

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: March 19, 2008

SUBJECT: Final Financing Documents - Elementary Schools

ATTACHMENTS: Resolution
Financing Documents

SUMMARY OF REQUEST:

Based on the action taken by the Board of Commissioners at its' February 20th and March 6th regularly scheduled meetings, staff is presenting the financing documents in substantially final form prepared by bond counsel for financing the construction of the new Hillandale and Mills River Elementary Schools and Phase II construction and renovation at Dana Elementary School.

The total amount included in the attached documents to be financed for the three projects at 3.72 percent for 17.5 years is a not to exceed amount of \$33,250,000. It is anticipated at today's meeting that the Board will determine the final project costs to be financed that are associated with construction of the two new elementary schools of which will be included in the closing documents.

The attached meeting extracts and resolution provide for the approval of the installment financing and authorizes the Board Chairman and County Staff to execute the documents and close the transaction with SunTrust Leasing Corporation subject to the Local Government Commission's approval on April 1, 2008.

BOARD ACTION REQUESTED:

Staff requests that the Board consider approving the attached resolution included in the meeting extracts prepared by bond counsel.

Suggested Motion:

I move that the Board approve the attached resolution approving an installment financing of elementary school facilities in Henderson County and authorizing the execution and delivery of documents in connection therewith.

EXTRACTS FROM MINUTES OF BOARD OF COMMISSIONERS

The Board of Commissioners of the County of Henderson (the "County") held a regularly scheduled meeting in the County Administration Building, 100 North King Street, Hendersonville, North Carolina on March 19, 2008 at 9:00 a.m. The following Commissioners were:

Present: _____

Absent: _____

At 9:00 a.m., the Chairman stated that one of the purposes of the meeting was to approve and authorize the execution and delivery of the proposed installment financing contract and certain related documents and instruments under which the County would obtain financing pursuant to Section 160A-20 of the North Carolina General Statutes, as amended, for the design, acquisition, construction, renovation and/or equipping of the Hillandale Elementary School, the Mills River Elementary School and Phase II of the Dana Elementary School (collectively, the "School Facilities"), and under which the County would secure repayment by it of moneys advanced pursuant to such installment financing contract by granting a security interest in the Hillandale Elementary School and the Mills River Elementary School and real property thereof.

Thereupon, Commissioner _____ introduced the following resolution that was read by title, and moved that it be adopted.

**RESOLUTION APPROVING AN INSTALLMENT
FINANCING OF ELEMENTARY SCHOOL FACILITIES IN HENDERSON COUNTY
AND AUTHORIZING THE EXECUTION AND DELIVERY
OF DOCUMENTS IN CONNECTION THEREWITH**

WHEREAS, there have been available at this meeting substantially final drafts of the following:

- (1) A form of the Installment Financing Contract to be dated on or about April 10, 2008 (the "Contract") between Henderson County, North Carolina (the "County") and the SunTrust Equipment Finance & Leasing Corp. (the "Corporation");
- (2) A form of the Deed of Trust and Security Agreement to be dated on or about April 10, 2008 (the "Deed of Trust"), from the County to a trustee for the benefit of the Corporation;

- (3) A form of the Lease Agreement to be dated on or about April 10, 2008 (the "Lease") between the County and the Henderson County Board of Public Education (the "Board of Education");
- (4) A form of the Construction & Acquisition Agreement to be on or about dated April 10, 2008 (the "Agency Agreement") between the County and the Board of Education; and
- (5) A form of the Escrow Agreement to be dated on or about April 10, 2008 (the "Escrow Agreement"), by and among the Corporation, the County and SunTrust Bank.

WHEREAS, the Board of Commissioners of the County desires to approve the proposed installment financing of the School Facilities and to authorize other actions in connection therewith;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the County as follows:

- (1) All actions heretofore taken by the County Manager, the Assistant County Manager, the Finance Director and the County Attorney effectuating the proposed installment financing of the School Facilities are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the documents referred to above.
- (2) The Board of Commissioners hereby authorizes the acceptance by the County of conveyance of title to the Hillandale Elementary School and the Mills River Elementary School to the County, which will be used by the Board of Education for school purposes.
- (3) The Board of Commissioners hereby finds and determines in connection with the Contract and the transactions contemplated thereby that (a) the Contract is necessary or expedient to the County, (b) such proposed Contract, under current circumstances, is preferable to a bond issue of the County for the same purpose, (c) the sums estimated to fall due under such Contract are adequate and not excessive for its proposed purpose, (d) the County's debt management procedures and policies are good and its debt will continue to be managed in strict compliance with the law, (e) any increase in taxes necessary to meet the sums estimated to fall due under the Contract will not be excessive and (f) the County is not in default regarding any of its debt service obligations.
- (4) Each of the Contract, the Deed of Trust, the Escrow Agreement, the Lease Agreement and the Agency Agreement, in the form submitted to this meeting, is hereby approved, in substantially such form and the Chairman or Vice Chairman of the Board, the County Manager, the Assistant County Manager, the Finance Director, the County Attorney and the Clerk to the Board are each hereby authorized and directed to execute and deliver each of those documents on behalf

of the County, with such changes, insertions or omissions as they may approve with the advice of counsel.

- (5) Subject to the limitations set forth herein, the County Manager is hereby authorized to approve the terms of the Contract, including but not limited to, the aggregate principal amount thereof, the redemption provisions thereof and the interest rate thereon; provided that: (i) the principal amount of the Contract shall not exceed \$33,250,000; (ii) the final maturity date of the Contract shall not exceed 17.5 years; and (iii) the interest rate thereof shall not exceed 3.72%.
- (6) The Chairman or Vice Chairman of the Board, the County Manager, the Assistant County Manager, the Finance Director, the Clerk to the Board, and the County Attorney are hereby authorized to take any and all such further action and to execute and deliver such other documents as may be necessary or advisable to carry out the intent of this Resolution and to effect the installment financing pursuant to the Contract, including, without limitation, entering into tax compliance certificates. Without limiting the generality of the foregoing, each of the County Manager and Finance Director is authorized to approve all details of the financing, including without limitation, the amount advanced under the Contract (which shall not exceed \$33,250,000, the annual payments under the Contract, the interest rate with respect to such payments, and the term of the Contract. Execution of the Contract by the Chairman or Vice Chairman of the Board or the County Manager and Finance Director shall conclusively evidence approval of all such details of the financing.

On motion of Commissioner _____, the foregoing resolution entitled "RESOLUTION APPROVING AN INSTALLMENT FINANCING OF ELEMENTARY SCHOOL FACILITIES IN HENDERSON COUNTY AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS IN CONNECTION THEREWITH" was duly adopted by the following vote:

AYES:

NAYS:

This Resolution shall become effective immediately upon its adoption.

This the 19th day of March, 2008.

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: _____
William L. Moyer, Chairman

ATTESTED BY:

[SEAL]

Elizabeth W. Corn, Clerk to the Board

DRAFT

INSTALLMENT FINANCING CONTRACT

BETWEEN

SUNTRUST EQUIPMENT FINANCE & LEASING CORPORATION

AND

COUNTY OF HENDERSON, NORTH CAROLINA

DATED APRIL 10, 2008

INSTALLMENT FINANCING CONTRACT

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

J. Carey McLelland
Finance Director

INSTALLMENT FINANCING CONTRACT

THIS INSTALLMENT FINANCING CONTRACT, dated April 10, 2008 (this “Contract”), is between **SUNTRUST EQUIPMENT FINANCE & LEASING CORPORATION**, a Virginia corporation (the “Lender”), and the **COUNTY OF HENDERSON, NORTH CAROLINA**, a political subdivision of the State of North Carolina (the “County”), under the Constitution and laws of the State of North Carolina (the “State”).

PREAMBLE

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

WHEREAS, the County has determined to finance the cost of design, acquisition, construction, renovation and equipping of the new Hillandale and the new Mills River Elementary Schools that will replace the existing Hillandale and Mills River Elementary Schools and the construction, renovation and equipping of phase two of the existing Dana Elementary School (collectively, the “Project”);

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

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

WHEREAS, in order to secure the obligations of the County under this Contract, the County has entered into a Deed of Trust (as hereinafter defined) with the deed of trust trustees

named therein for the benefit of the Lender creating a lien on all of the right, title and interest of the County in and to the Mortgaged Property (as hereinafter defined);

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

WHEREAS, the execution, delivery and performance of this Contract have been authorized, approved and directed by the Board of Commissioners by a resolution passed by the Board of Commissioners on March 19, 2008; and

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

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

ARTICLE I

DEFINITIONS

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

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

“Amount Advanced” means the aggregate principal amount of [\$33,250,000*] **(DRAFT DOCUMENTS NOT TO EXCEED ESTIMATE/FINAL AMOUNT TO BE DETERMINED BY BOC)** advanced by the Lender on the date hereof to enable the County to finance costs of the Project.

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

“Board of Education” means the Henderson County Board of Public Education.

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

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

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

“Completion Date” means the date on which completion of the acquisition, construction and installation of the Project occurs, as evidenced by the certificate provided for in Section 5.3.

“Construction Contracts” means the contracts between the County and the contractors selected and hired by the County relating to the acquisition, construction and installation of the components of the Project relating to the Mortgaged Property.

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

(a) obligations incurred or assumed in connection with the acquisition, construction and installation of the Project;

(b) the cost of the acquisition, construction and installation of the Project, including, without limitation, the cost of architectural and engineering services, the Lender’s fees and expenses incurred in connection with the advance of the Amount Advanced to the County, fees and expenses of the Local Government Commission of North Carolina, if any, other legal and fiscal agency fees and expenses, taxes, inspection costs, the cost of permit fees and any filing and recording costs relating to the Project; and

(c) all other costs which are considered to be a part of the cost of the acquisition, construction and installation of the Project in accordance with generally accepted accounting principles, including sums required to reimburse the County for advances made by the County that are properly chargeable to the acquisition, construction and installation of the Project.

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

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

“Deed of Trust” means the Deed of Trust, Security Agreement and Financing Statement, made April 10, 2008, from the County to [_____], as trustees, for the benefit of the Lender, as beneficiary.

“Deed of Trust Trustee” means, [collectively, _____], as trustees named in the Deed of Trust, and any successor trustee thereto.

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

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

“Escrow Agent” means the SunTrust Equipment Finance & Leasing Corporation or its successors and assigns, acting in its capacity for the County as depository and escrow agent for the Project Fund.

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

“Event of Taxability” means the occurrence or existence of any fact, event or circumstance caused by the failure of the County to comply with any covenants in this Contract or any document or certificate executed by the County in connection with the transactions contemplated by this Contract which has the effect of causing the interest components of the Installment Payments made by the County under this Contract to be includable in the gross income of the Lender for federal income tax purposes.

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

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

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

“Interest Rate” means 3.72% per annum calculated on the basis of a 360-day year of twelve 30-day months.

“Lender” means SunTrust Equipment Finance & Leasing Corporation or its successors and assigns.

“Mortgaged Property” means the Real Property and all existing improvements located on the Real Property as of the date hereof, the Project to be acquired, constructed and installed

thereon, all other additions, alterations, enlargements, extensions, improvements and fixtures made a part of the Real Property or the improvements thereon and all appurtenances of any nature whatsoever, less all property released pursuant to this Contract or the Deed of Trust.

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

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

“Permitted Encumbrances” means

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

(2) the rights of the Lender under this Contract;

(3) the lien of the Deed of Trust and any other liens and encumbrances listed in Exhibit B thereto;

(4) any lease by the County in conformity with the provisions of Section 6.11;
and

(5) any other liens, encumbrances, charges and restrictions on the Real Property described in Schedule B of the commitment of the issuer of the Title Policy to issue the Title Policy or approved in writing by the Lender.

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

“Project” is defined in the Preamble hereto.

“Project Fund” means the separate fund created under Section 4.1 for the purpose of disbursing the Amount Advanced and interest earnings thereon and any other funds deposited therein.

“Real Property” means the sites of the following components of the Project: the Hillandale Elementary School and the Mills River Elementary School.

“State” means the State of North Carolina.

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

ARTICLE II

AMOUNT ADVANCED

Section 2.1 Advance of Amount Advanced. The Lender hereby makes an advance to the County of the Amount Advanced, and the County hereby accepts from the Lender the Amount Advanced to be applied in accordance with the terms and conditions of this Contract. The proceeds of the Amount Advanced will be used to acquire, construct and install the Project as provided in this Contract.

ARTICLE III

INSTALLMENT PAYMENTS; ADDITIONAL PAYMENTS

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

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

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

already paid or will not otherwise pay such additional interest as a consequence of such increase in the Interest Rate. In the event of a Determination of Taxability, the Lender shall provide the County with a new Payment Schedule which reflects the new Interest Rate and will replace the Payment Schedule attached hereto.

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

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

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

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

Section 3.3 No Abatement. There will be no abatement or reduction of the Installment Payments or Additional Payments by the County for any reason, including but not limited to, any failure by the County to appropriate funds to the payment of the Installment Payments or Additional Payments, any defense, recoupment, setoff, counterclaim or any claim (real or imaginary) arising out of or related to the acquisition, construction and installation of the Project. The County assumes and shall bear the entire risk of loss and damage to the Project from any cause whatsoever, it being the intention of the parties hereto that the Installment Payments shall be made in all events unless the obligation to make the Installment Payments is terminated as otherwise provided in this Contract.

Section 3.4 Prepayment of Amount Advanced.

(a) The County shall have the option to prepay or provide for the prepayment of the outstanding principal components of the Installment Payments in whole or in part on any Installment Payment Date (i) on or before April ____, 2018 at a prepayment price equal to one hundred and one percent (101%) of such principal components, plus accrued interest thereon to the date of such prepayment and (ii) after April ____, 2018 at a prepayment price equal to one hundred percent (100%) of such principal components, plus accrued interest thereon to the date of such prepayment, in either case upon not less than thirty (30) days prior written notice of such prepayment to the Lender.

(b) In the event of any loss or damage to or condemnation of the Mortgaged Property, if (i) the resulting Net Proceeds of any insurance policies (plus any amount withheld therefrom by reason of any deductible clause) or condemnation awards are insufficient to pay in full the cost of any repair, restoration, modification, improvement or

replacement of the Mortgaged Property as required under Section 8.2, (ii) the County determines not to apply such Net Proceeds to the repair, restoration, modification, improvement or replacement of the Mortgaged Property as permitted by Section 8.3(b) and (iii) the County has otherwise performed all of its obligations under this Contract, then the County shall cause such Net Proceeds to be applied, with any other available funds, to prepay the outstanding principal components of the Installment Payments in whole on any date, at a prepayment price equal to one hundred percent (100%) of such principal components, plus accrued interest thereon to the date of such prepayment, upon not less than thirty (30) days prior written notice of such prepayment to the Lender.

ARTICLE IV

PROJECT FUND

Section 4.1 Project Fund. The Lender has caused the Amount Advanced to be deposited in a separate fund established with the Escrow Agent, and designated as the “County of Henderson 2008 Installment Financing Project Fund,” to be applied by the Escrow Agent in accordance with the provisions of this Article IV. The County will deposit or cause to be deposited to the credit of the Project Fund or otherwise apply or cause to be applied to pay a part of the Cost of the Project all amounts received by it as refunds of State sales taxes with respect to expenditures made in connection with the Project and paid or reimbursed from the Amount Advanced.

Section 4.2 Investment. The County shall invest and reinvest the moneys at any time held in the Project Fund in investment obligations that are permitted under Section 159-30(c) of the General Statutes of North Carolina, as amended. Investment earnings on the moneys in the Project Fund shall be retained in the Project Fund pending their disbursement in accordance with this Article IV.

Section 4.3 Disbursement. Unless the Project Fund is earlier terminated in accordance with the provisions of Section 4.4, moneys in the Project Fund shall be disbursed by the Escrow Agent in payment of the Cost of the Project on receipt of a written requisition from the County substantially in the form set forth in Exhibit A attached hereto, together with any documents or other items as the Escrow Agent may determine to be necessary, including but not limited to construction invoices, lien waivers, inspection reports, itemization of present and prospective expenditures and a list of items necessary for completion. If moneys in the Project Fund and any refunds of State sales taxes which have been received but not deposited in the Project Fund are insufficient to pay the Cost of the Project, the County shall provide any balance of the funds needed to complete the Project. Any moneys remaining in the Project Fund after completion of the Project in accordance with Section 5.3 shall be used (a) as necessary, first, to pay the interest component of any scheduled Installment Payment which has become due and payable if, in the opinion of nationally recognized bond counsel, it is permissible to do so, second, to pay the principal component of any scheduled Installment Payment which has become due and payable and, third, to pay the outstanding principal components of the remaining Installment Payments coming due thereafter in the order of their due dates or (b) at the option of the County and subject to the consent of the Lender which consent shall not be unreasonably withheld, to pay for such other capital facilities as the County may determine, provided that such purpose is

authorized by law and, in the opinion of nationally recognized bond counsel, it is permissible to do so. Any moneys remaining in the Project Fund on termination thereof before completion of the Project shall be credited against future principal components of Installment Payments coming due in the order of their due dates.

Section 4.4 Termination. The Project Fund shall be terminated at the earliest of (a) the final distribution of all moneys in the Project Fund, (b) the receipt by the County of written notice of an Event of Default given by the Lender or (c) the termination of this Contract.

Section 4.5 Expenses. The County will pay to the Lender the amount of \$4,000 as a document processing fee in connection with the advance of the Amount Advanced and the Lender will pay any other costs incurred by the Lender in connection therewith, including the fee and expenses of Lender's counsel.

ARTICLE V

ACQUISITION, CONSTRUCTION AND INSTALLATION OF THE PROJECT

Section 5.1 Acquisition, Construction and Installation of the Project. The County shall enter into, or cause the Board of Education to enter into, the Construction Contracts and shall cause the acquisition, construction and installation of the Project to be carried on expeditiously in accordance with the Plans and Specifications, all applicable statutes and ordinances and all other applicable requirements of all regularly constituted authorities having jurisdiction over the same. The County shall insure that the Project will not violate any applicable use or other restrictions contained in prior conveyances or applicable protective covenants or restrictions. The County shall promptly cause to be corrected any defect in the Project or any departure from the Plans and Specifications, unless it obtains the approval of the Lender otherwise, which approval shall not be unreasonably denied.

The County may make, or cause to be made, such changes in the Project as it deems necessary or appropriate to cause the Project to be completed for a cost within the funds available therefor; provided, however, that no change may be made unless the related costs are capital costs under applicable federal income tax principles. In the event of a change in the Project which would render materially inaccurate the description herein, the County shall provide, or cause to be provided, to the Lender a revised Project description which reflects accurately the Project as changed.

Section 5.2 Right of Entry and Inspection. The Lender and its representatives and agents shall have the right to enter on and inspect the real property upon which the Project is to be located and the improvements thereto and thereon from time to time, during the acquisition, construction or installation of the Project, to the extent that the County has such right, and the County shall cause any contractor or subcontractor to cooperate with the Lender and its representatives and agents during such inspections. No right of inspection or approval contained in this Contract imposes on the Lender any duty or obligation whatsoever to undertake any inspection or to give any approval, except as provided in Section 5.1.

Section 5.3 Completion of the Project. The County shall use its best efforts to cause the acquisition, construction and installation of the Project to be completed within twenty-four (24) months of the Closing Date, unforeseeable delays beyond the reasonable control of the County only excepted. Upon completion of the acquisition, construction and installation of the Project, the County Representative shall deliver to the Lender (a) a certificate of the County stating the fact and date of such completion and that all of the Cost of the Project has been determined and paid (or that all of such Cost has been paid less specified claims which are subject to dispute and for which a retention in the Project Fund is to be maintained in the full amount of such claims until such dispute is resolved) and (b) a certificate of a duly authorized officer or agent of the architects, engineers or supervising contractors selected and hired by the County in connection with the acquisition, construction and installation of the Project stating the fact and date of such completion. If the accounting of the Project Fund by the County shows that moneys in the Project Fund will remain unexpended for the Cost of the Project, the unexpended funds in the Project Fund shall be applied in accordance with Section 4.3.

Section 5.4 Payment and Performance Bonds. Each contractor entering into a Construction Contract shall be required to furnish a performance bond and a separate labor and material payment bond as required by North Carolina General Statutes, Article 3, Chapter 44A, copies of which shall be provided to the Lender. In lieu of furnishing a performance bond and a separate labor and material payment bond, each contractor may furnish collateral in the amount of its Construction Contract securing the County pursuant to North Carolina General Statutes, Article 8, Chapter 143 (Section 143-129), evidence of which shall be provided to the Lender.

In the event of any material default by a contractor under any Construction Contract, or in the event of a material breach of warranty with respect to any materials, workmanship or performance, the County shall promptly proceed, either separately or in conjunction with others, to pursue diligently its remedies against such contractor and/or against each surety of any bond securing the performance of such Construction Contract. The Net Proceeds of any amounts recovered by the County by way of damages, refunds, adjustments or otherwise in connection with the foregoing, after reimbursement to the County of any amounts theretofore paid by the County and not previously reimbursed to the County for correcting or remedying the default or breach of warranty which gave rise to the proceedings against such contractor or surety, shall be deposited into the Project Fund if received before the Completion Date, or, if received thereafter, shall either be deposited as provided in Section 8.2 or applied as provided in Section 8.3. To the extent that the Net Proceeds of any payment bond or collateral required by this Section are not applied directly to pay the Cost of the Project, they shall likewise be deposited into the Project Fund if received before the Completion Date, or, if received thereafter, shall either be deposited as provided in Section 8.2 or applied as provided in Section 8.3.

Section 5.5 Contractor's General Public Liability and Property Damage Insurance. Each contractor entering into a Construction Contract shall be required to procure and maintain at its own expense during the duration of such Construction Contract standard form (a) comprehensive general public liability and property damage insurance in the amount of at least \$1,000,000 bodily injury and property damage liability combined single limit each occurrence/annual aggregate, and (b) comprehensive automobile liability insurance on owned, hired and non-owned vehicles with limits of not less than \$1,000,000 each accident bodily injury and property damage liability. Such policies shall include the County and the Lender as

additional named insureds, and shall include a provision prohibiting cancellation or termination without thirty (30) days' prior notice by certified mail to the County and the Lender. A certificate evidencing such coverage or, if such insurance is provided by a private carrier, a completed certificate of insurance, in form acceptable to the County and the Lender, shall be provided to the County and the Lender with respect to each contractor entering into a Construction Contract. Such insurance shall provide protection from all claims for bodily injury, including death, property damage and contractual liability, products/completed operations, broad form property damage and XCU (explosion, collapse and underground property damage), where applicable.

Section 5.6 Contractor's Worker's Compensation Insurance. Each contractor entering into a Construction Contract shall be required to procure and maintain at its own expense worker's compensation insurance during the term of its Construction Contract, covering its employees working thereunder. Such insurance, if issued by a private carrier, shall contain a provision prohibiting cancellation or termination without thirty (30) days' prior notice by certified mail to the County and the Lender. A certificate evidencing such coverage or, if such insurance is provided by a private carrier, a completed certificate of insurance, in form acceptable to the County and the Lender, shall be provided to the County and the Lender with respect to each contractor entering into a Construction Contract. Each Construction Contract shall also provide that each subcontractor of any contractor who is a party to such Construction Contract shall be required to furnish similar worker's compensation insurance.

Section 5.7 Filing With the Lender. The County shall cause copies of all performance bonds and insurance contracts or approved certificates thereof, as required under sections 5.4, 5.5 and 5.6 to be delivered to the Lender within thirty (30) days after a request therefor by the Lender and in such form as to evidence compliance with the provisions of such sections.

ARTICLE VI

RESPONSIBILITIES OF THE COUNTY

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

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

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

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

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

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

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

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

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

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

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

(a) Insurance against loss and/or damage to the Mortgaged Property under a policy or policies covering such risks as are ordinarily insured against for similar property. Such insurance shall be in an amount not less than the full replacement cost of the Mortgaged Property, but any such policy may have a deductible amount of not more than \$250,000. No such policy of insurance shall be so written that the proceeds thereof will produce less than the minimum coverage required by the preceding sentence, by reason of co-insurance provisions or otherwise, without the prior written consent thereto by the Lender. The term "full replacement cost" shall mean the actual replacement cost of the Mortgaged Property, without deduction for physical depreciation. Each such policy shall contain a replacement cost endorsement.

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

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

Each policy of insurance obtained pursuant to this Section shall (i) be issued by a generally recognized and responsible insurance company qualified under the laws of the State or the United States of America to assume the risks covered by such policy, (ii) name the County and the Lender as insureds, as their respective interests may appear, (iii) with respect to policies contained in paragraph (a) contain standard mortgagee clauses naming the Lender as mortgagee; and (iv) unless unavailable from the insurer, provide that such policy shall not be cancelled or

modified in any way adverse to any insured without at least thirty (30) days' prior written notice to each insured named therein. The County shall have the right to receive the proceeds from any insurance maintained pursuant to this Section, subject, however, to the provisions of this Article VI and Article VIII.

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

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

Section 6.7 Rating and Insurance. The Lender reserves the right to have this transaction rated and/or insured by a qualified rating agency and/or insurer at the Lender's sole cost at any time during the Contract. The County agrees to cooperate with the Lender and the agency/insurer in providing any requested financial or non-financial information that may be material to obtaining the rating/insurance.

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

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

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

providing evidence satisfactory to the Lender that an appropriation of funds sufficient to satisfy current Installment Payments is included in the adopted budget.

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

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

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

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

(b) The County shall obtain the prior consent of the Lender, which consent shall not be unreasonably withheld, to any lease and, within thirty (30) days after the execution of any lease, furnish or cause to be furnished to the Lender a true and complete copy of such lease.

(c) No lease shall cause the interest components of the Installment Payments to be includable in gross income for purposes of federal income taxation.

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

ARTICLE VII

TITLE; LIENS; PERSONAL PROPERTY

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

Section 7.2 Liens. The County shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, security interest, charge, encumbrance or claim on or with respect to the Mortgaged Property or any interest therein (except for Permitted Encumbrances) without the prior written consent of the Lender. The County shall promptly, at

its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, security interest, charge, encumbrance or claim if the same shall arise at any time. The County shall reimburse the Lender for any expense incurred by it (including reasonable attorneys' fees and reasonable expenses), after prior notice to the County, in order to discharge or remove any such mortgage, pledge, lien, security interest, charge, encumbrance or claim.

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

ARTICLE VIII

DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

Section 8.1 Damage, Destruction or Condemnation. If, during the term hereof, (i) the Project or any portion thereof is destroyed or is damaged by fire or other casualty, (ii) title to or the temporary or permanent use of the Project or any portion thereof or the estate of the County, the Lender or its assignee in the Project or any portion thereof is taken under the power of eminent domain by any governmental authority other than the County or (iii) a material defect in the acquisition, construction and installation of the Project becomes apparent, then the County shall continue to be obligated, subject to the provisions of Section 8.2, to pay the amounts specified in Section 3.1 at the respective times required regardless of whether the documentation provided for in Section 5.3 has been delivered.

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

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

part out of such Net Proceeds shall be the property of the County, subject to the Deed of Trust, and shall be included as part of the Mortgaged Property under this Contract.

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

(a) The County may complete the work and pay any cost in excess of the amount of such Net Proceeds, and the County agrees that, if by reason of any such insufficiency of such Net Proceeds, the County shall make any payments pursuant to the provisions of this subparagraph (a), the County will not be entitled to any reimbursement therefor from the Lender nor will the County be entitled to any diminution of the amounts payable under Section 3.1.

(b) The obligation of the County to repair or replace the Mortgaged Property under Section 8.2 may, at the option of the County, be discharged by causing such Net Proceeds to be applied to the prepayment of all of the then outstanding principal components of the Installment Payments in accordance with Section 3.4. If such Net Proceeds exceed the then outstanding principal components of the Installment Payments to be prepaid in accordance with Section 3.4, such excess shall be paid to or retained by the County.

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

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

ARTICLE IX

REPRESENTATIONS OF THE COUNTY AND LENDER

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

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

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

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

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

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

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

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

(h) The County Manager or Finance Director of the County shall include the Installment Payments and reasonably estimated Additional Payments coming due in each fiscal year in the corresponding annual budget request and exercise due diligence to have the Board of Commissioners include funds for the payment thereof in the corresponding final budget of the County. Any deletion of such funds from the County's final budget shall be made only pursuant to an express resolution of the Board of Commissioners which explains the reason for such action. Subject to applicable law, the actions required

of the County and its officers and of the Board of Commissioners pursuant to this paragraph shall be deemed to be and shall be construed to impose ministerial duties and it shall be the duty of each and every public official of the County to take such action and do such things as are required by law in the performance of the official duty of such official to enable the County to carry out and perform the actions required pursuant to this paragraph and its other agreements in this Contract. Nothing contained in this paragraph obligates the County to appropriate the moneys so budgeted or is to be construed to conflict with the provisions of Article XV.

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

(a) The Lender is a Virginia corporation and has the power and authority to enter into this Contract.

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

ARTICLE X

TAX COVENANTS

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

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

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

created by this Contract from time to time. This covenant shall survive the termination of this Contract.

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

ARTICLE XI

INDEMNIFICATION

Section 11.1 Indemnification. To the fullest extent permitted by law, including the provisions of Section 160A-20 of the North Carolina General Statutes, as amended, the County hereby agrees to indemnify, protect and save the Local Government Commission of North Carolina, the Lender and the Deed of Trust Trustee and their respective officers, employees, directors, members and agents (collectively the "Indemnitees") harmless from all liabilities, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys' fees, that (i) arise in tort, in contract, under 42 U.S. Code §1983 or under the public bidding laws of the State or (ii) arise out of, are connected with, or result, directly or indirectly, from the Project or any portion thereof, including, without limitation, the manufacture, selection, acquisition, delivery, possession, condition, construction, improvement, environmental or other condition, lease, use, operation or return of the Project or any portion thereof, or the transactions contemplated by this Contract; provided, however, that the right to indemnification shall not apply to losses arising from (i) any action taken by any other Indemnitee and (ii) the exercise of the right of the County not to appropriate moneys for the payment of Installment Payments. The indemnification arising under this Article shall continue in full force and effect notwithstanding the payment in full of all obligations under this Contract, subject only to the remedies allowable under Section 160A-20 of the North Carolina General Statutes, as amended.

ARTICLE XII

DISCLAIMER OF WARRANTIES

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

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

OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROJECT.

ARTICLE XIII

DEFAULT AND REMEDIES

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

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

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

(c) The County fails to perform or observe any term, condition or covenant of this Contract on its part to be observed or performed, other than as referred to in subparagraph (a) or (b) above, or of the Deed of Trust on its part to be observed or performed, or breaches any warranty by the County herein contained, other than as referred to in subparagraph (e) of this Section, for a period of thirty (30) days after written notice specifying such failure or breach and requesting that it be remedied has been given to the County by the Lender; provided, however, that if such failure or breach cannot with due diligence be cured within such thirty (30)-day period and the County has promptly commenced and diligently worked to cure such failure or breach within such thirty (30)-day period, the County will have an additional period of ninety (90) days to cure such failure or breach and, further, that if such failure or breach cannot with due diligence be cured within such ninety (90)-day period and the County has diligently continued to work to cure such failure or breach within such ninety (90)-day period, then, upon consultation with the Lender as to such matter, the County will have an additional reasonable period of time to cure such failure or breach as long as the County diligently continues to work to cure such failure or breach.

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

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

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

(g) The occurrence of a Determination of Taxability.

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

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

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

(c) Subject to the provisions of Article XV, exercise all the rights and remedies of a secured party or creditor under the general laws of the State with respect to the enforcement of the security interest granted under the Deed of Trust including, without limitation, to the extent permitted by law, reenter and take possession of the Mortgaged Property without any court order or other process of law and without liability for entering the premises and sell, lease, sublease or make other disposition of the same in a commercially reasonable manner for the account of the County, and apply the proceeds of any such sale, lease, sublease or other disposition, after deducting all costs and expenses, including court costs and attorneys' fees, incurred with the recovery, repair, storage, sale, lease, sublease or other disposition of the Mortgaged Property, toward the obligations due under this Contract and, thereafter, pay any remaining proceeds to the County.

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

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

Section 13.3 Further Remedies. Subject to the provisions of Article XV, this Contract shall remain in full force and effect and the County shall be and remain liable for the full performance of all its obligations under this Contract. All remedies of the Lender are cumulative

and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy.

ARTICLE XIV

ASSIGNMENT; DEFEASANCE

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

Section 14.2 Assignment by the Lender. The Lender may, at any time and from time to time, assign to any bank, insurance company or similar financial institution or to any other entity approved by the Local Government Commission of North Carolina all or any part of its interest in the Mortgaged Property or this Contract, including, without limitation, the Lender's rights to receive the Installment Payments and any Additional Payments due and to become due hereunder. Reassignment by any assignee may also only be to a bank, insurance company or similar financial institution or to any other entity approved by the Local Government Commission of North Carolina. The County agrees that this Contract may become part of a pool of obligations at the Lender's or its assignee's option. The Lender or its assignees may assign or reassign either the entire pool or any partial interest herein. Notwithstanding the foregoing, no assignment or reassignment of the Lender's interest in the Mortgaged Property or this Contract shall be effective unless and until the County shall receive a duplicate original counterpart of the document by which such assignment or reassignment is made disclosing the name and address of each assignee. The County covenants and agrees with the Lender and each subsequent assignee of the Lender to maintain for the full term of this Contract a written record of each such assignment or reassignment. The County agrees to execute any document reasonably required by the Lender in connection with any assignment. Notwithstanding any assignment by the Lender of its interest in this Contract, the County shall not be obligated to provide any financial or other information to any assignee of the Lender except as set forth in Section 6.10.

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

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

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

ARTICLE XV

LIMITED OBLIGATION OF THE COUNTY

Section 15.1 Limited Obligation of the County. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A DELEGATION OF GOVERNMENTAL POWERS NOR AS A DONATION BY OR A LENDING OF THE CREDIT OF THE COUNTY WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE. THIS CONTRACT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE COUNTY TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE SOLE DISCRETION OF THE COUNTY FOR ANY FISCAL YEAR IN WHICH THIS CONTRACT IS IN EFFECT; PROVIDED, HOWEVER, THAT ANY FAILURE OR REFUSAL BY THE COUNTY TO APPROPRIATE FUNDS WHICH RESULTS IN THE FAILURE BY THE COUNTY TO MAKE ANY PAYMENT COMING DUE UNDER THIS CONTRACT WILL IN NO WAY OBLIATE THE OCCURRENCE OF THE EVENT OF DEFAULT RESULTING FROM SUCH NONPAYMENT. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE COUNTY IN ANY ACTION FOR BREACH OF A CONTRACTUAL OBLIGATION UNDER THIS CONTRACT, AND THE TAXING POWER OF THE COUNTY IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY MONEYS DUE UNDER THIS CONTRACT. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED TO PLEDGE OR TO CREATE A LIEN ON ANY CLASS OR SOURCE OF THE COUNTY'S MONEYS, NOR SHALL ANY PROVISION OF THIS CONTRACT RESTRICT THE FUTURE ISSUANCE OF ANY OF THE COUNTY'S BONDS OR OBLIGATIONS PAYABLE FROM ANY CLASS OR SOURCE OF THE COUNTY'S

MONEYS. TO THE EXTENT OF ANY CONFLICT BETWEEN THIS ARTICLE AND ANY OTHER PROVISION OF THIS CONTRACT, THIS ARTICLE SHALL TAKE PRIORITY.

ARTICLE XVI

MISCELLANEOUS

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

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

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

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

If to the County:

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

If to the Lender:

SunTrust Equipment Finance &
Leasing Corporation
300 East Joppa Road
Hampton Plaza, Suite 700
Towson, Maryland 21286

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

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

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

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

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

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

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

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

Section 16.12 Proposal Letter. The terms of this Contract shall supersede the terms of the proposal letter from the Lender to the County dated January 24, 2008. To the extent of any conflict between this Contract and such proposal letter, this Contract will take priority.

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

PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES IT MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE.

Section 16.14 Non-Binding Arbitration.

(a) Upon demand of any party hereto, whether made before or after institution of any judicial proceeding, any claim or controversy arising out of or relating to this Contract or the Deed of Trust (a "Dispute") shall be submitted to non-binding arbitration. Disputes may include, without limitation, tort claims, counterclaims, claims brought as class actions or claims arising from documents executed in the future.

(b) All arbitration hearings shall be conducted in the County. A hearing shall begin within ninety (90) days of demand for arbitration and all hearings shall conclude within one hundred twenty (120) days of demand for arbitration. These time limitations may not be extended unless a party shows cause for extension and then for no more than a total of sixty (60) days. The arbitration shall be conducted by a single arbitrator who shall be a licensed attorney with substantial experience in commercial financial transactions. If the parties cannot mutually agree upon the arbitrator then they shall request that JAMS/Endispute select the arbitrator. The parties do not waive applicable federal or state substantive law except as provided herein. The prevailing party shall not be responsible for the fees and expenses of the arbitrator or any fees or expenses of JAMS/Endispute or other service engaged to select the arbitrator or facilitate the arbitration.

(c) Notwithstanding the preceding non-binding arbitration provisions, the parties agree to preserve, without diminution, certain remedies that any party may exercise before or after an arbitration proceeding is brought. The parties shall have the right to proceed in any court of proper jurisdiction or by self-help to exercise or prosecute the following remedies, as applicable: (i) all rights to foreclose against any real property or other security by exercising a power of sale or under applicable law by judicial foreclosure including a proceeding to confirm the sale, (ii) all rights of self-help including peaceful occupation of real property, (iii) obtaining provisional or ancillary remedies including injunctive relief, sequestration, garnishment, attachment, appointment of receiver and filing an involuntary bankruptcy proceeding and (iv) when applicable, a judgment by confession of judgment. The parties agree to cooperate to have any then-existing litigation stayed during the period of the arbitration proceedings but no party shall be prevented by the arbitration from taking mandatory actions or otherwise preserving its rights in such litigation (e.g. filing an answer, asserting mandatory counterclaims, etc.).

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

COUNTY OF HENDERSON, NORTH CAROLINA

[SEAL]

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

ATTEST:

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

APPROVED AS TO FORM:

Charles Russell Burrell
County Attorney

[Signatures Continued on the Following Page]

[Counterpart Signature Page to the \$[] Installment Financing Contract,
dated April 10, 2008, between SunTrust Equipment Finance & Leasing Corporation
and the County of Henderson, North Carolina]

**SUNTRUST EQUIPMENT FINANCE &
LEASING CORPORATION,**
as Lender

By: _____
Name:
Title:

[Signatures Continued on the Following Page]

[Counterpart Signature Page to the \$[] Installment Financing Contract,
dated April 10, 2008, between SunTrust Equipment & Finance Leasing Corporation
and the County of Henderson, North Carolina]

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

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

PAYMENT SCHEDULE

Payment No.	Installment Payment Date	Total Installment Payment	Principal Component	Interest Component	Outstanding Balance
[0		\$	\$	\$	\$
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
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31					
32					
33					
34					
35					
36					
37					
38]					
Totals		\$	\$	\$	\$

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

SUNTRUST BANK (ATLANTA, GA)

ABA 061 000 104

ACCOUNT NO. 201150263

ACCOUNT NAME: SunTrust Equipment & Finance Leasing Corporation

ATTENTION: Gail Loomis @ (410) 307-6722

REFERENCE: County of Henderson, NC – Acct # _____

EXHIBIT A
FORM OF REQUISITION

SunTrust Equipment Finance & Leasing Corporation
MD-CMD 6881
300 East Joppa Road
Towson, Maryland 21286
Attention: Brenda Kircher
Fax: (410) 307-6733

Re: Direction to Make Disbursements from the Henderson County Project Fund

Ladies and Gentlemen:

Pursuant to Section 4.3 of the Installment Financing Contract, dated April 10, 2008 (the "*Contract*"), between SunTrust Equipment Finance & Leasing Corporation and Henderson County, North Carolina (the "*County*"), you are hereby directed to disburse from the Henderson County Project Fund (the "*Project Fund*") the amount indicated below.

The undersigned hereby certifies:

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

3. The amount to be disbursed is \$ _____.
4. The purpose of the disbursement is to _____.
5. The disbursement herein requested is for an obligation properly incurred, is a proper charge against the Project Fund as a Cost of the Project under the Contract and such obligation has not been the basis of any previous disbursement that has not been repaid to the Project Fund previously pursuant to Section 5.4 (entitled "*Payment and Performance Bonds*") or Section 8.2 (entitled "*Obligation of the County To Repair and Replace the Mortgaged Property*") of the Contract.

DATED this ____ day of _____, _____.

HENDERSON COUNTY, NORTH CAROLINA

By: _____
County Representative

APPROVED:

SUNTRUST EQUIPMENT FINANCE & LEASING CORPORATION

By: _____
Authorized Representative

DRAFT

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

Return to:
Charles Russell Burrell, Esq.
Henderson County Attorney
100 North King Street
Hendersonville, North Carolina 28792

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

DEED OF TRUST, SECURITY AGREEMENT AND FINANCING STATEMENT

This **DEED OF TRUST, SECURITY AGREEMENT AND FINANCING STATEMENT**, made and entered into this 10th day of April, 2008 (this “Deed of Trust”), from the **COUNTY OF HENDERSON, NORTH CAROLINA**, a political subdivision of the State of North Carolina, whose organization number is 56-6000307, as grantor (the “Grantor”), to [_____], as trustees (collectively, the “Trustee”), for the benefit of **SUNTRUST EQUIPMENT FINANCE & LEASING CORPORATION**, a Virginia corporation (the “Lender” and, together with its successors and assigns, the “Beneficiary”);

WITNESSETH:

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

WHEREAS, this Deed of Trust has been executed and delivered to secure (i) the obligations of the Grantor to make the Installment Payments and Additional Payments and (ii) the performance of all of the other liabilities and obligations, whether now existing or hereafter arising, of the Grantor to the Lender under the Installment Financing Contract (all such obligations and liabilities described in (i) or (ii) above being hereinafter collectively called the “Indebtedness”); and

WHEREAS, the Grantor wants to secure (i) the payment of the Indebtedness and any renewals, modifications or extensions thereof, in whole or in part, and (ii) the additional

payments hereinafter agreed to be made by or on behalf of the Grantor, by a conveyance of the lands and security interests hereinafter described;

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

COLLATERAL IS OR INCLUDES FIXTURES

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

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

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

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

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

hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Grantor.

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

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

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

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

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

This Deed of Trust secures an obligation incurred for the construction of any improvement on the Real Property covered hereby and as such constitutes a “construction mortgage” under Section 25-9-334 of the General Statutes of North Carolina.

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

ARTICLE I

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

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

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

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

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

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

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

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

Section 1.5. **Care of Premises.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 1.17. Hazardous Material.

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

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

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

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

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

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

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

ARTICLE II

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III

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

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

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

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

Section 3.5. **Notices, Demands and Requests.** All notices, demands or requests provided for or permitted to be given pursuant to this Deed of Trust must be in writing and shall be deemed to have been properly given if served or given by personal delivery or by being deposited in the United States Mail, postage prepaid, registered or certified return receipt requested, and addressed to the addresses as follows: (a) if to the Grantor, County of Henderson, North Carolina, 113 North Main Street, Hendersonville, North Carolina 28792, Attention: Finance Director, (b) if to the Beneficiary, SunTrust Equipment Finance & Leasing Corporation, 300 East Joppa Road, Hampton Plaza, Suite 700, Towson, Maryland 21286, and (c) if to the Deed of Trust Trustee, [_____], c/o SunTrust Equipment Finance & Leasing Corporation, 300 East Joppa Road, Hampton Plaza, Suite 700, Towson, Maryland 21286.

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

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

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

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

Section 3.9. Release of Premises.

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

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

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

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

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

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

COUNTY OF HENDERSON, NORTH CAROLINA

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

[SEAL]

ATTEST:

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

STATE OF NORTH CAROLINA)
)
COUNTY OF HENDERSON)

I, _____, a Notary Public, certify that William L. Moyer personally came before me this day and acknowledged that he is the Chairman of the Board of Commissioners for the County of Henderson, North Carolina, and that, by authority duly given and as the act of said County, the foregoing instrument was signed in its name by him, sealed with its seal, and attested by Elizabeth Corn, the Clerk to the Board of Commissioners for said County.

WITNESS my hand and notarial seal, this ____ day of April, 2008.

My commission expires:

Notary Public

STATE OF NORTH CAROLINA)
)
COUNTY OF HENDERSON)

The foregoing certificate of _____, a Notary Public of the County of Henderson, North Carolina, is certified to be in due form and according to law. Let the said deed of trust and certificate be registered.

This ____ day of April, 2008.

Register of Deeds
County of Henderson, North Carolina

EXHIBIT A

REAL PROPERTY DESCRIPTION

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

EXHIBIT B
PERMITTED ENCUMBRANCES

Permitted encumbrances (the “Permitted Encumbrances”) are as follows:

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

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

(3) the lien of this Deed of Trust;

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

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

DRAFT

CONSTRUCTION AND ACQUISITION AGREEMENT

This **CONSTRUCTION AND ACQUISITION AGREEMENT**, dated as of April 10, 2008 (the "Agreement"), between the **COUNTY OF HENDERSON, NORTH CAROLINA**, a body politic and corporate and a political subdivision existing under the laws of the State of North Carolina (the "County") and **HENDERSON COUNTY BOARD OF PUBLIC EDUCATION**, a county administrative unit duly organized and existing under the laws of the State of North Carolina (the "Board of Education");

WITNESSETH:

WHEREAS, the County is a body politic and corporate and a political subdivision existing under the laws of the State of North Carolina vested with the powers and authority conferred upon counties by the laws of the State of North Carolina, acting through its Board of Commissioners;

WHEREAS, the Board of Education is the governing body of the Henderson County Board of Public Education, vested with the powers and authority conferred upon local boards of public schools by the laws of the State of North Carolina, including general control and supervision of all matters pertaining to Hillandale Elementary School, the Mills River Elementary School and the Dana Elementary School located in the County;

WHEREAS, pursuant to Section 153A-158.2, as amended, of the General Statutes of North Carolina, as the same applies to the County, the County may acquire by any lawful method the fee or any lesser interest in real or personal property for use by the Board of Education;

WHEREAS, the Board of Education has heretofore conveyed to the County certain parcels of real property more fully described in Schedule I to the Lease (hereinafter described) (the "Elementary School Land"), with the intention that elementary school facilities will be constructed thereon (the "Elementary Schools Project"), for the use of the Board of Education pursuant to the terms of the Lease;

WHEREAS, the County has arranged to finance the Elementary Schools Project pursuant to an Installment Financing Contract, dated as of April 10, 2008 (the "Installment Financing Contract"), between the County and SunTrust Equipment Finance & Leasing Corporation (the "Lender"), pursuant to which the Lender has advanced to the County amounts sufficient to pay the costs of acquisition, construction and equipping of the Elementary Schools Project and other components of the Project (as defined in the Installment Financing Contract), and the County has agreed to repay the advance, with interest, in installments (the "Installment Payments");

WHEREAS, the County's obligations under the Installment Financing Contract, including the making of the Installment Payments thereunder, is secured by a certain Deed of

Trust, dated as of April 10, 2008 (the “Deed of Trust”), granting a lien on property including the Real Property and all buildings, improvements and fixtures located thereon, all as more fully described in the Deed of Trust;

WHEREAS, the County, as lessor, and the Board of Education, as lessee, have entered into a Lease Agreement, dated as of April 10, 2008 (the “Lease”), pursuant to which the County has agreed to lease the Leased Premises (as defined in the Lease) to the Board of Education;

WHEREAS, pursuant to Section 153A-158.2 and Section 115D-15.1, as amended, of the General Statutes of North Carolina, the Board of Education may enter into contracts for the erection and repair of elementary school facilities owned in fee simple by the County; and

WHEREAS, the County desires for the Board of Education to oversee the Elementary Schools Project, and the Board of Education is willing to undertake such obligation;

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

Section 1. Supervision of the Elementary Schools Project by the Board of Education. The County and the Board of Education hereby agree and covenant that the Board of Education shall have supervisory power (“Supervisory Power”), subject to the consent provision as set forth in Section 3 hereof, in connection with the construction and equipping of the Elementary Schools Project. The Board of Education shall use its best efforts to cause the construction and equipping of the Elementary Schools Project in accordance with the plans and specifications therefor to be completed in an expeditious manner and in accordance with the Installment Financing Contract and any applicable requirements of governmental authorities and law.

Section 2. Covenants as to the Completion of the Elementary Schools Project. In consideration of the grant of Supervisory Power by the County to the Board of Education pursuant to Section 1 hereof, the County and the Board of Education hereby agree as follows in connection with the construction and equipping of the Elementary Schools Project by the Board of Education:

- (a) The Board of Education shall comply with the provisions of law, including all applicable laws relating to the procurement of construction and equipment through competitive bidding, and enter into one or more agreements or purchase orders providing for the construction and equipping of the Elementary Schools Project. The Board of Education shall obtain all orders, permits or similar governmental approvals necessary for the construction and operation of the Elementary Schools Project as an elementary school facility. The Board of Education shall cause the construction and equipping of the Elementary Schools Project to be carried on expeditiously in accordance with the plans and specifications therefor, all applicable ordinances and statutes, and in accordance with the requirements of all regularly constituted authorities having jurisdiction over same. The Board of Education shall cause the Elementary Schools Project to be located entirely on real property subject to lien of the Deed of Trust and will ensure that (a) the Elementary Schools Project does not encroach upon nor overhang any easement or right

of way and (b) the Elementary Schools Project, when erected, will be wholly within the building restriction lines, however established, and will not violate applicable use or other restrictions contained in prior conveyances or applicable protective covenants or restrictions.

(b) The Board of Education shall comply with all provisions of the Installment Financing Contract relating to the construction and equipping of the Elementary Schools Project.

(c) The County, the Lender and their respective representatives and agents shall have the right to enter upon and inspect the Leased Premises from time to time, during and after construction, and the Board of Education agrees to cause any contractor or subcontractor to cooperate with the County, the Lender and their respective representatives and agents during such inspections.

(d) Payment of the Elementary Schools Project costs shall be made from the moneys deposited with the County in accordance with the Installment Financing Contract. The Board of Education shall submit requests to the County for payment of costs of the Elementary Schools Project, and the Board of Education covenants that it will not submit any such requests for any costs other than Elementary Schools Project costs.

(e) The Board of Education shall use its best efforts to cause the construction and equipping of the Elementary Schools Project to be completed. In the event that (i) the amount of funds advanced under the Installment Financing Contract, plus other funds made available by the County, are not sufficient to complete the Elementary Schools Project, if any, and (ii) the County chooses to cause the Board of Education to revise the plans and specifications for the Elementary Schools Project to the end that an alternative project having a cost not in excess of the funds advanced under the Installment Financing Contract will be completed, then the Board of Education agrees to revise the plans and specifications for the Elementary Schools Project to the end that such alternative project having a cost not in excess of such available funds will be completed.

Section 3. Consent of the County and the Lender. The County hereby recognizes and covenants that the Board of Education shall have the right to make any changes in the description of the Elementary Schools Project or of any component or components thereof subject to the prior consent, oral or written, of the County and the Lender allowed under the Installment Financing Contract; provided, however, that any such change shall not alter the purpose of the Elementary Schools Project as elementary schools facilities.

Section 4. Construction Conferences. The Board of Education hereby agrees that it will, upon the request of the County Manager of the County, provide to the County Manager or his designee timely notice of all conferences with representatives of the architects, contractors and vendors with respect to the acquisition, construction and equipping of the Elementary Schools Project and that the County Manager or his designee shall have the right to attend all such conferences.

Section 5. The Board of Education's Right to Enforce Agreements. The Board of Education shall have the right to enforce in its own name or the name of the County such purchase orders or construction agreements at law or in equity; provided, however, that the assignment by the County shall not prevent the County from asserting said rights and powers in its own behalf.

Section 6. Acceptance. The Board of Education, for one dollar (\$1.00) and other good and valuable consideration in hand received, does hereby accept the foregoing appointment of Supervisory Power over the acquisition, construction and equipping of the Elementary Schools Project as described in Section 1 above and does hereby accept the foregoing delegation of duties as described in Section 2 above.

Section 7. The Board of Education Not an Agent of the County. The Board of Education in carrying out its duties under this Agreement is acting as an independent contractor and is not an agent of the County in connection with this Agreement or in connection with any other agreement between the Board of Education and the County, express or implied.

Section 8. Disclaimers of the County. The Board of Education acknowledges and agrees that the design of the Elementary Schools Project has not been made by the County, that the County has not supplied any plans or specifications with respect thereto and that the County (a) is not a manufacturer of, or a dealer in, any of the component parts of the Elementary Schools Project or similar projects, (b) has not made any recommendation, given any advice or taken any other action with respect to (i) the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Elementary Schools Project or any component part thereof or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Elementary Schools Project or any component part thereof or any property or rights relating thereto at any stage of the construction thereof, (c) has not at any time had physical possession of the Elementary Schools Project or any component part thereof or made any inspection thereof or any property or rights relating thereto, and (d) has not made any warranty or other representation, express or implied, that the Elementary Schools Project or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed or constructed or will accomplish the results which the Board of Education intends therefor, or (iii) is safe in any manner or respect.

The County makes no express or implied warranty or representation of any kind whatsoever with respect to the Elementary Schools Project or any component part thereof to the Board of Education or 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 design or condition thereof; the safety, workmanship, quality or capacity thereof; compliance thereof with the requirements of any law, rule, specification or agreement pertaining thereto; any latent defect; the ability thereof to perform any function; that the funds advanced by the Lender pursuant to the Installment Financing Contract will be sufficient (together with other available funds of the County and the Board of Education) to pay the costs of the Elementary Schools Project; or any other characteristic of the Elementary Schools Project; it being agreed that all risks relating to the Elementary Schools Project, the completion thereof or the transactions contemplated hereby or by the Installment Financing

Contract are to be borne by the Board of Education, and the benefits of any and all implied warranties and representations of the County are hereby waived by the Board of Education.

Section 9. Agreement to Survive Termination of Lease. Notwithstanding anything to the contrary contained herein, the Supervisory Power granted to the Board of Education by the County hereunder shall, in the event that the Elementary Schools Project is not fully completed prior to the termination of the Lease, survive the termination of the Lease.

Section 10. Indemnification. To the extent permitted by law, the Board of Education shall indemnify and save the County harmless against and from all claims by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition, construction and equipping of the Elementary Schools Project; provided, however, that the Board of Education shall not be obligated to pay the Installment Payments pursuant to the Installment Financing Contract or to indemnify (a) any party to the Installment Financing Contract for any third-party claims asserted against any such party relating to the payment of such Installment Payments or (b) the County for any liability arising from any act of negligence or willful misconduct on the part of the County or any of its agents, officers or employees. The Board of Education shall be notified promptly by the County of any action or proceeding brought in connection with any such claims arising from the acquisition, construction and equipping of the Elementary Schools Project.

As between the Board of Education and the County, the covenant of the Board of Education in this Section, except to the extent permitted by law, is unconditional and absolute. As between the Board of Education and any third-party, the Board of Education, to the extent permitted by law, hereby reserves the right and defense of sovereign immunity.

Section 11. Amendments and Further Instruments. The County and the Board of Education may, from time to time, with the written consent of the Lender, execute and deliver such amendments to this Agreement and such further instruments as may be required or desired for carrying out the expressed intention of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed and attested this Agreement by their duly authorized representatives as of the day and year first written above.

**COUNTY OF HENDERSON, NORTH
CAROLINA**

By: _____
Chairman of the Board of Commissioners

**HENDERSON COUNTY BOARD OF PUBLIC
EDUCATION**

By: _____
Chairman of the Board of Education

DRAFT

After recording return to:
Peter A. Baumgaertner, Esq.
Dewey & LeBoeuf LLP
1301 Avenue of the Americas
New York, NY 10019

Charles Russell Burrell, Esq.
Henderson County Attorney
100 North King Street
Hendersonville, North Carolina 28792

LEASE AGREEMENT

THIS LEASE AGREEMENT made this 10th day of April, 2008 (the “Agreement”), by and between the **COUNTY OF HENDERSON, NORTH CAROLINA**, a body politic and corporate and a political subdivision existing under the laws of the State of North Carolina (the “County”) and **HENDERSON COUNTY BOARD OF PUBLIC EDUCATION**, a county administrative unit duly organized and existing under the laws of the State of North Carolina (the “Board of Education”);

WITNESSETH:

WHEREAS, pursuant to Section 153A-158.2 of the General Statutes of North Carolina, the County may acquire, by any lawful method, fee title, or any lesser interest, in real or personal property, for use by the Board of Education; and

WHEREAS, pursuant to Section 160A-274(b) of the General Statutes of North Carolina, the County may lease to the Board of Education, upon such terms and conditions as the parties deem appropriate, with or without consideration, any interest the County may own in real property; and

WHEREAS, the County has acquired from the Board of Education certain real property (hereinafter “Leased Premises”), more fully described in Schedule I attached hereto with the intention that elementary school facilities will be constructed thereon (the “Elementary Schools Project”) for use by the Board of Education pursuant to the terms of this Agreement; and

WHEREAS, the County has arranged to finance the Elementary Schools Project pursuant to an Installment Financing Contract, dated as of the 10th day of April, 2008

(hereinafter the "Financing Contract"), between the County and SunTrust Equipment Finance & Leasing Corporation (hereinafter the "Lender"); and

WHEREAS, the County's obligation under the Financing Contract is secured by a Deed of Trust, dated as of the 10th day of April, 2008 (hereinafter the "Deed of Trust"), granting to the Lender a lien on property including the Leased Premises and any improvements constructed thereon;

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

Section 1. Lease Term and Rental. The County does hereby demise and lease the Leased Premises unto the Board of Education, to have and to hold for a term commencing on April 10, 2008 and ending at 12:00 midnight on the first day of [_____]. Annual rental during the term of this Agreement shall be One Dollar (\$1.00). The County hereby acknowledges its receipt of, and the sufficiency of, all annual rental payments which will become due during the entire term of this Agreement.

Section 2. Quiet Enjoyment. During the term of this Agreement, the Board of Education shall peaceably and quietly have, hold and enjoy the Leased Premises without suit or hindrance from the County, except as expressly required or permitted by this Agreement. The provisions of this Section shall be subject to rights granted to the County and the Lender in Section 7 hereof.

Section 3. Use and Maintenance. During the term of this Agreement, the Leased Premises shall be used solely for the accomplishment of public purposes, specifically including the construction and operation of elementary schools; provided, however, that the Board of Education may use the Leased Premises for any other elementary school related purpose. The Board of Education shall do nothing with regard to the Leased Premises that would cause the County to default in its obligations under the Financing Contract.

Section 4. Utilities. The Board of Education shall pay all charges for gas, water, electricity, light, heat, telephone or any other utility service furnished to or used by the Board of Education in connection with its use of the Leased Premises.

Section 5. Insurance. The Board of Education shall procure and maintain throughout the term of this Agreement, fire, casualty, property damage and theft insurance as required to be maintained by the County pursuant to Article V of the Financing Contract, and shall name the County and the Lender as additional insureds under any such policy. The Board of Education shall cooperate fully with the County and the Lender in filing any proof of loss with respect to such policies. In no event shall the Board of Education voluntarily settle, nor consent to the settlement of, any legal proceeding arising out of any insurance claim involving the Leased Premises, without the prior written consent of the County and the Lender. The Board of Education hereby agrees that the net proceeds of such insurance shall be applied in accordance with the provisions of Article VI of the Financing Contract.

Section 6. Improvements. The Board of Education shall construct elementary school facilities on the Leased Premises, and from time-to-time, in its sole discretion, and at its

own expense, modify or improve said elementary school facilities; provided that no such modification shall materially impair the effective use of or materially decrease the value of the Leased Premises. The Board of Education may also install items of equipment or other personal property therein. Any such construction or installation shall be subject to the lien created by the Deed of Trust.

Section 7. Access to the Leased Premises. The County and the Lender shall have the right at all reasonable times to enter upon and inspect the Leased Premises.

Section 8. Encumbrances. Except for permitted encumbrances allowed under the Financing Contract and the Deed of Trust, the Board of Education shall not create, incur, assume nor suffer to exist any mortgage, pledge, lien, charge or claim with respect to the Leased Premises. The Board of Education shall promptly, at its own expense, take such action as may be reasonably necessary to duly discharge or remove any such encumbrance, and hereby agrees to reimburse the County or the Lender for any expense incurred by either of them in removing any such encumbrance which the Board of Education fails to remove itself within a reasonable time. The Board of Education may sublease all or a portion of the Leased Premises, provided that such sublease complies with Section 8.2 of the Financing Contract.

Section 9. Indemnification of County. To the extent permitted by law, the Board of Education, shall defend, indemnify and hold the County harmless against any and all losses, claims, damages or liabilities, joint or several, including attorneys fees and expenses, for which the County may become liable as a result of the Elementary Schools Project, the Board of Education's operation of the Elementary Schools Project or its failure to comply with the terms of this Agreement. The Board of Education may also install items of equipment or other personal property therein. Any such construction or installation shall be subject to the lien created by the Deed of Trust.

Section 10. General Tax Covenant. The Board of Education shall not use nor permit the use of the Leased Premises in any manner that would result in the obligation of the County under the Financing Contract to be classified as a "private activity bond" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended, or that would otherwise cause the interest payable under the Financing Contract to be included in the gross income of the recipient thereof for federal income tax purposes.

Section 11. Assignment. The Board of Education shall not assign its rights or obligations under this Agreement to any other person, firm or corporation without the prior written consent of the County.

Section 12. Option to Purchase. The County hereby grants to the Board of Education the option to purchase the Leased Premises at the end of the term of this Agreement for a purchase price of One Dollar (\$1.00). The Board of Education may exercise this option by notifying the County in writing of the exercise of such option. Within 45 days after receiving such notification and upon the expiration of the term of this Agreement, the County shall execute and deliver to the Board of Education all documents necessary to convey good and marketable title to the Leased Premises to the County.

Section 13. Recording. This Agreement or a Memorandum of this Agreement shall be recorded in the Office of the Henderson County Register of Deeds.

Section 14. Priority of Deed of Trust. Any other provision of this Agreement to the contrary notwithstanding, the Board of Commissioners of the County hereby expressly acknowledges that its rights under this Agreement are subject in all respects to the rights of the Lender and it assigns, as beneficiary under the Deed of Trust. The Board of Education shall cooperate with any Deed of Trust trustee, and with the Lender and its assigns, as beneficiary under the Deed of Trust, in any way necessary to assure that the Lender and its assigns enjoy the full benefit of the rights granted under the Deed of Trust.

Section 15. Miscellaneous. (a) If any term or provision of this Agreement shall be deemed invalid or unenforceable by the court of competent jurisdiction, the remainder of this Agreement, and any other application of such term or provision, shall not be affected thereby.

(b) Headings in this Agreement are for purposes of reference only and shall not limit nor define any meaning contained thereunder.

(c) This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors and assigns, during the term hereof and during any extension or renewal hereof.

Section 16. Notices. For all purposes hereunder, including specifically provision of any notice required hereby, the parties may be served at the following addresses:

County: Henderson County, North Carolina
100 North King Street
Hendersonville, NC 28792
Attention: Director

Board of Education The Henderson County Board of Public Education
414 Fourth Avenue West
Hendersonville, North Carolina 28739
Attention: Superintendent

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year above first written.

[SEAL]

COUNTY OF HENDERSON, NORTH CAROLINA

BY: _____
Chairman of Board of Commissioners

Attest:

Clerk

[SEAL]

THE HENDERSON COUNTY BOARD OF
PUBLIC EDUCATION

BY: _____
Chairman of Board of Education

Attest:

Superintendent

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, _____, a Notary Public for said County and State, hereby certify that Elizabeth W. Corn personally appeared before me this day and acknowledged that she is Clerk to the Board of Commissioners for the County of Henderson, North Carolina, and that by authority duly given and as the act of said County, the foregoing instrument was signed in its name by its Chairman, sealed with its seal, and attested by herself as its Clerk.

WITNESS my hand and notarial seal, this the ___ day of _____, 2008.

[Notary Seal]

Notary Public

My Commission Expires: _____

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, _____, a Notary Public for said County and State, hereby certify that _____ personally appeared before me this day and acknowledged that she is _____ Secretary of the Henderson County Board of Public Education and that by authority duly given and as the act of the Henderson County Board of Public Education, the foregoing instrument was signed in its name by its Chairman, sealed with its seal, and attested by herself as its _____ Secretary.

WITNESS my hand and notarial seal, this the ___ day of _____, 2008.

Notary Public

My Commission Expires: _____

SCHEDULE I

LEGAL DESCRIPTION OF LEASED PREMISES

DRAFT

ESCROW AGREEMENT

This **ESCROW AGREEMENT**, made and entered into as of April 10, 2008, by and among **SUNTRUST EQUIPMENT FINANCE & LEASING CORPORATION**, a Virginia corporation (“Lender”), **COUNTY OF HENDERSON, NORTH CAROLINA**, a political subdivision of the State of North Carolina (“County”), and **SUNTRUST BANK**, a Georgia banking corporation, as Escrow Agent (“Escrow Agent”).

In consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

**ARTICLE I.
DEFINITIONS AND RECITALS**

Section 1.1. **Definitions.** The terms defined in this Section 1.1 shall, for all purposes of this Escrow Agreement, have the meanings specified below, in Schedule I attached hereto, or in the Installment Financing Contract (as defined herein) between Lender and County.

“**Escrow Agent Fee**” has the meaning set forth in Section 6.1 and the amount of such Escrow Agent Fee is shown on Schedule I.

“**Escrow Agreement**” means this Escrow Agreement and any duly authorized and executed amendment or supplement hereto.

“**Form of Requisition**” means the document substantially in the form attached hereto as Exhibit A to be executed by County and Lender and submitted to Escrow Agent to authorize payment of Costs of the Project

“**Initial Deposit Amount**” means the amount shown as the Initial Deposit Amount on Schedule I.

“**Installment Financing Contract**” means the Installment Financing Contract dated as of April 10, 2008 between Lender and County, and any duly authorized and executed amendment or supplement thereto.

“**Parties**” means, collectively, Lender, County and Escrow Agent.

“**Project Fund**” means the account by that name established and held by Escrow Agent pursuant to Article II of this Escrow Agreement.

“**Qualified Investments**” means any lawful investment, at the time the funds are invested, in _____. By signing this Escrow Agreement, County acknowledges that such Qualified Investment is a permitted investment under any state, county or municipal law applicable to the investment of County’s funds.

**ARTICLE II.
APPOINTMENT OF ESCROW AGENT; AUTHORITY**

Section 2.1. **Appointment of Escrow Agent.** Lender and County hereby appoint and employ Escrow Agent to receive, hold, invest and disburse the moneys to be paid to Escrow Agent pursuant to this Escrow Agreement and to perform certain other functions, all as hereinafter provided. By executing and delivering this Escrow Agreement, Escrow Agent accepts the duties and obligations of Escrow Agent hereunder.

Escrow Agent undertakes to perform only such duties as are expressly set forth herein, and no additional duties or obligations shall be implied hereunder. In performing its duties under this Escrow Agreement, or upon the claimed failure to perform any of its duties hereunder, Escrow Agent shall not be liable to anyone for any damages, losses or expenses which may be incurred as a result of Escrow Agent so acting or failing to so act; provided, however, Escrow Agent shall not be relieved from liability for damages arising out of its proven gross negligence or willful misconduct under this Escrow Agreement. Escrow Agent shall in no event incur any liability with respect to (i) any action taken or omitted to be taken in good faith upon advice of legal counsel, which may be counsel to any party hereto, given with respect to any question relating to the duties and responsibilities of Escrow Agent hereunder or (ii) any action taken or omitted to be taken in reliance upon any instrument delivered to Escrow Agent and believed by it to be genuine and to have been signed or presented by the proper party or parties. Escrow Agent shall not be bound in any way by any agreement or contract between Lender and County, including the Installment Financing Contract, whether or not Escrow Agent has knowledge of any such agreement or contract.

Section 2.1. **Authority.** Each of the parties has authority to enter into this Escrow Agreement, and has taken all actions necessary to authorize the execution of this Escrow Agreement by the representatives whose signatures are affixed hereto.

**ARTICLE III.
PROJECT FUND**

Section 3.1. **Project Fund.** Escrow Agent shall establish special escrow account(s) designated as the "Project Fund" (the "Project Fund"), shall keep such Project Fund separate and apart from all other funds and moneys held by it and shall administer such Project Fund as provided in this Escrow Agreement.

Section 3.2. **Deposit.** Upon execution of the Installment Financing Contract and delivery to Lender by County of all documents required to be delivered thereunder, Lender shall deposit or cause to be deposited with Escrow Agent an amount equal to the Initial Deposit Amount. Escrow Agent shall credit such amount to the Project Fund. The Initial Deposit Amount is to be sent by Lender to Escrow Agent by wire transfer to: **SunTrust Bank, Atlanta, Georgia, ABA# 061000104, Account# _____, Account Name: SunTrust Bank, Escrow Agent for: Beneficiary as shown on Schedule I, Attention: Gay Armstead (410) 583-6741.**

Section 3.3. **Disbursements.** Escrow Agent shall use the moneys in the Project Fund from time to time to pay the Costs of the Project, within a reasonable time of receipt with respect thereto of a Form of Requisition executed by Lender and County; provided, however, that Escrow Agent shall not disburse any moneys in excess of \$1,000,000.00 in the Project Fund as specifically relates to the Project until the time that the Lender has received the following as relates to each of the Hillandale Elementary School and the Mills River Elementary School: (a) Phase I Environmental Assessment report (the “Environmental Report”) completed by an independent geotechnical engineering firm acceptable to Lender that: (i) states that the report may be relied upon Lender in connection with the Installment Financing Contract; (ii) states that no “environmentally recognized conditions” or violation of environmental laws exist at the Real Estate; (iii) states that no existing, potential or suspect conditions at the Real Estate pose a significant liability to, or restrict the planned use of, the Real Estate; and (iv) is otherwise acceptable to Lender; (b) a survey of the Real Estate locating any structures thereon in form and substance acceptable by the Lender; (c) evidence of required insurances (d) GMP construction contracts, to include plans and specifications, in form and substance acceptable by the Lender; (e) a lender’s policy of the insurance with extended coverage and such endorsements as Lender shall reasonably require in connection with the Real Estate, issued by a title insurer acceptable to Lender; (f) certification that the sites are not located within any flood hazard area; and (g) payment and performance bonds posted by the general contractor. An amount equal to ten percent (10%) of the Initial Deposit Amount will be held separate by Escrow Agent and not disbursed until such time as evidence of completion of the Project is submitted along with the Form of Requisition for such amount. Upon receipt of a Form of Requisition executed by Lender and County, an amount equal to the Costs of the Project as shown therein shall be paid directly by Escrow Agent to the person or entity entitled to payment as specified therein. Any Form of Requisition submitted by County shall include AIA Forms G-702 and G-703 or similar forms approved by the Lender itemizing all costs to be paid with the requisitioned advance and copies of bills, invoices or other documents supporting the payments requested. Although the Form of Requisition may have schedules, invoices and other supporting document attached to it, Lender will send to Escrow Agent only the page or pages showing the signatures of Lender and County, the Costs of the Project and related payment information, without such schedules, invoices or other supporting documentation. Escrow Agent may act and rely upon the signed Form of Requisition without the need to review or verify any such schedules, invoices or other supporting documentation.

Section 3.4. **Transfers Upon Completion.** Unless all of the funds deposited by Lender in the Project Fund have been previously disbursed pursuant to Section 3.3 or paid to Lender pursuant to Section 3.5, on the Completion Date, Escrow Agent shall apply upon written direction all remaining moneys in the Project Fund as provided in Section 4.3 of the IFC costs, if any, which have accrued or been incurred under the Installment Financing Contract, then to overdue Principal Portion and Interest Portion on the Installment Financing Contract and then, in the sole discretion of Lender, either (i) to Principal Portion payments thereafter due under the Installment Financing Contract in the inverse order of their maturities or (ii) proportionately to each Principal Portion payment thereafter due under the Installment Financing Contract. In the event that Lender elects to apply any such amounts in accordance with clause (i) of the preceding sentence, County shall continue to make Installment Financing Contract Payments as scheduled in the Installment Financing Contract Payment Schedule. In the event that Lender elects to apply such amounts in accordance with clause (ii) of this Section 3.4, shall provide County with a

revised Installment Financing Contract Payment Schedule which shall reflect the Principal Portion balance and reduced Installment Financing Contract Payments due under the Installment Financial Contract. Capitalized terms used in this Section 3.4, but not defined herein, shall have the meanings given to such terms the Installment Financing Contract. Escrow Agent shall have no responsibility to see to the appropriate application of any moneys returned under this Section 3.4.

Section 3.5. **Liquidation.** Upon receipt of written notice from Lender or County that the Installment Financing Contract has been terminated pursuant to Sections 13.1(b) thereof, Escrow Agent shall liquidate all investments held in the Project Fund and transfer the proceeds thereof and all other moneys held in the Project Fund to Lender.

ARTICLE IV. TRUST; INVESTMENT

Section 4.1. **Irrevocable Trust.** The moneys and investments held by Escrow Agent under this Escrow Agreement are irrevocably held in trust for the benefit of Lender and County, and such moneys, together with any income or interest earned, shall be expended only as provided in this Escrow Agreement, and shall not be subject to levy or attachment or lien by or for the benefit of any creditor of either Lender or County (other than Lender's security interest granted hereunder).

Escrow Agent shall have no responsibility at any time to ascertain whether or not any security interest exists in the Project Fund or any part of the Project Fund or to file any financing statement under the Uniform Commercial Code of any jurisdiction with respect to the Project Fund or any part thereof.

Section 4.2. **Investment.** Moneys held by Escrow Agent hereunder shall be invested and reinvested by Escrow Agent only in Qualified Investments. Such investments shall be registered in the name of Escrow Agent and held by Escrow Agent for the benefit of Lender and County. Escrow Agent may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Article IV. Such investments and re-investments shall be made giving full consideration for the time at which funds are required to be available. Any income received on such investments shall be credited to the Project Fund and any loss on such investments shall be charged to the Project Fund. Escrow Agent shall not be responsible or liable for any loss suffered in connection with any investment of moneys made by it in accordance with this Article IV.

Section 4.3. **Disposition of Investments.** Escrow Agent shall, without further direction from Lender or County, sell such investments as and when required to make any payment from the Project Fund.

Section 4.4. **Accounting.** Escrow Agent shall keep complete and accurate records of all moneys received and disbursed under this Escrow Agreement which shall be available for inspection by Lender or County, or the agent of either of them, at any time during regular business hours upon prior written request. Escrow Agent shall furnish to Lender and County no less than quarterly an accounting of all investments and interest and income therefrom.

Section 4.5. **Termination.** This Escrow Agreement shall terminate upon disbursement by Escrow Agent of all moneys held by it hereunder. Notwithstanding the foregoing, this Escrow Agreement shall not be considered to be terminated until all fees, costs and expenses of Escrow Agent have been paid in full. Upon termination, Escrow Agent shall be discharged from all duties and responsibilities under this Escrow Agreement.

**ARTICLE V.
ESCROW AGENT'S AUTHORITY; INDEMNIFICATION**

Section 5.1. **Validity.** Escrow Agent may act upon any writing or instrument or signature which it believes to be genuine, may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions hereof has been duly authorized to do so, and Escrow Agent shall be under no duty to make any investigation or inquiry as to any of the foregoing. Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner and execution, or validity of any instrument deposited with it, nor as to the identity, authority or right of any person executing the same.

Escrow Agent shall be entitled to rely upon any statement, certificate, document or instrument presented to it by or on behalf of County by any of the County's Authorized Representatives shown on Schedule I and shall be entitled to rely upon any such statement, certificate, document or instrument presented to it by any other person who identifies himself or herself as an authorized representative of County.

Section 5.2. **Use of Counsel and Agents.** Escrow Agent may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers. Escrow Agent shall be entitled to advice of counsel concerning all matters of trust and its duties hereunder and shall be paid or reimbursed the reasonable fees and expenses of such counsel, as provided in Section 6.1. Escrow Agent shall not be answerable for the default or misconduct of any such attorney, agent, or receiver selected by it with reasonable care.

Section 5.3. **Interpretation.** As an additional consideration for and as an inducement for Escrow Agent to act hereunder, it is understood and agreed that, in the event of any disagreement between the parties to this Escrow Agreement or among them or any other persons resulting in adverse claims and demands being made in connection with or for any money or other property involved in or affected by this Escrow Agreement, Escrow Agent shall be entitled, at the option of Escrow Agent, to refuse to comply with the demands of such parties, or any of such parties, so long as such disagreement shall continue. In such event, Escrow Agent shall make no delivery or other disposition of the Project Fund or any part of the Project Fund. Anything herein to the contrary notwithstanding, Escrow Agent shall not be or become liable to such parties or any of them for the failure of Escrow Agent to comply with the conflicting or adverse demands of such parties or any of such parties.

Escrow Agent shall be entitled to continue to refrain and refuse to deliver or otherwise dispose of the Project Fund or any part thereof or to otherwise act hereunder, as stated above, unless and until:

1. the rights of such parties have been finally settled by binding arbitration or duly adjudicated in a court having jurisdiction of the parties and the Project Fund; or

2. the parties have reached an agreement resolving their differences and have notified Escrow Agent in writing of such agreement and have provided Escrow Agent with indemnity satisfactory to Escrow Agent against any liability, claims or damages resulting from compliance by Escrow Agent with such agreement.

In the event of a disagreement between such parties as described above, Escrow Agent shall have the right, in addition to the rights described above and at the option of Escrow Agent, to tender into the registry or custody of any court having jurisdiction, all money and property comprising the Project Fund and may take such other legal action as may be appropriate or necessary, in the opinion of Escrow Agent. Upon such tender, the parties hereto agree that Escrow Agent shall be discharged from all farther duties and responsibilities under this Escrow Agreement; provided, however, that the filing of any such legal proceedings shall not deprive Escrow Agent of its compensation hereunder earned prior to such filing and discharge of Escrow Agent of its duties and responsibilities hereunder.

The parties hereto jointly and severally agree that, whether under this Section 5.3 or any other provisions of this Escrow Agreement, in the event any controversy arises under or in connection with this Escrow Agreement or the Project Fund or in the event that Escrow Agent is made a party to or intervenes in any litigation pertaining to this Escrow Agreement or the Project Fund, to pay to Escrow Agent reasonable additional compensation for its extraordinary services and to reimburse Escrow Agent for all costs and expenses associated with such controversy or litigation, including reasonable attorney's fees.

Section 5.4. **Limited Liability of Escrow Agent.** Escrow Agent shall not be liable in connection with the performance or observation of its duties or obligations hereunder except for in the case of its proven gross negligence or willful misconduct. Escrow Agent shall have no obligation or liability to any of the other parties under this Escrow Agreement for the failure or refusal of any other party to perform any covenant or agreement made by such party hereunder or under the Installment Financing Contract, but shall be responsible solely for the performance of the duties and obligations expressly imposed upon it as Escrow Agent hereunder.

Section 5.5. **Indemnification.** Escrow Agent shall have no obligation to take any legal action in connection with this Escrow Agreement or towards its enforcement, or to appear in, prosecute or defend any action or legal proceeding which would or might involve it in any cost, expense, loss or liability unless security and indemnity, as provided in this Section 5.5, shall be furnished.

To the extent permitted by applicable law, County agrees to indemnify Escrow Agent and its officers, directors, employees and agents and save Escrow Agent and its officers, directors, employees and agents harmless from and against any and all Claims (as hereinafter defined) and Losses (as hereinafter defined) which may be incurred by Escrow Agent or any of such officers, directors, employees or agents as a result of Claims asserted against Escrow Agent or any of such officers, directors, employees or agents as a result of or in connection with Escrow Agent's capacity as such under this Escrow Agreement by any person or entity. For the purposes hereof,

the term “Claims” shall mean all claims, lawsuits, causes of action or other legal actions and proceedings of whatever nature brought against (whether by way of direct action, counterclaim, cross action or impleader) Escrow Agent or any such officer, director, employee or agent, even if groundless, false or fraudulent, so long as the claim, lawsuit, cause of action or other legal action or proceeding is alleged or determined, directly or indirectly, to arise out of, result from, relate to or be based upon, in whole or in part: (a) the acts or omissions of County, (b) the appointment of Escrow Agent as escrow agent under this Escrow Agreement, or (c) the performance by Escrow Agent of its powers and duties under this Escrow Agreement; and the term “Losses” shall mean losses, costs, damages, expenses, judgments and liabilities of whatever nature (including but not limited to attorneys’, accountants’ and other professionals’ fees, litigation and court costs and expenses and amounts paid in settlement), directly or indirectly resulting from, arising out of or relating to one or more Claims. Upon the written request of Escrow Agent or any such officer, director, employee or agent (each referred to hereinafter as an “Indemnified Party”), and to the extent permitted by law, County agrees to assume the investigation and defense of any Claim, including the employment of counsel acceptable to the applicable Indemnified Party and the payment of all expenses related thereto and, notwithstanding any such assumption, the Indemnified Party shall have the right, and County agrees to pay the cost and expense thereof, to employ separate counsel with respect to any such Claim and participate in the investigation and defense thereof in the event that such Indemnified Party shall have been advised by counsel that there may be one or more legal defenses available to such Indemnified Party which are different from or additional to those available to either Lender or County. County hereby agrees that the indemnifications and protections afforded Escrow Agent in this Section 5.5 shall survive the termination of this Escrow Agreement.

ARTICLE VI. COMPENSATION

Section 6.1. **Escrow Agent Fee.** Escrow Agent shall be paid by County the Escrow Agent Fee shown on Schedule I for the ordinary services to be rendered hereunder (the “Escrow Agent Fee”), and will be paid and/or reimbursed by County upon request for all costs, expenses, disbursements and advances, such as reasonable attorney’s fees and court costs, incurred or made by Escrow Agent in connection with carrying out its duties hereunder, including the costs, expenses, disbursements and advances described in Sections 5.2, 5.3 and 6.2. The Escrow Agent Fee and such other costs, expenses, disbursements and advances shall be payable from the interest earnings from the Project Fund. In the event a shortfall occurs, said shortfall shall be the responsibility of County and not the responsibility of Escrow Agent, Lender, or their agents or assigns. Such shortfall shall be paid by County to Escrow Agent within 30 days following receipt by County of a written statement setting forth such shortfall.

Section 6.2. **Investment Fees.** Escrow Agent shall be entitled to charge reasonable fees and commissions in connection with the investment by it of amounts held in the Project Fund (the “Investment Fees”). Lender and County hereby authorize Escrow Agent to periodically deduct the Investment Fees from investment earnings on the Project Fund. County shall be solely responsible for paying any Investment Fees that are not satisfied through investment earnings.

Section 6.3. **Security for Fees and Expenses.** As security for all fees and expenses of Escrow Agent hereunder and any and all losses, claims, damages, liabilities and expenses incurred by Escrow Agent in connection with its acceptance of appointment hereunder or with the performance of its obligations under this Escrow Agreement and to secure the obligation of County to indemnify Escrow Agent as set forth in Section 5.5, Escrow Agent is hereby granted a security interest in and a lien upon the Project Fund, which security interest and lien shall be prior to all other security interests, liens or claims against the Project Fund or any part thereof.

ARTICLE VII. CHANGE OF ESCROW AGENT

Section 7.1. **Removal of Escrow Agent.** Lender and County, by written agreement, may by written request, at any time and for any reason, remove Escrow Agent and any successor thereto, and shall thereupon appoint a successor or successors thereto, but any such successor shall have capital (exclusive of borrowed capital) and surplus of at least Fifty Million Dollars (\$50,000,000), and be subject to supervision or examination by federal or state authority. If such bank or trust company publishes a report of condition at least annually, pursuant to statute or the requirements of any federal or state supervising or examining authority, then for the purposes of this Section 7.1, the combined capital and surplus of such bank or trust company may be conclusively established in its most recent report of condition so published.

Section 7.2. **Resignation of Escrow Agent.** Escrow Agent may resign at any time from its obligations under this Escrow Agreement by providing written notice to the parties hereto. Such resignation shall be effective on the date set forth in such written notice which shall be no earlier than 30 days after such written notice has been given, unless an earlier resignation date and the appointment of a successor Escrow Agent shall have been approved by Lender and County. In the event no successor escrow agent has been appointed on or prior to the date such resignation is to become effective, Escrow Agent shall be entitled to tender into the custody of a court of competent jurisdiction all assets then held by it hereunder and shall thereupon be relieved of all further duties and obligations under this Escrow Agreement. Escrow Agent shall have no responsibility for the appointment of a successor escrow agent hereunder.

Section 7.3. **Merger or Consolidation.** Any entity into which Escrow Agent may be merged or converted, or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which it shall be a party, or any company to which Escrow Agent may sell or transfer all or substantially all of its corporate trust business (provided that such company shall be eligible under Section 7.1) shall be the successor to Escrow Agent without any execution or filing or further act.

ARTICLE VIII. ADMINISTRATIVE PROVISIONS.

Section 8.1. **Notice.** All written notices to be given under this Escrow Agreement shall be given by mail, by facsimile or by overnight courier to the party entitled thereto at its contact information specified on Schedule I, or at such contact information as the party may provide to the other parties hereto in writing from time to time. Any such notice shall be deemed to have been received 72 hours after deposit in the United States mail in registered or certified form, with

postage fully prepaid, or if given by other means, when delivered at the address or facsimile number specified in Schedule I. Any notice given by any party shall be given to both other parties.

Section 8.2. **Assignment.** Except as expressly herein provided to the contrary, the rights and duties of each of the parties under this Escrow Agreement shall not be assignable to any person or entity without the written consent of all of the other parties. Notwithstanding the above, Lender may freely assign all or any part of its interest in this Escrow Agreement and the Project Fund in connection with an assignment by Lender of its rights under the Installment Financing Contract.

Section 8.3. **Binding Effect.** This Escrow Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

Section 8.4. **Severability.** In the event any provision of this Escrow 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 8.5. **Entire Agreement Amendments.** This Escrow Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous writings, understandings, agreements, solicitation documents and representations, express or implied. By execution of this Escrow Agreement, Escrow Agent shall not be deemed or considered to be a party to any other document, including the Installment Financing Contract.

This Escrow Agreement may be amended, supplemented or modified only by written documents duly authorized, executed and delivered by each of the parties hereto.

Section 8.6. **Captions.** The captions or headings in this Escrow Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions, Articles, Sections or clauses hereof.

Section 8.7. **Further Assurances and Corrective Instruments.** Lender and County agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may be necessary or proper to carry out the intention or to facilitate the performance of the parties under this Escrow Agreement, and for better assuring and confirming the rights and benefits provided herein.

Section 8.8. **Governing Law.** This Escrow Agreement shall be construed and governed in accordance with the laws of the State of North Carolina.

Section 8.9. **Execution in Counterparts.** This Escrow 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 Escrow Agreement.

Section 8.10. **Waiver of Jury Trial.** Lender, County and Escrow Agent hereby waive any right to trial by jury in any action or proceeding with respect to, in connection with or arising out of this Escrow Agreement.

Section 8.11. **No Tax Reporting.** Escrow Agent will not be responsible for tax reporting of any income on the Project Fund.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement as of the Date of Escrow Agreement shown on Schedule I.

SUNTRUST BANK

Escrow Agent

By _____
Name:
Title:

**SUNTRUST EQUIPMENT FINANCE &
LEASING CORPORATION**

Lender

By _____
Name:
Title:

COUNTY OF HENDERSON, NORTH CAROLINA

By: _____
Name:
Title:

ATTEST to County Signature

[SEAL]

By: _____
Name:
Title:

Schedule I Information to Complete Escrow Agreement
Exhibit A Form of Requisition

SCHEDULE I

INFORMATION TO COMPLETE ESCROW AGREEMENT

Date of Escrow Agreement: April 10, 2008

Name of County: COUNTY OF HENDERSON, NORTH CAROLINA

County's State/Commonwealth: North Carolina

Escrow Agent Fee: \$ N/A

Initial Deposit Amount: **\$33,250,000 (DRAFT DOCUMENTS NOT TO EXCEED ESTIMATE/FINAL AMOUNT TO BE DETERMINED BY BOC)**

Date of Installment Financing Contract Agreement: April 10, 2008

Beneficiary Name for Fund: County of Henderson 2008 Installment Financing Project Fund

Ending Date: April 10, 2010

County's Address: County of Henderson, North Carolina
113 North Main Street
Hendersonville, NC 28792

Attention: Finance Director

County's Telephone: (828) 697-4821

County's Facsimile: (828) 697-4569

County's Taxpayer Identification Number: 56-6001967

County's Authorized Representatives: J. Carey McLelland
Charles Russell Burrell

Escrow Agent's Address: SunTrust Bank
MD-CMD 6881
300 East Joppa Road, Suite 700
Towson, Maryland 21204
Attention: Brenda Kircher
(410) 307-6733

Lender's Address: SunTrust Equipment Finance & Leasing Corporation
Hampton Plaza
300 East Joppa Road, Suite 700
Towson, Maryland 21286

Lender's Telephone: 410-307-6621

Lender's Facsimile: 410-307-6613

Lender's Taxpayer Identification Number: 540904325

EXHIBIT A
FORM OF REQUISITION

[SunTrust Bank]

Attention: _____
Fax: _____

**Re: Direction to Make Disbursements from the Henderson
County Project Fund**

Ladies and Gentlemen:

Pursuant to Section 4.3 of the Installment Financing Contract, dated April 10, 2008 (the "Contract"), between SunTrust Equipment Finance & Leasing Corporation and Henderson County, North Carolina (the "County"), you are hereby directed to disburse from the Henderson County Project Fund (the "Project Fund") the amount indicated below.

The undersigned hereby certifies:

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

3. **The amount to be disbursed is \$ _____.**
4. **The purpose of the disbursement is to _____.**
5. **The disbursement herein requested is for an obligation properly incurred, is a proper charge against the Project Fund as a Cost of the Project under the Contract and such obligation has not been the basis of any previous disbursement that has not been repaid to the Project Fund previously pursuant to Section 5.4 (entitled "*Payment and Performance Bonds*") or Section 8.2 (entitled "*Obligation of the County To Repair and Replace the Mortgaged Property*") of the Contract.**

DATED this ____ day of _____, _____.

HENDERSON COUNTY, NORTH CAROLINA

By: _____
County Representative

APPROVED:

[SUNTRUST EQUIPMENT FINANCE & LEASING CORPORATION]

By: _____
Authorized Representative