHASE PRICE

The Corporation hereby makes an advance to the County of the Purchase Price, and the County hereby accepts from the Corporation the Purchase Price to be applied in accordance with the terms and conditions of this Contract. The proceeds of the Purchase Price attributable to the 2010A Bonds have been or will be used to finance the Projects. The proceeds of the Purchase Price attributable to the 2010B Bonds have been or will be used to refinance the Prior Contracts.

[End of Article II]

ARTICLE III
INSTALLMENT PAYMENTS; ADDITIONAL PAYMENTS

Section 3.1. *Amounts and Times of Installment Payments and Additional Payments.* As consideration for the financing of the Projects and the refinancing of the Prior Contracts by the Corporation, the County shall repay to the Trustee, as assignee of the Corporation, the Purchase Price in installments with interest as provided in this Contract and the Payment Schedule attached hereto (each an "*Installment Payment*"). Each installment shall be deemed to be an Installment Payment and shall be paid in the amounts and at the times set forth on the Payment Schedule except as provided herein. There shall be credited against the amount of Installment Payments otherwise payable hereunder amounts equal to (1) earnings derived from the investment of the Bond Fund and the Prepayment Fund to the extent such earnings are not required to be deposited in the Rebate Fund and (2) any other moneys not constituting Installment Payments required to be deposited in the Bond Fund. Installment Payments shall be sufficient in the aggregate to repay the Purchase Price together with interest thereon. As further consideration for the financing of the Projects and the refinancing of the Prior Contracts by the Corporation, the County shall also pay the Additional Payments, as required herein, on a timely basis directly to the person or entity to which such Additional Payments are owed.

Section 3.2. *Place of Payments.* The County shall make all payments required to be made to the Corporation hereunder to the Trustee at its designated office in immediately available funds or as may be otherwise directed in writing by the Trustee.

Section 3.3. *Late Charges.* To the extent permitted by law, if the County fails to pay any Installment Payment or any other sum required to be paid to the Trustee following the due date thereof, the County shall pay a late payment charge equal to the amount of the delinquency times a per diem rate calculated at the rate(s) borne by each respective Bond.

Section 3.4. *No Abatement.* Subject to Article XIV, 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 said Installment Payments or Additional Payments, any defense, recoupment, setoff, counterclaims or any claim (real or imaginary) arising out of or related to the Projects. The County assumes and shall bear the entire risk of loss and damage to the Projects from any cause whatsoever, it being the intention of the parties that the Installment Payments shall be made in all events unless the obligation to make such Installment Payments is terminated as otherwise provided herein.

Section 3.5. *Prepayment of Purchase Price.*

(a) If the County has performed all of its obligations under this Contract, it shall have the option to prepay or provide for the prepayment of the Purchase Price of the 2010 Bonds on any date on or after June 1, 2020, in full or in part in the amount of \$5,000 or any integral multiple thereof on 45 days' notice to the Trustee, at a prepayment price equal to the then applicable prepayment price of the 2010 Bonds, including any required prepayment premium under Section 4.01 of the Indenture, plus accrued interest to the prepayment date.

(b) Upon the occurrence of an Extraordinary Event, the County shall have the option to prepay or provide for the prepayment of the Purchase Price applicable to the 2010A Bonds on any date, in full or in part in the amount of \$5,000 or any integral multiple thereof as provided for under Section 4.01 of the Indenture.

(c) If the Purchase Price is partially prepaid, the Trustee shall recalculate the Payment Schedule as necessary in the manner required by Section 3.07 of the Indenture.

[End of Article III]

ARTICLE IV
ACQUISITION AND CONSTRUCTION

Section 4.1. *Acquisition and Construction Fund.* As provided in Section 3.01 of the Indenture, the Corporation has caused (1) \$[] to be deposited in the 2010A Account of the Acquisition and Construction Fund and (2) \$[] to be deposited in the 2010B Account of the Acquisition and Construction Fund.

Section 4.2. *Disbursements.* Except as provided for in Section 3.11 of the Indenture, the Trustee shall disburse moneys held to the credit of the Acquisition and Construction Fund in payment of the Cost of Acquisition and Construction on receipt of written requisition from the County Representative substantially in the form set forth in Exhibit A, attached hereto, together with any documents or other items as the Trustee may reasonably determine to be necessary, including but not limited to construction invoices, lien waivers, inspection reports, itemization of present and prospective expenditures and a list of items necessary for completion.

Section 4.3. *Termination.* The Trustee shall terminate the Acquisition and Construction Fund at the earlier of (a) the final distribution of moneys held in the Acquisition and Construction Fund or (b) the termination of this Contract.

Section 4.4. *Reliance of Trustee on Documents.* The Trustee may act in reliance on any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Trustee is not liable in any manner for the sufficiency or correctness as to form, manner and execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder are limited to the receipt of such moneys, instruments or other documents received by it as the Trustee, and for the disposition of the same in accordance herewith.

Section 4.5. *Discretion of the Trustee To File Civil Action in the Event of Dispute.* If the County and the Trustee disagree about the interpretation of this Contract, or about the rights and obligations, or the propriety of any action contemplated by the Trustee hereunder, the Trustee may, but is not required to, file an appropriate civil action in the State to resolve the disagreement. The Trustee will be indemnified, to the extent permitted by applicable law and subject to Article XIV, for all costs, including reasonable attorneys' fees, in connection with such civil action and shall be fully protected in suspending all or part of its activities under this Contract until a final judgment in such action is received.

Section 4.6. *Consultation with Counsel.* The Trustee may consult with qualified counsel of its own choice and has full and complete authorization and protection with the reasonable opinion of such counsel. The Trustee is otherwise not liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its negligence or misconduct.

Section 4.7. *Compensation of Trustee.* The County shall pay to the Trustee reasonable compensation for all services performed by the Trustee hereunder and under the Indenture and also for all reasonable expenses, charges and other disbursements and those of the Trustee's attorneys, agents and employees incurred in and about the administration and execution of the Indenture and the performance of the Trustee's powers and duties hereunder and under the Indenture, as an Additional Payment.

Section 4.8. *Construction.* The County shall comply with the provisions of Article 8 of Chapter 143 of the General Statutes of North Carolina and enter into construction contracts in accordance with Section 143-128.1 of the General Statutes of North Carolina. The County shall cause the Projects to be carried on expeditiously in accordance with the plans and specifications therefor, all applicable

ordinances and statutes, and in accordance with the requirements of all regularly constituted authorities having jurisdiction over same. The County shall ensure that (a) the Projects do not encroach on nor overhang any easement or right of way and (b) the portions of the Projects, when erected, will be wholly within the respective site of the Projects and building restriction lines, however established, and will not violate applicable use or other restrictions contained in prior conveyances or applicable protective covenants or restrictions. The County shall cause all utility lines, septic systems and streets serving the Projects to be completed in accordance with health department standards and other applicable regulations of any governmental agency having jurisdiction. The County will promptly correct or cause to be corrected any structural defect in the improvements or any departure from the plans and specifications.

Section 4.9. *Right of Entry and Inspection.* The Corporation, the Trustee and their representatives and agents have the right to enter on the property on which the Projects are located and inspect the Projects from time to time, during and after acquisition, construction and equipping, and the County shall cause the construction manager at risk or any first-tier subcontractor to cooperate with the Corporation, the Trustee and their representatives and agents during such inspections. No right of inspection or approval contained herein imposes on the Corporation or the Trustee any duty or obligation whatsoever to undertake any inspection or to give any approval.

Section 4.10. *Completion of Construction.* The County shall proceed with reasonable diligence to complete the Projects in a timely manner. On completion of the acquisition, construction and equipping of the Projects, a County Representative shall deliver to the Trustee (a) a certificate of a County Representative stating the fact and date of such completion and stating that all of the Cost of Acquisition and Construction has been determined and paid (or that all of such Cost has been paid less specified claims which are subject to dispute and for which a retention in the Acquisition and Construction Fund is to be maintained in the full amount of such claims until such dispute is resolved), and (b) proof of the insurance coverage required by Section 5.10, if any. If, on the basis of such certificate, the accounting of the Acquisition and Construction Fund by the Trustee shows that money in the Acquisition and Construction Fund will remain unexpended for the Cost of Acquisition and Construction, then the County shall direct the Trustee in writing either (1) to move such unexpended funds to another account within the Acquisition and Construction Fund or (2) to transfer such unexpended funds to the Bond Fund to be applied in accordance with Section 3.12 of the Indenture as a credit against the Installment Payments in the order in which they are due.

Section 4.11. *Payment and Performance Bonds.* Each contractor, or the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk, related to the Projects is required to furnish a performance bond and a separate labor and material payment bond as required by North Carolina General Statutes, Article 3, Chapter 44A, copies of which must be provided to the Trustee. In lieu of furnishing a performance bond and a separate labor and material payment bond, each contractor, or the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk, may furnish collateral in an amount of its construction contract securing the County, copies of the evidence of such collateral which shall be provided to the Trustee.

In the event of any material default by a contractor, or the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk, under any construction contract, or in the event of a material breach of warranty with respect to any materials, workmanship or performance, the County shall promptly proceed, either separately or in conjunction with others, to pursue diligently its remedies against such contractor and/or against each surety of any bond securing the performance of the construction contract. The Net Proceeds of any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, remaining after deduction of expenses incurred in such recovery (including, without limitation, attorneys' fees and costs),

and after reimbursement to the County of any amounts theretofore paid by the County and not previously reimbursed to the County for correcting or remedying the default or breach of warranty which gave rise to the proceedings against the contractor or surety, shall be paid to the Trustee for deposit into the Acquisition and Construction Fund if received before the Completion Date therefor or if received thereafter, shall be deposited as otherwise provided in Section 7.2 or otherwise applied as provided in Section 7.3. The Net Proceeds of any performance or payment bond or insurance policy required by this Section shall likewise be paid into the Acquisition and Construction Fund, if received before the Completion Date, or, if received thereafter, shall either be deposited as provided in Section 7.2 or otherwise applied as provided in Section 7.3.

Section 4.12. Contractor's General Public Liability and Property Damage Insurance. Each contractor, or the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk, entering into a construction contract related to the Projects is required by the County to procure and maintain standard form (a) comprehensive general public liability and property damage insurance, at its own cost and expense, during the duration of such contractor's construction contract, in the amount of at least \$1,000,000 bodily injury and property damage liability combined single limit each occurrence/annual aggregate, and (b) comprehensive automobile liability insurance on owned, hired and non-owned vehicles for limits not less than \$1,000,000 each accident bodily injury and property damage liability. Such policies must include the County, the Corporation and the Trustee as additional named insureds, and shall include a provision prohibiting cancellation or termination without 30 days' prior notice by certified mail to the County and the Trustee. A certificate evidencing such coverage shall be provided to the County and the Trustee or, if such insurance is provided by a private carrier, a completed certificate of insurance, in form acceptable to the County and the Trustee, shall be provided to the County and the Trustee with respect to each contractor entering into a construction contract or, in the case of a construction manager at risk, the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk. Such insurance shall provide protection from all claims for bodily injury, including death, property damage and contractual liability, products/completed operations, broad form property damage and XCU (explosion, collapse and underground property damage), where applicable.

Section 4.13. Contractor's Builder's Risk Completed Value Insurance. The County will procure and maintain, or will require each contractor, or the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk, entering into a construction contract related to the Projects to procure and maintain property insurance (builder's risk) on all acquisition, construction and equipping related to the Projects (excluding contractor's tools and equipment) at the Projects at the full and insurable value thereof. This insurance will include the interest of the County, the Trustee and the contractor as additional insureds; and shall insure against "all risk" subject to standard policy conditions and exclusions. Each contractor, or the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk, shall purchase and maintain similar property insurance for portions of the work stored off the sites on which the Projects are located or in transit when such portions of the work are to be included in an application for payment. Each contractor, or the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk, is responsible for the payment of any deductible amounts associated with this insurance.

Section 4.14. Contractor's Worker's Compensation Insurance. Each contractor, or the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk, entering into a construction contract related to the Projects is required to procure and maintain, at its own cost and expense, worker's compensation insurance during the term of its construction contract, covering its employees working thereunder. Such insurance, if issued by a private carrier, must contain a provision prohibiting cancellation or termination without 30 days' prior notice by

certified mail to the County, the Corporation and the Trustee. A certificate evidencing such coverage shall be provided to the County, the Corporation and the Trustee or, if such insurance is provided by a private carrier, then a completed certificate of insurance, in form acceptable to the County, the Corporation and the Trustee, shall be provided to the County, the Corporation and the Trustee with respect to each contractor entering into a construction contract or, in the case of a construction manager at risk, to the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk.

[End of Article IV]

ARTICLE V RESPONSIBILITIES OF THE COUNTY

Section 5.1. *Care and Use.* Subject to the provisions of applicable law and Article XIV, the County shall use the Premises 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 Premises so as to keep the Premises in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear excepted. The County shall replace any part of the Premises as may from time to time become worn out, unfit for use, lost, stolen, destroyed or damaged. Any and all additions to or replacements of the Premises and all parts thereof shall constitute accessions to the Premises and shall be subject to all the terms and conditions of this Contract and included in the term "*Premises*" and as used in this Contract.

Section 5.2. *Inspection.* The Trustee has the right on reasonable prior notice to the County, and subject to the reasonable direction and supervision of the County, to enter into and inspect the Projects and observe their use during normal business hours.

Section 5.3. *Utilities.* The County shall pay all charges for gas, water, steam, electricity, light, heat or power, telephone or other utility services furnished to or used on or in connection with the Projects. There shall be no abatement of the Installment Payments on account of interruption of any such services.

Section 5.4. *Taxes.* The County shall pay when due any and all taxes relating to the Projects and the County's obligations hereunder 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 Projects by any governmental body or agency, together with any interest and penalties, other than taxes on or measured by the net income of the Corporation.

Section 5.5. *Title Insurance.* The County agrees to obtain, at its own cost and expense, a policy of title insurance, in form satisfactory to the Corporation, at the time of and dated as of the date of execution and delivery of this Contract, payable to the Trustee, as its interest may appear, insuring fee title of the County to the Premises.

Section 5.6. *Survey.* The County shall provide a foundation survey covering the Premises such that the policy of title insurance delivered pursuant to Section 5.5 will insure matters of survey to and including the date of such survey.

Section 5.7. *Risk of Loss.* The County shall bear all risk (1) of loss or damage to the Projects and (2) of the condemnation of any of the Projects or any portion thereof.

Section 5.8. *Performance by the Trustee of the County's Responsibilities.* Any performance required of the County or any payments required to be made by the County may, but are not required to, if not timely performed or paid, be performed or paid by the Trustee, and, in that event, the Trustee shall be immediately reimbursed by the County for these payments or other performance by the Trustee, with interest thereon at a rate equal to the prime rate of the Trustee at the time the payment is made and as adjusted from time to time thereafter until so reimbursed.

Section 5.9. *Financial Statements.* The County agrees that it will furnish to the Trustee annually not later than seven months after the end of each fiscal year and at such other reasonable times as the Trustee shall request current financial statements (including, without limitation, the County's

annual budget as submitted or approved), and permit the Trustee or its respective agent and representative to inspect the County's books and records and make extracts therefrom. The County represents and warrants to the Trustee that (1) all financial statements which have been or may be delivered to the Trustee do and will fairly and accurately reflect the County's financial condition and (2) there has been no material adverse change, as of the date of execution of this Agreement, in the County's financial condition from the condition as reflected in the financial statements for the Fiscal Year ending June 30, 2008. The County further agrees that it will furnish a copy of its most recent audited financial statements to any Owner of the Bonds on written request therefor.

Section 5.10. *Property Insurance.* The County shall continually maintain or cause to be maintained insurance to the full insurable value of the Premises against loss by fire, wind damage, hazards customarily included in the term "extended coverage" with responsible and reputable insurance companies and shall promptly pay all premiums therefor when due. All insurance policies and renewals thereof shall name the Corporation and the Trustee as parties insured thereunder, as the respective interests of each of such parties may appear, and have attached thereto a mortgagee long form loss payable clause in favor of the Trustee, and provide that no such policy can lapse or be canceled, substantially modified or terminated without at least 60 days prior notice to the Trustee and that any loss payable thereunder shall be made payable and shall be applied as provided in Article VII. In the event of loss, the County shall give immediate notice by mail to the Trustee, who may, but shall not be obligated to, make proof of loss. In the event of foreclosure of the Deed of Trust or other transfer of title to the Premises, all right, title and interest of the County in any insurance policies then in force shall pass to the Trustee. Additionally, during the term of this Contract, the County shall continually maintain standard liability insurance as is customarily maintained by like entities with respect to facilities similar to the Premises.

The County may provide for and maintain the insurance required under this Contract partially or wholly by means of an adequate risk retention fund. Reserves for a risk retention fund shall be determined by using actuarial principles. Any risk retention fund shall be reviewed annually by the County's risk manager or an independent insurance consultant or actuarial consultant. The Trustee may rely on a letter of the County's risk manager or an independent insurance consultant or actuarial consultant as to the adequacy of any risk retention fund.

[End of Article V]

**ARTICLE VI
TITLE; LIENS**

Section 6.1. Title. Title to the Projects and any and all additions, repairs, replacements or modifications thereto shall be in the County from and after the date of execution and delivery of this Contract. The County shall own the Projects free and clear of any lien or security interest created by the Deed of Trust on the repayment in full of the Purchase Price and the payment of all other amounts due hereunder. The County shall deliver to the Trustee the Deed of Trust simultaneously with the execution and delivery of this Contract and shall cause the Deed of Trust to be recorded in the Henderson County Registry. On payment in full of all of the County's obligations hereunder, including the Purchase Price and all other payments due hereunder, the Corporation or its assignee, at the County's expense and request, shall discharge the Indenture and release the lien on the Deed of Trust, at which time this Contract will terminate.

Section 6.2. Liens. The County shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, security interest, encumbrance or claim on or with respect to Premises or any interest therein, except for (1) the lien and security interest of the Corporation and the Trustee therein; (2) utility, access and other easements and rights of way, restrictions and exceptions which do not interfere with or impair the intended use of the Premises; (3) any lease permitted by Section 13.1 of this Contract; and (4) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property of the general character of the Premises and as do not materially impair title to the Premises. The County shall promptly, at its own expense, take such action as may be necessary duly to 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 Corporation for any expense incurred by it to discharge or remove any such mortgage, pledge, lien, security interest, charge, encumbrance or claim.

[End of Article VI]

ARTICLE VII
DAMAGE, DESTRUCTION AND CONDEMNATION;
USE OF NET PROCEEDS

Section 7.1. *Damage, Destruction or Condemnation.* If, during the term hereof, (1) any portion of the Projects is destroyed or damaged by fire or other casualty; (2) title to or the temporary or permanent use of any portion of the Projects or the estate of the County or the Corporation or its assignee in any portion of the Projects is taken under the power of eminent domain by any governmental authority; (3) a material defect in construction of any portion of the Projects becomes apparent; or (4) title to or the use of any portion of the Projects is lost by reason of a defect in title thereto, then the County continues to be obligated, subject to the provisions of Section 7.2, to pay the amounts specified in Section 3.1 at the respective times required.

Section 7.2. *Obligation of the County To Repair and Replace the Premises.* Subject to the provisions of Section 7.3, the Trustee shall cause the Net Proceeds of any insurance policies, performance or payment bonds, if any, condemnation awards or Net Proceeds made available by reason of any occurrence described in Section 7.1, to be deposited in a separate fund held by the Trustee. Except as set forth in Section 7.3, all Net Proceeds so deposited shall be applied to the prompt repair, restoration, modification, improvement or replacement of the Premises on receipt of requisitions acceptable to the Trustee approved by a County Representative stating with respect to each payment to be made: (a) the requisition number; (b) the name and address of the person, firm or corporation to whom payment is due; (c) the amount to be paid; and (d) that each obligation mentioned therein has been properly incurred, is a proper charge against the Acquisition and Construction Fund or such separate fund, and has not been the basis of any previous withdrawal and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation. The Trustee shall cooperate with the County in the administration of such separate fund and shall not unreasonably withhold its approval of requisitions under this Section 7.2. If the Net Proceeds (plus any amount withheld therefrom by reason of any deductible clause) are insufficient to pay in full the cost of any repair, restoration, modification, improvement or replacement of the Premises, the County may complete the work and pay any cost in excess of the amount of the Net Proceeds, and the County agrees that, if by reason of any such insufficiency of the Net Proceeds, the County shall make any payments pursuant to the provisions of this Section 7.2, the County is not entitled to any reimbursement therefor from the Corporation, the Trustee or the Owners nor is the County entitled to any diminution of the amounts payable under Section 3.1. Any repair, restoration, modification, improvement or replacement 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 to the extent it relates to the Premises, and shall be included as part of the Premises under this Contract.

Section 7.3. *Discharge of the Obligation of the County To Repair the Premises.* On the occurrence of an event described in Section 7.1 with respect to the Premises, the County may elect not to repair, restore, improve or replace the affected portion of the Premises if (1) the Net Proceeds are less than \$500,000 and (2) a County Representative certifies to the Corporation that such Net Proceeds are not necessary to restore the affected portion of the Premises to its intended use. In such event, the County shall direct the Trustee to deposit such Net Proceeds in the Bond Fund to be applied toward the next payment of principal and interest with respect to the Bonds.

Within 90 days of the occurrence of an event specified in Section 7.1, the County shall commence the repair, restoration, modification, improvement or replacement of the Premises, or shall elect, by written notice to the Trustee, to proceed under the provisions of the immediately preceding paragraph. For purposes of this Section, "*commence*" shall include the retention of an architect or engineer in anticipation of repair, restoration, modification, improvement or replacement of the Premises.

Section 7.4. Cooperation of the Corporation. The Corporation shall cooperate fully with the County and the Trustee in filing any proof of loss with respect to any insurance policy covering the events described in Section 7.1, and hereby assigns to the Trustee any interest it may have in such policies or rights of action for such purposes. In no event shall the Corporation or the County voluntarily settle, or consent to the settlement of, any proceeding arising out of any such insurance claim with respect to the Premises without the written consent of the other.

[End of Article VII]

ARTICLE VIII
REPRESENTATIONS, WARRANTIES AND COVENANTS
OF THE COUNTY AND THE CORPORATION

Section 8.1. *Representations, Warranties and Covenants of the County.* The County warrants and represents to the Corporation and to the Trustee for the benefit of the Owners (all such representations and warranties being continuing) that:

(a) The County is a duly organized and validly existing political subdivision of the State and has all powers necessary to enter into the transactions contemplated by this Contract and the Deed of Trust and to carry out its obligations hereunder;

(b) The County agrees that during the term of this Contract it will take no action that would adversely affect its existence as a political subdivision in good standing in the State, cause the County to be consolidated with or merge into another political subdivision of the State or permit one or more other political subdivisions of the State to consolidate with or merge into it, unless the political subdivision of the State created thereby expressly assumes in writing the County's obligations hereunder;

(c) This Contract, the Deed of Trust and all other documents relating hereto and the performance of the County's obligations hereunder and thereunder have been or will be duly and validly authorized, executed and delivered by the County and approved under all laws, regulations and procedures applicable to the County and, assuming due authorization, execution and delivery thereof by the other parties thereto, constitute valid, legal and binding obligations of the County, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency and other laws affecting the enforcement of creditors' rights generally and such principles of equity as a court having jurisdiction may impose;

(d) 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 and all other documents related thereto and the transactions contemplated hereby and thereby or if such approvals are required, they will be duly obtained;

(e) Except as disclosed by the County in writing to the Corporation, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best of the County's knowledge, threatened, against or affecting the County challenging the validity or enforceability of this Contract, the Deed of Trust or any other documents relating hereto and the performance of the County's obligations hereunder and thereunder, and compliance with the provisions hereof or thereof, under the circumstances contemplated hereby or thereby, does not and will not in any material respect conflict with, constitute on the part of the County a breach of or default under, or result in the creation of a lien or other encumbrance on any property of the County (except as contemplated herein or therein) pursuant to any agreement or other instrument to which the County is a party, or any existing law, regulation, court order or consent decree to which the County is subject;

(f) Neither the execution and delivery of this Contract or the Deed of Trust or the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the terms and conditions hereof or thereof conflicts with or results in a breach of the terms, conditions, or provisions of any 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, nor conflicts with or results in a violation of any provision of applicable law or regulation governing the County and no representation, covenant and warranty herein is false, misleading or erroneous in any material respect;

(g) The County is vested with fee simple title to the Premises, and there are no liens or encumbrances on the Premises other than the lien created by the Deed of Trust and the other liens permitted hereby and thereby;

(h) The resolutions relating to the performance by the County of this Contract, the Deed of Trust and the transactions contemplated hereby and thereby, have been duly adopted, are in full force and effect, and have not been in any respect modified, revoked or rescinded;

(i) The Projects are essential to the proper, efficient and economical operation of the County and the delivery of its services, and each of the Projects will provide an essential use and permit the County to carry out public functions that it is authorized by law to perform;

(j) The County reasonably believes funds will be available to satisfy all of its obligations hereunder;

(k) The County shall (1) cause its Budget Officer, as statutorily defined, to include the Installment Payments and the reasonably estimated Additional Payments coming due in each Fiscal Year in the corresponding annual budget request, (2) require that the deletion of such funds from the County's final budget or any amended budget be made only pursuant to an express resolution of the Board which explains the reason for such action and (3) deliver notice to the Trustee, S&P, Moody's and the LGC within five days after the adoption by the Board of the resolution described in clause (2) above. Nothing contained in this paragraph (k) obligates the County to appropriate moneys contained in the proposed budget for the payment of Installment Payments and reasonably estimated Additional Payments coming due under this Contract;

(l) Moneys appropriated by the County to make Installment Payments in any Fiscal Year shall be used for no other purpose;

(m) The County agrees, in accordance with Rule 15c2-12 (the "*Rule*") promulgated by the Securities and Exchange Commission (the "*SEC*"), to provide to the MSRB:

(1) by not later than seven months after the end of each Fiscal Year, beginning with the Fiscal Year ending June 30, 2010, the audited financial statements of the County for the preceding Fiscal Year, if available, prepared in accordance with Section 159-34 of the General Statutes of North Carolina, as it may be amended from time to time, or any successor statute, or if such audited financial statements are not then available, unaudited financial statements of the County for such Fiscal Year to be replaced subsequently by audited financial statements of the County to be delivered within 15 days after such audited financial statements become available for distribution;

(2) by not later than seven months after the end of each Fiscal Year, beginning with the Fiscal Year ending June 30, 2010, (a) the financial and statistical data as of a date not earlier than the end of the preceding Fiscal Year for the type of information included under the captions "~~THE COUNTY--DEBT INFORMATION~~" and "~~--TAX INFORMATION~~" (including subheadings thereunder) in the Official Statement dated May 21, 2010 with respect to the 2010 Bonds (excluding any information on overlapping or underlying units) and (b) the combined budget of the County for the current Fiscal Year, to the extent such items are not included in the audited financial statements referred to in paragraph (1) above;

(3) in a timely manner, notice of any of the following events with respect to the 2010 Bonds, if material:

- (A) principal and interest payment delinquencies;
- (B) non-payment related defaults;
- (C) unscheduled draws on the debt service reserves reflecting financial difficulties;
- (D) unscheduled draws on any credit enhancements reflecting financial difficulties;
- (E) substitution of any credit or liquidity providers, or their failure to perform;
- (F) adverse tax opinions or events affecting the tax-exempt status of the 2010 Bonds;
- (G) modification to rights of the beneficial owners of the 2010 Bonds;
- (H) 2010 Bond calls other than calls for mandatory sinking fund prepayments;
- (I) defeasances;
- (J) release, substitution or sale of any property securing repayment of the 2010 Bonds; and
- (K) rating changes; and

(4) in a timely manner, notice of a failure of the County to provide required annual financial information described in (1) or (2) above on or before the date specified.

The County agrees that its undertaking under this paragraph is intended to be for the benefit of the Owners and the beneficial owners of the 2010 Bonds and is enforceable by the Trustee or by any of them, including an action for specific performance of the County's obligations under this paragraph, but a failure to comply will not be an Event of Default under Section 12.1 of this Contract and will not result in acceleration of the principal component of Installment Payments. An action must be instituted, had and

maintained in the manner provided in this paragraph for the benefit of all of the Owners and beneficial owners of the 2010 Bonds.

The County may modify from time to time, consistent with the Rule, the information provided or the format of the presentation of such information, to the extent necessary or appropriate in the judgment of the County, but:

(1) any such modification may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law or change in the identity, nature or status of the County;

(2) the information to be provided, as modified, would have complied with the requirements of the Rule as of the date of the Official Statement, after taking into account any amendments or interpretations of the Rule as well as any changes in circumstances;

(3) any such modification does not materially impair the interest of the Owners or the beneficial owners, as determined by nationally recognized bond counsel or by the approving vote of the Owners of a majority in principal amount of the Bonds pursuant to Section 9.05 of the Indenture as may be amended from time to time.

Any annual financial information containing modified operating data or financial information will explain, in narrative form, the reasons for the modification and the impact of the change in the type of operating data or financial information being provided.

All documents provided to the MSRB as described above shall be provided in an electronic format as prescribed by the MSRB and accompanied by identifying information as prescribed by the MSRB. The County may discharge its undertaking described above by transmitting those documents or notices in a manner subsequently required by the U.S. Securities and Exchange Commission in lieu of the manner described above.

The provisions of this paragraph terminate on payment, or provision having been made for payment in a manner consistent with the Rule, in full of the principal of and interest with respect to the Bonds.

Section 8.2. *Warranties and Representations of the Corporation.* The Corporation warrants and represents to the County (all such warranties and representations continuing) that:

(a) The Corporation is a nonprofit corporation duly organized, existing and in good standing under and by virtue of the laws of the State, has the power to enter into this Contract and the Indenture, and has duly authorized the execution and delivery of this Contract and the Indenture;

(b) The Corporation has duly authorized this Contract and the Indenture and has caused each to be executed on its behalf in accordance with the laws of the State;

(c) Neither the execution and delivery of this Contract or the Indenture, 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 charter or bylaws of the Corporation or any agreement or instrument to which the Corporation is now a party or by which the Corporation is bound, or constitutes a default under any of the foregoing; and

(d) To the best of the Corporation's knowledge after due and reasonable investigation, 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 Corporation challenging the validity or enforceability of this Contract, the Indenture or any other documents relating hereto and the performance of the Corporation's obligations hereunder and thereunder.

[End of Article VIII]

ARTICLE IX
TAX COVENANTS AND REPRESENTATIONS

The County covenants that 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 of the interest portion of the Installment Payments related to (1) the 2010A Bonds created by this Contract, if the 2010A Bonds were to have been executed and delivered as tax-exempt obligations, or (2) the 2010B Bonds, under Section 103 of the Code. The County will not directly or indirectly use or permit the use of any proceeds of any fund related to the 2010 Bonds created under the Indenture, or take or omit to take any action that would cause the obligation created by this Contract to be an “arbitrage bond” within the meaning of Section 148(a) of the Code. To that end, the County and the Corporation have executed the Arbitrage and Tax Regulatory Agreements and will comply with all requirements of Section 148 of the Code to the extent applicable. The County further represents and covenants that the Installment Payments created by this Contract are not and will not constitute a “private activity bond” as defined in Section 141 of the Code.

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 created by this Contract from time to time. This covenant shall survive the payment in full of all Installment Payments under this Contract.

Notwithstanding any provision of this Article, (1) this Article shall not apply to the extent that the interest portion of the Installment Payments created under this Contract is not intended to be excludable from gross income for federal income tax purposes under Section 103 of the Code and (2) if the County shall provide to the Trustee an opinion of nationally recognized bond counsel to the effect that any action required under this Section or the Arbitrage and Tax Regulatory Agreements is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of the interest on the obligations created by this Contract pursuant to Section 103 of the Code, the County, the Corporation and the Trustee may rely conclusively on such opinion in complying with the provisions hereof.

[End of Article IX]

ARTICLE X
INDEMNIFICATION

To the extent permitted by applicable law and Article XIV, the County hereby agrees to indemnify, protect and save the Corporation, the LGC and any member, director, officer, agent or employee thereof and the Trustee harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including attorneys' fees, arising out of, connected with, or resulting, directly or indirectly, from the Projects, or from the Indenture, the Deed of Trust and this Contract or from the County's performance under each of said documents, including, without limitation, the possession, condition, construction or use of the Projects. The indemnification arising under this Article shall continue in full force and effect notwithstanding the payment in full of all obligations under this Contract.

[End of Article X]

ARTICLE XI
DISCLAIMER OF WARRANTIES

THE CORPORATION AND THE TRUSTEE MAKE NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROJECTS OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROJECTS.

[End of Article XI]

ARTICLE XII
DEFAULT AND REMEDIES

Section 12.1. *Definition of Event of Default.* The County shall be deemed to be in default hereunder 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 on the date such Installment Payment is due hereunder;

(b) 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;

(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 (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 or therein contained, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the County by the Trustee unless the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure cannot be corrected within the stated period, Trustee will not unreasonably withhold consent for an extension not longer than 180 days;

(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 90 days after the institution or occurrence thereof; or

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

Section 12.2. *Remedies on Default.* On the occurrence of any Event of Default, the Trustee may, and if required by a majority in aggregate principal amount of the Owners of the Bonds, the Trustee shall, to the extent permitted by applicable law and Article XIV, exercise any one or more of the following remedies as the Trustee shall elect or as shall be directed by a majority in aggregate principal amount of the Owners of the Bonds:

(a) Declare the unpaid portion of the principal and interest components of Installment Payments immediately due and payable without notice or demand to 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; or

(c) Exercise or direct the Deed of Trust trustee to exercise all the rights and remedies of a secured party or creditor under the Uniform Commercial Code of the State and the general laws of the State with respect to the enforcement of the security interest granted or reserved under this Contract and the Deed of Trust including, without

limitation, to the extent permitted by law, re-enter and take possession of the Premises 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 and other sale, lease, sublease or other disposition, toward the balance due under this Contract and, thereafter, shall pay any remaining proceeds to the County.

Notwithstanding any other provisions herein, it is the intent of the parties hereto to comply with General Statutes of North Carolina Section 160A-20. No deficiency judgment may be rendered against the County in violation of Section 160A-20 including, without limitation, any deficiency judgment for amounts that may be owed hereunder when the sale of all or any portion of the Premises is insufficient to produce enough money to pay in full all remaining obligations under this Contract. To the extent of any conflict between this paragraph and any other provision of this Article XII, this paragraph shall take priority. This Section 12.2 in no way limits the provisions of Article XIV.

Section 12.3. *Further Remedies.* Notwithstanding the occurrence of an Event of Default hereunder and the exercise of any or all of the remedies listed in Section 12.2, this Contract shall remain in full force and effect and the County, to the extent permitted by applicable law and subject to Article XIV, shall be and remain liable for the full performance of all its obligations hereunder. All remedies of the Trustee 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.

[End of Article XII]

ARTICLE XIII ASSIGNMENT

Section 13.1. *Assignment by the County.* 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 Premises (except for (1) the Lease between the Henderson County Board of Education and the County dated as of the date hereof related to Apple Valley Middle School and North Henderson High School or (2) the lien and security interest of the Corporation therein or except for any permitted encumbrances under Section 6.2) without the Trustee's prior written consent. Notwithstanding the foregoing, the County may lease all or a portion of the Premises subject to the following conditions:

(a) the obligation of the County to make Installment Payments and Additional Payments under this Contract will remain obligations of the County;

(b) the County will, at least 30 days before the execution and delivery of any such lease, furnish or cause to be furnished to the Trustee a true and complete copy of such lease;

(c) no lease will cause the interest component of Installment Payments relating to any Bonds intended to be excludable from gross income of the recipient thereof for federal income tax purposes to become includable in gross income for federal income tax purposes; and

(d) the Trustee will have received an opinion of Counsel to the County to the effect that such lease is subordinate in all respects to the lien of the Deed of Trust and that such lease is subject to immediate termination at the Trustee's direction in the event of a default by the County under this Contract.

Section 13.2. *Assignment by the Corporation.* The Corporation has assigned all of its interest in the Premises and this Contract (other than its rights under Article X, certain notice rights and those Additional Payments payable to the Corporation under this Contract), including without limitation, the Corporation's rights to receive the Installment Payments, to the Trustee.

[End of Article XIII]

ARTICLE XIV
LIMITED OBLIGATION OF THE COUNTY

Notwithstanding any provision of this Contract, the Indenture or the Deed of Trust which may be to the contrary, no provision of this Contract, the Indenture or the Deed of Trust shall be construed or interpreted as creating a pledge of the faith and credit of the County within the meaning of the constitution of the State. No provision of this Contract, the Indenture or the Deed of Trust 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, the Indenture and the Deed of Trust 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, any failure or refusal by the County to appropriate funds which results in the failure by the County to make any payment coming due hereunder will in no way obviate 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, the Indenture or the Deed of Trust 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, the Indenture or the Deed of Trust 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 XIV and any other provision of this Contract, the Indenture or the Deed of Trust, this Article shall take priority.

[End of Article XIV]

ARTICLE XV
JOINDER BY THE TRUSTEE

The Trustee hereby executes this Contract to signify its agreement to be bound to the terms of this Contract applicable to it. The County and the Corporation acknowledge and agree that the Trustee shall be entitled to enforce and to benefit from the terms and conditions of this Contract applicable to it.

[End of Article XV]

**ARTICLE XVI
MISCELLANEOUS**

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

Section 16.2. *County's Acceptance of Rights and Responsibilities Under the Indenture.* The County accepts all responsibilities assigned to it under and pursuant to the Indenture.

Section 16.3. *Severability.* If any portion of this Contract other than Article XIV 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 16.4. *Governing Law.* This Contract is to be construed, interpreted and enforced in accordance with the laws of the State.

Section 16.5. *Notices.* 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
100 North King Street
Hendersonville, North Carolina 28792
Attention: Finance Director

If to the Corporation: Henderson County Governmental Financing Corporation
100 North King Street
Hendersonville, North Carolina 28792
Attention: President

If to the Trustee: U.S. Bank National Association
Hearst Tower
214 N. Tryon Street, 27th Floor
Charlotte, North Carolina 28202
Attention: Corporate Trust Department

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

Section 16.6. *Section Headings.* All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Contract.

Section 16.7. *Entire Contract.* This Contract, together with the schedules and Exhibits hereto, constitutes the entire contract between the parties and this Contract may not be modified, amended, altered or changed except by written contract signed by the parties.

Section 16.8. *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 Trustee).

Section 16.9. *Time.* Time is of the essence of this Contract and each and all of its provisions.

Section 16.10. *Payments.* 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 16.11. *Covenants of County, Corporation or LGC not Covenants of Officials Individually.* No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, director, agent, officer or employee of the County, the Corporation or the LGC in his individual capacity, and neither the members of the Board, the Board of Directors of the Corporation, the members of the LGC nor any other member, director, agent, officer or employee of the Board, the County, the Corporation or the LGC shall be subject to any personal liability or accountability by reason of the execution and delivery of the Bonds. No member of the Board, the Board of Directors of the Corporation, the LGC nor any agent, officer or employee of the County, the Corporation or the LGC shall incur any personal liability under this Contract.

Section 16.12. *Amounts Remaining in Funds.* It is agreed by the parties hereto that any amounts remaining in the Bond Fund, the Acquisition and Construction Fund, the Prepayment Fund or any other fund or account created under the Indenture other than the Rebate Fund, on termination of this Contract and the Indenture, and after payment in full of the Bonds (or provision for payment thereof having been duly made in accordance with the provisions of this Contract or the Indenture) and fees and expenses of the Trustee in accordance with this Contract and the Indenture, shall be paid to the County by the Trustee as an overpayment of Installment Payments in accordance with the terms of the Indenture.

Section 16.13. *Amendments to this Contract.* This Contract may not be amended by the parties hereto except in accordance with Article IX of the Indenture. In addition, no amendment to this Contract which would increase the amount or maturity of Bonds Outstanding is effective until it is approved by the LGC.

Section 16.14. *Execution in Counterparts.* This Contract may be executed in any number of counterparts, each of which is an original and all of which constitute but one and the same instrument.

[SIGNATURES ON FOLLOWING PAGES]

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

**HENDERSON COUNTY GOVERNMENTAL
FINANCING CORPORATION**

[SEAL]

By: _____
[name]
President

Attest:

[name]
Secretary

[Signatures Continued on Following Pages]

[Counterpart Signature Page to the Installment Financing Contract
Dated as of June 1, 2010, between Henderson County Governmental Financing Corporation
and the County of Henderson, North Carolina]

COUNTY OF HENDERSON, NORTH CAROLINA

[SEAL]

By: _____
Steven D. Wyatt
County Manager

Attest:

Teresa Wilson
Clerk to the Board of Commissioners

[Signatures Continued on Following Pages]

[Counterpart Signature Page to the Installment Financing Contract
Dated as of June 1, 2010, between Henderson County Governmental Financing Corporation
and the County of Henderson, North Carolina]

Consented to and Accepted:

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Shawna Hale
Vice President

[Signatures Continued on the Following Page]

[Counterpart Signature Page to the Installment Financing Contract
Dated as of June 1, 2010, between Henderson County Governmental Financing Corporation
and the County of Henderson, North Carolina]

THIS CONTRACT HAS BEEN
APPROVED UNDER THE PROVISIONS
OF THE NORTH CAROLINA GENERAL
STATUTES, § 159-152.

Secretary of the Local Government Commission

EXHIBIT A

FORM OF REQUISITION
ACQUISITION AND CONSTRUCTION FUND

U.S. Bank National Association
Hearst Tower
214 N. Tryon Street, 27th Floor
Charlotte, North Carolina 28202
Attention: Corporate Trust Department

Re: Direction to Make Disbursements from the Acquisition and Construction Fund

Ladies and Gentlemen:

Pursuant to Section 3.11 of the Indenture of Trust dated as of June 1, 2010 (the "*Indenture*") between Henderson County Governmental Financing Corporation (the "*Corporation*") and U.S. Bank National Association, as trustee (the "*Trustee*"), and Section 4.2 of the Installment Financing Contract dated as of June 1, 2010, (the "*Contract*") between the Corporation and the County of Henderson, North Carolina (the "*County*"), you are hereby directed to disburse from the [2010A Account/2010B Account] of the Acquisition and Construction Fund referred to in the Indenture (the "*Acquisition and Construction Fund*") the amount indicated below.

The undersigned hereby certifies:

1. This is requisition number _____ from the Acquisition and Construction Fund.
2. The name and address of the person, firm or corporation to whom the disbursement is due is as follows:

3. The amount to be disbursed is \$_____.
4. The purpose of the disbursement is to _____.
5. The disbursement herein requested is for an obligation properly incurred, is a proper charge against the Acquisition and Construction Fund as a Cost of Acquisition and Construction and has not been the basis of any previous disbursement.

Dated this __ day of _____, 20__.

COUNTY OF HENDERSON, NORTH CAROLINA

By: _____
County Representative

Drafted by and
Return to: Donald P. Ubell, Esq.
Parker Poe Adams & Bernstein LLP
Three Wachovia Center
401 South Tryon Street, Ste. 3000
Charlotte, North Carolina 28202

NORTH CAROLINA

HENDERSON COUNTY

COLLATERAL IS OR INCLUDES FIXTURES

**DEED OF TRUST,
SECURITY AGREEMENT
AND FIXTURE FILING**

THIS DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING is made and entered into as of the 1st day of June, 2010 (the "*Deed of Trust*"), from the **COUNTY OF HENDERSON, NORTH CAROLINA**, a political subdivision regularly created and validly existing under the laws of the State of North Carolina, whose address is 100 North King Street, Hendersonville, North Carolina 28792 (hereinafter called the "*Grantor*"), to **SCOTT E. LEO**, as trustee (hereinafter referred to as the "*Trustee*"), for the benefit of **HENDERSON COUNTY GOVERNMENTAL FINANCING CORPORATION**, a nonprofit corporation duly created, existing and in good standing under the laws of the State of North Carolina, whose address is 100 North King Street, Hendersonville, North Carolina 28792, as grantee (the "*Corporation*") (the Corporation and its successors and assigns are hereinafter referred to as the "*Beneficiary*").

RECITALS:

The Grantor and the Corporation have entered into an Installment Financing Contract dated as of June 1, 2010 (the "*Contract*"), pursuant to which (1) the Corporation has agreed to advance certain monies to enable the Grantor to finance the Projects (as defined in the Indenture of Trust dated as of June 1, 2010 (the "*Indenture*") between the Corporation and **U.S. BANK NATIONAL ASSOCIATION**, as Bond trustee) and refinance the Prior Contracts (as defined in the Indenture), and (2) the Grantor has agreed to make the Installment Payments (as defined in the Contract) to the Corporation. The Contract is incorporated herein by this reference.

The Corporation has assigned substantially all of its rights under the Contract to U.S. Bank National Association pursuant to the Indenture under which the Taxable Limited Obligation Bonds (County of Henderson, North Carolina Recovery Zone Economic Development Bonds), Series 2010A (the "2010A Bonds") and the Limited Obligation Bonds (County of Henderson, North Carolina), Series 2010B (the "2010B Bonds," and together with the 2010A Bonds, the "2010 Bonds"), each evidencing proportionate undivided interests in rights to receive certain Revenues (as defined in the Contract) under the Contract, will be executed, delivered and sold. U.S. Bank National Association is unwilling to enter into the Indenture and the Corporation is unwilling to enter into the Contract unless the Grantor secures the obligations under the Contract and this Deed of Trust by the conveyance of the Premises (as defined herein), and the improvements and fixtures thereon, and as more fully described herein.

This Deed of Trust has been executed and delivered to secure (1) the obligations of the Grantor to make the Installment Payments (as defined in the Contract) and (2) the payment and performance of all of the other liabilities and obligations, whether now existing or hereafter arising, of the Grantor to the Corporation under the Contract and this Deed of Trust, all such obligations and liabilities described in (1) or (2) above hereinafter collectively called the "Indebtedness."

It is intended that this Deed of Trust comply with the provisions of Sections 45-67 *et seq.* of the North Carolina General Statutes. For purposes of complying with such provisions, the Grantor hereby represents as follows:

(a) That this Deed of Trust has been executed and delivered by the Grantor to secure future Indebtedness which may be incurred from time to time under the Contract;

(b) That the maximum principal amount, including present and future Indebtedness, which may be secured by this Deed of Trust at any one time is \$[] (exclusive of advances that may be made under the terms of the Contract or this Deed of Trust for fire and extended coverage insurance, taxes, assessment or other necessary expenditures for the preservation of the real property), subject to the limitation that at no time shall the total principal amount of Indebtedness secured hereby exceed said maximum principal sum of \$[], together with accrued interest and the payment for fire and extended coverage insurance, taxes, assessments or other necessary expenditures for the preservation of the real property; *provided that* the foregoing limitation shall apply only to the lien upon real property located in the State of North Carolina created by this Deed of Trust and shall not in any manner limit, affect or impair any grant of a security interest in or lien on any other real property or any personal property in favor of the Beneficiary;

(c) That the period within which such future Indebtedness may be incurred is the period between the date hereof and the date 30 years from the date hereof; and

(d) That it shall not be a requirement for any such future Indebtedness to be secured hereby that the Grantor sign an instrument or other notation stipulating that such Indebtedness is secured by this Deed of Trust, as no such future Indebtedness is required, under the Contract or otherwise, to be evidenced by a written instrument or notation.

The Grantor desires to secure (a) the payment of the Indebtedness and any renewals, modifications or extensions thereof, in whole or in part, and (b) 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 premises 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 considerations, receipt of which is hereby acknowledged, the Grantor has given, granted, bargained and sold, and by these presents does give, grant, bargain, sell and convey unto the Trustee, its heirs, successors and assigns, the following property (hereinafter collectively referred to as the "*Premises*"):

(a) The real property lying and being in Henderson County, North Carolina and described below in the legal description attached as an exhibit hereto (hereinafter referred to as the "*Land*"):

SEE EXHIBIT "A" ATTACHED HERETO FOR LAND DESCRIPTION, WHICH EXHIBIT "A" IS INCORPORATED HEREIN BY REFERENCE.

(b) All buildings, structures, additions and improvements of every nature whatsoever now or hereafter situated on or about the Land (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 Land 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 Land, and the record owner of the Land 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 Land 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 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 (other than insurance proceeds and condemnation payments) so long as the Grantor is not in Default hereunder.

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 (as defined in Exhibit "B" attached hereto and incorporated herein by reference), 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 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 canceled of record at the request and at the cost of the Grantor.

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

ARTICLE I

1.01. ***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.

1.02. ***Taxes, Liens and Other Charges.*** The Grantor will comply with the terms of the Contract in all matters relating to Taxes, Liens and other charges.

1.03. ***Insurance.*** The Grantor shall comply with the terms of the Contract in all matters relating to insurance.

1.04. ***Condemnation.*** The Grantor shall comply with the terms of the Contract in all matters relating to condemnation.

1.05. ***Care of Premises.*** The Grantor shall comply with the Contract in all matters relating to the care of Premises.

1.06. ***Leases and Other Agreements Affecting Property.*** The Grantor will duly and punctually perform all terms, covenants, conditions and agreements binding upon it under any lease or any other agreement of any nature whatsoever which involves or affects the Premises or any part thereof. The Grantor will, at the request of Beneficiary, furnish Beneficiary with executed copies of all leases now or hereafter created upon the Premises or any part thereof, and all leases now or hereafter entered into will be in form and substance subject to the prior written approval of Beneficiary (which approval will not be unreasonably withheld or delayed). The Grantor will not, without the express written approval of Beneficiary (which approval will not be unreasonably withheld or delayed), modify, surrender or terminate, either orally or in writing, any lease now existing or hereafter created upon the Premises or any part thereof, nor will the Grantor permit an assignment or a subletting by any tenant without the prior express written approval of Beneficiary (which approval will not be unreasonably withheld or delayed).

The Grantor will not accept payment of rent more than one (1) month in advance without the prior express written approval of Beneficiary.

1.07. ***Security Agreement and Fixture Filing.*** With respect to the Fixtures, this Deed of Trust is hereby made and declared to be a security agreement in favor of Beneficiary encumbering each and every item of such property included herein as a part of the Premises, in compliance with the provisions of the Uniform Commercial Code as enacted in the State of North Carolina, and the Grantor hereby grants a security interest to Beneficiary in and to all of such Fixtures. This Deed of Trust shall constitute a financing statement filed as a fixture filing in accordance with N.C. Gen. Stat. §25-9-402 (or any amendment thereto). For purposes of complying with the requirements of N.C. Gen. Stat. §25-9-402, the name of Grantor, as Debtor, and Beneficiary, as Secured Party, and the respective addresses of Grantor, as Debtor, and Beneficiary, as Secured Party, are set forth on the first page of this Deed of Trust. Grantor authorizes Beneficiary to effect any filing or recording of any additional financing statements relating to the Fixtures or amendments thereto where appropriate to perfect and continue the security interest in, and to protect and preserve, the Fixtures. Subject to Article XIV of the Contract and the limitations on the remedies in Article XII of the Contract, the remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Deed of Trust shall be (1) as prescribed herein, or (2) as prescribed by general law, or (3) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Beneficiary's sole election. The mention in any such financing statement or statements of the rights in and to (1) the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) the Grantor's interest as lessor in any present or future lease or rights to rents, issues or awards growing out of the use and/or occupancy of the Premises, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of Beneficiary as determined by this Deed of Trust or affect the priority of Beneficiary's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement or statements is solely for the protection of Beneficiary in the event any court shall at any time hold with respect to the foregoing clauses (1), (2) or (3) of this sentence, that notice of Beneficiary's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records.

1.08. ***Further Assurances; After Acquired Property.*** At any time, and from time to time, upon request by Beneficiary, the Grantor will make, execute and deliver or cause to be made, executed and delivered, to Beneficiary and/or Trustee and, where appropriate and on request of the Trustee or the Beneficiary, 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 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 Beneficiary, be necessary or desirable to effectuate, complete, or perfect, or to continue and preserve (a) the obligations of the Grantor under the 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 Grantor. Upon any failure by the Grantor so to do, 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 Beneficiary as its agent and attorney-in-fact to do so.

1.09. ***Expenses.*** To the extent permitted by applicable law and Article XIV of the Contract, the Grantor will pay or reimburse Beneficiary and Trustee, upon demand therefor, for all reasonable attorneys' fees, costs and expenses actually incurred by Beneficiary and the Trustee in any suit, action, legal proceeding or dispute of any kind in which Beneficiary and/or 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 misconduct by Beneficiary or any breach of this Deed of Trust by Beneficiary; and all such amounts paid by Beneficiary shall be added to the Indebtedness.

1.10. *Limit of Validity.* If from any circumstances whatsoever fulfillment of any provision of this Deed of Trust or the Contract at the time performance of such provision 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 Contract that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity.

1.11. *Use and Management of the Premises.* Unless required by applicable law, the Grantor shall not materially alter or change the use of the Premises or abandon the Premises without the prior written consent of Beneficiary which shall not be unreasonably withheld; provided, however, that nothing contained in this Section 1.11 or elsewhere in the Deed of Trust shall be deemed or construed so as to in any way estop, limit or impair the Grantor from exercising or performing any regulatory, policing, legislative, governmental or other powers or functions of a municipal corporation pursuant to applicable law.

1.12. *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 (which consent will not be unreasonably withheld or delayed).

1.13. *Hazardous Material.*

(a) The Grantor represents, warrants and agrees that, except as previously disclosed to the Corporation in writing, (1) the Grantor has not used or installed any Hazardous Material (as hereinafter defined) in violation of applicable Environmental Laws on, from or in the Premises and to the Grantor's actual knowledge no other person has used or installed any Hazardous Material on, from or in the Premises; (2) to the Grantor's knowledge, no other person has violated any applicable Environmental Laws (as hereinafter defined) relating to or affecting the Premises or any other property owned by the Grantor except as previously disclosed to the Corporation; (3) to the best of the Grantor's 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, to the best knowledge of the Grantor, 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; (4) 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 other than the processing of materials in the ordinary course of the Grantor's business as of the date hereof; (5) 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; (6) the Grantor shall comply with Environmental Laws applicable to the Premises, all at no cost or expense to Beneficiary or Trustee; (7)

the Grantor has obtained and 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; (8) to the best of the Grantor's 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 abates; and (9) 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 applicable law and Article XIV of the Contract, the Grantor hereby agrees to indemnify Beneficiary and Trustee and hold Beneficiary and 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, attorneys' and experts' fees) and claims of any and every kind whatsoever paid, incurred, suffered by or asserted against Beneficiary, Trustee and/or the Premises for, with respect to, or as a direct or indirect result of: (1) 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; (2) the violation of any Environmental Laws applicable to the Premises or the Grantor; (3) the failure by the Grantor to comply fully with the terms and provisions of this Section 1.13; (4) 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; or (5) any warranty or representation made by the Grantor in paragraph (a) of Section 1.13 being false or untrue in any material respect.

(c) In the event Beneficiary has a reasonable basis to suspect that the Grantor has violated any of the covenants, warranties or representations contained in this Section 1.13, or that the Premises are not in compliance with the applicable Environmental Laws for any reason, the Grantor shall take such steps as Beneficiary reasonably requires by written notice to the Grantor 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, Beneficiary may take such action as Beneficiary reasonably believes necessary to protect its interest, and the cost and expenses of all such actions taken by Beneficiary, including, without limitation, Beneficiary's reasonable attorneys' fees, shall be added to the Indebtedness.

(d) For purposes of this Deed of Trust: (1) "Hazardous Material" or "Hazardous Materials" means and includes, without limitation, (a) 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 CERCLA (as defined below), or in any applicable state or local law or regulation, (c) toxic substances, as defined in the Toxic Substances Control Act of 1976, or in any applicable state or local law or regulation or (d) 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; (2) "Release" has the meaning given such term, in the Environmental Laws, including, without limitation, Section 101(22) of CERCLA; and (3) "Environmental Law" or "Environmental Laws" means 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"); the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("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"). To the extent permitted by applicable law and subject to Article XIV of the Contract, the obligations and liabilities of the Grantor under this Section 1.13 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 1.13 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 and such grace period as specified in the Contract for the cure of such default. 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.

1.14. **Release of Premises.** Notwithstanding any other provisions of this Deed of Trust, with the consent of the Beneficiary and at any time so long as there is no Event of Default, the Trustee must release the Premises or any part thereof from the lien and security interest of this Deed of Trust when and if the following requirements have been fulfilled:

(1) In connection with any release of the Premises, or any part thereof, there shall be filed with the Beneficiary a certified copy of the resolution of the Board of Commissioners for the Grantor stating the purpose for which the Grantor desires such release of the Premises, giving an adequate legal description of the part of the Premises to be released, requesting such release and providing for the payment by the Grantor of all expenses in connection with such release.

(2) In connection with the release of any part of the Premises constituting less than the entire Premises, the tax, insured or appraised value of the Premises remaining after the proposed release is not less than 100% of the aggregate principal components of the Installment Payments relating to the Bonds then Outstanding (as each such term is defined in the Indenture).

(3) In connection with the release of any part of the Premises constituting less than the entire Premises, such release shall not prohibit Grantor's ingress, egress and regress to and from the remainder of the Premises not being released, or materially interfere with the use of the remainder of the Premises not being released.

(4) In connection with the release of all property constituting the entire Premises, there is paid to the Beneficiary an amount sufficient to provide for the payment in full of all Outstanding Bonds in accordance with Article VI of the Indenture.

ARTICLE II

2.01. *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 any Additional Payment when due or any Installment Payment by the first day of the month following the date on which such Installment Payment is due;

(b) The occurrence of any other "*Event of Default*" under the Contract; or

(c) Failure by the Grantor to perform or observe any term, condition or covenant of this Deed of Trust on its part to be observed or performed, other than as referred to in (a) or (b) above, or breach of any warranty by the Grantor herein contained, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the Grantor by the Trustee or the Beneficiary unless the Trustee or the Beneficiary agrees in writing to an extension of such time before its expiration; provided, however, that if the failure cannot be corrected within the stated period, the Trustee or the Beneficiary will not unreasonably withhold consent for an extension not longer than 180 days.

2.02. *Acceleration upon Default; Additional Remedies.* In the event an Event of Default shall have occurred and is continuing, Beneficiary shall, at the direction of a majority in aggregate principal amount of the Owners of the Outstanding Bonds, declare all Indebtedness to be due and payable and the same shall thereupon become due and payable in accordance with the Contract and this Deed of Trust without any presentment, demand, protest or notice of any kind. Thereafter, Beneficiary may, to the extent permitted by applicable law and subject to Article XIV of the Contract:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court 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 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 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 Beneficiary, to the extent permitted by applicable law and subject to Article XIV of the Contract, 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, specially enforce any of the covenants hereof, or cause the Trustee to foreclose this Deed of Trust by power of sale; and

(c) To the extent permitted by applicable law and subject to Article XIV of the Contract, exercise any or all of the remedies available to a secured party under the Uniform Commercial Code of North Carolina or under any other applicable laws.

NOTWITHSTANDING ANY PROVISIONS HEREIN, IT IS THE INTENT OF THE PARTIES TO COMPLY WITH THE PROVISIONS OF NORTH CAROLINA GENERAL STATUTES SECTION 160A-20. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE GRANTOR IN FAVOR OF THE BENEFICIARY IN VIOLATION OF SECTION 160A-20, INCLUDING, WITHOUT LIMITATION, ANY DEFICIENCY JUDGMENT FOR AMOUNTS THAT MAY BE OWED UNDER THE 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 OBLIGATIONS UNDER THE CONTRACT OR THIS DEED OF TRUST. TO THE EXTENT OF ANY CONFLICT BETWEEN THIS PARAGRAPH AND ANY OTHER PROVISION OF THIS DEED OF TRUST, THIS PARAGRAPH SHALL TAKE PRIORITY AND SHALL INCORPORATE HEREIN BY REFERENCE ARTICLE XIV OF THE CONTRACT. 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 AND THE TAXING POWER OF THE GRANTOR IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY MONIES DUE OR SECURED UNDER THIS DEED OF TRUST.

2.03. ***Foreclosure by Power of Sale.*** Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

Upon application of Beneficiary, it shall be lawful for and the duty of Trustee, and 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 North Carolina law with respect to the exercise of powers of sale contained in deeds of trust, and, upon such sale, Trustee shall convey title to the purchaser in fee simple. After retaining from the proceeds of such sale just compensation for Trustee's services and all expenses incurred by Trustee, including a reasonable trustee's commission not exceeding one-half of one percent (.5%) of the bid and reasonable attorneys' fees for legal services actually performed, Trustee shall apply the residue of the proceeds, first, to the payment of all sums expended by Beneficiary under the terms of this Deed of Trust, second, to the payment of the Indebtedness and interest thereon secured hereby, and the balance, if any, shall be paid to the Grantor. The Grantor agrees that in the event of sale hereunder, Beneficiary shall have the right to bid thereat. Trustee may require the successful bidder at any sale to deposit immediately with 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 Trustee shall at the same time and place again offer the Premises for sale. Such deposit shall be refunded in case a resale is had; otherwise, it shall be applied to the purchase price.

2.04. ***Performance by 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, Beneficiary may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Beneficiary in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by the Grantor to Beneficiary with interest thereon at the rate provided in the Contract. Beneficiary shall be the sole judge of the necessity for any such actions and of the amounts to be paid. 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.

2.05. ***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, exemption or redemption laws now or hereafter in force, 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 marshaled upon any foreclosure of the lien hereof.

2.06. ***Leases.*** Beneficiary and 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 Grantor, a defense to any proceedings instituted by Beneficiary and Trustee to collect the sums secured hereby.

2.07. ***Discontinuance of Proceedings and Restoration of the Parties.*** In case Beneficiary and 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 Beneficiary and Trustee, or either of them, then and in every such case the Grantor and Beneficiary and Trustee, and each of them, shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Beneficiary and Trustee, and each of them, shall continue as if no such proceeding had been taken.

2.08. ***Remedies Not Exclusive.*** To the extent permitted by applicable law and subject to Article XIV of the Contract, Trustee and 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 Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary or 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 Trustee or 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 power or remedy given by any instrument securing or relating to the Indebtedness secured hereby to Trustee or 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 Trustee or Beneficiary and either of them may pursue inconsistent remedies.

2.09. ***Waiver.*** No delay or omission of 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 Beneficiary and Trustee, and each of them, may be exercised from time to time and as often as may be deemed expedient by Beneficiary and Trustee, and each of them. No consent or waiver, expressed or implied, by 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 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 Beneficiary of its rights hereunder or impair any rights, powers or remedies consequent on any breach or Default by the Grantor.

2.10. ***Suits to Protect the Premises.*** Beneficiary and Trustee, and each of them, shall have 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 Beneficiary.

2.11. ***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, 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 to have the claims of 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.

ARTICLE III

3.01. ***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 Grantor, Trustee or Beneficiary such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of Grantor, Trustee or Beneficiary, respectively.

3.02. ***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 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 thereof, shall refer to the corresponding Articles, Sections or subsections thereof, of this Deed of Trust unless specific reference is made to such Articles, Sections or subsections thereof of another document or instrument.

3.03. ***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, then, subject to applicable law and Article XIV of the Contract, the remainder of this Deed of Trust and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

3.04. ***Applicable Law and Jurisdiction.*** This Deed of Trust shall be interpreted, construed and enforced according to the laws of the State of North Carolina. The exclusive forum and venue for all actions arising out of this Deed of Trust are with the North Carolina General Court of Justice in Henderson County, North Carolina or the U.S. District Court for the Western District of North Carolina. Any attempt to contravene this Section shall be an express violation of this Deed of Trust.

3.05. ***Notices, Demands and Request.*** 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 or served by personal delivery or by depositing in the United States Mail, prepaid and registered or certified, return receipt requested, and addressed to the addresses set forth in the Contract. 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 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.

3.06. ***Appointment of Successor Trustee.*** Beneficiary shall at any time have the irrevocable right to remove Trustee herein named without notice to such Trustee for 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 this state, and in the event of the death or resignation of Trustee named herein, 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 Trustee in the same manner and to the same extent as though such were named herein as Trustee. In the event of such substitution of Trustee, Beneficiary shall furnish notice thereof to the Grantor.

3.07. ***Trustee's Powers.*** At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and Grantor and presentation of this Deed of Trust, and without affecting the liability for payment of the Indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of said Premises, Trustee may (1) reconvey any part of said Premises, (2) consent in writing to the making of any map or plat thereof, (3) join in granting any easement therein or (4) join in any extension agreement or any agreement subordinating the lien or charge hereof. This provision shall not limit the powers of Trustee under applicable law or Section 2.03 hereof.

3.08. ***Beneficiary's Powers.*** Without affecting the liability 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, Beneficiary may, from time to time and without notice, (1) release any person so liable, (2) extend the maturity or alter any of the terms of any such obligation, (3) grant other indulgences, (4) cause to be released or reconveyed at any time at Beneficiary's option, any parcel, portion or all of the Premises, (5) take or release any other or additional security for any obligation herein mentioned or (6) make compositions or other arrangements in relation thereto. The provisions of N.C. Gen. Stat. Section 45-45.1 or any similar statute hereafter enacted in replacement or in substitution thereof shall be inapplicable to this Deed of Trust.

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

3.10. *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

[SEAL]

By: _____
Steven D. Wyatt
County Manager

Attest:

Teresa Wilson
Clerk to the Board of Commissioners

STATE OF NORTH CAROLINA)
)
COUNTY OF HENDERSON)

I, a Notary Public of the County and State aforesaid, certify that Teresa Wilson (the "Signatory") personally came before me this day and acknowledged that she is the Clerk to the Board of Commissioners for the County of Henderson, North Carolina and that by authority duly given and as the act of said County, the foregoing instrument was signed in its name by the County Manager of the County of Henderson, North Carolina and attested by her as Clerk to said Board of Commissioners.

I certify that the Signatory personally appeared before me this day, and

(check one of the following)

_____ (I have personal knowledge of the identity of the Signatory); or

_____ (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:

(check one of the following)

___ a driver's license or

___ in the form of _____); or

_____ (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal, this the _____ day of June, 2010.

Notary Public

Print: Name: _____

[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: _____

☞ [NOTARY SEAL] (MUST BE FULLY LEGIBLE)

EXHIBIT A
LAND DESCRIPTION

[to be added]

EXHIBIT B

PERMITTED ENCUMBRANCES

"Permitted Encumbrances" means, as of any particular time: (a) this Deed of Trust; (b) the Contract, as it may be amended from time to time; (c) the Indenture; (d) the Lease dated as of June 1, 2010 between the Grantor and Henderson County Board of Education; (e) utility, access and other easements and rights of way, restrictions and exceptions which exist of record as of the closing date and date which do not interfere with or impair the intended use of the Premises; (f) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property of the general character of the Premises and as do not materially impair title to the Premises; and (g) any other encumbrances described in the policy evidencing the title insurance required pursuant to Section 5.5 of the Contract.