

## **REQUEST FOR BOARD ACTION**

### **HENDERSON COUNTY BOARD OF COMMISSIONERS**

**MEETING DATE:** May 3, 2010

**SUBJECT:** Resolution Providing for Final Approval of the Terms and Documents for the Qualified Zone Academy Bonds (QZABs) School Improvements Financing

**ATTACHMENTS:** Resolution  
Summary of Bank Proposals Received  
RBC Bank Proposal  
Draft Installment Financing Contract

#### **SUMMARY OF REQUEST:**

The Board of Commissioner's funding plan for school capital projects in the current fiscal year includes the issuance of Qualified Zone Academy Bonds (QZABs) to finance repair and renovation projects at multiple school facilities. The County received an approved allocation of \$1,807,500 from the State Board of Education for this purpose which will complete the \$4 million current fiscal year funding plan approved by the Board of Commissioners .

Staff requested proposals to finance the issuance of the QZABs. Attached for the Board's information is a summary of the bank interest rates received/proposed for this financing. RBC Bank has been certified as the lowest responsive proposal received to finance \$1,807,500 in QZABs for 10 years at a 5.70 percent interest rate. The interest rate proposed is a taxable rate that qualifies for a 100 percent interest payment subsidy back to the County from the U.S. Treasury, if lower than the federal tax credit rate published on May 4<sup>th</sup>, the day on which the Local Government Commission approves the financing.

The attached resolution approves the final terms and financing documents drafted by Bond Counsel for the issuance of the QZABs. The draft documents, which are in substantially final form, include an Installment Financing Contract, the Deed of Trust, an Agency Agreement and Lease Agreement with the public school system.

#### **BOARD ACTION REQUESTED:**

Request that the Board approve the attached resolution providing for final approval of the terms and financing documents for the Qualified Zone Academy Bonds (QZABs) school improvement projects and which authorizes the Chairman and Staff to execute the documents to complete the financing with RBC Bank.

#### **Suggested Motion:**

**I move the approval of the Resolution of the County of Henderson, North Carolina Approving an Installment Financing Contract to Provide for the Acquisition, Construction, Furnishing and Equipping of Certain Projects Set Forth Therein and Related Matters.**

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, May 3, 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:

\* \* \* \* \*

Commissioner \_\_\_\_\_ moved that the following resolution, a copy of which was available with the Board and which was read by title, be adopted:

**RESOLUTION OF THE COUNTY OF HENDERSON, NORTH CAROLINA APPROVING AN  
INSTALLMENT FINANCING CONTRACT TO PROVIDE FOR THE ACQUISITION,  
CONSTRUCTION, FURNISHING AND EQUIPPING OF CERTAIN PROJECTS SET FORTH  
THEREIN AND RELATED MATTERS**

*WHEREAS*, the County of Henderson, North Carolina (the "*County*") is a political subdivision validly existing under the Constitution, statutes and laws of the State (the "*State*");

*WHEREAS*, the County has the power, pursuant to the General Statutes of North Carolina, to (1) purchase real and personal property, (2) enter into installment purchase contracts to finance the purchase or improvement of real and personal property used, or to be used, for public purposes, and (3) grant a security interest in some or all of the property purchased or improved to secure repayment of the purchase price;

*WHEREAS*, the Board of Commissioners of the County (the "*Board*") has previously determined that it is in the best interest of the County to enter into (1) an installment financing contract with RBC Bank (USA), a state banking corporation (the "*Bank*"), in order to pay the capital costs of the renovation, refurbishment and furnishing of (a) Edneyville Elementary School, (b) Bruce Drysdale Elementary School, (c) Atkinson Elementary School, (d) Glenn C. Marlow Elementary School, (e) Upward Elementary School, (f) Apple Valley Middle School, (g) Flat Rock Middle School and (h) North Henderson High School (collectively, the "*Projects*"); and (2) a deed of trust, security agreement and fixture filing related to all or a portion of the County's fee simple interest in the real property on which Glenn C. Marlow Elementary School is located (the "*Site*" and, together with the improvements thereon, the "*Mortgaged Property*");

*WHEREAS*, the County has determined that it would be in the best interest of the County to enter into an Installment Financing Contract dated as of June 1, 2010 (the "*Contract*") between the County and the Bank in order to pay the capital costs of the Projects;

*WHEREAS*, in order to secure the County's obligations under the Contract, the County will enter into a Deed of Trust, Security Agreement and Fixture Filing dated as of June 1, 2010 (the "*Deed of Trust*") related to the Mortgaged Property;

WHEREAS, there have been described to the Board the forms of the following documents (collectively, the "Instruments"), copies of which have been made available to the Board, which the Board proposes to approve, enter into and deliver, as applicable, to effectuate the proposed installment financing:

- (1) the Contract;
- (2) the Deed of Trust;
- (3) the Agency Agreement dated as of June 1, 2010 (the "Agency Agreement") between the County and the Henderson County Board of Education (the "Board of Education"); and
- (4) the Lease dated as of June 1, 2010 (the "Lease") between the County and the Board of Education;

WHEREAS, it appears that each of the Instruments is in an appropriate form and is an appropriate instrument for the purposes intended;

WHEREAS, the Board did conduct a public hearing on April 5, 2010, to receive public comment on the proposed Contract to finance the Projects; and

WHEREAS, the County has filed an application to the LGC for approval of the Contract;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF HENDERSON, NORTH CAROLINA, AS FOLLOWS:**

**Section 1. Ratification of Instruments.** That all actions of the County, the Chairman of the Board (the "Chairman"), the Clerk to the Board (the "Clerk"), the County Manager, the Finance Director of the County (the "Finance Director"), the County Attorney and their respective designees, whether previously or hereinafter taken, in effectuating the proposed financing are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the Instruments.

**Section 2. QZAB Designation.** The County hereby designates the Contract as a "qualified zone academy bond" within the meaning of, and for purposes of, Section 54E of the Code and agrees to do or cause to be done all things necessary to preserve and maintain such designation and qualification under Section 54E of the Code.

**Section 3. Representations, Warranties and Covenants of the County.** The County represents, warrants and covenants as follows:

- (a) During the term of the Contract, the Projects will be used by the County and the Board of Education only for the purpose of performing essential governmental uses and public functions of the County consistent with the permissible scope of the County's authority and that the Advance (as defined in the Contract) delivered to the County by the Bank will be used for (1) the rehabilitation and repair of existing facilities of qualified zone academies within the meaning of Section 54E of the Code, (2) the provision of equipment for use at qualified zone academies within the meaning of Section 54E of the Code, (3) the development of course materials for education to be provided at qualified zone academies within the meaning of Section 54E of the Code, or (4) the training of teachers and other school personnel

at qualified zone academies within the meaning of Section 54E of the Code, all within the meaning of Section 54E(d)(3) of the Code (each a "*Qualified Purpose*");

(b) The County will annually provide the Bank with current financial statements, budgets, proof of appropriation for the current budget year and such other financial information relating to the ability of the County to perform its obligations under the Contract as may be requested by the Bank;

(c) Each of the Schools at which the Projects will be installed or used constitutes a "*qualified zone academy*" within the meaning of Section 54E(d)(1) of the Code, created and established by the Board of Education at each of the Schools. In connection therewith, the County represents and warrants that:

(i) Each such school is a public school established by and operated under the supervision of the Board of Education to provide education and training below the post-secondary level and has been designed and will continue to be designed in cooperation with business to enhance the academic curriculum, increase graduation and employment rates, and better prepare students for the rigors of college and the increasingly complex workforce;

(ii) All of the students at each such public school are subject to the same academic standards and assessments as other students educated by the Board of Education;

(iii) The comprehensive educational plan of each such public school is approved by the Board of Education;

(iv) There is a reasonable expectation as of the date hereof that at least 35% of the students attending each such public school will be eligible for free or reduced-cost lunches under the school lunch program established under the Richard B. Russell National School Lunch Act (codified at 42 U.S.C.S. Sections 1751 through 1764); and

(v) Each such public school is located within the corporate limits and the jurisdiction of the Board of Education;

(d) During the term of the Contract, the Projects will be owned by the County or the Board of Education and used by the County and the Board of Education to provide educational services to the students of the County;

(e) The County has received written commitments from private entities to make qualified contributions within the meaning of Section 54E of the Code of in-kind services having a present value as of the date of execution and delivery of the Contract of not less than 10% of the Advance delivered by the Bank under the Contract;

(f) That 100% of the Available Proceeds (defined as the amount of the Advance minus issuance expenses (capped at 2% of the Advance) plus investment proceeds) delivered by the Bank to the County pursuant to the Contract will be used for Qualified Purposes at the qualified zone academy within three years from the date of closing and that the County owns and holds fee title to the real property to which all or a part of the Projects may be or become a fixture;

(g) The Board of Education is an organized board of education of the State and constitutes an "*eligible local education agency*" within the meaning of Section 54E(d)(2) of the Code and Section 9101

of the Elementary and Secondary Education Act of 1965, as amended (codified at 20 U.S.C.S. Section 7801(26)), because it is a public school board of education legally constituted within the State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in the County;

(h) To the best of the County's knowledge and belief, the Contract, which has been designated as a "*qualified zone academy bond*", authorized by the County and approved by the North Carolina State Board of Education, will not cause the State's qualified zone academy bond allocation under the Code to be exceeded; and

(i) The County will comply with all applicable provisions of the Code, including specifically Section 54A and 54E of the Code, and the regulations promulgated thereunder, from time to time proposed or in effect, in order for the Contract to qualify as a "*qualified zone academy bond*" within the meaning of Section 54E of the Code and to maintain the federal income tax credits with respect to the Contract provided in accordance with Section 54E of the Code for the benefit of the Bank.

**Section 4. Authorization to Execute the Contract.** That the County approves the acquisition of the Projects in accordance with the terms of the Contract, which will be a valid, legal and binding obligation of the County in accordance with its terms. The form and content of the Contract are hereby in all respects authorized, approved and confirmed, and the Chairman, the Clerk, and the County Manager and their respective designees are hereby authorized, empowered and directed to execute and deliver the Contract, including necessary counterparts, in substantially the form and content presented to the Board, but with such changes, modifications, additions or deletions therein as they may deem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of the County's approval of any and all changes, modifications, additions or deletions therein from the form and content of the Contract presented to the Board, and that from and after the execution and delivery of the Contract, the Chairman, the Clerk, the County Manager and the Finance Director are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Contract as executed.

**Section 5. Authorization to Execute the Deed of Trust.** That the County approves the form and content of the Deed of Trust and that the Deed of Trust is in all respects authorized, approved and confirmed, and the Chairman, the Clerk and the County Manager and their respective designees are hereby authorized, empowered and directed to execute and deliver the Deed of Trust, including necessary counterparts, in substantially the form and content presented to the Board, but with such changes, modifications, additions or deletions therein as they may deem necessary, desirable or appropriate, specifically including the removal of any property from the Mortgaged Property that the Bank determines is not needed. Execution by the Chairman, the Clerk and the County Manager or their respective designees shall constitute conclusive evidence of the County's approval of any and all such changes, modifications, additions or deletions therein from the form and content of the Deed of Trust presented to the Board, and from and after the execution and delivery of the Deed of Trust, the Chairman, the Clerk, the County Manager and the Finance Director are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Deed of Trust as executed.

**Section 6. Authorization to Execute the Lease and Agency Agreement.** That form and content of the Lease and the Agency Agreement are hereby in all respects authorized, approved and confirmed, and the Chairman, the Clerk and the County Manager and their respective designees are hereby authorized, empowered and directed to execute and deliver the Lease and the Agency Agreement, including necessary counterparts, in substantially the form and content presented to the Board, but with such changes, modifications, additions or deletions therein as they may deem necessary, desirable or

appropriate, their execution thereof to constitute conclusive evidence of the County's approval of any and all changes, modifications, additions or deletions therein from the form and content of the Lease and Agency Agreement, respectively, presented to the Board, and that from and after the execution and delivery of the Lease and the Agency Agreement, the Chairman, the Clerk, the County Manager and the Finance Director are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Lease and Agency Agreement as executed.

*Section 7. **County Representative.*** That the Chairman, the County Manager and the Finance Director are hereby designated as the County's Representative to act on behalf of the County in connection with the transactions contemplated by the Instruments, and the Chairman, the County Manager and the Finance Director are authorized to proceed with the acquisition of the Projects in accordance with the Instruments and to seek opinions as a matter of law from the County Attorney, which the County Attorney is authorized to furnish on behalf of the County, and opinions of law from such other attorneys for all documents contemplated hereby as required by law. The County's representative and/or designee or designees are in all respects authorized on behalf of the County to supply all information pertaining to the County for use in the transactions contemplated by the Instruments. The County's representatives are hereby authorized, empowered and directed to do any and all other acts and to execute any and all other documents, which they, in their discretion, deem necessary and appropriate to consummate the transactions contemplated by the Instruments or as they deem necessary or appropriate to implement and carry out the intent and purposes of this Resolution.

*Section 8. **Severability.*** That if any section, phrase or provision of this Resolution is for any reason declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

*Section 9. **Repealer.*** That all motions, orders, resolutions and parts thereof, in conflict herewith are hereby repealed.

*Section 10. **Effective Date.*** That this Resolution is effective on the date of its adoption.

STATE OF NORTH CAROLINA                    )  
  )  
COUNTY OF HENDERSON                    )        SS:

I, *Teresa Wilson*, Clerk to the Board of Commissioners of the County of Henderson, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of a resolution titled **"RESOLUTION OF THE COUNTY OF HENDERSON, NORTH CAROLINA APPROVING AN INSTALLMENT FINANCING CONTRACT TO PROVIDE FOR THE ACQUISITION, CONSTRUCTION, FURNISHING AND EQUIPPING OF CERTAIN PROJECTS SET FORTH THEREIN, THE REFINANCING OF CERTAIN INSTALLMENT FINANCING CONTRACT AND RELATED MATTERS"** adopted by the Board of Commissioners of the County of Henderson, North Carolina in regular session convened on the 3<sup>rd</sup> day of May, 2010, as recorded in the minutes of the Board of Commissioners of the County of Henderson, North Carolina.

***WITNESS***, my hand and the seal of the County of Henderson, North Carolina, this the \_\_\_\_ day of May, 2010.

(SEAL)

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

**HENDERSON COUNTY**  
**QUALIFIED ZONE ACADEMY BONDS (QZABs)**  
**\$1,807,500**  
**Summary of Financing Rates Proposed**

<u>Financial Institution:</u>	<u>Fixed Taxable Interest Rate Proposed</u>
RBC Bank	5.70%
BB&T	5.76%
Bank of America	6.48%





**RBC Bank™**

Public and Institutional Banking  
34 2<sup>nd</sup> Street NW  
Hickory, NC 28601  
(828) 261-2719 phone  
(828) 431-2118 fax  
(888) 680-5064

April 2, 2010

J. Carey McLelland  
Finance Director  
County of Henderson  
Hendersonville, NC 28792

RE: County School Improvements

Dear Carey:

RBC Bank is pleased to indicate our interest in providing financing to the County of Henderson for improvements to the various County school buildings.

We are excited about the prospects of developing a stronger partnership with the County. If there are any questions related to the enclosed proposal, please do not hesitate to call me at (828) 261-2719. I look forward to hearing from you and working with you on this transaction.

Sincerely,

Jeremy E. Fisher  
Director  
Public & Institutional Banking

## INSTALLMENT FINANCING AGREEMENT PROPOSAL

RBC Bank is pleased to respond to your request for a loan to finance the improvements to various school buildings for the County. The terms and conditions of our proposal are as follows:

<b>Borrowing Entity:</b>	County of Henderson, North Carolina (the "County")
<b>Secured Party:</b>	RBC Bank or its nominee (the "Bank")
<b>Project Description:</b>	To provide financing for improvements to various County school building (the "Project")
<b>Total Amount to Finance:</b>	Not to exceed \$1,807,500.00
<b>Anticipated Funding Date:</b>	On or before June 9, 2010
<b>Term:</b>	Ten (10) years
<b>Program Type:</b>	Qualified Zone Academy Bonds
<b>Program Description:</b>	Under the Qualified Zone Academy Bonds Direct Payment program, the County will receive a payment from the Federal Government equal to the interest payable on the obligation. The interest payment will be an amount equal to the lesser of the interest calculated at the Interest Rate set forth below, or the interest rate designated as the "Tax Credit Rate" by the US Treasury on the date the Installment Financing Agreement is signed.
<b>Interest Rate:</b>	5.70%
<b>Payment Amount:</b>	\$180,750.00 Equal principal plus interest paid annually (in arrears) (Attached Schedule A)
<b>Prepayment Penalty:</b>	Prepayment of the loan will be subject to a yield maintenance fee equal to the present value of the daily lost cash flow to RBC Bank based upon the difference between the interest rate under the Installment Finance Agreement and the rate on a new loan of similar amount with the same remaining maturity to a similar borrower. The discount rate for calculating the present value will be the current rate offered by RBC Bank for a new loan of the similar amount with the same remaining maturity to a similar borrower, as determined by RBC Bank in its reasonable discretion, which discretion shall be conclusive absent a showing of bad faith or manifest error. Any prepayment of the Installment Financing Agreement will be subject to a minimum fee of one-half percent (.5%). <b>In the event that the Federal Government terminates the Qualified Zone Academy Bonds Program and discontinues interest rebate payments to the County, the Bank will allow prepayment of the Bond at a penalty of 1% of the outstanding principal balance.</b>
<b>Type of Financing:</b>	The Installment Financing Agreement will include language compliant with NC General Statute Section 160A-20.
<b>Funding:</b>	At closing, the proceeds of the loan will be placed in an Escrow Account under the Escrow Deposit Agreement.

<b>Escrow Fund:</b>	RBC Bank will set up and administer the Escrow Fund under the Escrow Deposit Agreement and invest it in RBC Bank's Public Funds Account for the County's benefit. Interest earnings accrued as a result of investment of the funds will be added to the balance of the Escrow Account and will be available to pay Project costs. There will be no charge for the initial set-up of this account.
<b>Non-Appropriation:</b>	The County will agree that an appropriation sufficient to satisfy the debt service will be included in its budgeting proposal process.
<b>Title and Security Interest:</b>	Deed of Trust and/or Security Interest on the Project. RBC Bank will have a first lien position on the Flat Rock Middle or Glen Marlow Elementary.
<b>Conditions:</b>	In order for RBC Bank to provide financing for the Project, the following condition(s) must be met at or prior to closing:
1.	Total Bank fees will be \$6,000.00 for review. The County shall also be responsible for all costs associated with obtaining or providing surveys, insurance, and title insurance.
2.	All financing documentation, including, but not limited to, Deed of Trust, Certificates and Opinions will be subject to final satisfactory review and approval by the Bank and Bank's Counsel. Bank will review documents prepared by the County's Counsel.
3.	Satisfaction of the conditions detailed on the attached Addendum A.
4.	Legal opinions from counsel satisfactory to the Bank concerning enforceability, validity of the transaction to the Bank shall be provided with all associated costs to be paid by the County.
5.	Evidence of LGC approval.
6.	Proposal assumes bond counsel for the County will draft documents, and make necessary elections for contract to be treated as a refundable qualified zone academy bond.

April 15, 2010

**Proposal Expiration:** The Bank must be notified by 5:00 p.m. that our bid will be recommended to the governing body for approval.

April 30, 2010

**Proposal Acceptance:** The governing body must accept the proposal by this date. Upon acceptance, please return a signed copy of this letter to RBC Bank.

June 9, 2010

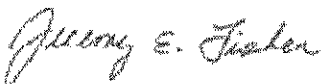
**Funding Date:** The interest rate and payments will be valid for funding through this date. If this loan is not closed by the funding date, the quoted interest rate and payments are subject to change based on current market conditions, unless extended by RBC Bank.

This letter expresses the willingness of RBC Bank to seek the additional approvals necessary for this transaction and is delivered to you with the understanding that its contents will be kept strictly confidential.

**A final commitment will require the prior approval of RBC Bank's credit committee, documents in an acceptable form, and the negotiation of a definitive structure. Once this proposal is accepted by the governing body, please sign below and return this letter to RBC Bank.**

If you have any questions, please feel free to call or e-mail me at (828) 261-2719 or [jeremy.fisher@rbc.com](mailto:jeremy.fisher@rbc.com).

Sincerely,



Jeremy E. Fisher  
Director  
Public & Institutional Banking

*Proposal Accepted By:*

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

## Addendum A

### Real Property Requirements

If the Financing Proposal is committed by the Bank, the County understands and agrees that the Bank shall require in form and content satisfactory to the Bank and its counsel the items marked in the following list:

- ☒ 1. **Deed of Trust** – The Installment Financing Agreement shall be secured by a first lien deed of trust (“the Deed of Trust”) on the Project and improvements to the Project. The description of the Project contained in or attached to the Deed of Trust shall conform to the survey referred to in paragraph 4 below (if required). The Deed of Trust shall specify, among other things, that the Bank shall have the right to inspect the premises on reasonable notice at reasonable times.
- ☒ 2. **UCC Financing Statements** – UCC financing Statements, properly recorded, providing a first lien on equipment and other items and types of personal property now owned or hereafter acquired and located upon the property and used or useable in the operation and maintenance of the improvements;
- ☒ 3. **Title Insurance** – A title insurance policy in an amount and issued by a company acceptable to the Bank insuring the Bank’s first lien position. The policy shall contain no matters objectionable to the Bank, including, without limitation, exceptions with respect to mechanics’ and materialmen’s liens, prior years’ taxes, matters of survey, deed restrictions, etc.
- ☒ 4. **Boundary Survey.** Prior to closing a survey containing all setback and side lines, all existing or proposed buildings, and all streets, roads, rights-of-way, easements, encroachments, etc. must be provided.
- ☒ 5. **Hazard Insurance** – A hazard insurance policy to include fire, vandalism and malicious mischief, and extended coverage. The insurance policy must be in an amount sufficient to avoid co-insurance liability and equal to at least the amount of the loan. The insurance policy shall be issued by a company licensed to do business in North Carolina or through the North Carolina Association of County Commissioners Risk Management Pools or North Carolina League of Municipalities Interlocal Risk Financing Fund of North Carolina and shall contain a standard mortgagee clause designating the Bank as loss payee. As soon as construction of the improvements is completed, the policy shall be converted to a permanent fire and hazard insurance policy and shall be in an amount sufficient to avoid co-insurance liability and equal to the total replacement value or the amount of the loan, whichever is greater.
- ☒ 6. **Flood Insurance** – A flood insurance policy if the property is located in a “special flood, mudslide, or erosion hazard area.” The flood insurance policy shall be in the amount of the loan or the maximum amount of coverage available, whichever is less, and shall contain a standard mortgagee clause designating the Bank as loss payee.
- ☒ 7. **Environmental** - The County shall provide to the Bank a completed Environmental Questionnaire on the form provided by the Bank or, as deemed necessary by the Bank, a Phase I Environmental Survey.

## Schedule A

County of Henderson

Compound Period      Annual  
Nominal Annual Rate      5.70%

	Event	Start Date	Amount	Number	Period	End Date
1	Loan	9-Jun-10	1,807,500.00	1		
2	Payment Fixed Payment (+ Interest)	9-Jun-11	180,750.00	10	Annual	6/9/2020

## AMORTIZATION SCHEDULE - Normal Amortization 360 Day Year

#	Date	Payment	Interest	Principal	Balance
Loan	9-Jun-10				1,807,500.00
2010 Totals		0.00	0.00	0.00	
1	9-Jun-11	283,777.50	103,027.50	180,750.00	1,626,750.00
2011 Totals		283,777.50	103,027.50	180,750.00	
2	9-Jun-12	273,474.75	92,724.75	180,750.00	1,446,000.00
2012 Totals		273,474.75	92,724.75	180,750.00	
3	9-Jun-13	263,172.00	82,422.00	180,750.00	1,265,250.00
2013 Totals		263,172.00	82,422.00	180,750.00	
4	9-Jun-14	252,869.25	72,119.25	180,750.00	1,084,500.00
2014 Totals		252,869.25	72,119.25	180,750.00	
5	9-Jun-15	242,566.50	61,816.50	180,750.00	903,750.00
2015 Totals		242,566.50	61,816.50	180,750.00	
6	9-Jun-16	232,263.75	51,513.75	180,750.00	723,000.00
2016 Totals		232,263.75	51,513.75	180,750.00	
7	9-Jun-17	221,961.00	41,211.00	180,750.00	542,250.00
2017 Totals		221,961.00	41,211.00	180,750.00	
8	9-Jun-18	211,658.25	30,908.25	180,750.00	361,500.00
2018 Totals		211,658.25	30,908.25	180,750.00	
9	9-Jun-19	201,355.50	20,605.50	180,750.00	180,750.00
2019 Totals		201,355.50	20,605.50	180,750.00	
10	9-Jun-20	191,052.75	10,302.75	180,750.00	0.00
2020 Totals		191,052.75	10,302.75	180,750.00	
Grand Totals		2,374,151.25	566,651.25	1,807,500.00	

**INSTALLMENT FINANCING CONTRACT**

BETWEEN

**RBC BANK (USA)**

AND

**COUNTY OF HENDERSON, NORTH CAROLINA**

DATED AS OF  
JUNE 1, 2010

# INSTALLMENT FINANCING CONTRACT

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and is not part of the Installment Financing Contract.)

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THIS INSTRUMENT HAS BEEN PRE-AUDITED  
IN THE MANNER REQUIRED BY THE LOCAL  
GOVERNMENT BUDGET AND FISCAL  
CONTROL ACT.

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

## INSTALLMENT FINANCING CONTRACT

This **INSTALLMENT FINANCING CONTRACT**, dated as of June 1, 2010 (this ***“Contract”***), is between **RBC BANK (USA)** (the ***“Bank”***), a state banking corporation, and its successors and assigns, and the **COUNTY OF HENDERSON, NORTH CAROLINA** (the ***“County”***), a political subdivision of the State of North Carolina, validly existing under and by virtue of the Constitution, statutes and laws of the State of North Carolina.

### ***PREAMBLES***

***WHEREAS***, the County has the power, pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended, to (1) purchase real and personal property, (2) enter into installment financing contracts in order to finance the purchase of real and personal property used, or to be used, for public purposes, and (3) finance the construction of fixtures or improvements on real property by contracts that create in the fixtures or improvements and in the real property on which such fixtures or improvements are located a security interest to secure repayment of moneys advanced or made available for such construction;

***WHEREAS***, the Henderson County Board of Education (the ***“Board of Education”***) operates (a) Edneyville Elementary School, (b) Bruce Drysdale Elementary School, (c) Atkinson Elementary School, (d) Glenn C. Marlow Elementary School, (e) Upward Elementary School, (f) Apple Valley Middle School, (g) Flat Rock Middle School and (h) North Henderson High School (the ***“Schools”***), and the Board of Education has developed a qualified zone academy at such public schools and has determined that it is in the best interests of the residents of the County to provide for the renovation, refurbishment and furnishing of the Schools, each of which qualifies as a qualified zone academy within the meaning of Section 54E(d) of the Code (collectively, the ***“Projects”***);

***WHEREAS***, the County and the Board of Education have previously determined to cooperate to provide for the undertaking of the Projects and for the financing of the costs of the Projects in an amount of \$1,807,500;

***WHEREAS***, in furtherance of such plan of financing and to provide for improved public schools for County residents, the Board of Education has conveyed [Glenn C. Marlow Elementary School or Flat Rock Middle School] (together with the site thereof, the ***“Mortgaged Property”***) to the County pursuant to a General Warranty Deed (the ***“Deed”***) to assist the County in financing the costs of the Projects for the Board of Education;

***WHEREAS***, the Mortgaged Property is owned by the County and will be operated by the Board of Education pursuant to a Lease Agreement, dated as of June 1, 2010 (the ***“Lease Agreement”***), by and

between the Board of Education and the County, providing for the use of the Mortgaged Property by the Board of Education in providing educational services to the residents of the County;

**WHEREAS**, in connection with the Projects, the County will enter into an Agency Agreement, dated as of June 1, 2010 (the "**Agency Agreement**"), by and between the Board of Education and the County, to provide that the Board of Education will oversee the Projects;

**WHEREAS**, the Board of Commissioners of the County (the "**Board**") has determined that it is in the best interests of the County to assist the Board of Education by providing for the financing of the costs of the Projects;

**WHEREAS**, in furtherance of such plan of financing, the Board has determined that it is in the best interests of the County to receive an advance of funds in an aggregate principal amount of \$1,807,500 by entering into this Contract with the Bank pursuant to which the County will make Installment Payments and Additional Payments (each term as hereinafter defined) in consideration thereof;

**WHEREAS**, the County and the Bank intend that this Contract will qualify as a "**qualified zone academy bond**" within the meaning of, and for purposes of, Sections 54A and 54E of the Code and the Bank has offered to finance the costs of the Projects by entering into this Contract and the County will enter into a Tax Compliance Certificate, dated as the Closing Date (the "**Tax Compliance Certificate**"), to ensure compliance with the requirements of the applicable provisions of the Code, including without limitation Sections 54A and 54E of the Code and the Treasury Regulations, in connection with this Contract, the use of the principal amount advanced by the Bank to the County under this Contract and the qualification of the Contract as a "**qualified zone academy bond**" within the meaning of, and for purposes of, Sections 54A and 54E of the Code;

**WHEREAS**, the Bank will advance an aggregate principal amount of \$1,807,500 (the "**Advance**") to the County pursuant to the terms of this Contract to be used by the County to pay costs of the Projects and for certain other purposes as set forth in this Contract, and the County will repay the Advance to the Bank by making annual payments of principal and interest on the outstanding balance due at an interest rate of 5.70% per annum (the "**Interest Rate**") to the Bank on June [9] of each year (the "**Installment Payment Date**") starting June [9], 2011;

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

**WHEREAS**, pursuant to the Resolution, the County has designated this Contract as a "**qualified zone academy bond**" within the meaning of, and for purposes of, Section 54E of the Code, which is the successor statutory provision to Section 1397E of the Code;

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

**WHEREAS**, the obligation of the County to make the Installment Payments and Additional Payments when due shall constitute a limited obligation of the County, payable solely from currently budgeted appropriations of the County; shall not constitute a general obligation or other indebtedness of the County within the meaning of the Constitution of the State of North Carolina (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**, in order to secure the obligations of the County under this Contract, the County has entered into a Deed of Trust, Security Agreement and Fixture Filing, dated as of the Closing Date (the "**Deed of Trust**"), with the deed of trust trustee named therein for the benefit of the Bank, creating a lien on all of the right, title and interest of the County in the Mortgaged Property, as defined herein; 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 in this Contract contained, the parties hereto agree as follows:

## **ARTICLE I DEFINITIONS**

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

**"Additional Payments"** means the reasonable and customary expenses and fees of the Bank, any expenses of the Bank in defending an action or proceeding in connection with this Contract and any taxes or any other expenses, including, but not limited to, licenses, permits, state and local income, sales and use or ownership taxes or property taxes which the Bank is expressly required to pay as a result of this Contract (together with interest that may accrue thereon if the County fails to pay the same, as set forth in this Contract).

**"Advance"** means the original aggregate principal amount equal to \$1,807,500 advanced by the Bank to enable the County to construct and equip the Projects under this Contract, as such amount advanced may be adjusted by amendment to this Contract.

**"Agency Agreement"** means the Agency Agreement, dated as of June 1, 2010, between the Board of Education and the County, as amended and supplemented from time to time in accordance with the terms thereof.

**"Bank"** means RBC Bank (USA), a state banking corporation, and its successors and assigns.

**"Bank Representative"** means any person or persons at the time designated to act on behalf of the Bank for purposes of performing any act on behalf of the Bank under this Contract by a written certificate furnished to the County containing the specimen signatures of such person or persons and signed on behalf of the Bank by its vice president.

**"Board"** means the duly elected governing Board of Commissioners of the County, or any successor to its functions.

**"Board of Education"** means the Henderson County Board of Education, a body corporate which has general control and supervision of all matters pertaining to the public schools in the Henderson County School Administrative Unit, its school administrative unit, and is duly organized and existing under the laws of the State of North Carolina, or any successor to its functions.

**"Business Day"** means a day on which the Bank, at its principal corporate offices, is not required or authorized by law to remain closed.

**"Closing Date"** means June [9], 2010.

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

**"Completion Date"** means the date on which completion of the Projects has occurred, as evidenced by a certificate provided for in Section 5.3.

**"Construction Contracts"** means the contracts between the County and contractors selected and hired by the County relating to the construction of the Projects.

**"Contract"** means this Installment Financing Contract, including the Schedule and Exhibits attached hereto and incorporated herein by this reference, as amended and supplemented from time to time in accordance with the terms hereof.

**"Cost of Construction"** shall be deemed to include the payment of, or the reimbursement to the County for the following items:

(1) obligations incurred or assumed for the Projects in connection with the construction of the Projects;

(2) the cost of the construction, improving, equipping and furnishing of the Projects; including, without limitation, the Bank's fees and expenses incurred in connection with the delivery of the Advance to the County, fees and expenses of the Local Government Commission of North Carolina, if any, legal fees and expenses, taxes, inspection costs, the cost of permit fees, filing and recording costs and survey expenses in connection with the granting of the Deed of Trust on the Mortgaged Property;

(3) all other costs which are considered to be a part of the costs of the construction, improvement, equipping and furnishing of the Projects in accordance with generally accepted accounting principles and which will not affect the tax status for federal income tax purposes of the designated interest component of the Installment Payments payable by the County under this Contract, including sums required to reimburse the County for advances made by the County that are properly chargeable to the construction, equipping or furnishing of the Projects, and including the interest component of the Installment Payments prior to the Completion Date; and

(4) payment or prepayment of the principal component of Installment Payments, at the option of the County, from any funds remaining in the Project Fund subsequent to the Completion Date.

**"County"** means the County of Henderson, a political subdivision of the State of North Carolina, validly existing under and by virtue of the Constitution, statutes and laws of the State of North Carolina, and any successor to its functions.

**"County Representative"** means (1) 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 Bank containing the specimen signatures of such person or persons and signed on behalf of the County by the County Manager of the County, or (2) if any or all of the County's rights and obligations are assigned under this Contract, the person or persons at the time designated to act on behalf of the County and the assignee by a written certificate similarly furnished and of the same tenor.

***“Deed of Trust”*** means the Deed of Trust, Security Agreement and Fixture Filing, dated as of June 1, 2010, from the County to the deed of trust trustee named therein, for the benefit of the Bank and its successor and assignees, creating a lien in and to the Mortgaged Property, and as the same may be amended and supplemented from time to time as provided in the Deed of Trust, 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.

***“Deed of Trust Trustee”*** means CB Services Corp., as trustee named in the Deed of Trust, and any successor trustee thereto.

***“Event of Default”*** means any of the events of default as defined in Section 13.1.

***“Fiscal Year”*** means a twelve-month period commencing on July 1 of any year and ending on June 30 of the immediately succeeding year, or such other twelve-month period which may subsequently be adopted as the Fiscal Year of the County.

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

***“Installment Payment Date”*** means June [9] of each year, the date that Installment Payments are due and payable to the Bank in accordance with the terms of this Contract.

***“Interest Rate”*** means 5.70% per annum, calculated on a 30/360-day basis.

***“LGC”*** means the Local Government Commission of North Carolina.

***“Lease Agreement”*** means the Lease Agreement, dated as of June 1, 2010, between the Board of Education and the County, as amended and supplemented from time to time in accordance with the terms thereof.

***“Mortgaged Property”*** means the real property and all improvements thereto located within the County as described in Exhibit A attached and incorporated herein by reference, as the same may be amended and supplemented from time to time so as to add real property thereto or to release real property therefrom.

***“Net Proceeds”*** when used with respect to any proceeds from policies of insurance, proceeds of any condemnation award arising out of the condemnation of all or any portion of the Mortgaged Property, or the proceeds from any sale or lease of the Mortgaged Property pursuant to the Deed of Trust or otherwise, mean the amount remaining after deducting from the gross proceeds thereof all expenses (including, without limitation, attorneys’ fees and costs) incurred in the collection of such proceeds.

***“Payment Schedule”*** means the document attached hereto and incorporated herein by reference, which sets forth the County’s Installment Payments.

***“Plans and Specifications”*** means the plans and specifications to be prepared by an architect selected and hired by the County relating to the construction, improving, equipping and furnishing of the Projects.

***“Projects”*** means the renovation, refurbishment and furnishing of (a) Edneyville Elementary School, (b) Bruce Drysdale Elementary School, (c) Atkinson Elementary School, (d) Glenn C. Marlow

Elementary School, (e) Upward Elementary School, (f) Apple Valley Middle School, (g) Flat Rock Middle School and (h) North Henderson High School financed with proceeds of the Advance.

***“Project Fund”*** means the fund of that name created in Article IV of this Contract into which the Bank shall deposit the Advance.

***“Qualified Contribution”*** means any contribution (of a type and quality acceptable to the County) of (1) equipment for use in a Qualified Zone Academy (including state-of-the-art technology and vocational equipment), (2) technical assistance in developing curriculum or in training teachers in order to promote appropriate market driven technology in the classroom, (3) services of employees as volunteer mentors, (4) internships, field trips, or other educational opportunities outside the academy for students, or (5) any other property or service within the meaning of Section 54E(d)(4) of the Code as specified by the County.

***“Qualified Purpose”*** means (1) the rehabilitation and repair of existing facilities of Qualified Zone Academies, (2) the provision of equipment for use at Qualified Zone Academies, (3) the development of course materials for education to be provided at Qualified Zone Academies, and (4) the training of teachers and other school personnel at Qualified Zone Academies, all within the meaning of Section 54E(d)(3) of the Code.

***“Qualified Zone Academy”*** means the qualified zone academy, within the meaning of Section 54E(d)(1) of the Code, created and established by the Board of Education at each of the Schools where the Projects will be located.

***“Qualified Zone Academy Bond”*** means an obligation, such as this Contract, which qualifies as a qualified zone academy bond within the meaning of, and for purposes of, Section 54E of the Code.

***“Revenues”*** means (1) all Net Proceeds not applied to the replacement of the Projects; (2) all of the Installment Payments, and (3) all other revenues derived from this Contract.

***“State”*** means the State of North Carolina.

***“Tax Compliance Certificate”*** means the Tax Compliance Certificate, dated as of the Closing Date, by and between the Bank and the County, as amended and supplemented from time to time in accordance with the terms thereof, providing for compliance by the County with the requirements set forth in Section 54E of the Code with respect to the Projects and the use of the proceeds of the Advance.

***“Title Policy”*** means the policy of title insurance issued by [Name of Title Insurance Company], in connection with the Mortgaged Property and the transactions contemplated by this Contract.

## **ARTICLE II**

### **THE ADVANCE**

Section 2.1. *The Advance.* The Bank hereby makes an advance to the County of the Advance, and the County hereby accepts from the Bank the Advance to be applied in accordance with the terms and conditions of this Contract. The proceeds of the Advance are being used to construct and equip the Projects in accordance with the Plans and Specifications.

[END OF ARTICLE II]



### **ARTICLE III**

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

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

(a)     The County shall repay the obligation created by this Contract in Installment Payments consisting of an interest component and a principal component on June [9] of each year, as provided in this Contract and Payment Schedule attached to this Contract. The County hereby approves the Advance by the Bank to the County pursuant to this Contract to be repaid by the County in Installment Payments as provided in this Contract at an interest rate per annum equal to the Interest Rate.

(b)     The Installment Payments are payable on each Installment Payment Date as provided in this Contract and the Payment Schedule attached to this Contract.

(c)     Each installment shall be deemed to be an Installment Payment and shall be paid in the amounts and at the times set forth in the attached Payment Schedule, except as otherwise provided herein. If an Installment Payment is due on any day which is not a Business Day, such Installment Payment shall be due on the next succeeding Business Day and the County shall make such Installment Payment on such Business Day with no additional interest due thereon. On completion of the Projects, the County may direct the Bank to transfer any remaining amounts on deposit in the Project Fund and receive a credit against the amount of Installment Payments otherwise owed under the Contract equal to any such amounts transferred from the Project Fund to make such Installment Payment. Installment Payments shall be sufficient in the aggregate to repay the principal amount of the Advance, together with interest thereon, as the same shall become due and payable. The County shall pay any Additional Payments on a timely basis directly to the person or entity to which such Additional Payments are owed. All payments shall be made in lawful currency of the United States.

**Section 3.2.     *Place of Payments.*** All payments required to be made to the Bank hereunder shall be made to the Bank (1) at the address set forth in Section 16.1 in immediately available funds, (2) as wire transfers to the Bank on the payable date as directed by the Bank or (3) as may be otherwise directed in writing by the Bank.

**Section 3.3.     *Late Charges.*** An Installment Payment that is not paid within 30 days of the due date thereof is subject to a late payment charge of [4]% of the amount of the past due Installment Payment.

**Section 3.4.     *No Abatement.*** There will be no abatement or reduction of the Installment Payments or Additional Payments by the County for any reason, including but not limited to, any failure by the County to appropriate sufficient funds for the payment of the Installment Payments or Additional Payments, any defense, recoupment, setoff, counterclaims or any claim (real or imaginary) arising out of or related to the Mortgaged Property or the acquisition, construction, improving, equipping and furnishing of 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 Advance.*

(a) The County may prepay or provide prepayment of the principal component of the Installment Payments outstanding in whole or in part at its option at any time upon giving the Bank not less than 30 days written notice thereof, on payment of the principal component of the Installment Payments to be prepaid, interest accrued to the prepayment date and a prepayment premium equal to the Yield Maintenance Fee.

*“Yield Maintenance Fee”* means the present value of the daily lost cash flow to the Bank based upon the difference between the Interest Rate and the rate on a new loan of similar amount with the same remaining maturity to a similar borrower. The discount rate for calculating the present value will be the current rate offered by the Bank for a new loan of the similar amount with the same remaining maturity to a similar borrower, as determined by the Bank in its reasonable discretion, which discretion shall be conclusive absent a showing of bad faith or manifest error. Any prepayment of this Contract will be subject to a minimum fee of 0.50% of the principal component of the Installment Payments to be prepaid.

(b) In the event of loss or condemnation of or damage to the Projects, if the County determines not to apply any Net Proceeds to the repair, restoration, modification, improvement or replacement of the Projects as permitted by Section 8.3(a), and if the County has otherwise performed all of its obligations under this Contract, the County shall prepay the principal component of the Installment Payments then outstanding in accordance with Section 8.3(b).

(c) The County may prepay or provide prepayment of the principal component of the Installment Payments outstanding in whole at its option at any time on giving the Bank not less than 30 days written notice thereof, on payment of the principal component of the Installment Payments to be prepaid, interest accrued to the prepayment date and a prepayment premium of 1.00% of the principal component of the Installment Payments to be prepaid if there occurs a reduction or elimination of the County’s cash subsidy payment from the United States Treasury under Section 54AA or 6431 of the Code (as such Sections were added by The Hiring Incentives to Restore Employment Act, P.L. 111-147); provided that no such prepayment is permitted under this Section 3.5(c) if the reduction or elimination of the County’s cash subsidy payment from the United States Treasury resulted from any action, failure to act or misrepresentation on the part of the County.

[END OF ARTICLE III]

## ARTICLE IV PROJECT FUND

Section 4.1. ***Project Fund.*** There is hereby created a separate fund to be held by the Bank, on behalf of the County, designated as the ***"County of Henderson 2010 Installment Financing QZAB Project Fund"*** (the ***"Project Fund"***). The funds in the Project Fund will be disbursed in accordance with the provisions of this Article IV.

Section 4.2. ***Investment.*** The Bank shall invest and reinvest the moneys, and any interest thereon, held in the Project Fund as permitted under Section 159-30 of the General Statutes of North Carolina, as amended, as directed in writing by the County. The County and the Bank agree that money in the Project Fund will be deposited and held in the RBC Bank (USA) Public Escrow Account that complies with the requirements of Section 159-30 of the General Statutes of North Carolina, as amended.

Section 4.3. ***Disbursements.*** The moneys held in the Project Fund shall be disbursed by the Bank for payment of the Cost of Construction on receipt of a written requisition from the County substantially in the form set forth in Exhibit B attached to this Contract, together with any documents or other items that the Bank determines to be necessary in connection therewith. If amounts held to the credit of the Project Fund are insufficient to pay the Costs of Construction, the County shall provide any balance of funds necessary to complete the construction, improving, equipping and furnishing of the Projects or, on termination hereof before such completion, shall be credited against future Installment Payments coming due under this Contract in the order of their due dates.

Section 4.4. ***Termination.*** The Project Fund shall be terminated at the earliest of (1) the final distribution of amounts held in the Project Fund or (2) the termination of this Contract.

Section 4.5. ***Reliance of Bank on Documents.*** The Bank may act in reliance on any writing or instrument or signature which it believes, in good faith, to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Bank 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 their duties under this Contract are limited to the receipt of such moneys, instruments or other documents received by it as the Bank, and for the disposition of the same in accordance herewith.

[END OF ARTICLE IV]

## ARTICLE V CONSTRUCTION OF THE PROJECTS

Section 5.1. **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, all applicable ordinances and statutes, and in accordance with the requirements of all regularly constituted authorities having jurisdiction over the same. The County shall ensure (1) that the Projects do not impermissibly encroach upon nor impermissibly overhang any easement or right of way and (2) that the Projects, when erected, will be wholly within the real property upon which the Projects are located and any 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 5.2. **Right of Entry and Inspection.** The Bank and its representatives and agents have the right to enter on and inspect the Projects from time to time, during and after construction, and the County shall cause the construction manager at risk or any first-tier subcontractor to cooperate with the Bank and its representatives and agents during such inspections. No right of inspection or approval contained in this Contract imposes on the Bank any duty or obligation whatsoever to undertake any inspection or to give any approval.

Section 5.3. **Completion of Construction.** The County shall proceed with reasonable diligence to complete the Projects in a timely manner. On completion of the Projects, a County Representative shall deliver to the Bank (1) a certificate of the County stating the fact and date of such completion and stating that all of the Cost of Construction has been determined and paid (or that all of such Costs have been paid less specified claims which are subject to dispute and for which a retention in the Project Fund is to be maintained in the full amount of such claims until such dispute is resolved) and (2) proof of the insurance coverage required by the Deed of Trust and Section 6.7 of this Contract. If the accounting of the Project Fund by the Bank shows that funds in the Project Fund will remain unexpended for the Cost of Construction, the unexpended funds in the Project Fund shall be transferred from the Project Fund and applied as a credit against the amount of Installment Payments otherwise due under the Contract.

Section 5.4. **Payment and Performance Bonds.** Each contractor entering into a Construction Contract, or the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk for the construction of the Projects shall be required to furnish a performance bond and a separate labor and material payment bond as required by Article 3, Chapter 44A of the General Statutes of North Carolina, as amended, copies of which shall be provided to the Bank, if the Bank so requests. 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 their construction contract securing the County, copies of the evidence of such collateral which shall be provided to the Bank, if the Bank so requests.

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 Contracts. 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 Bank for deposit into the Project Fund if received before the Completion Date therefor or if received thereafter, shall be deposited as otherwise provided in Section 8.2 or otherwise applied as provided in Section 8.3. The Net Proceeds of any performance or payment bond or insurance policy required by this Section shall likewise be paid into the Project Fund if received before the Completion Date, or, if received thereafter, shall either be deposited as provided in Section 8.2 or otherwise applied as provided in Section 8.3.

Section 5.5. ***Contractor's General Public Liability and Property Damage Insurance.*** Each contractor entering into a Construction Contract for the construction of the Projects, or the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk for the construction of the Projects shall be required by the County to procure and maintain standard form (1) 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 (2) 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 shall include the County and the Bank as additional named insureds, and shall include a provision providing that if such policies are cancelled or terminated that the issuing insurer will endeavor to mail 30 days prior written notice to the named insureds, but failure to mail such notice will impose no liability on the insurer. A certificate evidencing such coverage shall be provided to the County and the Bank or, if such insurance is provided by a private carrier, a completed certificate of insurance, in form acceptable to the County and the Bank, shall be provided to the County and, if the Bank so requests, to the Bank 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 5.6. ***Contractor's Builder's Risk Completed Value Insurance.*** The County will procure and maintain, or will require each contractor entering into a Construction Contract for the construction of each of the Projects, or the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk for the construction of each of the Projects, to procure and maintain, property insurance (builder's risk) on all construction, improving, equipping and furnishing of the Projects (excluding contractor's tools and equipment) at the full and insurable value thereof. Such insurance will include the interest of the County and the contractor as additional insureds, and shall insure against "all risk" subject to standard policy conditions and exclusions. With respect to any of the Projects in a flood plain, flood insurance is required up to, but not exceeding, the maximum attainable amount of coverage under Federal flood 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, shall purchase and maintain similar property insurance for portions of the work stored off the real property upon 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 5.7. ***Contractor's Worker's Compensation Insurance.*** Each contractor entering into a Construction Contract for the construction of each of the Projects, or the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk for the construction of the Projects, shall be 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, shall contain a provision providing that if such policies are cancelled or terminated that the issuing insurer will endeavor to mail 30 days prior written notice to the named insureds, but failure to mail such notice will impose no liability on the insurer. A certificate evidencing such coverage shall be provided to the County and, if the Bank so requests, to the Bank; or, if such insurance is provided by a private carrier, a completed certificate of insurance, in form acceptable to the County and the Bank, shall be provided to the County and the Bank, if the Bank so requests, 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.

Section 5.8. ***Filing With the Bank.*** The County shall cause copies of all performance bonds and insurance contracts or approved certificates thereof, as required under Sections 5.4, 5.5, 5.6 and 5.7, to be delivered to the Bank, if the Bank requests, in a timely manner and in such form as to certify compliance with the applicable provisions of this Article V.

[END OF ARTICLE V]

## ARTICLE VI COVENANTS OF THE COUNTY

Section 6.1. **Care and Use.** The County shall use, and shall cause the use of, the Projects 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 Projects so as to keep the Projects in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear excepted, and shall replace any part of the Projects 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 Projects and all parts thereof shall constitute accessions to the Projects and shall be subject to all the terms and conditions of this Contract and included in the term **"Projects"** as used in this Contract.

Section 6.2. **Inspection.** In addition to the rights outlined in Section 5.2 herein, the Bank has the right on reasonable prior notice to the County to enter into and upon the Projects to inspect the Projects and observe the use of the Projects during normal business hours.

Section 6.3. **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 6.4. **Taxes.** The County agrees to pay when due any and all taxes relating to the Projects and the County's obligations under this Contract including, but not limited to, all license or registration fees, gross receipts tax, sales and use tax, if applicable, license fees, documentary stamp taxes, rental taxes, assessments, charges, ad valorem taxes, excise taxes, and all other taxes, licensees and charges imposed on the ownership, possession or use of the Projects by any governmental body or agency, together with any interest and penalties.

Section 6.5. **Title Insurance.** The County agrees to obtain, at its own cost and expense, a Title Policy, or an endorsement to such Title Policy, in form satisfactory to the Bank, at the time of and dated as of the date of execution and delivery of this Contract, in an amount not less than the Advance, payable to the Bank, as its interest may appear, insuring fee title of the County to the Mortgaged Property, issued by a title insurance company qualified to do business in the State.

Section 6.6. **Survey.** If required by the Bank, the County shall provide a certified survey by a registered land surveyor covering the Mortgaged Property satisfactory to the Bank, prior to the execution and delivery of this Contract, or if consented to in writing by the Bank, after the execution and delivery of this Contract but prior to the commencement of the acquisition, construction, improving, equipping and furnishing of the Projects, where applicable. The survey shall detail all boundaries of the Mortgaged Property with dimensions, bound descriptions, and locations to streets, building lines, existing buildings or improvements, right-of-ways, easements, encroachments, or any aspect that may affect the Mortgaged Property, and shall certify the location of the Mortgaged Property within any flood hazard area, if applicable. The County shall obtain an endorsement to the Title Policy delivered pursuant to Section 6.5 in the amount of the Advance insuring matters of survey to and including the date of such survey.

Section 6.7. **Insurance.** The County shall maintain, or cause to be maintained, at its own expense, except as hereinafter provided, insurance with respect to its property and business against such casualties and contingencies in amounts not less than is customary in similar activities and similarly situated. Without limiting the foregoing, the County shall maintain, or cause to be maintained, except as hereinafter provided, the following insurance:

(a) Insurance against loss and/or damage to the Projects under a policy or policies covering such risks as are ordinarily insured against by similar facilities, including without limiting the generality of the foregoing, fire, lightning, windstorm, windblown rain, hail, explosion, riot, riot attending a strike, civil commotion, damage from aircraft, smoke and uniform standard extended coverage and vandalism and malicious mischief endorsements, war risk (to the extent obtainable from an agency of the United States Government). Such insurance policy shall be in an amount not less than the lesser of (1) the full replacement cost of the Projects, or (2) the prepayment price of all outstanding Installment Payments; *provided, however*, that no such insurance policy may have a deductible amount of more than \$100,000. No such insurance policy shall be written such that the proceeds thereof will produce less than the minimum coverage required by the preceding sentence, by reason of co-insurance provisions or otherwise, without the prior written consent thereto by the Bank. The term "full insurable value" shall mean the actual replacement cost of the Projects (excluding foundation and excavation costs and costs of underground flues, pipes, drains and other uninsurable items), without deduction for physical depreciation, and shall be determined once every three years by a insurance consultant, in any case, selected and paid for by the County. Each such policy shall contain a replacement cost endorsement.

(b) Comprehensive general liability insurance protecting the County and the Bank as their respective interests may appear, against liability for injuries to persons and/or property, occurring on, in or about the Projects, in the minimum amount of \$100,000 liability to any one person for property damage, \$1,000,000 liability for personal injury for any one occurrence and an aggregate annual liability limit of not less than \$2,000,000, with a deductible amount of not more than \$100,000.

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

(d) During the course of any construction or repair of improvements on the Projects, builder's risk insurance, covering the total value of work performed and equipment, supplies and materials furnished in connection with such construction or repair of the improvements.

(e) After receipt of an elevation certificate with respect to the Projects, national flood insurance, if applicable, in an amount acceptable to the Bank.

Each insurance policy obtained pursuant to this Section shall (1) be issued by a generally recognized and responsible insurance company qualified under the laws of the State to assume the risks covered by such policy, (2) with respect to (b) and (e) above, name the Bank and the County as either an insured or a loss payee, as their respective interests may appear, (3) with respect to the policies contained in paragraphs (a) and (d) above, contain standard mortgagee clauses naming the Bank as mortgagee, and (4) unless unavailable from the insurer, provide that such policy shall not be cancelled or modified in any way adverse to any insured party without at least 30 days' prior written notice to each insured party named therein. The County shall have the right to receive the proceeds from any insurance maintained pursuant to this Section, subject, however, to the limitations of this Article VI.

All such policies shall be deposited with the Bank, if the Bank so requests, provided that in lieu of such insurance policies there may be deposited with the Bank a certificate or certificates of the County attesting the fact that the insurance required by this Section is in full force and effect. Prior to the expiration of any such policy, the County shall furnish the Bank, if the Bank so requests, evidence



satisfactory to the Bank that such insurance policy has been renewed or replaced or is no longer required by this Contract.

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

In lieu of policies of insurance written by commercial insurance companies meeting the requirements of this Section, the County may maintain a program of self-insurance or participate in group risk financing programs, risk pools, risk retention groups, purchasing groups and captive insurance companies, and in state or federal insurance programs.

Section 6.8. ***Rating and Insurance.*** The Bank reserves the right to have this transaction rated and/or insured by a qualified rating agency and/or insurer at any time during the term of this Contract. The County agrees to cooperate with the Bank and the agency/insurer in providing any requested financial or non-financial information that may be material to obtaining the rating/insurance.

Section 6.9. ***Environmental Audit.*** The County shall provide, as may be required by the Bank, either a Phase I Environmental Audit or a completed environmental questionnaire on the Bank's form on the real property on which the Mortgaged Property is located prior to receipt of the Advance by the County.

Section 6.10. ***Risk of Loss.*** The County shall bear all risk of loss or damage to and condemnation of the Mortgaged Property.

Section 6.11. ***Performance by the Bank of the County's Responsibilities.*** Any performance required of the County or any payments required to be made by the County may, if not timely performed or paid, be performed or paid by the Bank, and, in such event, the Bank shall be immediately reimbursed by the County for such payments or other performance by the Bank, with interest thereon at a rate equal to the Interest Rate applied to determine the interest component of Installment Payments.

Section 6.12. ***Financial Statements.*** The County shall furnish to the Bank annually:

- (a) within 270 days of the end of its fiscal year, current financial statements,
- (b) the County's annual budget as approved by the Board (and any amendments thereto), and
- (c) such other documents relating to the financial condition of the County as the Bank shall request.

The County shall permit the Bank or its agents and representatives to inspect the County's books and records and make extracts therefrom. The County represents and warrants to and covenants with the Bank that all financial statements which have been or may be delivered to the Bank fairly and accurately reflect the County's financial condition and there has been and will be no material adverse change in the County's financial condition as reflected in the financial statements since the respective dates thereof.

[END OF ARTICLE VI]

## ARTICLE VII TITLE; LIENS

Section 7.1. **Title.** Title to the Mortgaged Property 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 so long as the County is not in default hereunder and shall vest permanently in the County upon the payment in full of the principal component of the Installment Payments free and clear of any lien or security interest of the Bank therein. On the date of the execution and delivery of this Contract, the Deed of Trust will be in full force and effect and no events of default shall have occurred thereunder. Upon payment or provision for payment in full of all of the County's obligations hereunder, including the principal component of the Installment Payments then outstanding and all other payments due hereunder, the Bank or its assignee, at the County's expense and request, shall cancel the Deed of Trust and this Contract will terminate.

Section 7.2. **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 the Mortgaged Property or any interest therein, except for: (1) the lien and security interest of the Bank in the Mortgaged Property; (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 Mortgaged Property; (3) permitted encumbrances as described in Exhibit B to the Deed of Trust; and (4) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property of the general character of the Mortgaged Property and as do not materially impair title thereto or the ability of the County to construct and operate the Projects thereon. 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 Bank for any expense incurred by the Bank in order to discharge or remove any such mortgage, pledge, lien, security interest, charge, encumbrance or claim.

Section 7.3. **Security Agreement.** To secure all obligations of the County hereunder, the County has granted to the Bank, pursuant to the Deed of Trust, a security interest in any and all of the County's right, title and interest in the Mortgaged Property, all additions, attachments, accessions, substitutions and replacements thereto, and rental payments due with respect thereto, and any and all proceeds thereof, including without limitation, the proceeds of insurance thereon. The County agrees to execute and deliver all documents, instruments and financing statements necessary or appropriate to maintain the security interest granted thereby. The Bank is authorized to file financing statements as specified by the Uniform Commercial Code in the State of North Carolina to perfect or maintain the Bank's security interest.

[END OF ARTICLE VII]

**ARTICLE VIII**  
**DAMAGE, DESTRUCTION, AND CONDEMNATION;**  
**USE OF NET PROCEEDS**

Section 8.1. ***Damage, Destruction or Condemnation.*** If, during the term of this Contract, (1) the Projects or any portion of the Projects is destroyed, or is damaged by fire or other casualty; (2) title to or the temporary or permanent use of the Projects or any portion thereof or the estate of the County or the Bank or its assignee in the Projects or any portion thereof is taken under the power of eminent domain by any governmental authority; (3) a material defect in construction of the Projects becomes apparent; or (4) title to or the use of all or any portion of the Projects is lost by reason of a defect in title thereto, the County shall continue to be obligated, subject to the provisions of Section 8.2, to pay the amounts specified in Section 3.1 at the respective times required.

Section 8.2. ***Obligation of the County to Repair and Replace the Mortgaged Property.*** Subject to the provisions of Section 8.3, the Bank shall cause the Net Proceeds of any insurance policies, performance bonds, condemnation awards or Net Proceeds received as a consequence of default under a Construction Contract or made available by reason of any occurrence described in Sections 5.4, 6.7(a) or 8.1 to be returned to the County. Except as set forth in Section 8.3, the County shall apply all Net Proceeds so returned to the prompt repair, restoration, modification, improvement or replacement of the damaged or destroyed Mortgaged Property. 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, if located on the Mortgaged Property, to the Deed of Trust, and shall be included as part of the Mortgaged Property under this Contract.

Section 8.3. ***Insufficiency of Net Proceeds; Discharge of the Obligation of the County To Repair the Mortgaged Property.*** 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 Mortgaged Property as required under Section 8.2, the County may elect to proceed under either of the following options; *provided, however*, that the option set forth in subparagraph (b) below will only be available in the event such Net Proceeds equal or exceed one-third of the then outstanding principal component of the Installment Payments:

(a) 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 this Section, the County is not entitled to any reimbursement therefor from the Bank nor is the County entitled to any diminution of the amounts payable under Section 3.1; or

(b) The obligation of the County to repair or replace the Mortgaged Property under Section 8.2 may, at the option of the County, be discharged by causing the Net Proceeds of such insurance policies, performance bonds or condemnation awards to be applied to the prepayment of all or any part of the then outstanding principal component of the Installment Payments in accordance with Section 3.5(c). If the Net Proceeds exceed the then outstanding principal component of the Installment Payments in accordance with Section 3.5(c), such excess shall be paid to or retained by the County.

Within 120 days of the occurrence of an event specified in Section 8.1, the County shall commence the repair, restoration, modification, improvement or replacement of the Mortgaged Property, or shall elect, by written notice to the Bank, to proceed under the provisions of paragraph (b) above. 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 Mortgaged Property. If the County shall, after commencing the repair, restoration, modification, improvement or replacement of the Mortgaged Property, determine that the Net Proceeds (plus any amount withheld therefrom by reason of any deductible clause) are insufficient for the accomplishment thereof, the County may, subject to the proviso set forth above, elect to proceed under Section 8.3(b).

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

[END OF ARTICLE VIII]

**ARTICLE IX**  
**REPRESENTATIONS AND WARRANTIES OF THE COUNTY**

Section 9.1. *Representations and Warranties of the County.* The County represents, warrants and covenants to and with the Bank (all such representations, warranties and covenants to be continuing) that:

(a) The County is a political subdivision of the State, validly organized and existing under the laws 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 subdivision of the State to consolidate with or merge into it, unless the County is the surviving political subdivision or the political subdivision of the State created thereby expressly assumes in writing the County's obligations hereunder;

(c) This Contract, the Deed of Trust, the Lease, the Agency Agreement and all other documents relating hereto and thereto, and the performance of the County's obligations hereunder and thereunder, have been duly and validly authorized, executed and delivered by the County and approved under all laws, regulations and procedures applicable to the County including, but not limited to, compliance with public meeting and bidding requirements, and, assuming the due authorization, execution and delivery hereof and thereof by the other parties hereto and 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 proper jurisdiction may impose;

(d) 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 in this Contract is false, misleading or erroneous in any material respect;

(e) 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, the Lease, the Agency Agreement 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) The estimated Cost of Construction is not less than \$1,807,500 and, other than building permits or other procedural requirements which are a prerequisite to the construction of the Projects and approval of the Local Government Commission of North Carolina (the "*LGC*"), which approval has been obtained, 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 hereto and thereto and the transactions contemplated hereby and thereby or if such approval is required, such approval has been duly obtained;

(g) The funds in the Project Fund and any investment earnings thereon will be used only for Qualified Purposes within the meaning of Section 54E of the Code;

(h) There are no liens or encumbrances on the Mortgaged Property other than the lien created by the Deed of Trust and the other liens permitted hereby and thereby;

(i) The resolutions relating to the performance by the County of this Contract, the Deed of Trust, the Lease, the Agency Agreement 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;

(j) The construction and equipping of the Projects is essential to the proper, efficient and economical operation of the County and the delivery of services and permit the County to carry out its public functions authorized and required by law to perform;

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

(l) The County shall (1) cause its County Manager to include the Installment Payments coming due in any Fiscal Year in the corresponding annual budget request and shall require the County Manager to use his or her best efforts to obtain an appropriation therefor and (2) require that the deletion of such funds from the County's final budget be made only pursuant to an express resolution of the Board which explains the reason for such action. This covenant on the part of the County contained in this Section 9.1(l) shall be deemed to be and shall be construed to impose by law ministerial duties and it shall be the duty of each and every public official of the County to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the County to carry out and perform the covenant in this subparagraph and the agreements in this Contract to be carried out and performed by the County; *provided, however*, that nothing contained in this Section 9.1(l) shall obligate the County to so appropriate the funds included in such proposed budget;

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

(n) The County agrees that during the term of this Contract, it will maintain the appropriate insurance required pursuant to this Contract and the Deed of Trust;

(o) The County has good and marketable title to the Mortgaged Property;

(p) The County has authorized the execution and delivery of this Contract and has designated this Contract as a Qualified Zone Academy Bond within the meaning of, and for

purposes of, Section 54E of the Code pursuant to the Resolutions on file with the Clerk to the Board of Commissioners;

(q) The Board of Education is an organized board of education of the State of North Carolina and constitutes an *“eligible local education agency”* within the meaning of Section 54E(d)(2) of the Code and Section 9101 of the Elementary and Secondary Education Act of 1965, as amended (codified at 20 U.S.C.S. Section 7801(26)), because it is a public school board of education legally constituted within the State of North Carolina for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in the County;

(r) The schools at which the Projects will be installed or used are each a Qualified Zone Academy within the meaning of Section 54E of Code because:

(1) Each of the Schools is a public school (or academic program within a public school) established by and operated under the supervision of the Board of Education to provide education and training below the post-secondary level and has been designed and will continue to be designed in cooperation with business to enhance the academic curriculum, increase graduation and employment rates, and better prepare students for the rigors of college and the increasingly complex workforce;

(2) All of the students at such Schools or programs (as the case may be) are subject to the same academic standards and assessments as other students educated by the Board of Education;

(3) The comprehensive educational plan of such public schools or programs is approved by the Board of Education; and

(4) (i) Each such School is located in an empowerment zone or enterprise community, or (ii) there is a reasonable expectation (as of the effective date of this Contract) that at least 35% of the students attending each such public school will be eligible for free or reduced-cost lunches under the school lunch program established under the Richard B. Russell National School Lunch Act (codified at 42 U.S.C.S. Sections 1751 through 1764); and

(5) Such Schools are located within the corporate limits and the jurisdiction of the Board of Education;

(s) During the term of this Contract, the Projects will be used by the County and the Board of Education to provide educational services to the students of the County, only for Qualified Purposes within the meaning of Section 54E of the Code;

(t) The County has received written commitments from private entities to make Qualified Contributions of in-kind services having a present value (as of the date of the effective date of this Contract) of not less than 10% of the Advance delivered by the Bank under this Contract;

(u) To the best of its knowledge and belief, this Contract, and the principal amount of the proceeds advanced under this Contract, which has been designated as a Qualified Zone Academy Bond, authorized by the County and approved by the North Carolina State Board of

Education, will not cause the State's qualified zone academy bond allocation under the Code to be exceeded; and

(x) The County will comply with all applicable provisions of the Code, including without limitation Sections 54A and 54E of the Code, and the regulations promulgated thereunder, from time to time proposed or in effect, in order for this Contract to qualify as a Qualified Zone Academy Bond within the meaning of Section 54E of the Code and to maintain the federal income tax credits with respect to this Contract provided in accordance with Sections 54A and 54E of the Code for the benefit of the Bank.

[END OF ARTICLE IX]



**ARTICLE X**  
**TAX COVENANTS AND REPRESENTATIONS**

Section 10.1. *Tax Covenants and Representations.*

(a) The County shall not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the qualification of this Contract as a Qualified Tax Credit Bond within the meaning of Section 54A of the Code and a Qualified Zone Academy Bond within the meaning of Section 54E of the Code. The County will maintain books on which will be recorded the Bank, or any assignee of this Contract, as the registered owner of this Contract. In connection with the foregoing, the County has executed and delivered the Tax Compliance Certificate and will comply with all of the requirements of the Code.

(b) The County hereby designates this Contract, including the principal component of each Installment Payment, as a Qualified Tax Credit Bond within the meaning of, and for purposes of, Section 54A of the Code and a Qualified Zone Academy Bond within the meaning of, and for purposes of, Section 54E of the Code.

(c) 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 under this Contract from time to time. This covenant shall survive the termination of this Contract pursuant to Section 7.1.

(dc) Notwithstanding any provision in this Contract to the contrary, if the County shall provide to the Bank an opinion of nationally recognized bond counsel to the effect that any action required under this Article X is no longer required, or to the effect that some further action is required, to maintain the tax status of the interest components of the obligations created by this Contract, the County and the Bank may rely conclusively on such opinion in complying with the provisions of this Article X.

[END OF ARTICLE X]

## **ARTICLE XI**

### **INDEMNIFICATION**

Section 11.1. ***Indemnification.*** To the fullest extent permitted by applicable law, the County hereby agrees to indemnify, protect and save the Local Government Commission of North Carolina, the Bank and their respective officers, employees, directors, members and agents harmless from all liabilities, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys' fees that (1) arise in tort, in contract, under 42 U.S. Code §1983 or under the public bidding laws of the State or (2) arise out of, are connected with, or result, directly or indirectly, from the Projects or any portion thereof, including, without limitation, the manufacture, selection, acquisition, delivery, possession, condition, construction, improvement, environmental or other condition, lease, use operation or return of the Projects or any portion thereof. The indemnification arising under this Article XI shall continue in full force and effect notwithstanding the payment in full of all of the obligations under this Contract.

[END OF ARTICLE XI]

## ARTICLE XII

### DISCLAIMER OF WARRANTIES

Section 12.1. *No Representations by the Bank.* The County acknowledges and agrees that the designs for the Projects have not been made by the Bank, and the Bank has not supplied any plans or specifications with respect thereto and that the Bank (a) is not a manufacturer of, nor a dealer in, any of the component parts of the Projects or similar projects; (b) has not made any recommendation, given any advice nor taken any other action with respect to (i) the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Projects or any component part thereof or any property or rights relating thereto or (ii) any action taken or to be taken with respect to the Projects or any component part thereof or any property or rights relating thereto at any stage of the construction thereof; (c) has not at any time had physical possession of the Projects or any component part thereof or made any inspection thereof or any property or rights relating thereto; and (d) has not made any warranty or other representation, express or implied, that the Projects or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed, or will accomplish the result which the County intends therefor, or (iii) is safe in any manner or respect.

Section 12.2. *Disclaimer by the Bank.* THE BANK MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE PROJECTS OF ANY COMPONENT PART THEREOF TO THE COUNTY OR IN REGARD TO ANY OTHER CIRCUMSTANCE WHATSOEVER WITH RESPECT THERETO, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATIONS WITH RESPECT TO: THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE; THE DESIGN OR CONDITION THEREOF; THE SAFETY, WORKMANSHIP OR QUALITY THEREOF; COMPLIANCE THEREOF WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO; ANY LATENT DEFECT; THE TITLE TO OR INTEREST OF THE BANK THEREIN; THE ABILITY THEREOF TO PERFORM ANY FUNCTION; THAT THE ADVANCE WILL BE SUFFICIENT (TOGETHER WITH ANY OTHER AVAILABLE FUNDS OF THE COUNTY) TO PAY THE COST OF IMPLEMENTING THE PROJECTS; OR ANY OTHER CHARACTERISTICS OF THE PROJECTS, IT BEING AGREED THAT ALL RISKS RELATING TO THE PROJECTS, THE COMPLETION THEREOF OR THE TRANSACTIONS CONTEMPLATED HEREBY ARE TO BE BORNE BY THE COUNTY AND THE BENEFITS OF ANY AND ALL IMPLIED WARRANTIES AND REPRESENTATIONS OF THE BANK ARE HEREBY WAIVED BY THE COUNTY.

[END OF ARTICLE XII]

### ARTICLE XIII DEFAULT AND REMEDIES

Section 13.1. **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 pay any Installment Payment or Additional Payment when due;
- (b) The County fails to budget and appropriate moneys sufficient to pay all Installment Payments and the reasonably estimated Additional Payments coming due in the following Fiscal Year of the County;
- (c) The County deletes from its duly adopted budget any appropriation for the purposes specified in clause (b) above;
- (d) 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 clauses (a), (b) or (c) 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 Bank, unless the Bank shall agree in writing to an extension of such time prior to its expiration;
- (e) 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;
- (f) Any representation, warranty or statement made by the County herein, in the Deed of Trust or in any other document executed or delivered in connection herewith or therewith is found to be incorrect or misleading in any material respect on the date made; or
- (g) An attachment, levy or execution is levied on or against any portion of the Mortgaged Property.

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

- (a) Declare the unpaid portion of the then outstanding principal component of the Installment Payments immediately due and payable, without notice or demand to the County;
- (b) Proceed by appropriate court action to enforce the performance by the County of the applicable covenants of this Contract or to recover for any breach thereof;
- (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 hereunder and under the Deed of Trust including, without limitation, to the extent permitted by law, re-enter and take possession of the Mortgaged Property without any court order or other process of law and without liability for entering the premises and to 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, to pay any remaining proceeds to the County; or

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

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

Section 13.3. ***Further Remedies.*** This Contract shall remain in full force and effect and the County shall be and remain liable for the full performance of all its obligations under this Contract. All remedies of the Bank 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 XIII]

## ARTICLE XIV ASSIGNMENT

Section 14.1 *Assignment.* Except pursuant to the Deed of Trust, the County will not sell, assign, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance on or against any interest in this Contract or the Mortgaged Property (except for any permitted encumbrances under Section 7.2) without the prior written consent of the Bank. The County's interest in this Contract may not be assigned or transferred by operation of law.

The Bank may, at any time and from time to time, assign all or any part of its interest in the Mortgaged Property, the Projects or this Contract, including, without limitation, the Bank's rights to receive Installment Payments payable to the Bank hereunder. Any assignment made by the Bank or any subsequent assignee shall not purport to convey any greater interest or rights than those held by the Bank pursuant to this Contract.

The County agrees that this Contract may become part of a pool of obligations at the Bank's or its assignee's option. The Bank or its assignees may assign or reassign all or any part of this Contract, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Contract without the consent of the Local Government Commission, although the Banks or any assignee shall give written notice to the Local Government Commission of any such assignment. Any assignment by the Bank may be only to a bank, insurance company, or similar financial institution or any other entity approved by the Local Government Commission. Notwithstanding the foregoing, no assignment or reassignment of the Bank's interest in the Deed of Trust or this Contract shall be effective unless and until the County shall receive a duplicate original counterpart of the document by which such assignment or reassignment is made disclosing the name and address of each such assignee.

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

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

[END OF ARTICLE XIV]

**ARTICLE XV**  
**LIMITED OBLIGATION OF THE COUNTY**

Section 15.1. *Limited Obligation of the County.* No PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE COUNTY WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL DEBT LIMITATION. No PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A DELEGATION OF GOVERNMENTAL POWERS NOR AS A DONATION BY OR A LENDING OF THE CREDIT OF THE COUNTY WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE. THIS CONTRACT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE COUNTY TO MAKE ANY PAYMENTS BEYOND ANY PAYMENTS APPROPRIATED IN THE SOLE DISCRETION OF THE COUNTY FOR ANY FISCAL YEAR IN WHICH THIS CONTRACT IS IN EFFECT; *PROVIDED, HOWEVER*, THAT ANY FAILURE OR REFUSAL BY THE COUNTY TO APPROPRIATE FUNDS WHICH RESULTS IN ITS FAILURE TO MAKE ANY PAYMENT COMING DUE HEREUNDER WILL IN NO WAY OBTAIN 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 HEREUNDER, AND THE TAXING POWER OF THE COUNTY IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY AMOUNTS DUE HEREUNDER. No PROVISION OF THIS CONTRACT SHALL BE CONSTRUED TO PLEDGE OR TO CREATE A LIEN ON ANY CLASS OR SOURCE OF THE COUNTY'S FUNDS, NOR SHALL ANY PROVISION OF THIS CONTRACT RESTRICT THE FUTURE ISSUANCE OF ANY OF THE COUNTY'S BONDS OR OBLIGATIONS PAYABLE FROM ANY CLASS OR SOURCE OF THE COUNTY'S FUNDS. TO THE EXTENT OF ANY CONFLICT BETWEEN THIS ARTICLE XV AND ANY OTHER PROVISION OF THIS CONTRACT, THIS ARTICLE XV SHALL TAKE PRIORITY.

[END OF ARTICLE XV]

## ARTICLE XVI MISCELLANEOUS

Section 16.1. **Notices.** Any and all notices, requests, demands, and other communications given under or in connection with this Contract are only effective if made in writing and delivered either personally or mailed by certified or registered mail, postage prepaid, or return receipt requested, and 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 BANK:        RBC Bank (USA)  
                                 34 2<sup>nd</sup> Street NW  
                                 Hickory, North Carolina 28601  
                                 Attention: Public and Institutional Banking

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

Section 16.2. **Time.** Time is of the essence of this Contract and each and all of its provisions.

Section 16.3. **If Payment or Performance Date not a Business Day.** If the date for making any 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 16.4. **Waiver.** No covenant or condition of this Contract can be waived except by the written consent of the Bank. Any failure of the Bank to require strict performance by the County or any waiver by the Bank of any terms, covenants or contracts in this Contract shall not be construed as a waiver of any other breach of the same or any other term, covenant or contract in this Contract.

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

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

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

Section 16.8. **Covenants of County 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, agent or employee of the County in such person's individual capacity, and neither the members of the Board nor any other officer of the Board or



the County shall be subject to any personal liability or accountability by reason of the execution and delivery of this Contract. No member of the Board or any agent or employee of the County shall incur any personal liability in acting or proceeding or if not acting or not proceeding, in good faith, reasonably and in accordance with the terms of this Contract.

Section 16.9. ***Severability.*** If any portion of this Contract is determined to be invalid under any applicable law, such provision shall be deemed void and the remainder of this Contract shall continue in full force and effect.

Section 16.10. ***Governing Law.*** This Contract shall be construed, interpreted and enforced in accordance with, the laws of the State.

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

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

*IN WITNESS WHEREOF*, the County and the Bank have caused this Installment Financing Contract to be executed by their duly authorized officers as of the day and year first above written.

**COUNTY OF HENDERSON, NORTH CAROLINA**

[SEAL]

By: \_\_\_\_\_  
Steven D. Wyatt  
County Manager

Attest:

\_\_\_\_\_  
Teresa Wilson  
Clerk to the Board of Commissioners

[COUNTY SIGNATURE PAGE TO THE INSTALLMENT FINANCING CONTRACT DATED AS OF JUNE 1, 2010  
BETWEEN RBC BANK (USA) AND THE COUNTY OF HENDERSON, NORTH CAROLINA]

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

[COUNTERPART SIGNATURE PAGE TO THE INSTALLMENT FINANCING CONTRACT, DATED AS OF  
JUNE 1, 2010 BETWEEN RBC BANK (USA) AND THE COUNTY OF HENDERSON, NORTH CAROLINA]

**RBC BANK (USA),**  
as Bank

By: \_\_\_\_\_  
Jeremy E. Fisher  
Director

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

[COUNTERPART SIGNATURE PAGE TO THE INSTALLMENT FINANCING CONTRACT, DATED AS OF  
JUNE 1, 2010, BETWEEN RBC BANK (USA) AND THE COUNTY OF HENDERSON, NORTH CAROLINA]

This Contract has been approved under the  
provisions of Section 159-152 of the General  
Statutes of North Carolina, as amended.

By: \_\_\_\_\_  
T. Vance Holloman  
Secretary  
Local Government Commission of North Carolina

### PAYMENT SCHEDULE

DATE	PRINCIPAL COMPONENT	INTEREST COMPONENT	TOTAL PAYMENT
6/9/2011	\$ 180,750.00	\$ 103,027.50	\$ 283,777.50
6/9/2012	180,750.00	92,724.75	273,474.75
6/9/2013	180,750.00	82,422.00	263,172.00
6/9/2014	180,750.00	72,119.25	252,869.25
6/9/2015	180,750.00	61,816.50	242,566.50
6/9/2016	180,750.00	51,513.75	232,263.75
6/9/2017	180,750.00	41,211.00	221,961.00
6/9/2018	180,750.00	30,908.25	211,658.25
6/9/2019	180,750.00	20,605.50	201,355.50
6/9/2020	180,750.00	10,302.75	191,052.75
TOTAL	\$ 1,807,500.00	\$ 566,651.25	\$ 2,374,151.25

**EXHIBIT A**

**REAL PROPERTY DESCRIPTION**

## EXHIBIT B

### FORM OF REQUISITION

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

RBC Bank (USA)  
301 Fayetteville Street, Suite 1100  
Raleigh, North Carolina 27601

**Re:    *Direction to Make Disbursements from the County of Henderson 2010 Installment Financing QZAB Project Fund***

Ladies and Gentlemen:

Pursuant to Section 4.3 of the Installment Financing Contract, dated as of June 1, 2010 (the "**Contract**"), by and between RBC Bank (USA) (the "**Bank**"), and the County of Henderson, North Carolina (the "**County**"), you are hereby directed to disburse from the County of Henderson 2010 Installment Financing QZAB Project Fund (the "**Project Fund**") the amount indicated below.

The undersigned hereby certifies:

1.       This is requisition number \_\_\_\_\_ from the Project 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 Project Fund as a Cost of Construction under the Contract and such obligation has not been the basis of any previous disbursement.

Dated this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

COUNTY OF HENDERSON, NORTH CAROLINA

By: \_\_\_\_\_  
County Representative

APPROVED:

**RBC BANK (USA)**

By: \_\_\_\_\_  
Authorized Bank Representative