

REQUEST FOR BOARD ACTION

**HENDERSON COUNTY
BOARD OF COMMISSIONERS**

PUBLIC HEARING

**MONDAY, APRIL 2, 2007
7:00 P.M.**

**DRAFT FINANCING DOCUMENTS TO FINANCE THE CONSTRUCTION OF THE
NEW ETOWAH BRANCH LIBRARY**

- ATTACHMENTS:**
- 1) Draft Meeting Extracts**
 - 2) Newspaper Notice and Publisher's Affidavit**
 - 3) Draft Installment Financing Agreement and Deed of Trust**

SUMMARY OF REQUEST:

A public hearing to hear comments on the proposed financing documents is required by North Carolina General Statutes when entering into an installment purchase contract for bank financing pursuant to N.C.G.S. 160A-20. The notice of the public hearing shall be published once at least 10 days before the hearing. This notice was duly advertised in the Times-News on Friday, March 16, 2007.

BOARD ACTION REQUESTED:

No Board action required.

DRAFT

CERTIFIED PROCEEDINGS OF THE COUNTY

I, Elizabeth W. Corn, Clerk to the Board of Commissioners of the County of Henderson, North Carolina (the "County"), DO HEREBY CERTIFY that attached hereto is a true correct and complete copy of extracts from minutes of a meeting of the Board of Commissioners of the County duly called and held on April 2, 2007.

IN WITNESS WHEREOF, I have executed this Certificate and affixed the seal of the County this ___ day of April, 2007.

[SEAL]

Clerk to the Board of Commissioners

EXTRACT FROM MINUTES OF BOARD OF COMMISSIONERS

A regular meeting of the Board of Commissioners of Henderson County was duly held on April 2, 2007 at ___o'clock p.m. in the County Administration Building, 100 North King Street, Hendersonville, North Carolina.

Those present were:

* * * * *

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

The public hearing was opened so that anyone who wished to be heard on the proposed project and the installment financing documents to finance the construction of the new Etowah Branch Library. The Finance Director presented an affidavit of an officer of the Time News showing publication on March 16, 2007 of a Notice of Public Hearing to be attached to this extract as Exhibit A.

The Finance Director presented drafts of an Installment Financing Agreement and Deed of Trust to finance the construction of the new Etowah Branch Library at an estimated cost of \$1,750,000. The Finance Director stated that the financing documents have been available in the County Finance Department. The Finance Director also stated that the Local Government Commission would be considering the County's application for this financing at its May 1st meeting.

The Chairman inquired whether there were any persons who wished to speak at the public hearing. [Public comments to be inserted]

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

CERTIFICATION OF PUBLICATION

March 16, 2007

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

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

3/16/07

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

This 16th day of March, 2007.

(Signed) Jane Schoff

Sworn to and subscribed before me, this 16th day of March, 2007.

Deborah H. Owen Notary Public
Deborah H. Owen

My Commission Expires March 1, 2011

1717 Four Seasons Blvd. • Hendersonville, NC 287
P. O. Box 490 • Hendersonville, NC 287
828/692-0505 • FAX 828/692-2319 • 828/693-5581
www.hendersonvillenews.com

Legals

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Henderson County Board of Commissioners (the "Board") will hold a public hearing on April 2, 2007 at 7:00 p.m. in the Commissioners' Meeting Room of the County Administration Building, 100 North King Street, Hendersonville, North Carolina for the purpose of considering whether the Board for the County of Henderson, North Carolina (the "County") should approve a proposed installment financing contract and certain related documents under which the County would obtain financing pursuant to North Carolina General Statutes § 160A-20, as amended, to finance the cost of the design and construction of a new Etowah Branch Library (the "Facilities") and under which the County would secure the repayment of it of moneys advanced pursuant to such installment financing contract by granting a security interest in the Facilities and related sites and property thereof under a deed of trust. The amount to be financed for construction of the Facilities is \$1,750,000. Drafts of proposed financing documents are available for inspection in the office of the Finance Director. All persons interested in this public hearing are encouraged to attend and express their views.

Elisabeth W. Corn
Clerk to the Henderson
County Board of
Commissioners

March 16, 2007

(04590404) 3/16

arge
15 each

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Elisabeth W. Corn
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County Board of
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March 16, 2007

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15 each

DRAFT

INSTALLMENT FINANCING AGREEMENT

This Installment Financing Agreement (the "Agreement") dated April ____, 2007, and entered into between Banc of America Public Capital Corp, a Kansas corporation ("Lender"), and County of Henderson, North Carolina, a body corporate and politic existing under the laws of the State of North Carolina ("Purchaser").

WITNESSETH:

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

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

WHEREAS, Purchaser has requested Lender to advance certain funds to enable Purchaser to finance the construction of a new Etowah Community Branch Library (the "Project"), and Purchaser desires to obtain such advance from Lender and to construct and install the Project pursuant to the terms and conditions set forth herein; and

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

WHEREAS, the governing body of Purchaser has authorized the execution and delivery of this Agreement pursuant to a resolution adopted by the governing board of the Purchaser on _____, 2007;

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

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

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

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

ARTICLE I DEFINITIONS

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

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

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

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

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

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

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

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

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

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

“Costs of the Project” shall be deemed to include payment of or reimbursement for the following items:

(a) the actual cost of labor, materials, machinery and equipment as payable to contractors, builders and materialmen in connection with the acquisition, construction, renovation, installation and equipping of the Project;

(b) governmental charges levied or assessed during installation upon the Project or on any property acquired therefor, and premiums on insurance in connection with the Project during construction;

(c) fees and expenses of architects and engineers for estimates, surveys and other preliminary investigations, preparation of plans, drawings and specifications and supervision of construction, as well as for the performance of all other duties of architects and engineers in relation to the construction of the Project;

(d) costs of issuance and expenses of administration, supervision and inspection properly chargeable to the Project, legal expenses and fees, financing charges and all other items not elsewhere specified in this section incident to the acquisition, construction, renovation, installation and equipping of the Project;

(e) all other costs which are considered to be a part of the costs of the construction, acquisition, installation and equipping of the Project, in accordance with generally accepted accounting principles and which will not affect the exclusion from gross income for federal income tax purposes of the designated interest component of Installment Payments payable by the Purchaser hereunder, including sums required to reimburse the Purchaser for advances made by the Purchaser that are properly chargeable to the acquisition, construction, installation and equipping of the Project.

“Deed of Trust” means the Deed of Trust and Security Agreement dated the date hereof from the Purchaser to the deed of trust trustee named therein for the benefit of the Lender.

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

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

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

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

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

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

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

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

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

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

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

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

“State” means the State of North Carolina.

ARTICLE II REPRESENTATIONS AND WARRANTIES OF PURCHASER

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III ADVANCE OF ACQUISITION AMOUNT

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

Section 3.02. Continuation of Purchase Term; Appropriation. Purchaser intends, subject to Section 3.03, to continue the Purchase Term of this Agreement through the Original Term and all Renewal Terms and to pay the Installment Payments thereunder. The Purchaser affirms that sufficient funds are available for the current fiscal year, and the Purchaser reasonably believes that an amount sufficient to make all Installment Payments during the entire Purchase Term can be obtained from legally available funds of Purchaser. The finance officer, manager or other appropriate official of the Purchaser (hereinafter the "Manager") shall include in the initial proposal for each of Purchaser's annual budgets the amount of all Installment Payments due under this Agreement and other payments coming due during the fiscal year to which such budget is applicable. Notwithstanding that the Manager includes an appropriation for Installment Payments and other payments in a proposed budget, Purchaser may terminate all its obligations hereunder and under this Agreement by not appropriating sufficient funds to make the scheduled Installment Payments and other payments. In the event the governing body of Purchaser determines not to appropriate in its budget an amount sufficient to pay all Installment Payments and reasonably estimated other payments coming due in the applicable fiscal year, the governing body of Purchaser shall adopt a resolution specifically deleting such appropriation from the proposed budget for that fiscal year. Such resolution shall state the reasons for such deletion, shall be adopted by a vote identifying those voting for and against and abstaining from the resolution, and shall be recorded in the minutes of the governing body. A copy of such resolution shall be promptly sent to Lender. Such failure to appropriate shall constitute an Event of Default.

Section 3.03. Nonappropriation. (a) The Purchaser is obligated only to pay such Installment Payments as may lawfully be made from funds budgeted and appropriated for that purpose during Purchaser's then current fiscal year. Should Purchaser fail to budget, appropriate or otherwise make available funds to pay Installment Payments following the then current Original Term or Renewal Term, this Agreement shall be deemed terminated at the end of the then current Original Term or Renewal Term. If the amount equal to the Installment Payments which will be due during the next fiscal year has not been appropriated by Purchaser in its budget, the Manager shall deliver to the Lender, within ten (10) days after the adoption of Purchaser's budget for such fiscal year, but not later than fifteen (15) days after the start of such fiscal year, a certificate from the Manager of Purchaser stating that Purchaser did not make such appropriation. Purchaser agrees to deliver notice to Lender of such termination promptly after

any decision to non-appropriate is made, but failure to give such notice shall not extend the term beyond such Original Term or Renewal Term.

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

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

Section 3.04. Conditions to Lender's Performance.

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

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

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

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

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

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

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

(vii) A fully executed copy of the Deed of Trust in recordable form;

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

(ix) A copy of a fully completed and executed Form 8038-G pursuant to Section 4.04(d);

(x) A preliminary title insurance binder for a mortgagee policy in form and substance satisfactory to the Lender;

(xi) An environmental questionnaire completed by the purchaser, a survey, and such other real estate due diligence items as may be required by Lender;

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

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

(b) In addition, the performance by Lender of any of its obligations hereunder shall be subject to: (i) no material adverse change in the financial condition of Purchaser since the date of this Agreement and (ii) no Event of Default having occurred.

ARTICLE IV INSTALLMENT PAYMENTS

Section 4.01. Installment Payments; Prepayments; Prepayment.

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

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

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

Section 4.03. Reserved.

Section 4.04. Tax Covenants.

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

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

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

(d) This Agreement will not be federally guaranteed within the meaning of Section 149(b) of the Code. The Purchaser shall provide a duly and properly completed Form 8038-G to Lender for filing with the IRS on or before the 15th day of the second month after the calendar quarter in which this Agreement is executed.

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

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

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

ARTICLE V CONSTRUCTION OF PROJECT

Section 5.01. Agreement to Construct Project. The Purchaser hereby agrees to use the Acquisition Amount to pay the Costs of the Project, subject to the terms and conditions of this Agreement. The Purchaser has complied, or will comply, with all applicable public bidding requirements with respect to the Project, including, without limitation, Article 8 of Chapter 143 of the General Statutes of North Carolina.

Section 5.02. Deed of Trust. Simultaneously with the execution and delivery of this Agreement, the Purchaser shall deliver the Deed of Trust in form satisfactory to the Lender. Upon payment in full of all of the Purchaser’s obligations hereunder, including all other payments due hereunder, the Lender shall cancel the Deed of Trust and this Agreement will terminate.

Section 5.03. Construction of Project. The Purchaser shall comply with and agrees to the following:

(a) Construction. The Purchaser shall comply with the provisions of Article 8 of Chapter 143 of the General Statutes of North Carolina and enter into one or more contracts with a contractor or contractors relating to the construction and renovation of the Project (whether one or more, the “Construction Contract”). The Purchaser shall cause the construction to be carried on continuously in accordance with the plans and specifications and with all applicable ordinances and statutes, and in accordance with the requirements of all regularly constituted authorities having jurisdiction over same. The Purchaser shall require that all work be done in a workman-like manner. The Purchaser shall ensure (i) that the Project does not encroach upon or overhang any easement or right-of-way and (ii) that the Project, when erected, will be wholly within any applicable building restriction lines, however established, and will not violate applicable zoning, land use or other restrictions or applicable protective covenants. The Purchaser 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.

(b) Right of Entry and Inspection. The Lender and its representatives and agents shall have the right to inspect the Project and the improvements thereto during normal business hours with reasonable notice, during and after construction, and the Purchaser will cause any contractor or sub-contractor to cooperate with the Lender and its representatives and agents

during such inspections. The Lender shall have the right to review the plans and specifications and other construction documents relating to the Project.

No right of inspection or approval contained herein shall be deemed to impose upon the Lender any duty or obligation whatsoever to undertake any inspection or to make any approval. No inspection made or approval given by the Lender shall be deemed to impose upon the Lender any duty or obligation whatsoever to identify or correct any defects in the improvements or to notify any person with respect thereto, and no liability shall be imposed upon the Lender and no warranties (either express or implied) are made by the Lender as to the quality or fitness of any improvement, any such inspection and approval being made solely for the benefit of the Lender.

(c) Completion of Construction.

(i) The Purchaser represents that, based upon (A) its examination of the site upon which the Project is located, the Construction Contract and the related plans and specifications, (B) estimated construction and equipment costs provided by licensed architects and engineers, and (C) the anticipated configuration of the Project, the Project can be constructed and equipped for a total price within the total amount of funds expected to be available for such purposes.

(ii) Prior to commencement of construction of the Project, the Purchaser shall deliver to the Lender a flood hazard certificate for the Project. .

(iii) Upon completion of the Project, the Purchaser shall deliver to the Lender, (A) a certificate (the "Completion Certificate") of the Purchaser 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 escrow fund, if any, is to be maintained in the full amount of such claims until such dispute is resolved), (B) a certificate of a duly authorized officer or agent of the architects, engineers or supervising contractors selected and hired by the Purchaser in connection with the construction of the Project stating the fact and date of such completion, and (C) proof of the insurance coverage required by this Agreement.

(d) Compliance with Laws and Regulations and Securing of Regulatory Approvals. The Purchaser will comply with all applicable laws, regulations and requirements of any governmental authority having jurisdiction over the Project and has secured, or caused to be secured, all regulatory approvals that are available at this time and necessary for the construction of the Project. The Purchaser will secure, or cause to be secured, any additional regulatory approvals if required as construction of the Project progresses.

(e) Payment and Performance Bonds. Each contractor of the Project shall be required by the Purchaser to furnish a performance bond and a separate labor and materials payment bond as required by North Carolina General Statutes, Article 3, Chapter 44A, copies of which shall be provided to the Lender if Lender so requests.

In the event of any material default by a contractor, or in the event of a material breach of warranty with respect to any materials, workmanship or performance, the Purchaser 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 contract with such contractor. 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 Purchaser of any amounts theretofore paid by the Purchaser and not previously reimbursed to the Purchaser for correcting or remedying the default or breach of warranty or nonperformance which gave rise to the proceedings against such contractor shall be applied toward prepayment of the Installment Payments. The net proceeds of any performance or payment bond or insurance policy required by this paragraph shall likewise be applied toward prepayment of the Installment Payments.

(f) Contractor's General Public Liability and Property Damage Insurance. Each contractor shall be required by the Purchaser to procure and maintain standard form comprehensive general public liability and property damage insurance, at its own cost and expense, during the duration of such contractor's contract, in the amount of at least \$1,000,000 bodily injury and property damage liability combined single limit each occurrence/annual aggregate. Such policies shall include the Purchaser and the Lender as additional named insureds, and shall include a provision prohibiting cancellation or termination without 30 days' prior notice by certified mail to the Lender. A certificate evidencing such coverage shall be provided to the Purchaser or, if such insurance is provided by a private carrier, a completed certificate of insurance, in form acceptable to the Purchaser, shall be provided to the Purchaser with respect to each contractor engaged. 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.

(g) Contractor's Builder's Risk Completed Value Insurance. The Purchaser will purchase and maintain or cause each contractor to purchase and maintain property insurance (builder's risk) on its portion of the Project (excluding contractor's tools and equipment) at the full and insurable value thereof. This insurance (i) shall insure against "all risk" subject to standard policy conditions and exclusions, (ii) shall include the Purchaser and the Lender as additional insureds, and (iii) shall include a provision prohibiting cancellation or termination without 30 days prior written notice by certified mail to the Lender. Each contractor shall purchase and maintain similar property insurance for portions of the work stored off the site or in transit when such portions of the work are to be included in an application for payment. Each contractor shall be responsible for the payment of any deductible amounts associated with this insurance.

(h) Contractor's Workers' Compensation Insurance. Each contractor shall be required to procure and maintain, at its own cost and expense, worker's compensation insurance during the term of its engagement, covering its employees working thereunder. Such insurance, if issued by a private carrier, shall contain a provision prohibiting cancellation or termination without 30 days' prior notice by certified mail to the Purchaser and the Lender. A certificate evidencing such coverage shall be provided to the Purchaser and the Lender or, if such insurance

is provided by a private carrier, a completed certificate of insurance, in form acceptable to the Purchaser and the Lender, shall be provided to the Purchaser and the Lender with respect to each contractor engaged.

(i) Filing with the Lender. The Purchaser shall cause copies of all performance bonds and insurance contracts or approved certificates thereof to be delivered to the Lender in a timely manner and in such form as to certify compliance with the provisions of the paragraphs referred to herein.

Section 5.04. Quiet Enjoyment of the Project. So long as Purchaser is not in default under this Agreement, neither Lender nor any entity claiming by, through or under Lender, shall interfere with Purchaser's quiet use and enjoyment of the Project during the Purchase Term.

Section 5.05. Location; Inspection. Lender shall have the right at all reasonable times during regular business hours to enter into and upon the property of Purchaser for the purpose of inspecting the Project.

Section 5.06. Use and Maintenance of the Project. Purchaser will not use, operate, or maintain the Project in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Purchaser shall secure all permits and licenses, if any, necessary for the operation of the Project. In addition, Purchaser agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative, or judicial body; provided that Purchaser may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lender, adversely affect the interest (including the reversionary interest) of Lender in and to the Project or its interest or rights under this Agreement.

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

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

ARTICLE VI SECURITY INTEREST IN THE PROJECT

Section 6.01. Title to the Project. During the Purchase Term, and so long as Purchaser is not in default under Article XI hereof, title to the Project and any and all additions, repairs, replacements or modifications thereto shall be in the Purchaser from and after the date of execution and delivery of this Agreement. Purchaser shall at all times protect and defend, at its own cost and expense, its title in and to the Project from and against all claims, liens and legal processes of its creditors, and keep all Project free and clear of all such claims, liens and processes other than the Deed of Trust. Upon final payment of any Installment Payments or prepayment thereof pursuant to Section 4.01(b), Lender's security interest or other interest in the Project shall terminate, and Lender shall execute and deliver to Purchaser such documents as Purchaser may request to evidence the termination or release of the Deed of Trust.

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

ARTICLE VII COVENANTS OF PURCHASER

Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges. Purchaser shall keep the Project free of all levies, liens, and encumbrances except those created by this Agreement and the Deed of Trust. The parties to this Agreement contemplate that the Project will be used for a governmental or proprietary purpose of Purchaser and that the Project will therefore be exempt from all property taxes. If the use, possession or acquisition of any part of

the Project is nevertheless determined to be subject to taxation, Purchaser shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to such part of the Project. Purchaser shall pay all utility and other charges incurred in the use and maintenance of the Project. Purchaser shall pay such taxes or charges as the same may become due; provided that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, Purchaser shall be obligated to pay only such installments as accrue during each Purchase Term.

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

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

connection with this Agreement. The provisions of this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Purchase Term for any reason.

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

ARTICLE VIII DAMAGE, DESTRUCTION AND CONDEMNATION

Section 8.01. Damage, Destruction and Condemnation. If, prior to the termination of the Purchase Term, (a) the Project or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Project or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, Purchaser and Lender will cause the Net Proceeds of any insurance claim or condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Project. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Purchaser. Notwithstanding the foregoing, in the event of such damage or destruction, Purchaser shall have the option to prepay its obligations under this Agreement by prepaying all of the Purchase Price then due under this Agreement on the day specified in Purchaser's notice to Lender of its exercise of the prepayment option (which shall be the earlier of the next Installment Payment Date or 60 days after the event resulting in such damage, destruction or condemnation).

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

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

ARTICLE IX WARRANTIES

Section 9.01. Disclaimer of Warranties. THE LENDER MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE PROJECT OR ANY COMPONENT PART THEREOF TO THE PURCHASER OR IN REGARD TO ANY OTHER CIRCUMSTANCE WHATSOEVER WITH RESPECT THERETO, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATION WITH RESPECT TO: THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE; THE VALUE, DESIGN OR CONDITION THEREOF; THE SAFETY, WORKMANSHIP OR QUALITY THEREOF; COMPLIANCE THEREOF WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO; ANY LATENT DEFECT; THE TITLE TO OR INTEREST OF THE LENDER THEREIN; THE ABILITY THEREOF TO PERFORM ANY FUNCTION; THAT THE PROCEEDS OF THIS AGREEMENT WILL BE SUFFICIENT (TOGETHER WITH ANY OTHER AVAILABLE FUNDS OF THE PURCHASER) TO PAY THE COST OF ACQUIRING OR CONSTRUCTING THE PROJECT; OR ANY OTHER CHARACTERISTICS OF THE PROJECT, IT BEING AGREED THAT ALL RISKS RELATING TO THE PROJECT, THE CONSTRUCTION AND OPERATION THEREOF OR THE TRANSACTIONS CONTEMPLATED HEREBY ARE TO BE BORNE BY THE PURCHASER, AND THE BENEFITS OF ANY AND ALL IMPLIED WARRANTIES AND REPRESENTATIONS OF THE LENDER ARE HEREBY WAIVED BY THE PURCHASER. In no event shall Lender be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, the Project or the existence, furnishing, functioning or Purchaser's use of any item, product or service provided for in this Agreement.

ARTICLE X ASSIGNMENTS

Section 10.01. Assignment by Lender.

(a) The Lender may, at any time and from time to time, assign all or any part of its interest in the Project or this Agreement, including, without limitation, Lender's rights to receive Installment Payments payable to Lender hereunder or thereunder, in accordance with this Section 10.01. Any assignment made by the Lender or any subsequent assignee shall not purport to convey any greater interest or rights than those held by the Lender pursuant to this Agreement. Any assignment by the Lender may be to a bank, insurance company, or similar financial institution or any other entity, provided that any such other entity shall be approved by the LGC if this Agreement requires LGC approval pursuant to Section 3.04(x) hereof. Purchaser agrees that this Agreement may become part of a pool of obligations at the Lender's or its assignee's option. In addition, the Lender or its assignees may assign or reassign all or any part of this Agreement, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Agreement without the consent of Purchaser or the LGC. Purchaser shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Purchaser may have against Lender or Vendor. Notwithstanding the foregoing, unless to an affiliate controlling, controlled by or under common

control with Lender, no assignment or reassignment of the Lender's interest in the Agreement shall be effective unless and until the Purchaser shall receive notice of such assignment or reassignment disclosing the name and address of each such assignee.

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

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

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

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

ARTICLE XI EVENTS OF DEFAULT

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

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

(b) Failure by Purchaser to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subparagraph (a) above, for a period of 30 days after written notice specifying such failure and requesting that it be remedied is given to Purchaser by Lender, unless Lender shall agree in writing to an extension

of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, Lender will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Purchaser within the applicable period and diligently pursued until the default is corrected;

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

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

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

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

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

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

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

(b) With or without terminating the Purchase Term, Lender may enter the Project and retake possession of the Project and sell or lease the Project or, for the account of Purchaser, sublease the Project, continuing to hold Purchaser liable, but solely from legally available funds, for the difference between (i) the Installment Payments payable by Purchaser pursuant to this

Agreement and other amounts related to this Agreement or the Project that are payable by Purchaser to the end of the then current Original Term or Renewal Term, as the case may be, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lender in exercising its remedies hereunder, including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing the Project and all brokerage, auctioneer's and attorney's fees), subject, however, to the provisions of Section 3.03. The exercise of any such remedies respecting any such Event of Default shall not relieve Purchaser of any other liabilities hereunder or the Project; and

(c) Exercise its rights as a beneficiary under the Deed of Trust, including taking possession of any part or all of the Project pursuant to the Deed of Trust, with or without terminating this Agreement, excluding the Purchaser from possession, and selling or leasing the Mortgaged Property for the account of the Purchaser City;

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

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

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

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

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

ARTICLE XII MISCELLANEOUS

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

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

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

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

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

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

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

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

LENDER:

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

PURCHASER:

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

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

(Seal)

Attest:

By: _____
Name: _____
Title: _____

CERTIFICATE OF LOCAL GOVERNMENT COMMISSION

Local Government Commission
Signature page for Installment Financing Agreement
designated as County of Henderson, North Carolina
in the amount of \$1,750,000 by and between Banc of America Public Capital Corp
and the County of Henderson, North Carolina dated April ___, 2007

The foregoing Installment Financing Agreement has been approved under the provisions of Section 160A-20 and Article 8 of Chapter 159 of the General Statutes of North Carolina, as amended.

Secretary-Treasurer
Local Government Commission of North Carolina

List of Exhibits:

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

EXHIBIT A

ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT

This Acquisition Fund and Account Control Agreement dated April ____, 2007, by and among Banc of America Public Capital Corp, a Kansas corporation (hereinafter referred to as "Lender"), County of Henderson, North Carolina, a political subdivision of the State of North Carolina (hereinafter referred to as "Purchaser") and Bank of America, N.A., a national banking association (hereinafter referred to as "Acquisition Fund Custodian").

Reference is made to that certain Installment Financing Agreement dated April ____, 2007 between Lender and Purchaser (the "Purchase Agreement"), covering the construction of the project described therein (the "Project"). It is a requirement of the Purchase Agreement that the Cost of the Project (in an amount of \$1,750,000) (the "Acquisition Amount") be deposited into an escrow under terms satisfactory to Lender, for the purpose of fully funding the Purchase Agreement, and providing a mechanism for the application of such amounts to the purchase of and payment for the Project.

The parties agree as follows:

1. Creation of Acquisition Fund.

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

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

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

amounts in the Acquisition Fund are insufficient to pay such amounts, Purchaser shall provide any balance of the funds needed to complete the construction of the Project. Any moneys remaining in the Acquisition Fund after [April ____, 2008] (the "Acquisition Period") shall be applied as provided in Section 4 hereof.

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

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

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

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

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

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

2. Acquisition of Property.

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

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

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

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

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

certificate, entitled to retain; and (iv) the Project is insured in accordance with the Purchase Agreement.

2. Delivery to Lender of an invoice therefor as required by Sections 3.04 and 5.01 of the Purchase Agreement referenced above;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Banc of America Public Capital Corp,
as Lender

County of Henderson, North Carolina,
as Purchaser

By: _____
Laura Pritchett
Title: _____

By: _____
William L. Moyer, Chairman

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

By: _____
Title: _____

SCHEDULE 1
TO ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT

FORM OF DISBURSEMENT REQUEST

Re: Installment Financing Agreement dated April ____, 2007 by and between Banc of America Public Capital Corp, as Lender and County of Henderson, North Carolina, as Purchaser (the "Purchase Agreement").

In accordance with the terms of the Acquisition Fund and Account Control Agreement dated April ____, 2007 (the "Acquisition Fund and Account Control Agreement") by and among Banc of America Public Capital Corp ("Lender"), County of Henderson, North Carolina ("Purchaser") and Bank of America, N.A. (the "Acquisition Fund Custodian"), the undersigned hereby requests the Acquisition Fund Custodian pay the following persons the following amounts from the Acquisition Fund created under the Acquisition Fund and Account Control Agreement (the "Acquisition Fund") for the following purposes.

Payee's Name and Address	Invoice Number	Dollar Amount	Purpose

The undersigned hereby certifies as follows:

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

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

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

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

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

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

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

Dated: _____

COUNTY OF HENDERSON, NORTH
CAROLINA

By: _____
Authorized Representative

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

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

By: _____
Vice President

SCHEDULE 2

ARBITRAGE AND TAX CERTIFICATE

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

The Purchase Agreement

1. Each of the undersigned is charged, together with other officials and officers, with the responsibility for entering into the \$1,750,000 Installment Financing Agreement dated April ____, 2007, including the Schedule of exhibits thereto (the "Purchase Agreement") between the Purchaser and Banc of America Public Capital Corp, an affiliate of Bank of America, N.A. (the "Lender"), which is authorized pursuant to Section 160A-20 of the North Carolina General Statutes, and a resolution adopted by the Purchaser on March ____, 2007 (the "Resolution"). This certificate shall constitute a document related to the Purchase Agreement. This certificate is given with the understanding that it may be relied upon by Hunton & Williams LLP in rendering its opinion of even date herewith with respect to the exclusion of the interest portion of the Installment Payments (as defined herein) from gross income for federal tax purposes.

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

Proceeds

3. The Purchaser will receive \$1,750,000 from the Lender as a result of the financing of the Project as contemplated by the Purchase Agreement. Pursuant to the Acquisition Fund Agreement, and for the purpose of meeting their obligations under the Purchase Agreement and assuring Purchaser the availability of moneys needed to pay the Costs of the Project when due, the Purchaser and the Lender have entered into the Acquisition Fund Agreement pursuant to which the Lender shall deposit the proceeds of the Purchase Agreement (the "Proceeds") into the Acquisition Fund to be held, invested and disbursed as provided therein. Purchaser will pursue the construction of the Project and the expenditure of the Proceeds with due diligence. Completion of the construction of the Project is expected to occur prior to ____, 20__. Purchaser has entered into, or will enter into within six months after the date hereof, binding contracts or commitments obligating the expenditure of at least five

percent (5%) of the Proceeds. At least eighty-five percent (85%) of the Proceeds will be expended to _____.

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

Project

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

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

Yield

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

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

9. As of the Closing Date, the Purchaser expects that the purchase price of \$1,750,000 is the issue price of the obligations under the Purchase Agreement to the public (excluding bond houses, brokers and other intermediaries). Based upon such price, the Purchaser expects the yield on the Purchase Agreement to be computed as _____%.

Arbitrage Certifications

10. No sinking fund has been established in connection with the payment of the principal of and interest under the Purchase Agreement, and no other similar fund or reserve or replacement fund has or will be created or established, nor does the Purchaser expect to create or establish such a fund. The Purchaser will pay Installment Payments directly to the Lender on the due dates thereof.

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

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

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

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

Miscellaneous

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

16. The Purchaser has not received notice of deficiency or other notice from the Internal Revenue Service, the Department of Treasury or any other governmental agency or department challenging or questioning in any way the status of the interest portion of the Installment Payments as being excludable from gross income for federal income tax purposes, nor has the Purchaser been notified of any listing or proposed listing of it by the Internal Revenue Service as an issuer that may not enter into the type of transaction as contemplated by the Purchase Agreement.

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

Dated this _____ day of April, 2007, the same being the date of delivery of and payment for the Purchase Agreement.

County of Henderson, North Carolina

By: _____
Carey McLelland, Finance Officer

By: _____
Steven D. Wyatt, County Manager

EXHIBIT B

SCHEDULE OF PROPERTY

Re: Installment Financing Agreement dated April ___, 2007, between Banc of America Public Capital Corp as Lender, and County of Henderson, North Carolina, as Purchaser

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

2. Project. The Project consists of the acquisition, construction and equipping of a _____ square foot building known as the Etowah Community Branch Library situated on a _____ acre parcel located at [address].

3. Payment Schedule.

(a) Installment Payment Schedule. The amount advanced to the Purchaser under the Agreement is \$1,750,000. The Installment Payments shall be in such amounts and payable on such dates as set forth in the Installment Payment Schedule attached to this Schedule as Schedule B-1. Installment Payments shall commence on the date on which the Acquisition Amount is deposited with the Acquisition Fund Custodian.

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

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

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

5. Agreement Proceeds. The Acquisition Amount which Lender shall pay to the Acquisition Fund Custodian is \$1,750,000. It is expected that by twelve (12) months from the date of the Agreement, Purchaser will have taken possession of all portions of the Project.

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

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

Dated: _____, 2007

LENDER:

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

PURCHASER:

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

By: _____
Laura Pritchett
Title: _____

By: _____
William L. Moyer, Chairman

(Seal)

Attest:

By: _____
Elizabeth W. Corn, Clerk

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

EXHIBIT B-2

INSTALLMENT PAYMENT SCHEDULE

Re: Installment Financing Agreement dated April __, 2007, between Banc of America
Public Capital Corp, as Lender, and County of Henderson, North Carolina, as Purchaser

Purchaser: County of Henderson, North Carolina

Purchase Term: 15 years

Purchase Price: \$1,750,000

Interest Rate: _____%

[illegible]

--	--	--	--	--

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

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

PURCHASER:

By: _____

Name: _____

Title: _____

[Signature Page to Installment Payment Schedule]

EXHIBIT C

INCUMBENCY CERTIFICATE

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

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

B. The Officials are duly authorized, on behalf of Purchaser, to negotiate, execute and deliver the Installment Financing Agreement dated April ____, 2007 and the Schedule thereunder (the "Agreement") by and between Purchaser and Banc of America Public Capital Corp, and the Agreement is a binding and authorized Agreement of Purchaser, enforceable in all respects in accordance with its terms.

<u>Name of Official</u>	<u>Title</u>	<u>Signature</u>
William L. Moyer	Chairman	_____
James C. McLelland	Finance Officer	_____
Steven D. Wyatt	County Manager	_____

By: _____
Elizabeth W. Corn, Clerk to the Board
Henderson County, North Carolina

Date: April __, 2007

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

EXHIBIT D

OPINION OF COUNSEL TO PURCHASER

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

Re: Installment Financing Agreement dated April __, 2007, between Banc of America Public Capital Corp, as Lender, and County of Henderson, North Carolina, as Purchaser

Ladies and Gentlemen:

As legal counsel to County of Henderson, North Carolina ("Purchaser"), I have examined (a) an executed counterpart of the Installment Financing Agreement dated April __, 2007, and Exhibits thereto by and between Banc of America Public Capital Corp ("Lender") and Purchaser (the "Agreement"), which, among other things, provides for the financing of costs related to the construction of a new Etowah Community Branch Library (the "Project") and a certain Acquisition Fund and Account Control Agreement among Lender, Purchaser, and Bank of America, N.A. as Acquisition Fund Custodian dated April __, 2007 ("Account Fund Agreement"), (b) an executed counterpart of the ordinances or resolutions of Purchaser which, among other things, authorize Purchaser to execute the Agreement and the Schedule and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. The Agreement and the Schedule, together with the Installment Payment Schedule attached to the Schedule, are herein referred to collectively as the "Agreement", and the Agreement and the Acquisition Fund Agreement are referred to collectively as the "Transaction Documents."

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

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

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

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

Printed Name: _____

Signature: _____

Firm: _____

Dated: _____

Address: _____

Telephone No.: _____

EXHIBIT E

NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT

Dated _____

BANC OF AMERICA PUBLIC CAPITAL CORP (“Assignor”) hereby gives notice that it has assigned and sold to [_____] (“Assignee”) all of Assignor’s right, title and interest in, to and under the Installment Financing Agreement and related Schedule (“Agreement”) dated April __, 2007, between Assignor and County of Henderson, North Carolina (“Purchaser”).

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

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

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

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

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

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

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

ACKNOWLEDGED AND AGREED:

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

By: _____
Name: _____
Title: _____

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

By: _____
Name: _____
Title: _____

Prepared by and Return to:

DRAFT

Mary Nash K. Rusher
Hunton & Williams LLP
Post Office Box 109
Raleigh, North Carolina 27602

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

DEED OF TRUST AND SECURITY AGREEMENT

THIS DEED OF TRUST CONSTITUTES A FIXTURE FILING

This DEED OF TRUST AND SECURITY AGREEMENT dated April __, 2007 (the "Deed of Trust"), from HENDERSON COUNTY, NORTH CAROLINA, a body politic and corporate and a political subdivision existing under the Constitution and laws of the State of North Carolina (the "Purchaser") to PRLAP, INC., as trustee (the "Deed of Trust Trustee"), for the benefit of BANK OF PUBLIC CAPITAL CORP, a Kansas corporation (the "Beneficiary"),

WITNESSETH:

WHEREAS, in accordance with the provisions of N.C. Gen. Stat. Section 160A-20, the Beneficiary has agreed pursuant to an Installment Financing Agreement by and between the Beneficiary and the Grantor, dated of even date herewith (the "Agreement"), to lend to or for the benefit of the Grantor up to the principal sum of \$1,750,000 (the "Advance") and;

WHEREAS, the Purchaser has agreed to repay the Advance in installments, including interest thereon, due at the times and in the amounts set forth in the Agreement (the "Installment Payments") and to pay certain additional payments as more fully provided therein;

WHEREAS, the Grantor is thereby, or shall hereafter become, indebted to the Beneficiary in an amount equal to the sum of all outstanding advances made under the

Agreement, as provided therein together with and payable with interest as, and at the rate or rates, specified in the Agreement;

WHEREAS, the Grantor desires to secure the payment of the obligations under the Agreement with interest and any extensions, renewals, modifications or amendments thereof, or substitutions or replacements therefore, in whole or in part, the payment of all other sums, with interest thereon, advanced in accordance with the Agreement, or herewith, to protect the security of this Deed of Trust, or advanced to protect the rights of the Beneficiary hereunder or under the Agreement, and to secure the performance of the covenants and agreements of the Grantor contained herein, by a conveyance of the lands and a grant of the security interests hereinafter described;

WHEREAS, all obligations of the Grantor hereunder are expressly made subject to the limitation of liability set forth in Section 16 of this Deed of Trust and Section 4.5 of the Agreement.

WHEREAS, the Purchaser desires to secure (a) the payment of the Installment Payments due under the Agreement, (b) the payment by the Purchaser of all additional payments required to be paid by the Purchaser under the Agreement and the performance by the Purchaser of all of its other obligations under the Agreement; (d) the payment of any and all other indebtedness which this Deed of Trust by its terms secures; and (e) the performance by the Purchaser of the covenants and agreements contained in this Deed of Trust;

NOW, THEREFORE, the Purchaser, subject to Permitted Encumbrances (as defined in the Agreement), as security for repayments and other payments to be made under the Agreement and for the performance by the Purchaser of all of its obligations under the Agreement and this Deed of Trust, and in further consideration of the sum of \$1.00 paid to the Purchaser by the Deed of Trust Trustee, receipt and sufficiency of which are hereby acknowledged, has given, granted, bargained and sold, and by these presents does give, grant, bargain, sell and convey unto the Deed of Trust Trustee, its successors and assigns, in trust, with power of sale, the real property lying and being in the Purchaser of Henderson in the State of North Carolina, constituting so much thereof as constitutes real property or fixtures, and more particularly described as follows:

SEE SCHEDULE I ATTACHED HERETO AND
BY THIS REFERENCE INCORPORATED HEREIN

TOGETHER with any real property or fixtures that may be hereafter added to the lien created by this Deed of Trust by an amendment or modification hereof; TOGETHER with all buildings, improvements and fixtures of every kind and description now or hereafter erected or located thereon, all rights, appurtenances, easements, privileges, remainders and reversions appertaining thereto and all materials intended for construction, reconstruction, alteration and repair of such buildings and improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises hereby conveyed immediately upon the delivery thereof to the aforesaid real property, and all apparatus, equipment, fixtures and articles of personal property now or hereafter attached thereto as fixtures, and replacements thereof, including, but not limited to, all heating, refrigerating, air conditioning, gas, plumbing, telephone and electric apparatus and equipment, all boilers, engines, motors, power equipment,

pipng and plumbing fixtures, pumps, tanks, lighting equipment and systems, fire prevention and sprinkling equipment and systems, and other things now or hereafter thereon or therein, including all interests of any owner thereof in any of such items, and all renewals or replacements thereof or articles in substitution thereof; TOGETHER with all rents, issues, profits and revenues of the aforesaid real property, fixtures and other property and all of the right, title and interest of the Purchaser in and to any and all leases and contracts now or hereafter affecting the real property, fixtures and other property covered hereby or any part thereof; TOGETHER with all proceeds of any of the foregoing real property, fixtures and other property including, without limitation, proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, all awards and other payments as a result of or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain by any governmental authority ("Eminent Domain"), all insurance proceeds and claims therefor as a result of damage to or destruction of all or any part of any of the foregoing, and all proceeds of title insurance with respect to all or any part of any of the foregoing (the real property, fixtures, other property and proceeds granted to the Deed of Trust Trustee pursuant to the foregoing provisions hereof being collectively referred to as the "Mortgaged Property");

TO HAVE AND TO HOLD the Mortgaged Property, with all the rights, privileges and appurtenances thereunto belonging or appertaining to the Deed of Trust Trustee, its heirs, successors and assigns, in fee simple forever, upon the trusts and for the uses and purposes herein set forth;

AND THE PURCHASER COVENANTS to and with the Deed of Trust Trustee and the Beneficiary that the Purchaser is seized of the Mortgaged Property in fee simple, that the Purchaser has the right to convey the Mortgaged Property in fee simple, that the Mortgaged Property is free and clear from all encumbrances and restrictions other than the such encumbrances specifically mentioned in Schedule II attached hereto and made a part hereof, and that the Purchaser does hereby forever warrant and will forever defend the title to the Mortgaged Property (except for those matters set forth in Schedule II) against the claims of all persons whatsoever; provided, however, that

THIS CONVEYANCE IS MADE UPON THIS SPECIAL TRUST, that if the Purchaser shall make all of the payments required under the Agreement secured hereby in accordance with its terms, together with all interest thereon and all taxes, charges, assessments and any premiums for insurance hereby secured, and, further, shall comply with all the covenants, terms and conditions of this Deed of Trust and the Agreement, and any amendments and supplements thereto, then this conveyance shall be null and void and may be canceled of record at the request and at the cost of the Purchaser.

THE PURCHASER FURTHER COVENANTS, REPRESENTS AND AGREES AS FOLLOWS:

Section 1. Amount Secured; Maintenance and Modification of Mortgaged Property by Purchaser. This Deed of Trust secures the payment of all amounts owing by the Purchaser under the Agreement. The Deed of Trust Trustee shall not be under any obligation to operate, maintain or repair the Mortgaged Property. The Purchaser agrees that it will at its own expense (a) keep the Mortgaged Property in as reasonably safe condition as its operations shall permit,

(b) keep the Mortgaged Property in good repair and in good operating condition, (c) comply with all applicable governmental requirements imposed upon the Mortgaged Property or in connection with its use, and (d) make from time to time all necessary repairs thereto.

The Purchaser may, also at its own expense, make from time to time any additions, modifications or improvements to the real property covered hereby that it may deem desirable for its governmental or proprietary purposes and that do not materially impair the effective use, nor materially decrease the value, of the Mortgaged Property. All such additions, modifications and improvements so made by the Purchaser within the boundaries of the Mortgaged Property shall become a part of the Mortgaged Property. The Purchaser will do, or cause to be done, all such things as may be required by law in order fully to protect the security and all rights of the Beneficiary under this Deed of Trust. The Purchaser shall not cause or permit the lien of this Deed of Trust to be impaired in any way.

Section 2. Grant and Release of Easements and Mortgaged Property.

If no Event of Default under this Deed of Trust shall have occurred and shall continue to exist, the Purchaser may at any time or times grant easements, licenses, rights of way and other rights or privileges in the nature of easements with respect to any part of the Mortgaged Property, and the Purchaser may release existing interests, easements, licenses, rights of way and other rights or privileges with or without consideration, and the Beneficiary agrees that it shall execute and deliver and will cause, request or direct, the Deed of Trust Trustee to execute and deliver any instrument necessary or appropriate to grant or release any such interest, easement, license, right of way or other right or privilege but only upon receipt of (i) a copy of the instrument of grant or release, (ii) a written application signed by the Purchaser requesting such instrument and (iii) a certificate executed by the Purchaser and reasonably acceptable to the Beneficiary that the grant or release (A) is not detrimental to the proper conduct of the operations of the Purchaser at the Mortgaged Property and (B) will not impair the effective use of or interfere with the operations of the Purchaser at the Mortgaged Property and will not impair the value of the security under this Deed of Trust in contravention of the provisions hereof.

Section 3. Remedies of the Deed of Trust Trustee Upon Default.

(a) If any of the following events shall occur:

(i) failure by the Purchaser to pay any Installment Payment as and when due under the Agreement or any other sum due under this Deed of Trust or the Agreement or to comply with any of the other terms, covenants or conditions of the Agreement secured hereby and the expiration of any applicable grace or notice periods provided thereby;

(ii) failure by the Purchaser to observe and perform any warranty, covenant, condition or agreement on the part of the Purchaser under this Deed of Trust other than Section 6 hereof for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to the Purchaser by the Beneficiary unless the Beneficiary shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in the notice cannot be reasonably corrected within the applicable period, and if corrective action is instituted by the

Purchaser within the applicable period and diligently pursued, the Purchaser shall have an additional period following such written notice to correct the failure; or

(iii) any lien, charge or encumbrance prior to or affecting the validity of this Deed of Trust is found to exist, other than Permitted Encumbrances, or proceedings are instituted to enforce any lien, charge or encumbrance against any of said Mortgaged Property and such lien, charge or encumbrance would be prior to the lien of this Deed of Trust;

then and in any of such events (hereinafter referred to as an “Event of Default”), all payments under the Agreement shall, at the option of the Beneficiary, become at once due and payable, regardless of the maturity date or other due date thereof.

(b) Upon the occurrence of an Event of Default:

(i) To the extent permitted by law, the Deed of Trust Trustee shall have the right to enter upon the Mortgaged Property to such extent and as often as the Deed of Trust Trustee, in his sole discretion, deems necessary or desirable in order to cure any default by the Purchaser. The Deed of Trust Trustee may take possession of all or any part of the Mortgaged Property and may hold, operate and manage the same, and from time to time make all needful repairs and improvements as shall be deemed expedient by the Deed of Trust Trustee; and the Deed of Trust Trustee may lease any part of the Mortgaged Property in the name of and for the account of the Purchaser, and collect, receive and sequester the rent, revenues, receipts, earnings, income, products and profits therefrom, and out of the same and from any moneys received from any receiver of any part thereof pay, and set up proper reserves for the payment of, all proper costs and expenses of so taking, holding and managing the same, including reasonable compensation to the Deed of Trust Trustee, his agents and counsel, and any taxes and assessments and other charges prior to the lien of this Deed of Trust which the Deed of Trust Trustee may deem it proper to pay, and all expenses of such repairs and improvements, and apply the remainder of the moneys so received in accordance with the provisions hereof.

(i) To the extent permitted by law, the Deed of Trust Trustee shall have the right after an Event of Default to the appointment of a receiver to collect the rents and profits from the Mortgaged Property without consideration of the value of the premises or the solvency of any person liable for the payment of the amounts then owing, and all amounts collected by the receiver shall, after expenses of the receivership, be applied to the payment of the obligations hereby secured, and the Deed of Trust Trustee, at his option, in lieu of an appointment of a receiver, shall have the right to do the same. If such receiver should be appointed or if there should be a sale of the said premises, as provided below, the Purchaser, or any person in possession of the premises thereunder, as tenant or otherwise, shall become a tenant at will of the receiver or of the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

(ii) The Deed of Trust Trustee shall have the right to assign to any other person, for lawful consideration, any rents, revenues, earnings, income, products and

profits receivable under this Deed of Trust, provided that the proceeds of any such assignment shall be applied as provided in this Deed of Trust.

(iii) The Deed of Trust Trustee is hereby authorized and empowered to expose to sale and to sell the Mortgaged Property or such part or parts thereof or interests therein as the Deed of Trust Trustee deems prudent at public auction for cash, and upon collection of the proceeds from such sale to make and deliver a deed therefor, after first having complied with all applicable requirements of North Carolina law with respect to the exercise of powers of sale contained in deeds of trust. The Purchaser agrees that in the event of a sale hereunder, the Beneficiary shall have the right to bid at it and to become the purchaser. The Deed of Trust Trustee may require the successful bidder at any sale to deposit immediately with the Deed of Trust Trustee cash or a certified check in an amount not to exceed five percent (5%) of his 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 successful bidder. Such deposit shall be refunded in case a resale is had; otherwise it shall be applied to the purchase price. The sale of the Mortgaged Property or any part thereof or any interest therein, whether pursuant to judicial foreclosure, foreclosure under power of sale or otherwise under this Deed of Trust, shall forever bar any claim with respect to the Mortgaged Property by the Purchaser.

(iv) To the extent permitted by law, the Beneficiary, immediately and without additional notice and without liability therefor to the Purchaser, may do or cause to be done any or all of the following: (A) take physical possession of the Mortgaged Property; (B) exercise its right to collect the rents and profits thereof; (C) enter into contracts for the completion, repair and maintenance of the Mortgaged Property; (D) expend any rents, income and profits derived from the Mortgaged Property for payment of any taxes, insurance premiums, assessments and charges for completion, repair and maintenance of the Mortgaged Property, preservation of the lien of this Deed of Trust and satisfaction and fulfillment of any liabilities or obligations of the Purchaser arising out of or in any way connected with the Mortgaged Property whether or not such liabilities and obligations in any way affect, or may affect, the lien of this Deed of Trust; (E) enter into leases demising the Mortgaged Property or any part thereof; (F) take such steps to protect and enforce the specific performance of any covenant, condition or agreement in this Deed of Trust or the Agreement or to aid the execution of any power herein granted; and (G) generally, supervise, manage, and contract with reference to the Mortgaged Property as if the Beneficiary were the equitable owner of the Mortgaged Property. The Purchaser also agrees that any of the foregoing rights and remedies of the Beneficiary may be exercised at any time independently of the exercise of any other such rights and remedies, and the Beneficiary may continue to exercise any or all such rights and remedies until the Event(s) of Default of the Purchaser are cured with the consent of the Beneficiary or until foreclosure and the conveyance of the Mortgaged Property to the high bidder or until the indebtedness secured hereby is otherwise satisfied or paid in full.

(v) The Beneficiary may proceed against the fixtures as provided in and in accordance with the applicable provisions of the Uniform Commercial Code as adopted by the State of North Carolina, as amended (the "UCC") or, at its election, may proceed

and may instruct the Deed of Trust Trustee to proceed as to the portion of the Mortgaged Property constituting fixtures in accordance with its rights and remedies with respect thereto and those granted to the Deed of Trust Trustee, all as set forth in this Deed of Trust.

(c) The Purchaser hereby waives, to the full extent it lawfully may, the benefit of all appraisal, valuation, stay, moratorium, exemption from execution, extension and redemption laws and any statute of limitations, now or hereafter in force and all rights of marshalling in the event of the sale of the Mortgaged Property or any part thereof or any interest therein.

(d) Except as set forth in (e), the foregoing shall in no way be construed to limit the powers of sale, or to restrict the discretion the Deed of Trust Trustee may have under the provisions of Article 2A of Chapter 45 of the General Statutes of North Carolina, as amended. Each legal, equitable or contractual right, power or remedy of the Deed of Trust Trustee now or hereafter provided herein or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power and remedy, and the exercise or beginning of the exercise by the Deed of Trust Trustee of any one or more of such rights, powers and remedies shall not preclude the simultaneous or later exercise of any or all such other rights, powers and remedies.

(e) NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NO DEFICIENCY JUDGMENT SHALL BE RENDERED AGAINST THE PURCHASER IN ANY ACTION FOR BREACH BY THE PURCHASER OF ITS OBLIGATIONS UNDER THE AGREEMENT OR THIS DEED OF TRUST, OR FOLLOWING THE EXERCISE BY THE PURCHASER OF ITS RIGHT OF TERMINATION OF ITS OBLIGATION TO MAKE INSTALLMENT PAYMENTS AND ADDITIONAL PAYMENTS UNDER THE AGREEMENT; THE REMEDIES PROVIDED UNDER THIS DEED OF TRUST, INCLUDING FORECLOSURE AND SALE OF THE MORTGAGED PROPERTY UNDER THIS DEED OF TRUST, BEING THE SOLE REMEDY GRANTED HEREBY. THE TAXING POWER OF THE PURCHASER IS NOT AND MAY NOT BE PLEDGED IN ANY WAY, DIRECTLY OR INDIRECTLY, TO SECURE THE PAYMENT OF ANY MONEYS DUE UNDER THE AGREEMENT, INCLUDING THE INSTALLMENT PAYMENTS UNDER THE AGREEMENT, OR ANY OTHER INSTRUMENT CONTEMPLATED HEREBY OR THEREBY.

Section 4. Application of Proceeds. The proceeds of (a) the operation and management of the Mortgaged Property pursuant to Section 3 hereof, (b) any sale of the Mortgaged Property or any interest therein, whether pursuant to judicial foreclosure, foreclosure under power of sale or otherwise, and (c) any insurance policies or eminent domain awards or other sums (other than awards or sums to which the Purchaser is entitled to under the Agreement) retained by the Deed of Trust Trustee upon the occurrence of an Event of Default shall be applied to pay:

First: The costs and expenses of sale, reasonable attorneys' fees actually incurred to the extent permitted by Section 6-21.2 of the General Statutes of North Carolina, as amended, the Beneficiary's fees and expenses, court costs, any other expenses or advances made

or incurred in the protection of the rights of the Beneficiary or in the pursuance of any remedies hereunder and the Deed of Trust Trustee's commission payable under Section 5 hereof;

Second: All taxes and assessments then constituting a lien against said premises other than those advertised and sold subject to;

Third: Any indebtedness secured by this Deed of Trust and at the time due and payable (whether by acceleration or otherwise) in the manner provided in the Agreement; and

Fourth: The balance, if any, to the persons then entitled thereto under the Agreement, as applicable.

Section 5. Deed of Trust Trustee's Commission. In the event of a consummated sale under the power of sale contained herein, the Deed of Trust Trustee's commission shall be one-half of one percent (0.5%) of the successful bid thereat.

It is further provided that in the event foreclosure is terminated upon the request of the Purchaser prior to delivery of the deed by the Deed of Trust Trustee, the Purchaser shall pay the Deed of Trust Trustee all costs and expenses incident to the foreclosure, including as compensation for services an amount equal to one-half of one percent (0.5%) of the outstanding indebtedness in accordance with the following schedule: one-fourth (1/4) thereof before the Deed of Trust Trustee issues a notice of hearing on the right to foreclose; one-half (1/2) thereof after issuance of said notice; three-fourths (3/4) thereof after such hearing; and the full commission if such termination is at any time after the initial sale; together with attorneys' fees actually incurred to the extent permitted by Section 6-21.2 of the General Statutes of North Carolina, as amended.

It is further provided that the compensation herein allowed to the Deed of Trust Trustee shall constitute a lien on the Mortgaged Property immediately upon request of sale.

Section 6. General Warranties and Covenants.

(a) The Purchaser shall pay the amounts due under the Agreement and shall observe and perform all covenants, conditions and agreements contained in the Agreement, and any amendments and supplements thereto.

(b) The Purchaser represents and warrants that it is seized of the Mortgaged Property in fee (and has title to any appurtenant easements) and has the right to convey the same, that title to such property is free and clear of all encumbrances except for Permitted Encumbrances (as defined in the Agreement), and that it will warrant and defend the title to such property against the claims of all persons or parties except for the Permitted Encumbrances.

(c) The Purchaser agrees to execute and deliver to the Beneficiary, concurrently with the execution of this Deed of Trust and upon the request of the Beneficiary from time to time hereafter, all financing statements and other documents reasonably required to perfect and maintain the security interest created hereby. To the extent permitted by law, the Purchaser hereby irrevocably (as long as the Advance remains unpaid) makes, constitutes and appoints the Beneficiary as the true and lawful attorney of the Purchaser to sign the name of the Purchaser

(after the Purchaser has failed or refused to timely execute such documents upon request of the Beneficiary) on any financing statement, continuation of financing statement or similar document required to perfect or continue such security interests.

Section 7. Payment of Costs, Attorneys' Fees and Expenses. As between the Beneficiary, the Deed of Trust Trustee and the Purchaser, the Purchaser shall pay, to the extent permitted by law, any and all costs, attorneys' fees and other expenses of whatever kind incurred by the Beneficiary or the Deed of Trust Trustee in connection with (a) obtaining possession of the Mortgaged Property, (b) the protection and preservation of the Mortgaged Property, (c) the collection of any sum or sums secured hereby, (d) any litigation involving the Mortgaged Property, this trust, any benefit accruing by virtue of the provisions hereof, or the rights of the Deed of Trust Trustee or the Beneficiary, (e) the presentation of any claim under any administrative or other proceeding in which proof of claim is required by law to be filed, (f) any additional examination of the title to the Mortgaged Property which may be reasonably required by the Beneficiary or the Deed of Trust Trustee, (g) taking any steps whatsoever in enforcing this Deed of Trust, claiming any benefit accruing by virtue of the provisions hereof, or exercising the rights of the Beneficiary hereunder, or (h) any proceeding, legal or otherwise, which the Beneficiary shall deem necessary to sustain the lien of this Deed of Trust or its priority. If the Purchaser shall fail to make any payment required to be made by the foregoing covenant, however, such amount shall be payable solely from the amounts realized upon the enforcement of the remedies set forth in Section 3 of this Deed of Trust. The Purchaser will not be required to pay such attorney's fees in the event of any litigation that results in a finding that the Beneficiary or the Deed of Trust Trustee acted with gross negligence or willful misconduct.

Section 8. Insurance and Taxes. Pursuant to the Agreement, the Purchaser will obtain and maintain certain insurance and will pay all lawful taxes, assessments and charges, if any, at any time levied or assessed upon or against the Mortgaged Property or any part thereof; provided, however, that nothing contained in this Deed of Trust shall require the maintenance of insurance or the payment of any such taxes, assessments or charges if the same are not required to be paid under the Agreement. If the Purchaser shall fail to make any payment required to be made by the foregoing covenant, however, such amount shall be payable solely from the amounts realized upon the enforcement of the remedies set forth in Section 3 of this Deed of Trust.

Section 9. No Assignment or Encumbrance of Mortgaged Property. Except in accordance with Section 2 hereof and the Agreement, the Purchaser shall not sell, transfer, exchange, lease, mortgage, encumber, pledge, assign or otherwise dispose of the Mortgaged Property, or any interest therein or any part thereof, without the prior written consent of the Deed of Trust Trustee and the Beneficiary. Any such disposition or encumbrance of the Mortgaged Property, or any interest therein or any part thereof, without such prior written consent shall, at the option of the Beneficiary, constitute a default hereunder, giving rise to all of the remedies herein provided for an Event of Default.

Section 10. Advances by Beneficiary. The Beneficiary is authorized, for the account of the Purchaser, to make any required payments under any lien prior hereto or under this Deed of Trust, the non-payment of which would constitute a default, including but not limited to principal payments, interest payments, premium payments, if any, taxes and insurance premiums. All sums so advanced shall attach to and become part of the debt secured hereby, shall become payable at any time on demand therefor and, from the date of the advance to the date of repayment, any sum so advanced shall bear interest at a rate of five percent (5%) per annum. The failure to make payment on demand shall, at the option of the Beneficiary, constitute a default hereunder, giving rise to all of the remedies herein provided for an Event of Default. If the Purchaser shall fail to make any payment required to be made by the foregoing covenant, however, such amount shall be payable solely from the amounts realized upon the enforcement of the remedies set forth in Section 3 hereof.

Section 11. The Deed of Trust Trustee. The Deed of Trust Trustee shall be under no duty to take any action hereunder except as expressly required, or to perform any act which would involve him in expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to its satisfaction by the Beneficiary. All reasonable expenses, charges, counsel fees and other disbursements incurred by the Deed of Trust Trustee in and about the administration and execution of the trusts hereby created, and the performance of its duties and powers hereunder, shall, to the extent permitted by law, be payable at any time on demand therefor, be secured by this Deed of Trust prior to the indebtedness represented by the Agreement, and such amounts not paid when due shall, to the extent permitted by law, bear interest at the rate of five percent (5%) per annum. If the Purchaser shall fail to make any payment required to be made by the foregoing covenant, however, such amount shall be payable solely from the amounts realized upon the enforcement of the remedies set forth in Section 3 hereof.

Section 12. Security Interest in Fixtures. COLLATERAL IS OR INCLUDES FIXTURES. With respect to any portion of the Mortgaged Property which is or may become fixtures, this Deed of Trust shall constitute a financing statement filed as a fixture filing. The fixtures are located on the land described on Schedule I attached hereto, and the Grantor is the record owner of such land. The name and address of the Grantor, as debtor, and the Beneficiary, as secured party, are set forth in Section 16 hereof. The lien upon fixtures granted herein and perfected hereby shall be in addition to and not in lieu of any lien upon fixtures acquired under real property law.

Section 13. Additional Documents. The Purchaser agrees to execute and deliver to the Beneficiary, concurrently with the execution of this Deed of Trust and upon the request of the Beneficiary from time to time hereafter, all financing statements and other documents reasonably required to perfect and maintain the lien or security interest created hereby. For the period in which the indebtedness of the Purchaser to the Beneficiary remains unpaid, to the extent permitted by law the Purchaser hereby irrevocably makes, constitutes and appoints the Beneficiary as the true and lawful attorney in fact of the Purchaser to sign the name of the Purchaser on any financing statement, continuation of financing statement or similar document required to perfect or continue such security interests.

Section 14. Substitution of Deed of Trust Trustee. The Purchaser and the Deed of Trust Trustee covenant and agree to and with the Beneficiary that in case the Deed of Trust Trustee, or any successor trustee, shall die, become incapable of acting, renounce his trust, or for any reason the holder the Beneficiary desires to replace the Deed of Trust Trustee, then the Beneficiary may appoint, in writing, a trustee to take the place of the Deed of Trust Trustee; and upon the probate and registration of the same, the trustee thus appointed shall succeed to all rights, powers and duties of the Deed of Trust Trustee. This granting of power to the Beneficiary is coupled with an interest and is irrevocable.

Section 15. Environmental Issues. The Purchaser for itself, its successors and assigns represents, warrants and agrees that (a) neither the Purchaser nor any other person has improperly used or installed any Hazardous Material (as hereinafter defined) on the Mortgaged Property or received any notice from any governmental agency, entity or other person with regard to Hazardous Materials on, from or affecting the Mortgaged Property; (b) neither the Purchaser nor any other person has violated any applicable Environmental Laws (as hereinafter defined) relating to or affecting the Mortgaged Property; and (c) the Mortgaged Property is presently in compliance with all Environmental Laws and there are no 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 threatened, any action, suit, investigation or proceeding against the Purchaser relating to the Mortgaged Property (or against any other party relating to the Mortgaged Property) seeking to enforce any right or remedy under any of the Environmental Laws. In addition, the Purchaser for itself, its successors and assigns, hereby agrees that (a) the Mortgaged Property shall be used to generate, manufacture, refine, transport, treat, store, handle, dispose, produce or process Hazardous Materials only in accordance with all applicable Environmental Laws; (b) the Purchaser shall not cause nor permit the improper installation of Hazardous Materials in the Mortgaged Property nor a release of Hazardous Materials on the Mortgaged Property; (c) the Purchaser shall at all times comply with and ensure compliance by all other parties with all applicable Environmental Laws relating to or affecting the Mortgaged Property and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to any applicable Environmental Laws; (d) the Purchaser has obtained and will at all times continue to obtain and/or maintain all licenses, permits, and/or other governmental or regulatory actions necessary to comply with Environmental Laws with respect to the Mortgaged Property (the "Permits"), and the Purchaser is in full compliance with the terms and provisions of the Permits and will continue to comply with the terms and provisions of the Permits; and (e) the Purchaser shall immediately give the Beneficiary oral and written notice in the event that the Purchaser 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 shall conduct and complete all investigations, 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. To the extent permitted by law, the Purchaser hereby agrees to defend and indemnify the Deed of Trust Trustee and the Beneficiary and hold them harmless from and against any and all losses, liabilities, damages, injuries (including, without limitation, attorneys' fees) and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against the Deed of Trust Trustee or the Beneficiary for, with respect to, or as a direct or indirect result of (a) the presence on, or under, or the escape, spillage, emission or release from the' Mortgaged Property of any Hazardous Material regardless of whether or not caused by or within

the control of the Purchaser, (b) the violation of any Environmental Laws relating to or affecting the Mortgaged Property, whether or not caused by or within the control of the Purchaser, (c) the failure by the Purchaser to comply fully with the terms and provisions of this paragraph, or (d) any warranty or representation made by the Purchaser in this paragraph being false or untrue in any material respect. In the event that the Beneficiary elects to control, operate, sell or otherwise claim property rights in the Mortgaged Property, the Purchaser shall deliver the Mortgaged Property free of any and all Hazardous Materials so that the conditions of the Mortgaged Property shall conform with all applicable Environmental Laws. Prior to any such delivery of the Mortgaged Property, the Purchaser shall pay to the Trustee from its own funds any amounts required to be paid under the indemnification provisions set forth above. For purposes of this Deed of Trust, "Hazardous Material" means and includes petroleum products, any flammable explosives, radioactive materials, hazardous materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous waste, substance or material defined as such in (or for the purpose of) the Environmental Laws. For the purposes of this Deed of Trust, "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Hazardous Materials Transportation Act, the Oil Pollution Act of 1990, the Emergency Planning and Right-to-Know Act, the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, the Resource Conservation and Recovery Act, any "Super Fund" or "Super Lien" law (including in all cases any regulations promulgated thereunder), or any other federal, state, or local law, regulation or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials, as may now or at any time hereafter be in effect. The obligations and liabilities of the Purchaser under this paragraph shall survive the foreclosure of the Deed of Trust, the delivery of a deed in lieu of foreclosure, and the cancellation of this Deed of Trust; or if otherwise expressly permitted in writing by the Beneficiary, the sale or alienation of any part of the Mortgaged Property.

Section 16. Limited Obligation of the Grantor.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, PURSUANT TO SECTION 160A-20 OF THE GENERAL STATUTES OF NORTH CAROLINA, NO DEFICIENCY JUDGMENT SHALL BE RENDERED AGAINST THE GRANTOR IN ANY ACTION FOR BREACH BY THE GRANTOR OF ITS OBLIGATIONS UNDER THE AGREEMENT; THE REMEDIES PROVIDED UNDER THIS DEED OF TRUST, INCLUDING FORECLOSURE UNDER THIS DEED OF TRUST, BEING THE SOLE REMEDY GRANTED HEREBY. THE TAXING POWER OF THE GRANTOR IS NOT AND MAY NOT BE PLEDGED IN ANY WAY, DIRECTLY OR INDIRECTLY, TO SECURE THE PAYMENT OF ANY MONEYS DUE UNDER THE AGREEMENT, INCLUDING THE INSTALLMENT PAYMENTS OR ADDITIONAL PAYMENTS UNDER THE AGREEMENT, OR ANY OTHER INSTRUMENT CONTEMPLATED HEREBY OR THEREBY. No provision of this Deed of Trust shall be construed or interpreted as creating a pledge of the faith and credit of Grantor within the meaning of any Constitutional debt limitation. No provision of this Deed of Trust shall be construed or interpreted as creating a pledge of the faith and credit of Grantor within the meaning of the Constitution of the State of North Carolina. This Deed of Trust shall not directly or indirectly or contingently obligate Grantor to make any payments beyond the amount appropriated, if any, in the sole discretion of the Grantor for any fiscal year in which this Deed of Trust shall be in effect. Grantor may at the end of any fiscal year terminate its future payment obligations under the Agreement secured by this Deed of Trust if

Grantor has not appropriated sufficient funds to make the next fiscal year's scheduled payment obligations; however, during each fiscal year, Grantor shall exercise its best efforts to appropriate funds for such obligations due in the next fiscal year. **No deficiency judgment may be rendered against Grantor in any action for breach of a contractual obligation under the Agreement or this Deed of Trust and the taxing power of the Grantor is not and may not be pledged directly or indirectly to secure any moneys due thereunder or hereunder.** In addition, any term of this Deed of Trust which is, or may have the effect of being, a "non-substitution clause" is void any of no effect. To the extent of any conflict between this Section and any other provision of this Deed of Trust, this Section shall take priority. Notwithstanding the foregoing, nothing in this Section is intended to impair or prohibit foreclosure under this Deed of Trust upon the occurrence of any Event of Default, and in such event, Beneficiary may request the Trustee to foreclose on the Mortgaged Property and the Tangible Personal Property as provided in this Deed of Trust.

Section 17. Miscellaneous.

Notices. All notices, approvals, consents, requests and other communications hereunder shall be in writing and, unless otherwise provided herein, shall be deemed to have been given when delivered or mailed by registered or certified mail, postage prepaid, addressed as follows: (a) if to the Purchaser, Henderson County, 113 North Main Street, Hendersonville, North Carolina, 28792, Attention: Finance Director, (b) if to the Beneficiary, Banc of America Public Capital Corp, 2059 Northlake Parkway, Tucker, Georgia 30084, Attention: _____ and (c) if to the Deed of Trust Trustee, PRLAP, Inc., Portfolio Administration, 1400 Best Plaza Drive, P.O. Box 26865, Richmond, VA 23227.

The Purchaser, the Beneficiary, the Trustee and the Deed of Trust Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, approvals, consents, requests or other communications shall be sent or persons to whose attention the same shall be directed.

(a) Successors and Assigns. This Deed of Trust shall inure to the benefit of and be enforceable by the Deed of Trust Trustee and the Beneficiary and their respective successors and assigns.

(b) Applicable Law. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of North Carolina.

(c) Severability. In the event any term, provision or covenant herein contained or the application thereof to any circumstances or situation shall be invalid or unenforceable in whole or in part, the remainder hereof and the application of said term or provision or covenant to any other circumstances or situation shall not be affected thereby, and every other term, provision or covenant herein shall be valid and enforceable to the full extent permitted by law.

IN WITNESS WHEREOF, the Purchaser has caused this Deed of Trust to be executed in its name by its duly authorized representatives all as of the date first above written.

HENDERSON COUNTY, NORTH CAROLINA

By: _____
William L. Moyer, Chairman
Board of Commissioners

[S E A L]

ATTEST:

Ellen W. Corn, Clerk to Board

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

This ____ day of April, 2007, personally came before me, a Notary Public in and for the said County and State, Ellen W. Corn, who, being by me duly sworn, says that she is the Clerk to the Board of Commissioners for Henderson County, North Carolina, a body politic and corporate and a political subdivision existing under the Constitution and laws of the State of North Carolina and acting through its Board of Commissioners, and by authority duly given and as the act of said County, the foregoing instrument was signed in its name by its Chairman of the Board of Commissioners, sealed with its seal, and attested by herself as the Clerk to said Board.

WITNESS my hand and notarial seal, this the _____ day of _____, 2007.

Notary Public

My commission expires: _____

SCHEDULE I

LEGAL DESCRIPTION OF MORTGAGED PROPERTY

SCHEDULE II

PERMITTED ENCUMBRANCES

All matters shown on Schedule B to the title policy.