EXTRACTS FROM MINUTES OF BOARD OF COMMISSIONERS

A regular meeting of the Board of Commissioners of the County of Haywood, North Carolina, was duly held on February 1, 2016 at 9:00 a.m. in the Haywood County Courtroom of the Historic Courthouse at 215 N. Main Street, Waynesville, North Carolina. Chairman Mark S. Swanger, presiding.

The following members were present:

The following members were absent:

* * * * * *

* * *

Commissioner _____ introduced the following resolution, a summary of which had been provided to each Commissioner, a copy of which was available with the Clerk to the Board and which was read by title:

RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF HAYWOOD, NORTH CAROLINA, APPROVING AN INSTALLMENT FINANCING CONTRACT AND A DEED OF TRUST WITH RESPECT THERETO AND DELIVERY THEREOF AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS

WHEREAS, the County of Haywood, North Carolina (the "*County*") is a validly existing political subdivision of the State of North Carolina, existing as such under and by virtue of the Constitution, statutes and laws of the State of North Carolina (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 financing contracts in order to finance and refinance the purchase 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 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 finance all or a portion of the costs of (1) the construction of an Emergency Medical Services and Emergency Management Base on property owned by the county, that will provide space for Emergency Management vehicles and equipment; 5 drive-through ambulance bays; sleep rooms with shared kitchen area; offices, a conference room, and a weight room; and (2) related site improvements, including on-site parking and utilities (collectively the "*Project*");

WHEREAS, the Board hereby determines that it is in the best interest of the County to enter into an Installment Financing Contract dated as of February 1, 2016 (the "*Contract*") between the County and TD Bank, N.A. (the "*Bank*") in order to (1) finance all or a portion of the costs of the Project and (2) pay certain costs incurred in connection with the execution and delivery of the Contract;

WHEREAS, the Board hereby further determines that it is in the best interest of the County to execute and deliver a Deed of Trust, Security Agreement and Fixture Filing dated as of February 1, 2016 (the "*Deed of Trust*") to the deed of trust trustee named therein for the benefit of the Bank, granting a lien on the County's fee simple interest in the real property on which the Project will be located, as more particularly described in the Deed of Trust, and the improvements thereon (collectively, the "*Mortgaged Property*"), in order to secure the County's obligations under the Contract;

WHEREAS, the Board adopted a resolution on December 7, 2015 making certain findings with respect to the Contract, the Deed of Trust and the Project;

WHEREAS, the Board conducted a public hearing on December 21, 2015 to receive public comments on the Contract, the Deed of Trust and the Project;

WHEREAS, the County has filed an application with the LGC for approval of the LGC with respect to the County entering into the Contract in an aggregate principal amount of not to exceed $2,100,000, and the County hereby determines that all findings, conclusions and determinations of the County in this Resolution are subject to such approval by the LGC;

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;

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

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

Section 1. ***Ratification of Prior Actions.*** All actions of the County, the County Manager, the Finance Director and the Clerk to the Board and their respective designees in effectuating the proposed financing of the Project are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the Instruments.

Section 2. ***Approval, Authorization and Execution of Contract.*** The County hereby approves the financing of the Project 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 County hereby approves the amount advanced by the Bank to the County pursuant to the Contract in an aggregate principal amount not to exceed $2,100,000, such amount to be repaid by the County to the Bank as provided in the Contract. The form, terms and content of the Contract are in all respects authorized, approved and confirmed, and the Chairman, the County Manager, the Finance Director and the Clerk to the Board or their respective designees are authorized, empowered and directed, individually and collectively, to execute and deliver the Contract for and on behalf of the County, including necessary counterparts, in substantially the form 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 their approval of any and all such changes, modifications, additions or deletions. From and after the execution and delivery of the Contract, the Chairman, the County Manager, the Finance Director and the Clerk to the Board or their respective designees are hereby authorized, empowered and directed, individually and collectively, 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 3. ***Approval, Authorization of Deed of Trust.*** The form, terms and content of the Deed of Trust are in all respects authorized, approved and confirmed, and the Chairman, the County Manager, the Finance Director and the Clerk to the Board or their respective designees are authorized, empowered and directed, individually and collectively, to execute and deliver the Deed of Trust for and on behalf of the County, including necessary counterparts, in substantially the form 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 their approval of any and all such changes, modifications, additions or deletions. From and after the execution and delivery of the Deed of Trust, the Chairman, the County Manager, the Finance Director and the Clerk to the Board or their respective designees are hereby authorized, empowered and directed, individually and collectively, 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 5. ***Further Actions.*** The County Manager, the Chairman of the Board and the Finance Director are each hereby designated as the County's representatives to act on behalf of the County in connection with the transactions contemplated by the Instruments. The County Manager, the Chairman of the Board and the Finance Director are authorized and directed, individually and collectively, to proceed with the financing of the Project in accordance with the terms of the Instruments and to seek opinions on matters 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 Chairman, the County Manager and the Finance Director are hereby authorized to designate one or more employees of the County to take all actions which the Chairman, the County Manager or the Finance Director is authorized to perform under this Resolution, and the Chairman, the County Manager, the Finance Director or their designees are in all respects authorized on behalf of the County, individually and collectively, to supply all information pertaining to the transactions contemplated by the Instruments. The Chairman of the Board, the County Manager, the Finance Director and the Clerk to the Board are authorized, individually and collectively, to execute and deliver for and on behalf of the County any and all additional certificates, documents, opinions or other papers and perform all other acts as may be required by the Instruments or as they may deem necessary or appropriate to implement and carry out the intent and purposes of this Resolution.

Section 6. ***Repealer.*** All motions, orders, resolutions, ordinances and parts thereof in conflict herewith are hereby repealed.

Section 7. ***Severability.*** If any section, phrase or provision of this Resolution is for any reason declared to be invalid, such declaration will not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

Section 8. ***Effective Date.*** This Resolution is effective on the date of its adoption.

On motion of Commissioner _____, seconded by Commissioner _____, the foregoing resolution entitled **"RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF HAYWOOD, NORTH CAROLINA, APPROVING AN INSTALLMENT FINANCING CONTRACT AND A DEED OF TRUST WITH RESPECT THERETO AND DELIVERY THEREOF AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS"** was duly adopted by the following vote:

AYES:

NAYS:

STATE OF NORTH CAROLINA)
) ss:
COUNTY OF HAYWOOD)

I, *Ira Dove*, Clerk to the Board of Commissioners of the County of Haywood, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of a resolution entitled "**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF HAYWOOD, NORTH CAROLINA, APPROVING AN INSTALLMENT FINANCING CONTRACT AND A DEED OF TRUST WITH RESPECT THERETO AND DELIVERY THEREOF AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS**" adopted by the Board of Commissioners of the County of Haywood, North Carolina, at a regular meeting duly called and held on the 19th day of January, 2016.

WITNESS my hand and the corporate seal of the County of Haywood, North Carolina, this the __ day of February, 2016.

_____
Ira Dove
Clerk to the Board
County of Haywood, North Carolina

INSTALLMENT FINANCING CONTRACT

BETWEEN

TD BANK, N.A.

AND

COUNTY OF HAYWOOD, NORTH CAROLINA

DATED AS OF
FEBRUARY 1, 2016

INSTALLMENT FINANCING CONTRACT

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and is not part of the Installment Financing Contract.)

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PAYMENT SCHEDULE

INSTALLMENT FINANCING CONTRACT

This **INSTALLMENT FINANCING CONTRACT**, dated as of February 1, 2016 (this "*Contract*"), is between **TD BANK, N.A.**, a national banking association (the "*Bank*"), and its successors and assigns, and the **COUNTY OF HAYWOOD, NORTH CAROLINA** (the "*County*"), a political subdivision of the State of North Carolina (the "*State*"), validly existing under and by virtue of the Constitution, statutes and laws of the State.

PREAMBLES

WHEREAS, the County has the power, pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended, to enter into installment financing contracts in order to finance the construction of fixtures or improvements on real property to be used for public purposes 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 money advanced or made available for such construction;

WHEREAS, the Board of Commissioners of the County (the "*Board*") has determined that it is in the County's best interests to receive an advance of funds in an aggregate principal amount of $2,100,000 (the "*Advance*") under this Contract in order to finance all or a portion of the costs of Project (as defined below), in exchange for which the County will make Installment Payments and Additional Payments (as each term is defined below) on the terms set forth below;

WHEREAS, the Board has authorized, approved and directed the County's execution, performance and delivery of this Contract by a resolution passed and adopted by the Board on February1, 2016 (the "*Resolution*");

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

WHEREAS, the County's obligation to make the Installment Payments and Additional Payments constitutes a limited obligation of the County, payable solely from currently budgeted appropriations of the County; does not constitute a general obligation or other indebtedness of the County within the meaning of the Constitution of the State; and does 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 County's obligations under this Contract, the County has executed and delivered a Deed of Trust, Security Agreement and Fixture Filing dated as of February 1, 2016 (the "*Deed of Trust*") to the deed of trust trustee named therein for the benefit of the Bank, creating a lien on all of the County's right, title and interest in the real property on which the Project will be located and all improvements thereon (collectively, the "*Mortgaged Property*"); 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 money 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 in the event that the County shall fail to pay the same, as set forth in this Contract).

"*Advance*" means the original aggregate principal amount equal to $2,100,000 advanced by the Bank for the purposes provided in this Contract, as such amount advanced may be adjusted by amendment to this Contract.

"*Bank*" means TD Bank, N.A., a national banking association, 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 any vice president.

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

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

"*Closing Date*" means February 10, 2016.

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

"*Completion Date*" means the date on which completion of the Project 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 Project.

"*Costs 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 Project in connection with the acquisition and construction of the Project;

(2) the cost to construct, improve, equip and furnish the Project; 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 LGC, 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 any lien on, or security interest in, 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 Project 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, improvement, equipping and furnishing of the Project; and

(4) payment or prepayment of the principal components of the Installment Payments from any funds remaining in the Project Fund after the Completion Date.

"*County*" means the County of Haywood, North Carolina, a political subdivision of the State, validly existing under and by virtue of the Constitution, statutes and laws of the State, 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 or the Finance Director 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 February 1, 2016 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 Commerce Southern Corp., as the 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 Payment Date*" means each date that an Installment Payment is due and payable to the Bank in accordance with the terms of this Contract.

"*Installment Payments*" means, collectively, the payments made by the County to the Bank as described in Article III and in the Payment Schedule attached hereto.

"*Interest Rate*" means 2.54% per annum, calculated on a 30/360-day basis.

"*LGC*" means the Local Government Commission of North Carolina or any successor to its functions.

"*Mortgaged Property*" means, collectively, the real property located within the County on which the Project will be located, and all improvements thereon, as more particularly described in Exhibit A to the Deed of Trust, 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 or construction bonds required under this Contract, 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 this Contract, the Deed of Trust or otherwise, means the amount remaining after deducting from the gross proceeds thereof all expenses (including, without limitation, attorneys' fees and costs) incurred in the collection of such proceeds.

"*Payment Schedule*" means the document setting forth the County's Installment Payments which is attached hereto and incorporated herein by reference.

"*Plans and Specifications*" means the plans and specifications, if any, to be prepared by an architect selected and hired by the County relating to the construction, improving, equipping and furnishing of the Project.

"*Project*" means, collectively, (1) the construction of an Emergency Medical Services and Emergency Management Base on property owned by the County, that will provide space for Emergency Management vehicles and equipment; 4 drive-through ambulance bays; sleep rooms with shared kitchen area; offices, a conference room and a weight room; and (2) related site improvements, including on-site parking and utilities (collectively, the "Project").

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

"*Revenues*" means all revenues derived from this Contract, including all Installment Payments and all Net Proceeds not applied to the replacement of the Mortgaged Property.

"*State*" means the State of North Carolina.

"*Tax Certificate*" means the Arbitrage and Tax Regulatory Certificate dated as of the Closing Date executed by the County in connection with the execution and delivery of this Contract.

[END OF ARTICLE I]

ARTICLE II
THE ADVANCE

Section 2.1 ***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 County will use the proceeds of the Advance (1) to complete the Project in accordance with the Plans and Specifications, if any, and (2) to pay certain costs incurred in connection with the execution and delivery of this Contract.

[END OF ARTICLE II]

ARTICLE III
INSTALLMENT PAYMENTS; ADDITIONAL PAYMENTS

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

(a) Subject to the provisions of Article XV, the County shall repay the Advance in Installment Payments consisting of an interest component and a principal component, as applicable, on each Installment Payment Date in the amounts set forth in this Contract and the Payment Schedule attached to this Contract. The County hereby approves the Advance by the Bank to the County pursuant to this Contract in the amount of $2,100,000 to be repaid by the County in Installment Payments at an interest rate per annum equal to the Interest Rate.

(b) Each Installment Payment shall be paid in the amounts and at the times set forth in the attached Payment Schedule, except as otherwise provided in this Contract. 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. 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 5 days of the due date thereof is subject to a late payment charge of 4% of the amount of the past due Installment Payment. Interest with respect to the principal component of such unpaid Installment Payment shall continue to accrue at the Interest Rate until paid.

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 completion of the Project. The County assumes and shall bear the entire risk of loss and damage to the Project from any cause whatsoever, it being the intention of the parties 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 the Advance.*** The Advance may be optionally prepaid in whole or in part at any time on 30 days prior written notice to the Bank, without penalty. The Advance may be prepaid at a prepayment price equal to 100% of the par amount of the Advance to be prepaid, plus accrued interest to the prepayment date. If the principal component of the Installment Payments then outstanding are prepaid in part, then such prepayment shall be deemed a prepayment on the principal component of the Installment Payments then outstanding in inverse order of maturity.

[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 "*Haywood County 2016 Installment Financing Project Fund.*" On the Closing Date, the Bank will cause the Advance to be deposited in 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 County shall invest and reinvest the money, and any interest thereon, held in the Project Fund as permitted under Section 159-30 of the General Statutes of North Carolina, as amended.

Section 4.3. ***Disbursements.*** Money held in the Project Fund shall be disbursed by the County for payment of the Costs of Construction. If amounts held to the credit of the Project Fund are insufficient to pay the Costs of Construction, then the County shall provide any balance of funds necessary to complete the Project. The County shall consult with its bond counsel regarding the disposition of any money remaining in the Project Fund after completion of the Project or the earlier termination of the Project Fund, and, if so permitted by the Code, such amount shall be used to pay 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 earlier of (1) the final distribution of amounts held in the Project Fund and (2) the termination of this Contract.

[END OF ARTICLE IV]

ARTICLE V
CONSTRUCTION OF THE PROJECT

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 Project to be carried on expeditiously in accordance with the Plans and Specifications, if any, 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 Project does not impermissibly encroach on nor impermissibly overhang any easement or right of way and (2) that the Project, when completed, (a) will, if applicable, be wholly within the real property on which the Project is located and any building restriction lines, however established, and (b) 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 Project to be completed in accordance with health department standards and other applicable regulations of any governmental agency having jurisdiction. The County will promptly correct any structural defect in the improvements or any departure from the Plans and Specifications, if any.

Section 5.2. ***Right of Entry and Inspection.*** The Bank and its representatives and agents have the right to enter on and inspect the Project from time to time, during and after any construction, and the County will cause the contractor, the construction manager at risk or any first-tier contractor 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 use its best efforts to cause the Project to be completed within three years from the date hereof, unforeseen delays beyond the reasonable control of the County only excepted. On completion of the Project, 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 Costs of Construction have 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.

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 Project, 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, each naming the Bank as a dual obligee, copies of which shall be provided to the Bank. In lieu of furnishing a performance bond and a separate labor and material payment bond, each contractor, or the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk, may furnish collateral in an amount of its construction contract securing the County, copies of the evidence of such collateral which shall be provided to the 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 Project, 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 Project 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 the Project, 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 Project, to procure and maintain, property insurance (builder's risk) on all construction, improving, equipping and furnishing of the Project (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. 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 on which the Project is 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 the Project, 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 Project, 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 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 Mortgaged Property in a careful and proper manner, in compliance with all applicable laws and regulations, and, at its sole cost and expense, shall service, repair and maintain the Mortgaged Property so as to keep the Mortgaged Property in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear excepted, and shall replace any part of the Mortgaged Property 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 Mortgaged Property and all parts thereof shall constitute accessions to the Mortgaged Property and shall be subject to all the terms and conditions of this Contract and included in the term "*Mortgaged Property*" as used in this Contract.

Section 6.2. ***Inspection.*** The Bank has the right upon reasonable prior notice to the County to enter into and upon the Mortgaged Property to inspect the Mortgaged Property and observe the use of the Mortgaged Property 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 Mortgaged Property. 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 Mortgaged Property and the County's obligations under this Contract including, but not limited to, all license or registration fees, gross receipts tax, sales and use tax, if applicable, license fees, documentary stamp taxes, rental taxes, assessments, charges, ad valorem taxes, excise taxes, and all other taxes, licensees and charges imposed on the ownership, possession or use of the Mortgaged Property by any governmental body or agency, together with any interest and penalties.

Section 6.5. ***Reserved.***

Section 6.6. ***Reserved.***

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 Mortgaged Property 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 Mortgaged Property, 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 Mortgaged Property (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 an 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 Mortgaged Property, 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 Mortgaged Property 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 Mortgaged Property, 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) 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) 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 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 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 a certificate or certificates of the respective insurers evidencing such coverage and stating, as required, the amount of coverage with respect to the Mortgaged Property or any part thereof.

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. ***Reserved.***

Section 6.9. ***Reserved.***

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 agrees that it will furnish the Bank:

(a) current audited financial statements within 210 days of the end of each Fiscal Year, carrying an unqualified opinion of a certified public accountant and prepared in accordance with generally accepted accounting principles and presented on a consistent basis; and

(b) a copy of the County's annual budget within 30 days of its adoption.

The County represents and warrants to the Bank that all financial statements which have been delivered to the Bank in connection with this Contract fairly and accurately reflect the County's financial condition and there has been no material adverse change in the County's financial condition as reflected in the financial statements since the date thereof. The County will submit to the Bank, together with the financial statements submitted under this Section, a certificate from the Finance Director or other responsible official stating that the County is in compliance with the terms of this Contract and detailing any Events of Default.

[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 Closing Date. On the Closing Date, the Deed of Trust will be in full force and effect and no events of default shall have occurred thereunder. On payment or provision for payment in full of all of the County's obligations hereunder, including the principal components 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 in 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) the Lease and any other 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 Project 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.

[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 Mortgaged Property or any portion of the Mortgaged Property is destroyed, or is damaged by fire or other casualty; (2) title to or the temporary or permanent use of the Mortgaged Property or any portion thereof or the estate of the County or the Bank or its assignee in the Mortgaged Property or any portion thereof is taken under the power of eminent domain by any governmental authority; (3) a material defect in construction of the Mortgaged Property becomes apparent; or (4) title to or the use of all or any portion of the Mortgaged Property 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 Net Proceeds of any insurance policies, condemnation awards or Net Proceeds made available by reason of any occurrence described in Sections 5.4, 6.7(a) or 8.1, shall be applied 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:

(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 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 as permitted under Section 3.5 or as otherwise agreed to by the Bank. If the Net Proceeds exceed the amount necessary to prepay the then outstanding principal component of the Installment Payments, 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 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, WARRANTIES AND COVENANTS OF THE COUNTY

Section 9.1. ***Representations, Warranties and Covenants 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 subdivisions of the State to consolidate with or merge into it, unless the County is the surviving entity or the entity created thereby expressly assumes in writing the County's obligations hereunder;

(c) This Contract, the Deed of Trust and all other documents relating hereto and 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 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 Costs of Construction are not less than $2,100,000 and, other than building permits or other procedural requirements which are a prerequisite to the construction of the Project and the approval of 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 the purposes permitted in Article IV and the Tax Certificate;

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

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

(j) The Project is essential to the proper, efficient and economical operation of the County and the delivery of services and permits the County to carry out its public functions that it is 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; and

(o) The County has or will have good and marketable title to the Mortgaged Property.

[END OF ARTICLE IX]

ARTICLE X
TAX COVENANTS AND REPRESENTATIONS

Section 10.1. ***Tax Covenants and Representations.***

(a) The County covenants that it will not take any action, or fail to take any action, if any such action or failure to take such action would adversely affect the exclusion from gross income of the interest portion of the obligations created by this Contract for federal income tax purposes. The County will not directly or indirectly use or permit the use of any proceeds of any fund created under this Contract or any funds of the County, or take or omit to take any action that would cause the obligations created by this Contract to be an "*arbitrage bond*" within the meaning of Section 148(a) of the Code. The County will maintain books on which will be recorded (1) the Bank, or (2) any assignee of the Installment

Payments due under this Contract, as the registered owner of such Installment Payments. To that end, the County has executed and delivered the Tax Certificate and will comply with all of the requirements of Section 148 of the Code to the extent applicable. The County further covenants that this Contract is not a "*private activity bond*" as defined in Section 141 of the Code.

(b) 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.

(c) The County acknowledges that the Bank is advancing the Advance at the Interest Rate based on the premise that the interest components of the Installment Payments received under this Contract is exempt from federal and State taxation and based on other State and federal laws in effect as of the Closing Date. If, as a result of any action or failure to take any action by the County, the interest received by the Bank hereunder shall be deemed to be taxable income to the Bank by any governmental agency or court of competent jurisdiction, then, at the sole option of the Bank, either (1) the remaining Installment Payments shall become immediately due and payable or (2) the Interest Rate and remaining interest components of the Installment Payments will be adjusted upward in order to provide for the payment of interest by the County at a taxable rate which will preserve the Bank's after-tax economic yield with respect to the obligations created by this Contract. In such event, the County agrees to indemnify and hold harmless the Bank from any cost and expense incurred as a result of the loss of the tax-exempt status of the obligation created by this Contract, specifically including without limitation all administrative expenses arising in connection with the amendment of the Bank's income tax returns. In addition, if any action or failure to take any action by the County shall adversely affect the Bank's after-tax economic yield with respect to the obligation created under this Contract, the Interest Rate and the Installment Payments shall be adjusted to produce an after-tax yield to the Bank equivalent to the Bank's after-tax yield immediately prior to such action or inaction.

(d) Notwithstanding any provision in this Contract to the contrary, if the County shall provide to the Bank an opinion of nationally recognized bond counsel reasonably acceptable to the Bank 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 tax-exempt status, the County and the Bank may rely conclusively on such opinion in complying with the provisions of this Article X.

(e) The County hereby agrees to revise the Interest Rate in the event of a breach of any of the representations set forth in 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 LGC, 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 Project or any portion thereof, including, without

limitation, the manufacture, selection, acquisition, delivery, possession, condition, construction, improvement, environmental or other condition, lease, use operation or return of the Project or any portion thereof. 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 Project 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 Project 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 Project 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 Project 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 Project 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 Project 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 PROJECT 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 PROJECT; OR ANY OTHER CHARACTERISTICS OF THE PROJECT, IT BEING AGREED THAT ALL RISKS RELATING TO THE PROJECT, 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 on 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 money 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, 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***. On 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 components 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;

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

(e) Pursue any other remedy available at law or equity to the Bank.

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.

Section 13.4. ***No Setoff Rights in Deposit Accounts***. Notwithstanding anything in this Contract to the contrary, the Bank shall have no right of setoff with respect to any amounts held to the credit of the Project Fund or any other County deposit account maintained with the Bank.

[END OF ARTICLE XIII]

ARTICLE XIV
ASSIGNMENT

Section 14.1. ***Assignment***. Except pursuant to this Contract and the Deed of Trust, as applicable, the County will not sell, assign, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance on or against any interest in this Contract or the Mortgaged Property (except for the Lease and any other 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 Project 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 LGC, although the Banks or any assignee shall give written notice to the LGC 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 LGC. 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 on 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 LGC, 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 OBVIATE THE OCCURRENCE OF THE EVENT OF DEFAULT RESULTING FROM SUCH NONPAYMENT. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE COUNTY IN ANY ACTION FOR BREACH OF A CONTRACTUAL OBLIGATION 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 Haywood, North Carolina
215 North Main Street
Waynesville, North Carolina 28786
Attention: County Manager

IF TO THE BANK: TD Bank, N.A.
200 College Street
Asheville, North Carolina 28801
Attention: Ross Sloan

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 any schedules and exhibits attached to this Contract and Deed of Trust, 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 is an original and all of which 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 HAYWOOD, NORTH CAROLINA

[SEAL]

By: _____
Mark S. Swanger
Chairman of the Board of Commissioners

ATTEST:

_____
Ira Dove
Clerk to the Board of Commissioners

[COUNTERPART SIGNATURE PAGE TO THE INSTALLMENT FINANCING CONTRACT, DATED AS OF FEBRUARY 1, 2016, BETWEEN TD BANK, N.A. AND THE COUNTY OF HAYWOOD, NORTH CAROLINA]

TD BANK, N.A.,
as Bank

By: _____
Ross Sloan
Vice President

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

[COUNTERPART SIGNATURE PAGE TO THE INSTALLMENT FINANCING CONTRACT, DATED AS OF FEBRUARY 1, 2016, BETWEEN TD BANK, N.A. AND THE COUNTY OF HAYWOOD, NORTH CAROLINA]

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

By: _____

Greg C. Gaskins
Secretary
Local Government Commission of North Carolina

PAYMENT SCHEDULE

PAYMENT DATE	INSTALLMENT PAYMENT - PRINCIPAL COMPONENT	INSTALLMENT PAYMENT - INTEREST COMPONENT*	TOTAL INSTALLMENT PAYMENT
08/01/2016	-	$25,633.00	$25,633.00
02/01/2017	$210,000	26,670.00	236,670.00
08/01/2017	-	24,003.00	24,003.00
02/01/2018	210,000	24,003.00	234,003.00
08/01/2018	-	21,336.00	21,336.00
02/01/2019	210,000	21,336.00	231,336.00
08/01/2019	-	18,669.00	18,669.00
02/01/2020	210,000	18,669.00	228,669.00
08/01/2020	-	16,002.00	16,002.00
02/01/2021	210,000	16,002.00	226,002.00
08/01/2021	-	13,335.00	13,335.00
02/01/2022	210,000	13,335.00	223,335.00
08/01/2022	-	10,668.00	10,668.00
02/01/2023	210,000	10,668.00	220,668.00
08/01/2023	-	8,001.00	8,001.00
02/01/2024	210,000	8,001.00	218,001.00
08/01/2024	-	5,334.00	5,334.00
02/01/2025	210,000	5,334.00	215,334.00
08/01/2025	-	2,667.00	2,667.00
02/01/2026	210,000	2,667.00	212,667.00
TOTAL	$2,100,000	$292,333.00	$2,392,333.00

*Interest rate of 2.54% calculated on a 30/360-day basis

Prepared by and
Return to: Leon M. Killian III
Haywood County Attorney
215 N. Main Street
Waynesville, NC 28786

STATE OF NORTH CAROLINA

COUNTY OF HAYWOOD

DEED OF TRUST,
SECURITY AGREEMENT
AND FIXTURE FILING

This **DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING,** is made and entered into as of February 1, 2016 (this "*Deed of Trust*"), from the **COUNTY OF HAYWOOD, NORTH CAROLINA** (the "*Grantor*"), 215 North Main Street, Waynesville, North Carolina 28786, to Commerce Southern Corp., 2070 Chain Bridge Road, Vienna, Virginia, 22182, as trustee (the "*Trustee*"), for the benefit of **TD BANK, N.A.**, 200 College Street, Asheville, North Carolina 28801 (the "*Bank*"). The Bank and its successors and assigns are collectively referred to herein as the "*Beneficiary*."

PREAMBLES

WHEREAS, the Grantor and the Bank have entered into an Installment Financing Contract, dated as of February 1, 2016 (the "*Contract*"), pursuant to which (1) the Bank has agreed to advance funds to enable the Grantor to finance all or a portion of the costs of the Project (as defined in the Contract), and (2) the Grantor has agreed to make the Installment Payments (as defined in the Contract) to the Bank;

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

COLLATERAL IS OR INCLUDES FIXTURES

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

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

(b) The maximum principal amount, including present and future Indebtedness, which may be secured by this Deed of Trust at any one time is $3,000,000 (exclusive of advances that may be made under the terms of the Contract or this Deed of Trust for the protection of collateral, payment of taxes, impositions and assessments, attorneys' fees and costs and other sums which the Grantor is required by the terms of said instruments to repay), subject to the limitation that any increase must be authorized by the Grantor's governing board and at no time shall the total principal amount of Indebtedness secured hereby exceed said maximum principal sum of $3,000,000 plus interest, attorneys' fees and costs and other sums for the protection of collateral, payment of taxes, impositions and assessments and similar sums advanced by the Beneficiary which the Grantor is obligated to repay hereunder, under the Contract, or otherwise;

(c) The period within which such future Indebtedness may be incurred shall expire not later than 30 years from the date of this Deed of Trust, and shall be effective without the recordation of an amendment, modification or supplement to this Deed of Trust; and

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

WHEREAS, the Grantor desires to secure (1) the payment of the Indebtedness and any renewals, modifications or extensions thereof, in whole or in part, and (2) the additional payments hereinafter agreed to be made by or on behalf of the Grantor, by a conveyance of the lands and security interests hereinafter described;

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

(a) The real property lying and being in the County of Haywood, North Carolina, and described below in the legal description attached as Exhibit A hereto (hereinafter referred to as the "*Real Property*"):

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

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

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

(d) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Real Property or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversion and reversions, remainder and remainders, whatsoever, in any way belonging, relating or appertaining to the Mortgaged Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Grantor.

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

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

And the Grantor covenants with the Trustee that the Grantor is lawfully seized of the Mortgaged Property in fee simple and has the right to convey the same in fee simple; that, except for Permitted Encumbrances (as defined in Exhibit B attached hereto and specifically incorporated herein by reference),

the same are free and clear of all encumbrances, and that the Grantor will warrant and defend the title to the same against the claims of all persons whomsoever arising by, under or through the Grantor.

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

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

ARTICLE I

Section 1.1. ***Payment of Indebtedness.*** The Grantor will pay the Indebtedness and all other sums now or hereafter secured hereby promptly as the same shall become due.

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

(a) The Grantor will pay, before the same become delinquent, all taxes, liens, assessments and charges of every character including all utility charges, whether public or private, already levied or assessed or that may hereafter be levied or assessed upon or against the Mortgaged Property; and will furnish the Beneficiary, on or before the final date whereon the same can be paid without penalty, evidence of the due and punctual payment of all such taxes, assessments and other fees and charges. Nothing contained herein shall require the payment or discharge of any such tax, lien, assessment or charge by the Grantor for so long as the Grantor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings provided that such proceedings shall prevent (1) the collection thereof or other realization thereof and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy the same or (2) the enforcement thereof, against the Grantor, the Trustee, the Beneficiary and the Mortgaged Property and so long as the Grantor first deposits with the Beneficiary in escrow such sums or other security as the Beneficiary may reasonably require to assure Beneficiary of the availability of sufficient money to pay such tax, lien, assessment or charge if and when the same is finally determined to be due.

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

Section 1.3. ***Insurance.***

(a) The Grantor shall procure for, deliver to and maintain for the benefit of the Beneficiary, during the term of this Deed of Trust, the insurance coverage required by the Contract. Such insurance shall be noncancellable except upon at least 30 days' prior written notice to the Beneficiary, and shall otherwise comply with the requirements of the Contract.

(b) The Beneficiary is hereby authorized and empowered and, at its option, with participation of the Grantor, to adjust or compromise any loss under any insurance policies maintained pursuant to this Section 1.3, and to collect and receive the proceeds from any such policy or policies. Each insurance

company is hereby authorized and directed to make payment for all such losses directly to the Grantor and the Beneficiary jointly. The net proceeds from any such policy or policies shall be applied as provided in the Contract. The Beneficiary shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(c) For the portion of such insurance which is not self-insurance, at least 30 days prior to the expiration date of each policy maintained pursuant to this Section 1.3, a renewal or replacement thereof satisfactory to the Beneficiary shall be delivered by the Grantor to the Beneficiary, if requested. In the event of the foreclosure of this Deed of Trust or any other transfer of title to the Mortgaged Property in extinguishment of the Indebtedness secured hereby, all right, title and interest of the Grantor in and to all insurance policies then in force shall pass to the purchaser or Beneficiary, as appropriate.

Section 1.4. ***Condemnation***. In the event there hereafter occurs a condemnation (which term when used in this Deed of Trust shall include any damage or taking by any governmental authority or other entity having the power of eminent domain, and any transfer by private sale in lieu thereof), resulting in any damage or taking, either temporarily or permanently, of (1) the entire Mortgaged Property, (2) so much of the Mortgaged Property as causes the remainder of the Mortgaged Property to be in violation of any zoning laws, restrictive covenants or similar laws, regulations or restrictions affecting the Mortgaged Property, and the Grantor fails to cure such violation within 30 days of the condemnation or such violation does not prevent the Grantor's continued use of the Mortgaged Property in the ordinary course of its business or (3) so much of the Mortgaged Property that, in the sole reasonable opinion of the Beneficiary, the value of the Mortgaged Property is materially and adversely affected, then, and in any one of said events, the Grantor shall repay the Indebtedness in accordance with Article VIII of the Contract. To the extent permitted by law, the Beneficiary shall be entitled to receive all compensation, awards and other payments or relief thereof. The Beneficiary is hereby authorized, at its option, to commence, appear in and prosecute, in its own or in the Grantor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Grantor to the Beneficiary. After deducting from said condemnation proceeds all of its expenses incurred in the collection and administration of such sums, including reasonable attorneys' fees, the Beneficiary shall apply the net proceeds as provided in the Contract, subject to the terms of Article VIII of the Contract. Any balance of such money then remaining shall be paid to the Grantor. The Grantor hereby agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds as the Beneficiary may require.

Section 1.5. ***Care of Mortgaged Property***.

(a) The Grantor will keep the buildings, parking areas, roads and walkways, recreational facilities, landscaping and all other improvements of any kind now or hereafter erected on the Real Property or any part thereof in good condition and repair, will not commit or suffer any waste, and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) The Grantor will not remove or demolish nor alter the structural character of any improvement located on the Real Property without the prior written consent of the Beneficiary.

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

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

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

(f) If all or any part of the Mortgaged Property shall be damaged or destroyed as described in Section 8.1 of the Contract, the Grantor will promptly repair, restore, modify, improve or replace the Mortgaged Property or any remaining portions in accordance with Section 8.2 of the Contract or, under certain circumstances described in Section 8.3 of the Contract, apply any Net Proceeds (as defined in the Contract) as provided for in Section 8.3 of the Contract.

Section 1.6. ***Leases and Other Agreements Affecting Property***. The Grantor will duly and punctually perform all terms, covenants, conditions and agreements binding upon the Grantor under any lease or any other agreement of any nature whatsoever which involves or affects the Mortgaged Property or any part thereof. The Grantor will furnish the Beneficiary with executed copies of all leases now or hereafter created upon the Mortgaged Property or any part thereof, and all leases now or hereafter entered into will be in form and substance subject to the prior written approval of the Beneficiary. The Grantor will not, without the express written approval of the Beneficiary (which approval will not be unreasonably withheld or delayed), modify, surrender or terminate, either orally or in writing, any lease now existing or hereafter created upon the Mortgaged Property or any part thereof, nor will the Grantor permit an assignment or a subletting by any tenant without the prior express written approval of the Beneficiary.

Section 1.7. ***Security Agreement and Fixture Filing***. With respect to the Fixtures, this Deed of Trust is hereby made and declared to be a security agreement in favor of the Beneficiary encumbering each and every item of such property included herein as a part of the Mortgaged Property, in compliance with the provisions of the Uniform Commercial Code as enacted in the State of North Carolina (the "*State*"), and the Grantor hereby grants a security interest to the Beneficiary in and to all of such Fixtures. This Deed of Trust shall constitute a financing statement filed as a fixture filing in accordance with N.C. Gen. Stat. §25-9-502 (or any amendment thereto). For purposes of complying with the requirements of N.C. Gen. Stat. §25-9-502, the name of Grantor, as Debtor, and Beneficiary, as Secured Party, and the respective addresses of Grantor, as Debtor, and Beneficiary, as Secured Party, are set forth on the first page of this Deed of Trust. Grantor authorizes Beneficiary to effect any filing or recording of any additional financing statements relating to the Fixtures or amendments thereto where appropriate to perfect and continue the security interest in, and to protect and preserve, the Fixtures. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Deed of Trust shall be (1) as prescribed herein, or (2) as prescribed by general law, or (3) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at the Beneficiary's sole election. The mention in any such financing statement or statements of the rights in and to (a) the proceeds of any fire and/or hazard insurance policy, (b) any award in eminent domain proceedings for a taking or for loss of value or (c) the Grantor's interest as lessor in any present or future lease or rights to rents, issues or awards growing out of the use and/or occupancy of the Mortgaged Property, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of the

Beneficiary as determined by this Deed of Trust or affect the priority of the Beneficiary's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement or statements is solely for the protection of the Beneficiary in the event any court shall at any time hold with respect to the foregoing clauses (a), (b) or (c) of this sentence, that notice of the Beneficiary's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records.

Section 1.8. ***Further Assurances; After Acquired Property***. At any time, and from time to time, upon request by the Beneficiary, the Grantor will make, execute and deliver or cause to be made, executed and delivered, to the Beneficiary and/or the Trustee and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Beneficiary, any and all such other and further deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the opinion of the Beneficiary, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve (1) the obligations of the Grantor under the Contract or this Deed of Trust and (2) the security interest created under this Deed of Trust as a first and prior lien upon, and security title in and to, all of the Mortgaged Property, subject to Permitted Encumbrances, whether now owned or hereafter acquired by the Grantor.

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

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

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

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

Section 1.13. ***Limit of Validity***. If from any circumstances whatsoever fulfillment of any provision of this Deed of Trust or the Contract at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any

other applicable law, with regard to obligations of like character and amount, then *ipso facto* the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Deed of Trust or the Contract that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity.

Section 1.14. ***Changes in Ownership.*** The Grantor hereby acknowledges to the Beneficiary that (1) the identity and expertise of the Grantor were and continue to be material circumstances upon which the Beneficiary has relied in connection with, and which constitute valuable consideration to the Beneficiary for, the extending to the Grantor of the Indebtedness and (2) any change in such identity or expertise could materially impair or jeopardize the security for the payment of the Indebtedness granted to the Beneficiary by this Deed of Trust. The Grantor therefore covenants and agrees with the Beneficiary, as part of the consideration for the extending to the Grantor of the Indebtedness, that the entire Indebtedness shall, at the option of the Beneficiary, become immediately due and payable, should the Grantor further encumber, pledge, convey, transfer or assign any or all of its interest in the Mortgaged Property or any portion thereof without the prior written consent of the Beneficiary or except as otherwise permitted herein.

Section 1.15. ***Use and Management of the Mortgaged Property.*** The Grantor shall not alter or change the use of the Mortgaged Property or abandon the Mortgaged Property without the prior written consent of the Beneficiary.

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

Section 1.17. ***Hazardous Material.***

(a) The Grantor represents, warrants and agrees that, except as previously disclosed to the Bank in writing: (1) the Grantor has not used or installed any Hazardous Material (as hereinafter defined) in violation of applicable Environmental Laws on, from or in the Mortgaged Property and to the Grantor's actual knowledge no other person has used or installed any Hazardous Material on, from or in the Mortgaged Property; (2) to the Grantor's knowledge, no other person has violated any applicable Environmental Laws (as hereinafter defined) relating to or affecting the Mortgaged Property or any other property owned by the Grantor except as previously disclosed to the Beneficiary; (3) to the best of the Grantor's knowledge the Mortgaged Property is presently in compliance with all applicable Environmental Laws, and there are no facts or circumstances presently existing upon or under the Mortgaged Property, or relating to the Mortgaged Property, which may violate any applicable Environmental Laws, and there is not now pending or, to the best knowledge of the Grantor, threatened any action, suit, investigation or proceeding against the Grantor or the Mortgaged Property (or against any other party relating to the Mortgaged Property) seeking to enforce any right or remedy against the Grantor or the Mortgaged Property under any of the Environmental Laws; (4) the Mortgaged Property shall be kept free of Hazardous Materials to the extent required by applicable Environmental Laws, and shall not be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, or process Hazardous Materials other than the processing of materials in the ordinary course of the Grantor's business as of the date hereof; (5) the Grantor shall not cause or permit the installation of Hazardous Materials in, on, over or under the Mortgaged Property or a Release (as hereinafter defined) of Hazardous Materials unto or from the Mortgaged Property or suffer the presence of Hazardous Materials in, on, over

or under the Mortgaged Property in violation of applicable Environmental Laws; (6) the Grantor shall comply with Environmental Laws applicable to the Mortgaged Property, all at no cost or expense to the Beneficiary or the Trustee; (7) the Grantor has obtained and will at all times continue to obtain and/or maintain all licenses, permits and/or other governmental or regulatory actions necessary for the Mortgaged Property to comply with applicable Environmental Laws (the "*Permits*") and the Grantor will be and at all times remain in full compliance with the terms and provisions of the Permits; (8) to the best of the Grantor's knowledge there has been no Release of any Hazardous Materials on or from the Mortgaged Property in violation of applicable Environmental Laws, whether or not such Release emanated from the Mortgaged Property or any contiguous real estate which has not been abated and any resulting violation of applicable Environmental Laws abates; (9) the Grantor shall immediately give the Beneficiary oral and written notice in the event that the Grantor receives any notice from any governmental agency, entity, or any other party with regard to Hazardous Materials on, from or affecting the Mortgaged Property and the Grantor shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Mortgaged Property in accordance with all applicable Environmental Laws.

(b) To the fullest extent permitted by applicable law, the Grantor hereby agrees to indemnify the Beneficiary and the Trustee and hold the Beneficiary and the Trustee harmless from and against any and all liens, demands, defenses, suits, proceedings, disbursements, liabilities, losses, litigation, damages, judgments, obligations, penalties, injuries, costs, expenses (including, without limitation, attorneys' and experts' fees) and claims of any and every kind whatsoever paid, incurred, suffered by, or asserted against the Beneficiary, the Trustee and/or the Mortgaged Property for, with respect to, or as a direct or indirect result of: (1) the presence of Hazardous Materials in, on or under the Mortgaged Property, or the escape, seepage, leakage, spillage, discharge, emission or Release on or from the Mortgaged Property of any Hazardous Materials regardless of whether or not caused by or within the control of the Grantor; (2) the violation of any Environmental Laws applicable to the Mortgaged Property or the Grantor, whether or not caused by or within the control of the Grantor; (3) the failure by the Grantor to comply fully with the terms and provisions of this Section 1.17; (4) the violation of any of the Environmental Laws in connection with any other property owned by the Grantor, which violation gives or may give rise to any rights whatsoever in any party with respect to the Mortgaged Property by virtue of any of the Environmental Laws, whether or not such violation is caused by or within the control of the Grantor; or (5) any warranty or representation made by the Grantor in subparagraph (a) of Section 1.17 being false or untrue in any material respect.

(c) In the event the Beneficiary has a reasonable basis to suspect that the Grantor has violated any of the covenants, warranties, or representations contained in this Section 1.17, or that the Mortgaged Property is not in compliance with the applicable Environmental Laws for any reason, the Grantor shall take such steps as the Beneficiary reasonably requires by written notice to the Grantor in order to confirm or deny such occurrences, including, without limitation, the preparation of environmental studies, surveys or reports. In the event that the Grantor fails to take such action, the Beneficiary may take such action as the Beneficiary reasonably believes necessary to protect its interest, and the cost and expenses of all such actions taken by the Beneficiary, including, without limitation, the Beneficiary's reasonable attorneys' fees, shall be added to the Indebtedness.

(d) For purposes of this Deed of Trust: (1) "*Hazardous Material*" or "*Hazardous Materials*" means and includes, without limitation, (A) solid or hazardous waste, as defined in the Resource Conservation and Recovery Act of 1980, as amended, or in any applicable state or local law or regulation,

(B) hazardous substances, as defined in CERCLA, or in any applicable state or local law or regulation, (C) gasoline, or any other petroleum product or by-product, (D) toxic substances, as defined in the Toxic Substances Control Act of 1976, as amended, or in any applicable state or local law or regulation or (E) insecticides, fungicides, or rodenticides, as defined in the Federal Insecticide, Fungicide, and Rodenticide Act of 1975, as amended, or in any applicable state or local law or regulation, as each such Act, statute or regulation may be amended from time to time; (2) "*Release*" shall have the meaning given such term, in the Environmental Laws, including, without limitation, Section 101(22) of CERCLA; and (3) "*Environmental Law*" or "*Environmental Laws*" shall mean any "*Super Fund*" or "*Super Lien*" law, or any other federal, state or local statute, law, ordinance or code, regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials as may now or at any time hereafter be legally in effect, including, without limitation, the following, as same may be amended or replaced from time to time, and all regulations promulgated and officially adopted thereunder or in connection therewith: the Super Fund Amendments and Reauthorization Act of 1986, as amended ("*SARA*"); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("*CERCLA*"); the Clean Air Act, as amended ("*CAA*"); the Clean Water Act, as amended ("*CWA*"); the Toxic Substance Control Act, as amended ("*TSCA*"); the Solid Waste Disposal Act, as amended ("*SWDA*"), as amended by the Resource Conservation and Recovery Act, as amended ("*RCRA*"); the Hazardous Waste Management System; and the Occupational Safety and Health Act of 1970, as amended ("*OSHA*"). The obligations and liabilities of the Grantor under this Section 1.17 which arise out of events or actions occurring prior to the satisfaction of this Deed of Trust shall survive the exercise of the power of sale under or foreclosure of this Deed of Trust, the delivery of a deed in lieu of foreclosure of this Deed of Trust, the cancellation or release of record of this Deed of Trust, and/or the payment in full of the Indebtedness.

(e) The parties expressly agree that an event under the provisions of Section 1.17 which may be deemed to be a default under this Deed of Trust shall not be a default until the Grantor has received notice of such event. Further, in terms of compliance with future governmental laws, regulations or rulings applicable to environmental conditions, the Grantor shall be permitted to afford itself of any defense or other protection against the application or enforcement of any such law, regulation or ruling.

ARTICLE II

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

(a) Failure by the Grantor to pay any principal component or interest component of the Installment Payments when due as required by the Contract or by this Deed of Trust; or

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

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

(d) The occurrence of any "*Event of Default*" under the Contract.

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

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

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

(c) Exercise any or all of the remedies available to a secured party under the Uniform Commercial Code of North Carolina or under any other applicable laws.

(d) Notwithstanding any provision to the contrary in this Deed of Trust, no deficiency judgment may be rendered against the Grantor in any action to collect any of the Indebtedness secured by this Deed of Trust and the taxing power of the Grantor is not and may not be pledged directly or indirectly or contingently to secure any money due or secured under this Deed of Trust.

Section 2.3. ***Foreclosure by Power of Sale.*** Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall notify the Trustee and shall deposit with the Trustee this Deed of Trust and such receipts and evidence of expenditures made and secured hereby as the Trustee may require.

Upon application of the Beneficiary, it shall be lawful for and the duty of the Trustee, and the Trustee is hereby authorized and empowered to expose to sale and to sell the Mortgaged Property at public auction for cash, after having first complied with all applicable requirements of North Carolina law with respect to the exercise of powers of sale contained in deeds of trust and upon such sale, the Trustee shall convey title to the purchaser in fee simple. After retaining from the proceeds of such sale just

compensation for the Trustee's services and all expenses incurred by the Trustee, including a the Trustee's commission not exceeding 1% of the bid and reasonable attorneys' fees for legal services actually performed, the Trustee shall apply the residue of the proceeds first to the payment of all sums expended by the Beneficiary under the terms of this Deed of Trust; second, to the payment of the Indebtedness and interest thereon secured hereby; and the balance, if any, shall be paid to the Grantor. The Grantor agrees that in the event of sale hereunder, the Beneficiary shall have the right to bid thereat. The Trustee may require the successful bidder at any sale to deposit immediately with the Trustee cash or certified check in an amount not to exceed 25% of the bid, provided notice of such requirement is contained in the advertisement of the sale. The bid may be rejected if the deposit is not immediately made and thereupon the next highest bidder may be declared to be the purchaser. Such deposit shall be refunded in case a resale is had; otherwise, it shall be applied to the purchase price.

Section 2.4. ***Performance by the Beneficiary on Defaults by the Grantor.*** If the Grantor shall Default in the payment, performance or observance of any term, covenant or condition of this Deed of Trust, the Beneficiary may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by the Beneficiary in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Grantor to the Beneficiary with interest thereon at the rate provided in the Contract. The Beneficiary shall be the sole judge of the necessity for any such actions and of the amounts to be paid. The Beneficiary is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to the Grantor or any person in possession holding under the Grantor.

Section 2.5. ***Receiver.*** If an Event of Default shall have occurred and is continuing and such Event of Default as to Events of Default occurring under Subsections 2.1(b), (c) and (d) hereof continues uncured for a period of 30 days or more after written notice of such Event of Default is given by the Beneficiary to the Grantor, the Beneficiary, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right without notice and without regard to the adequacy or value of any security for the Indebtedness secured hereby or the solvency of any party bound for its payment, to the appointment of a receiver or receivers to take possession of and to operate the Mortgaged Property and to collect and apply the rents and issues thereof. The Grantor hereby irrevocably consents to such appointment, provided the Grantor receives notice of any application therefor. Any such receiver or receivers shall have all of the rights and powers permitted under the laws of the State and all the powers and duties of the Beneficiary in case of entry as provided in Section 2.2(a), and shall continue as such and exercise all such powers until the date of confirmation of sale of the Mortgaged Property unless such receivership is sooner terminated. The Grantor will pay to the Beneficiary upon demand all reasonable expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions of this Section; and all such expenses shall be secured by this Deed of Trust.

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

laws, and any and all right to have the assets comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien hereof.

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

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

Section 2.9. ***Remedies Not Exclusive.*** Subject to Article XIII of the Contract, the Trustee and the Beneficiary, and each of them, shall be entitled to enforce payment and performance of any Indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or any other agreement securing or relating to the Indebtedness secured hereby or any laws now or hereafter in force, notwithstanding some of the Indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect the Trustee's or the Beneficiary's right to realize upon or enforce any other security now or hereafter held by the Trustee or the Beneficiary, it being agreed that the Trustee and the Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by the Beneficiary or the Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to the Trustee or the Beneficiary is intended to be exclusive of any other remedy herein or by law provided or preclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any instrument securing or relating to the Indebtedness secured hereby to the Trustee or the Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Trustee or the Beneficiary and either of them may pursue inconsistent remedies.

Section 2.10. ***Waiver.*** No delay or omission of the Beneficiary or the Trustee to exercise any right, power or remedy accruing upon any Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such Default, or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary and the Trustee, and each of them, may be exercised from time to time and as often as may be deemed expedient by the Beneficiary and the Trustee, and each of them. No consent or waiver, expressed or implied, by the Beneficiary to or of any breach or Default by the Grantor in the performance of the obligations thereof hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or Default in the performance of the same

or any other obligations of the Grantor hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary of its rights hereunder or impair any rights, powers or remedies consequent on any breach or Default by the Grantor.

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

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

ARTICLE III

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

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

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

Section 3.4. ***Applicable Law and Jurisdiction***. This Deed of Trust shall be interpreted, construed and enforced according to the laws of the State. The exclusive forum and venue for all actions arising out of this Deed of Trust are with the North Carolina General Court of Justice in Haywood County, North Carolina or the U.S. District Court for the Western District of North Carolina.

Section 3.5. ***Notices, Demands and Request.*** All notices, demands or requests provided for or permitted to be given pursuant to this Deed of Trust must be in writing and shall be deemed to have been properly given or served by personal delivery or by depositing in the United States Mail, postpaid and registered or certified return receipt requested, and addressed to the addresses set forth in the first paragraph of this Deed of Trust. All notices, demands and requests shall be effective upon personal delivery or upon being deposited in the United States Mail. However, the time period in which a response to any notice, demand or request must be given, if any, shall commence to run from the date of receipt of the notice, demand or request by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent. By giving at least 30 days written notice thereof, the Grantor, the Trustee or the Beneficiary shall have the right from time to time and at any time during the term of this Deed of Trust to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

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

Section 3.7. ***Trustee's Powers.*** At any time, or from time to time, without liability therefor and without notice, upon written request of the Beneficiary and presentation of this Deed of Trust, and without affecting the personal liability of any person for payment of the Indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of the Mortgaged Property, the Trustee may (1) reconvey any part of the Mortgaged Property, (2) consent in writing to the making of any map or plat thereof, (3) join in granting any easement therein, or (4) join in any extension agreement or any agreement subordinating the lien or charge hereof.

Section 3.8. ***Beneficiary's Powers.*** Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Mortgaged Property not then or theretofore released as security for the full amount of all unpaid obligations, the Beneficiary may, from time to time and without notice (1) release any person so liable, (2) extend the maturity or alter any of the terms of any such obligation, (3) grant other indulgences, (4) cause to be released or reconveyed at any time at the Beneficiary's option, any parcel, portion or all of the Mortgaged Property, (5) take or release any other or additional security for any obligation herein mentioned, or (6) make compositions or other arrangements with debtor in relation thereto. The provisions of Section 45-45.1 of the General Statutes of North Carolina, as amended, or any similar statute hereafter enacted in replacement or in substitution thereof shall be inapplicable to this Deed of Trust.

Section 3.9. ***Acceptance by Trustee.*** The Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made of public record as provided by law.

Section 3.10. ***Miscellaneous.*** The covenants, terms and conditions herein contained shall bind, and the benefits and powers shall inure to the respective heirs, executors, administrators, successors and

assigns of the parties hereto. Whenever used herein, the singular number shall include the plural, the plural the singular, and the term "*Beneficiary*" shall include any payee of the indebtedness hereby secured and any transferee or assignee thereof, whether by operation of law or otherwise.

Section 3.11. ***Waiver of Rights.*** By execution of this Deed of Trust and to the extent permitted by law, the Grantor expressly: (1) acknowledges the right to accelerate the Indebtedness and the power of sale given herein to the Trustee to sell the Mortgaged Property by non-judicial foreclosure upon default by the Grantor and without any notice other than such notice (if any) as is specifically required to be given by law or under the provisions of this Deed of Trust; (2) waives any and all rights of the Grantor to appraisement, dower, curtsey and homestead rights to the extent permitted by applicable law; (3) acknowledges that the Grantor has read this Deed of Trust and any and all questions regarding the legal effect of this Deed of Trust and its provisions have been explained fully to the Grantor and the Grantor has consulted with counsel or its choice prior to executing this Deed of Trust; and (4) acknowledges that all waivers of the aforesaid rights of the Grantor have been made knowingly, intentionally and willingly by the Grantor as part of a bargained for transaction.

[SIGNATURE PAGE BEGINS ON THE FOLLOWING PAGE]

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

COUNTY OF HAYWOOD, NORTH CAROLINA

[SEAL]

By: _____
Mark S. Swanger
Chairman of the Board of Commissioners

ATTEST:

_____
Ira Dove
Clerk to the Board of Commissioners

STATE OF NORTH CAROLINA)
)
COUNTY OF HAYWOOD)

I, a Notary Public of the County and State aforesaid, certify that Ira Dove (the "*Signatory*") personally came before me this day and acknowledged that he is the Clerk to the Board of Commissioners of the County of Haywood, North Carolina (the "*County*") and that by authority duly given and as the act of the County, the foregoing instrument was signed in its name by the Chairman of the Board of Commissioners of the County and attested by him as Clerk to the Board of Commissioners of the County.

I certify that the Signatory personally appeared before me this day, and
(check one of the following)
_____(I have personal knowledge of the identity of the Signatory); **or**
_____(I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:
(check one of the following)
___ a driver's license *or*
___ in the form of _____); **or**
_____(a credible witness has sworn to the identity of the Signatory).

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

Witness my hand and official stamp or seal, this the _____ day of October, 2015.

_____
Notary Public

Print: Name:_____
*[**Note:** Notary Public must sign exactly as on notary seal]*

My Commission Expires:_____
[NOTARY SEAL] **(MUST BE FULLY LEGIBLE)**

EXHIBIT A

BEGINNING at a fence post on southwestern boundary line of the original Haywood County prison camp property, also the beginning point of that property conveyed from the State of North Carolina to the County of Haywood, by deed dated February 12, 2013 and recorded in Book 842, Pages 1201-1203 Haywood County Registry, a corner of the current Haywood County Jail property described in Book 579, Page 2180 Haywood County Registry, and running thence with the last mentioned Haywood County property, North 21 degrees, 44 minutes, 21 seconds West 97.31 feet to a new corner for the 1.03 acre adjacent portion of the aforesaid first mentioned Haywood County property currently leased to Haywood Pathways Center, Inc. pursuant to Assignment and Amendment of Lease Agreement dated January 19, 2016; thence with the line of that adjacent Haywood County property, three new (3) calls as follows: North 68 degrees, 10 minutes, 52 seconds East 165.44 feet to a new point; North 21 degrees, 49 minutes, 06 seconds West 90.23 feet to a new point; and North 66 degrees, 10 minutes, 52 seconds East 127.19 feet to a point in the southwestern margin of the sidewalk running along the southwest margin of Hemlock Street, said point being South 19 degrees 59 minutes 15 seconds 100.79 feet from the northern most corner of the aforesaid original Haywood County prison camp property; thence with the said sidewalk margin, South 19 degrees, 59 minutes 15 seconds East 195.74 feet to a concrete marker, originally set as the eastern most corner of the aforesaid original Haywood County prison camp property; thence leaving the aforesaid sidewalk margin and running with the line of the property of Daniel M. Boyd (Book 373, Page 730), South 55 degrees, 28 minutes, 03 seconds West 273.36 feet (passing thru a point in the center of the entrance driveway to the Haywood County Jail property at 155.19 feet) to a concrete marker, originally set as the southern most corner of the aforesaid original Haywood County prison camp property; thence leaving the Boyd line, North 38 degrees, 02 minutes, 00 seconds West 71.09 feet (passing thru a point in the center of the entrance driveway to the Haywood County Jail property at 35.88 feet) to the point of BEGINNING, containing 1.15 acres, more or less, according to the plat of survey by Owens Surveying, Richard M. Owens, Jr., RLS, dated October 8, 2014 entitled "Survey for Haywood County/Former NCDOC Facility".

BEING a portion of that property conveyed to the County of Haywood by the State of North Carolina by deed dated February 12, 2013 of record in Book 842, Pages 1201-1203 Haywood County Registry.

EXHIBIT B

PERMITTED ENCUMBRANCES

Items shown on Schedule B – Section II to the Loan Title Insurance Policy provided by Chicago Title Insurance Company pursuant to Commitment No.