



Agenda

Greenville City Council

June 1, 2009
6:00 PM
City Council Chambers
200 West Fifth Street

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I. Call Meeting To Order

II. Invocation - Council Member Mercer

III. Pledge of Allegiance

IV. Roll Call

V. Approval of Agenda

VI. New Business

Public Hearings

1. Substantial Amendment to the 2008-09 Community Development Block Grant Annual Action Plan

Other Items of Business

2. Economic stimulus funding
3. Resolution calling for execution and delivery of the Installment Financing Agreement, Deed of Trust, and the Project Fund Agreement for the refinancing of the bonds (Series 1998 Certificate of Participation Bonds) and financing certain street improvements
4. Fiscal Year 2009-2010 Budget

VII. Adjournment



City of Greenville, North Carolina

Meeting Date: 6/1/2009
Time: 6:00 PM

Title of Item: Substantial Amendment to the 2008-09 Community Development Block Grant Annual Action Plan

Explanation: On May 5, 2009, the United States Department of Housing and Urban Development announced the availability of additional funding for the Community Development Block Grant (CDBG) program under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Funding that is available under the Recovery Act has clear purposes--to stimulate the economy through measures that modernize the nation's infrastructure, improve energy efficiency, and expand educational opportunities and health care.

HUD desires that CDBG-R grantees carefully evaluate proposed projects for consistency with the overarching goals of the Recovery Act, especially the above-cited purposes. To that extent, HUD is strongly urging grantees to use CDBG-R funds for hard development costs associated with infrastructure activities that provide basic services to residents or activities that promote energy efficiency and conservation through rehabilitation or retrofitting of existing buildings.

The Recovery Act appropriated \$1 billion of CDBG funding and is distributing \$980 million to grantees that received CDBG funding in FY 2008. The City of Greenville has been allocated \$216,580. The formula used for allocation of CDBG-R funds is the same as the formulas used for the annual allocation of CDBG funds. As a condition of acceptance, recipients of Recovery Act funds must prepare and submit an amendment to the Annual Action Plan to HUD by June 5, 2009. In addition, 50% of the funds must be obligated by the recipient by June 17, 2009.

The City's proposed amendment to the 2008-2009 Annual Action Plan as required by CDBG-R is as follows: \$21,650 Planning and Administration, \$30,000 Public Service Activities, and \$164,930 Housing Rehabilitation.

A copy of the Substantial Amendment is available for review and comment on

the City's Webpage.

Fiscal Note: City to receive \$216,580 CDBG-R funds.

Recommendation: Hold a public hearing to receive citizen comments on Substantial Amendment to the 2008-2009 Annual Action Plan. After the public hearing, approve the amendment and authorize the Mayor to sign all required documents.

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City of Greenville, North Carolina

Meeting Date: 6/1/2009
Time: 6:00 PM

Title of Item: Economic stimulus funding

Explanation: At the May 14, 2009 meeting, the City Council requested that a report on federal economic stimulus funding received by the City be presented at the June 1, 2009 budget meeting.

Since the approval of the American Recovery and Reinvestment Act of 2009 (ARRA) on February 17, 2009, staff has been pursuing all funding opportunities available to the City. The ARRA contains no earmarks and makes funds available through 75 existing grant programs. The City will receive certain grant funds on an entitlement basis, can apply directly to the federal government for some funds, and can apply for federal funds made available through the state. Each program has its own particular grant requirements and time lines.

Attached is a report on the City's economic stimulus funding activity to date. The report does not include any funds received by affiliated agencies such as GUC, the Housing Authority, or Pitt-Greenville Airport.

Fiscal Note: Total economic stimulus funding received or committed to date is \$5,239,683. The City has applied for an additional \$9,848,612 in funding and will make other applications as funding requests are issued by federal and state agencies.

Recommendation: Receive a report on federal economic stimulus funding.

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City of Greenville Project Status Report American Recovery and Reinvestment Act of 2009 June 1, 2009

A. Entitlements

1. Community Development Block Grant
\$216,580 to be used for planning and administration, public service activities, and housing rehabilitation; public hearing will be June 1, 2009.
2. Transit Capital Grant
\$1,478,464 to be used for two hybrid buses, an oil/water separator for the Public Works Facility, a transit storage building, bus shelters, an identification card system, and upgrades to the Reade Street Transfer Point; public hearing conducted on May 14, 2009.
3. Edward Byrne Justice Assistance Grant (Police)
\$340,669 to be used for two police vehicles, 24 patrol vehicle cameras, 10 neighborhood cameras, GPS tracking system, equipment for crime statistics room, and other law enforcement equipment; grant application submitted on May 18, 2009.
4. Energy Efficiency and Conservation Block Grant
\$777,600 to be used for development of energy efficiency and conservation strategies, energy efficiency retrofits, energy efficiency programs for buildings, residential and commercial energy audits, and other energy efficiency initiatives; application to be approved by City Council on June 8, 2009.

B. Direct Grants to City on Competitive Basis

1. Lead Hazard Reduction
\$1,922,370 to be used to remove lead based paint in residential structures for low and moderate income citizens; grant approved on March 6, 2009.
2. COPS Hiring Recovery Program
\$1,687,439 to be used to retain four school resource officers and hire four new police patrol officers; approved by City Council on April 6, 2009 and application submitted on April 14, 2009.
3. Edward Byrne Justice Assistance Grant (Police)
\$171,173 to be used to hire one crime analyst and one public safety systems coordinator; approved by City Council on April 6, 2009 and application submitted on April 27, 2009.

4. Assistance to Fire Fighters Grant Program (Fire Stations)
\$1,500,000 to be used to construct Fire Station #7 on Fire Tower Road; waiting on grant guidelines to be published.

C. Grants to the City through the State

1. Clean Water State Revolving Loan Fund (stormwater)
\$3,490,000 for projects submitted; included Moyewood Stormwater Emergency Repairs (\$600,000), Beatty Street Storm Drainage Repairs (\$900,000), Dickinson/Chestnut Area Storm Drainage Improvement Project (\$1,220,000), Lynndale Storm Drainage Ditch Improvements (\$70,000), and Skinner and Howell Streets Project (\$700,000); none funded in first round of grants.
2. Neighborhood Stabilization Program
\$4,500,000 to be used to purchase, rehabilitate, and re-sell foreclosed residential properties to low to moderate income citizens; prior grant application still pending.
3. Highway Infrastructure
No City projects approved in first round of projects approved by NCDOT; preliminary indication is that City will receive funding in second round for constructing an additional left turn lane on Arlington Blvd. at Stantonsburg Road (\$225,000) and sidewalk projects on Arlington Blvd. from Stantonsburg Road to Dickinson Ave. (\$178,000) and Charles Blvd. from Greenville Blvd. to Red Banks Road (\$101,000).



City of Greenville, North Carolina

Meeting Date: 6/1/2009
Time: 6:00 PM

Title of Item: Resolution calling for execution and delivery of the Installment Financing Agreement, Deed of Trust, and the Project Fund Agreement for the refinancing of the bonds (Series 1998 Certificate of Participation Bonds) and financing certain street improvements

Explanation: At the April 20, 2009 City Council meeting, the City Council approved a resolution calling for a public hearing to refund bonds [Series 1998 Certificates of Participation (COPS)] and to issue new debt for street improvements. During the May 14, 2009 meeting, the City Council conducted the public hearing pertaining to the financing.

Attached is the resolution that approves the proposed Installment Financing Agreement and permits the City Council to approve the documents attached and listed below related to the transaction, in preparation for the June 9, 2009 closing date.

1. Proposed Installment Financing Agreement
2. Deed of Trust
3. Project Fund Agreement

The Installment Financing Agreement will authorize the transaction between the City of Greenville and Branch Banking and Trust Company (BB&T). It will provide funds to refinance the COPs Series 1998 (City of Greenville Public Facilities and Equipment Project) and the financing of street improvements at Thomas Langston Road and Stantonsburg Road/10th Street Connector. The Deed of Trust ensures repayment by the City to the Bank of moneys borrowed. The Project Fund Agreement will allow the City to set up a project fund account with BB&T as a means to deposit the amount borrowed and withdraw funds as required for the project.

Fiscal Note: The July 9, 2009 sale date will include a refunding amount for the Series 1998 COPs (\$7,140,000) and an amount to finance certain street improvements

(\$4,860,000), not to exceed \$12,100,000.

Annual debt service payment amounts are estimated within the FY 2009-2010 proposed budget.

Refunding the Series 1998 COPs debt and issuing new COPs instead of GOs is estimated to generate approximately \$483,000 in interest expense and issuance costs savings.

Recommendation: Adopt the attached resolution approving a proposed Installment Financing Agreement and certain other documents for the refinancing of the bonds (Series 1998 Certificate of Participation Bonds) and financing certain street improvements.

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- [📄 Resolution II Part III June 1 830073](#)
 - [📄 Installment Agreement Resolution 2 Part I June 1 830068](#)
 - [📄 Deed of Trust Part II June 1 830071](#)
 - [📄 Bank Project Fund June1 Part IV 830074](#)
-

A regular meeting of the City Council of the City of Greenville, North Carolina was held in the City Council Chamber at the City Hall in Greenville, North Carolina, the regular place of meeting, on June 1, 2009 at 6:00 p.m.

Present: Mayor Patricia C. Dunn, presiding, and Council members _____

Absent: _____

* * * * *

Mayor Dunn introduced the following resolution, a copy of which had been provided to each Council member, and which was read by its title:

RESOLUTION NO. 2009 - __

RESOLUTION APPROVING A PROPOSED INSTALLMENT FINANCING AGREEMENT TO PROVIDE FOR (i) THE REFINANCING OF CERTAIN OUTSTANDING CERTIFICATES OF PARTICIPATION SERIES 1998 (CITY OF GREENVILLE PUBLIC FACILITIES AND EQUIPMENT PROJECT) AND (ii) FINANCING CERTAIN STREET IMPROVEMENTS, APPROVING CERTAIN OTHER DOCUMENTS AND ACTIONS RELATING THERETO AND AUTHORIZING OTHER OFFICIAL ACTION IN CONNECTION THEREWITH

WHEREAS, the City of Greenville, North Carolina (the “City”) has determined that it is necessary and expedient to (i) refinance outstanding Certificates of Participation Series 1998 (City of Greenville Public Facilities and Equipment Project) maturing June 1, 2010 – 2013 inclusive, June 1, 2016 and June 1, 2020 (the “Refinancing”) and (ii) finance certain street improvements in the City (the “New Project” and together with the Refinancing the “Project”); and

WHEREAS, in order to effectuate the financing of the Project, the City and Branch Banking and Trust Company (the “Bank”) propose to enter into an Installment Financing Agreement (as hereinafter defined), pursuant to the authority granted to the City under Section 160A-20 of the General Statutes of North Carolina; and

WHEREAS, in connection with such financing, it is necessary for the City to approve certain other documents relating thereto and to authorize certain action in connection therewith; and

WHEREAS, there have been presented at this meeting copies of the following documents relating to the financing of the Project:

(a) a draft of the proposed Installment Financing Agreement, to be dated as of June 9, 2009 or another mutually agreeable date (the "Installment Financing Agreement"), between the City and the Bank, pursuant to which the Bank will make available to the City funds which to finance the cost of the Project and costs relating to the execution and delivery of the Installment Financing Agreement, and the City will, among other requirements, be obligated to make Installment Payments (as defined in the Installment Financing Agreement) and certain other payments; and

(b) a draft of the proposed Deed of Trust, to be dated as of June 9, 2009 or another mutually agreeable date (the "Deed of Trust"), from the City to F. Louis Loyd, III, as deed of trust trustee, for the benefit of the Bank, by which the City will secure its obligations to the Bank under the Installment Financing Agreement; and

(c) a draft of the proposed Project Fund Agreement, to be dated as of June 9, 2009 or another mutually agreeable date (the "Project Fund Agreement"), pursuant to which certain of the funds made available by the Bank to finance the cost of the Project under the Installment Financing Agreement will be deposited in a special account of the City at the Bank;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREENVILLE:

Section 1. Capitalized words and terms used in this resolution and not defined herein shall have the same meanings in this resolution as such words and terms are given in the Installment Financing Agreement.

Section 2. The forms, terms and provisions of the Installment Financing Agreement, the Deed of Trust and the Project Fund Agreement are hereby approved in all respects, and the Mayor, the City Manager, the Director of Financial Services, the City Attorney and the City Clerk are hereby authorized and directed to execute and deliver the Installment Financing Agreement, the Deed of Trust and the Project Fund Agreement, in substantially the forms presented at this meeting, together with any changes, modifications and deletions as they, with the advice of counsel, may deem necessary and appropriate; such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the City.

Section 3. The Mayor, the City Manager, the Director of Financial Services, the City Attorney and the City Clerk are authorized and directed to take such action and to execute and deliver such documents, certificates, undertakings, agreements and other instruments as they, with the advice of counsel, may deem necessary or appropriate to effectuate the transactions

contemplated by the Installment Financing Agreement, the Deed of Trust and the Project Fund Agreement

Section 4. The City hereby represents that it reasonably expects that it and all subordinate entities thereof will not issue more than \$30,000,000 of tax-exempt obligations (not counting private-activity bonds except for qualified 501(c)(3) bonds as defined in the Code) during calendar year 2009. In addition, the City hereby designates the Installment Financing Agreement and its payment obligations as a “qualified tax-exempt obligation” for the purposes of Section 265(b)(3) of the Code.

Section 5. This resolution shall take effect immediately upon its passage.

Adopted this the 1st day of June, 2009.

Patricia C. Dunn
Mayor

ATTEST:

Wanda T. Elks
City Clerk

After consideration of the foregoing resolution, Council member _____
moved for the passage thereof, which motion was duly seconded by Council member
_____, and the foregoing resolution was passed by the following vote:

Ayes: _____
_____.

Noes: _____.

* * * * *

I, Wanda T. Elks, City Clerk of the City of Greenville, North Carolina, DO HEREBY
CERTIFY that the foregoing has been carefully copied from the recorded minutes of the City
Council of said City at a meeting held on June 1, 2009, said record having been made in Minute
Book No. ___ of the minutes of said City Council, beginning at page ___ and ending at page
___, and is a true copy of so much of said proceedings of said City Council as relates in any way
to the passage of the resolution described in said proceedings.

WITNESS my hand and the official seal of said City, this ___ day of June, 2009.

City Clerk

[SEAL]

Sidley Austin LLP draft 5/15/2009

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

Bernita W. Demery
Director of Financial Services

INSTALLMENT FINANCING AGREEMENT

Dated as of June [9], 2009

between

CITY OF GREENVILLE, NORTH CAROLINA

and

BRANCH BANKING AND TRUST COMPANY

[\$12,100,000]
Tax-Exempt Installment Financing

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SECTION 3.1. <u>Advancement.</u> In consideration of the covenants, warranties and representations contained herein, and in consideration of the City’s agreement to repay the moneys advanced hereunder and interest thereon, the Bank advances \$12,100,000.00 to the City on the Closing, and the City hereby accepts the Advancement from the Bank. The Bank shall advance _____ on the date hereof to the escrow agent for the Refinancing and make a deposit of \$_____ to a Project Fund (the “Project Fund”) as provided in a Project Fund Agreement dated as of June [9], 2009 (the “Project Fund Agreement”) between the City and Bank. All amounts on deposit from time to time in the Project Fund, including the portion of the Advancement deposited in such Project Fund and all investment earnings, shall be used only for New Money Project Costs until the Project Fund is terminated as provided under the Project Fund Agreement.	9
SECTION 3.2. <u>Project.</u> The City shall cause the New Money Project to be completed within ____ years from the date hereof and in compliance with all applicable ordinances and statutes and requirements of all regularly constituted authorities having jurisdiction over the same. The City shall cause the	

Refinancing to occur at or prior to Closing in compliance with all applicable ordinances and statutes and requirements of all regularly constituted authorities having jurisdiction over the same. Prior to or simultaneously with the disbursement of the proceeds of the Advancement to pay the purchase price for the Project, the City shall subject the Mortgaged Property to the lien and security interest created by the Deed of Trust.....9

SECTION 3.3. Payment of Project Costs and Closing Costs. The City shall be obligated to pay all Project Costs and the Closing Costs when the same become due and payable from the proceeds of the Advancement or other available funds of the City.....9

SECTION 3.4. Disclaimer of Bank. The City acknowledges and agrees that the Bank (a) has not made any recommendation, given any advice nor taken any other action with respect to (i) the acquisition of the Project or any component part thereof or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Project or any component part thereof or any property or rights relating thereto at any stage of the acquisition thereof, (b) has not at any time had physical possession of the Project or any component part thereof or made any inspection thereof or any property or rights relating thereto, and (c) has not made any warranty or other representation, express or implied, that the Project or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly used, or will accomplish the results which the City intends therefor, or (iii) is safe in any manner or respect.9

ARTICLE IV 11

SECURITY FOR REPAYMENT.....11

SECTION 4.3. Deed of Trust. In order to secure its obligations under this Agreement, including its obligation to make the Installment Payments hereunder, the City will execute and deliver the Deed of Trust simultaneously with the execution and delivery of this Agreement.....13

SECTION 4.4. No Set-Off; Recoupment, Etc. Subject to Section 4.2 and the Enforcement Limitation, the obligation of the City to make the Installment Payments hereunder and to perform and observe the other covenants of this Agreement shall be absolute and unconditional, and the City will pay without abatement, diminution or deduction all such amounts regardless of any cause or circumstance whatsoever, including, without limitation, any defense, set-off, recoupment or counterclaim that the City may have against the Bank.....13

ARTICLE V 14

INSURANCE 14

SECTION 5.1. Comprehensive General Liability. The City shall at its own expense, acquire, carry and maintain or cause to be maintained throughout the term of this

Agreement, a comprehensive general liability policy or policies in an amount not less \$2,000,000 for personal injury or death and \$2,000,000 for property damage in protection of the City, its officers, agents and employees. Said policy shall cover such losses and for such amounts (equal to or in excess of the amounts set forth above) and shall have such deductible amounts as shall be satisfactory to the City Council and, in the judgment of the City Council, shall protect the City against losses not protected under the principles of sovereign immunity. The net proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid. Such policies shall include the Bank as an additional insured with respect to occurrences at the Mortgaged Property.14

SECTION 5.2. Workers' Compensation. The City shall maintain workers' compensation insurance issued by a responsible carrier authorized under the laws of the State to insure its employees against liability for compensation under the laws now in force in the State, or any act hereafter enacted as an amendment or supplement thereto or in lieu thereof. The proceeds of such workers' compensation insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.14

SECTION 5.3. Insurance. (a) The City shall procure and maintain, or cause to be procured and maintained, throughout the term of this Agreement, insurance against loss or damage to any portion of the Mortgaged Property by fire and lightning, with extended coverage, and vandalism, theft and malicious mischief insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke, broken windows and other structural glass, falling objects, water damage and such other hazards as are normally covered by such insurance. Such insurance policies shall name the Bank as a mortgagee.14

SECTION 5.4. Title Insurance. The City shall obtain at the time of execution of this Agreement, and cause to be maintained, a mortgagee's title insurance policy on the Mortgaged Property insuring the City's fee simple interest in the Mortgaged Property, subject only to Permitted Encumbrances, in an amount equal to the aggregate Installment Payments designated as principal, naming the Bank as the named insured.15

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SECTION 6.1. Obligation of the City to Repair and Replace the Mortgaged Property. Unless applied to the payment in full of the remaining Installment Payments pursuant to Section 6.2, in the event that the Net Proceeds arising from any single event, or any single substantially related sequence of events, is more than \$50,000, then the City shall cause such Net Proceeds to be paid to an escrow agent (which shall be a bank, trust company or similar entity exercising fiduciary responsibilities) for deposit in a special escrow fund to

be held by such escrow agent. Except as set forth in Section 6.2, the City shall provide for the application of all Net Proceeds to the prompt completion, repair or restoration of the Mortgaged Property, as the case may be. The escrow agent shall disburse Net Proceeds for the payment of such costs upon receipt of requisitions in substantially the form of Exhibit A to the Project Fund Agreement. Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of such Net Proceeds shall be the property of the City, subject to the Deed of Trust and Permitted Encumbrances, and shall be included as part of the Mortgaged Property under this Agreement.17

SECTION 6.3. Cooperation of the Bank. The Bank shall cooperate fully with the City in filing any proof of loss with respect to any insurance policy covering the events specified in Section 5.1. In no event shall the Bank or the City 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.....18

ARTICLE VII 19

SECTION 7.1. Installation of Additional Improvements. The City may at any time and from time to time, in the sole discretion of the City, and at its own expense, construct real property improvements and install items of equipment or other personal property in or upon any portion of the Mortgaged Property that does not materially impair the effective use, nor materially decrease the value, of the Mortgaged Property; provided, however, that the City shall repair and restore any and all damage resulting from the construction, installation, modification or removal of any such items. All such items provided by the City shall be subject to the lien of the Deed of Trust.19

SECTION 7.2. Access to the Mortgaged Property. The City agrees that the Bank and its agents and employees, shall have the right, at all reasonable times during normal business hours of the City upon the furnishing of reasonable notice to the City under the circumstances, to enter upon the Mortgaged Property or any portion thereof to examine and inspect the same. The City further agrees that the Bank and the Bank’s successors, assigns or designees shall have such rights of access to the Mortgaged Property as may be reasonably necessary to cause the proper maintenance of the Mortgaged Property in the event of failure by the City to perform its obligations hereunder. No right of inspection shall be deemed to impose on the Bank any duty or obligation whatsoever to undertake any inspection, and no inspection made by the Bank shall be deemed to impose upon the Bank any duty or obligation to identify any defects in the Mortgaged Property or to notify any person with respect thereto.....19

SECTION 7.3. Maintenance, Utilities, Taxes and Assessments. (a) Subject to the Enforcement Limitation, the City shall provide for the repair and replacement of any portion of the Mortgaged Property required on account of ordinary wear and tear or want of care.....19

(b) Subject to the Enforcement Limitation, the City shall also pay, or provide for the payment of, all taxes and assessments, including, but not limited to, utility charges of

any type or nature levied, assessed or charged against any portion of the Mortgaged Property; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid as and when the same become due.....19

SECTION 7.4. Modification of the Mortgaged Property. The City shall, in its sole discretion and at its own expense, have the right to make additions, modifications and improvements to any portion of the Mortgaged Property if such additions, modifications or improvements are necessary or beneficial for the use of the Mortgaged Property. Such additions, modifications and improvements shall not in any way damage any of the Mortgaged Property (unless such damage is to be repaired as provided in Section 6.1) or cause the Mortgaged Property to be used for purposes other than those authorized under the provisions of law, and the Mortgaged Property, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is not less than the value of the Mortgaged Property immediately prior to the making of such additions, modifications and improvements. Such modification to the Mortgaged Property shall be subject to the lien of the Deed of Trust.20

SECTION 7.5. Encumbrances. Except as provided in this Article (including, without limitation, Section 7.4 and this Section), the City shall not, directly or indirectly, create, incur, assume or suffer to exist any pledge, lien, charge, encumbrance or claim, as applicable, on or with respect to the Mortgaged Property, other than Permitted Encumbrances. Except as expressly provided in this Article and subject to the Enforcement Limitation, the City shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such pledge, lien, charge, encumbrance or claim for which it is responsible if the same shall arise at any time; provided, however, that the City may contest any such lien, charge, encumbrance or claim if it desires to do so and if it provides the Bank with full security against any loss or forfeiture which might arise from the nonpayment of any such item in form satisfactory to the Bank. .20

SECTION 7.6. Indemnification of the Bank. To the fullest extent permitted by law, the City covenants to defend, indemnify and hold harmless the Bank, the LGC and its officers, directors, members, employees and agents (collectively, the “Indemnified Parties”) against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such Indemnified Parties may become subject under any statute or at law or in equity or otherwise in connection with the transactions contemplated by this Agreement or the Deed of Trust and shall reimburse any such Indemnified Parties for any legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of the transactions contemplated by this Agreement or the Deed of Trust; provided, however, that the right to

indemnification set forth in this Section shall not apply to any losses arising from any action taken by, or failure to act by, the Bank or any of its officers, directors, members, employees and agents. In particular, without limitation, the City shall and hereby agrees to indemnify and save the Indemnified Parties harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of any breach or default on the part of the City in the performance of any of its obligations under this Agreement or the Deed of Trust.20

SECTION 7.7. Financial Statements. The City agrees that it will furnish the Bank, when the same become available, but in no event later than 270 days after the end of the Fiscal Year, its annual audited financial statements and, at the Bank’s request, will furnish the Bank information regarding its annual budget as submitted or approved.....21

ARTICLE VIII 22

ASSIGNMENT, LEASING AND AMENDMENT22

SECTION 8.1. [Assignment by the Bank. The Bank may, at any time and from time to time, assign to any bank, insurance company or similar financial institution all or any part of its interest in the Mortgaged Property or this Agreement, including, without limitation, the Bank’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. The City agrees that this Agreement may become part of a pool of obligations at the Bank’s or its assignee’s option. The Bank or its assignees may assign or reassign either the entire pool or any partial interest herein to any bank, insurance company or similar financial institution. Notwithstanding the foregoing, no assignment or reassignment of the Bank’s interest in the Mortgaged Property or this Agreement shall be effective unless and until the City 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 City covenants and agrees with the Bank and each subsequent assignee of the Bank to maintain for the full term of this Agreement a written record of each such assignment or reassignment. The City agrees to execute any document reasonably required by the Bank in connection with any assignment. Notwithstanding any assignment by the Bank of its interest in this Agreement, the City shall not be obligated to provide any financial or other information to any assignee of the Bank except as set forth in Section 7.7.].....22

SECTION 8.2. Assignment by the City. (a) This Agreement may not be assigned by the City. 22

ARTICLE IX 24

EVENTS OF DEFAULT AND REMEDIES24

SECTION 9.1. Events of Default Defined. The following shall be “events of default” under this Agreement and the terms “events of default” and “default” shall mean, whenever they are used in this Agreement, any one or more of the

following events:.....24

SECTION 9.2. Remedies on Default. Upon the occurrence of any event of default under Section 9.1, the Bank may, without any further demand or notice, exercise any one or more of the following remedies:25

SECTION 9.3. No Remedy Exclusive. No remedy conferred herein upon or reserved to the Bank is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. To the extent permitted by law, any delay or omission to exercise any right or power accruing upon any default shall not impair any such right or power nor shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Bank to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required in this Article or by law.25

SECTION 9.4. Agreement to Pay Attorneys’ Fees and Expenses. In the event the City should default under any of the provisions hereof and the Bank should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the City contained herein, the City agrees that it will pay on demand to the Bank, subject to the limitations and provisions of Section 6-21.2 of the General Statutes of North Carolina, as amended, the reasonable fees of such attorneys and such other expenses so incurred by the Bank. For purposes of this Section, the reasonable fees of attorneys shall mean attorneys’ fees actually incurred at such attorneys’ standard hourly rate for such services and shall not be based on any percentage of the outstanding amount due; provided, however that such attorneys’ fees shall not exceed the maximum amount permitted by law.25

SECTION 9.5. No Additional Waiver Implied by One Waiver. In the event any provision contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder except as may be provided by law.26

ARTICLE X 27

PREPAYMENT OF INSTALLMENT PAYMENTS27

SECTION 10.1. Prepayment of Installment Payments. The principal component of the Installment Payments may be prepaid in whole on a scheduled Installment Payment Date, [with at least three (3) days’ prior written notice to the Bank], by payment of an amount equal to the principal amount to be prepaid, plus accrued interest to the prepayment date, plus a prepayment fee of 1% of the principal amount to be prepaid.]27

MISCELLANEOUS 28

SECTION 11.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received upon the

earlier of actual receipt or three days after deposit in the United States first-class, registered or certified mail (unless otherwise provided herein), postage prepaid, at the following addresses:.....28

SECTION 11.4. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the City and the Bank and their respective successors and assigns. Whenever in this Agreement either the City or the Bank is named or referred to, such reference shall be deemed to include the successors or assigns thereof and all the covenants and agreements in this Agreement contained by or on behalf of the City or the Bank shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.28

SECTION 11.5. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.29

SECTION 11.6. Execution in Counterparts. This Agreement 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.29

SECTION 11.8. Applicable Law. This Agreement shall be construed and governed in accordance with the laws of the State of North Carolina.....29

IN WITNESS WHEREOF, the City and the Bank have caused this Agreement to be executed in their respective names by their respective duly authorized officers as of the date first above written.....30

INSTALLMENT FINANCING AGREEMENT

This INSTALLMENT FINANCING AGREEMENT, dated as of [June 9, 2009] (the “Agreement”), between the CITY OF GREENVILLE, NORTH CAROLINA, a municipal corporation duly organized and validly existing under the laws of the State of North Carolina (the “City”), and BRANCH BANKING AND TRUST COMPANY, a national banking association duly organized and existing under the laws of the United States of America (the “Bank”);

WITNESSETH:

WHEREAS, the City is a municipal corporation duly organized and validly existing under and by virtue of the Constitution and laws of the State of North Carolina;

WHEREAS, pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended, the City may finance or refinance the acquisition of property and the construction of fixtures or improvements on real property by contracts that create in the fixtures or improvements, or in all or some portion of the property upon which the fixtures or improvements are located, or in both, a security interest to secure repayment of the moneys advanced or made available for construction;

[WHEREAS, after a public hearing and due consideration, the City Council of the City has determined to refinance the City’s outstanding Certificates of Participation Series 1998 (City of Greenville Public Facilities and Equipment Project) maturing June 1, 2010 – June 1, 2013, inclusive, June 1, 2016 and June 1, 2020 and finance the construction, reconstruction, widening, extending, resurfacing and improving Thomas Langston Road and the Statonsburg Road/10th Street Connector including traffic controls and lighting, and acquiring any necessary right of way thereof (collectively, the “Project”);]

WHEREAS, in order for the City to obtain the funds to pay the costs of the Project, the City has determined to enter into this Agreement whereby the Bank will advance funds to the City to pay the costs of the Project, and the City will repay such advancement with interest in installments pursuant to the terms of this Agreement;

WHEREAS, as security for the performance of its obligation under this Agreement, including the payment of the installment payments hereunder, the City will execute and deliver a Deed of Trust, dated as of the date hereof (the “Deed of Trust”), to the Deed of Trust trustee named therein, for the benefit of the Bank, pursuant to which the City will grant a lien on the Sites (hereafter defined) and all of the buildings, improvements and fixtures located and to be located thereon;

WHEREAS, the Bank is willing to advance moneys to the City for payment of the costs of the Project, and the City is willing to repay the moneys so advanced by the Bank in installments as more fully provided herein; and

WHEREAS, the City and the Bank have each duly authorized the execution and delivery of this Agreement.

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

SECTION 1.1. Definitions and Rules of Construction. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa. The words “hereby”, “herein”, “hereof”, “hereto”, “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof. All references herein to “Articles”, “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement unless some other reference is indicated.

“Act” means Section 160A-20 of the General Statutes of North Carolina, as amended.

“Advancement” means the advance being made by the Bank to the City pursuant to Section 3.1 of this Agreement relating to the acquisition of the Project.

“Additional Payments” means any of the Bank’s reasonable and customary fees and expenses related to the transactions contemplated by this Agreement, any of the Bank’s expenses (including attorneys’ fees) in prosecuting or defending any action or proceeding in connection with this Agreement, any required license or permit fees, state and local sales and use or ownership taxes or property taxes which the Bank is required to pay as a result of this Agreement, inspection and re-inspection fees, and any other amounts payable by the City (or paid by the Bank on the City’s behalf) as a result of its covenants under this Agreement (together with interest that may accrue on any of the above if the City shall fail to pay the same, as set forth in this Agreement).

“Agreement” means this Installment Financing Agreement, including any amendment or supplement hereto permitted herein.

“Bank” means Branch Banking and Trust Company, a national banking association organized and existing under the laws of the United States of America, and any successor thereto.

“City” mean the City of Greenville, North Carolina, a municipal corporation duly organized and validly existing under and by virtue of the Constitution and laws of the State of North Carolina, and any successor entity.

“City Council” means the City Council of the City.

“Closing” means the date on which the City executes and delivers this Agreement, and the Bank makes the Advancement to the City.

“Closing Costs” means and further includes all items of expense directly or indirectly payable by or reimbursable to the City relating to the financing of the Project, including, but not limited to, filing and recording costs, title insurance premiums, settlement costs, printing costs, word processing costs, reproduction and binding costs, legal fees and charges and financing and other professional consultant fees.

“Deed of Trust” means the Deed of Trust, of even date herewith, from the City to the Deed of Trust Trustee, for the benefit of the Bank, securing the Installment Payments and other obligations specified hereunder and thereunder, as supplemented and amended from time to time.

“Deed of Trust Trustee” means the person or other entity at the time serving as trustee under the Deed of Trust.

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

“Enforcement Limitation” means the provisions of the Act that provide that no deficiency judgment may be rendered against the City in any action for breach of a contractual obligation incurred under the Act and that the taxing power of the City is not and may not be pledged directly or indirectly to secure any moneys due under this Agreement.

“Event of Nonappropriation” means (a) the failure by the City Council to budget and appropriate in its budget for the ensuing Fiscal Year adopted on or about June 30 of each year moneys sufficient to pay all Installment Payments and any reasonably estimated Additional Payments under this Agreement coming due in the next ensuing Fiscal Year or (b) the City Council’s deletion from its duly adopted budget of any appropriation for the purposes specified in clause (a). In the event that during any Fiscal Year, any Additional Payments shall become due that were not included in the City’s current budget, and if there are no moneys available to pay such Additional Payments prior to the date upon which such Additional Payments are due, an Event of Nonappropriation shall be deemed to have occurred upon notice by the Bank to the City to such effect.

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

“Fiscal Year” means the period beginning on July 1 of any year and ending on June 30 of the following year.

“Inclusion Date” means the effective date that the interest component of the Installment Payments relating to the Advancement made by the City under this Agreement is includable in the gross income of the Bank as a result of a Determination of Taxability.

“Installment Payment Date” means each of the dates set forth on the Installment Payment Schedule attached hereto.

“Installment Payments” means the payments required to be paid by the City pursuant to Section 4.1 in order to repay the Advancement, as specified in Exhibit A.

“LGC” means the Local Government Commission of North Carolina established pursuant to Chapter 159 of the North Carolina General Statutes.

“Mortgaged Property” means the property subject to the lien of the Deed of Trust, consisting of the Sites, together with substantially all of the buildings, improvements and fixtures located or to be located thereon.

“Net Proceeds” means any proceeds of insurance paid with respect to the Mortgaged Property remaining after payment therefrom of any expenses (including attorneys’ fees) incurred in the collection thereof or any proceeds received in a condemnation proceeding.

[“New Money Project” means financing the construction, reconstruction, widening, extending, resurfacing and improving Thomas Langston Road and the Statonsburg Road/10th Street Connector including traffic controls and lighting, and acquiring any necessary right of way thereof.]

[“New Money Project Costs” means with respect to any item or portion of the New Money Project, the contract price paid or to be paid therefor upon the construction or equipping thereof, including any reimbursement of the City for any expenditure made by it with respect thereto. New Money Project Costs include the administrative, engineering, legal, financial and other costs incurred by the City in connection with the construction and equipping of the New Money Project.]

“Permitted Encumbrances” means and includes (a) liens for taxes, assessments and other governmental charges due but not yet payable; (b) landlord’s, warehouseman’s, carrier’s, worker’s, vendor’s, mechanic’s and materialmen’s liens and similar liens incurred in the ordinary course of business remaining undischarged for not longer than sixty (60) days from the filing thereof; (c) attachments remaining undischarged for not longer than sixty (60) days from the making thereof; (d) liens in respect of pledges or deposits under workers’ compensation laws, unemployment insurance or similar legislation and in respect of pledges or deposits to secure bids, tenders, contracts (other than contracts for the payment of money), leases or statutory obligations, or in connection with surety, appeal and similar bonds incidental to the conduct of litigation; (e) the lien created by the Deed of Trust and any lease of all or any portion of the Mortgaged Property permitted by Section 8.2; (f) this Agreement; (g) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which the City certifies in writing to the Bank will not materially impair the use of the Project for its intended purpose or the marketability of the Mortgaged Property; (h) any mortgage or encumbrance on the Mortgaged Property consented to by the Bank pursuant to Section __ of the Deed of Trust; and (i) any other encumbrances described in Exhibit __ to the Deed of Trust.

“Project” means collectively the New Money Project and the Refinancing.

“Project Costs” means collectively the New Money Project Costs and the amount required for the Refinancing.

“Refinancing” means the refinancing of the City’s outstanding Certificates of Participation Series 1998 (City of Greenville Public Facilities and Equipment Project) maturing June 1, 2010 – June 1, 2013, inclusive, June 1, 2016 and June 1, 2020.

“Sites” means the real property identified in Exhibit A to the Deed of Trust.

“State” means the State of North Carolina.

SECTION 1.2. Exhibits. The following exhibits are attached to, and by reference made a part of, this Agreement:

Exhibit A: Installment Payment Schedule

ARTICLE II

REPRESENTATIONS OF THE CITY AND BANK

SECTION 2.1. Representations, Covenants and Warranties of the City. The City represents, covenants and warrants to the Bank as follows:

(a) The City is a municipal corporation duly organized and validly existing under and by virtue of the Constitution and laws of the State of North Carolina.

(b) The Constitution and laws of the State authorize the City to execute and deliver this Agreement and the Deed of Trust and to enter into the transactions contemplated by and to carry out its obligations under this Agreement and the Deed of Trust.

(c) The City has duly authorized and executed this Agreement and the Deed of Trust in accordance with the Constitution and laws of the State.

(d) Neither the execution and delivery of this Agreement and 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, restriction or any agreement or instrument to which the City is now a party or by which the City is bound, or constitutes a default under any of the foregoing.

(e) No approval or consent is required from any governmental authority with respect to the entering into or performance by the City of this Agreement, the Deed of Trust and all other documents related 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 City challenging the validity or enforceability of this Agreement, the Deed of Trust or any other documents relating hereto and the performance of the City's obligations hereunder and thereunder.

(g) The City will obtain or cause to be obtained all licenses, permits and other approvals of any other governmental entity having jurisdiction over the City or the Project that are necessary for the Project.

SECTION 2.2. Representations, Covenants and Warranties of the Bank. The Bank represents, covenants and warrants to the City as follows:

(a) [The Bank is a national banking association organized, existing and in good standing under and by virtue of the laws of the United States of America and has the power and authority to enter into this Agreement.]

(b) Neither the execution and delivery of this Agreement 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 Bank or any restriction or any agreement or instrument to which the Bank is now a party or by which the Bank is bound.

ARTICLE III

ADVANCEMENT; ACQUISITION OF PROJECT

SECTION 3.1. Advancement. In consideration of the covenants, warranties and representations contained herein, and in consideration of the City's agreement to repay the moneys advanced hereunder and interest thereon, the Bank advances \$12,100,000.00 to the City on the Closing, and the City hereby accepts the Advancement from the Bank. The Bank shall advance _____ on the date hereof to the escrow agent for the Refinancing and make a deposit of \$ _____ to a Project Fund (the "Project Fund") as provided in a Project Fund Agreement dated as of June [9], 2009 (the "Project Fund Agreement") between the City and Bank. All amounts on deposit from time to time in the Project Fund, including the portion of the Advancement deposited in such Project Fund and all investment earnings, shall be used only for New Money Project Costs until the Project Fund is terminated as provided under the Project Fund Agreement.

SECTION 3.2. Project. The City shall cause the New Money Project to be completed within ____ years from the date hereof and in compliance with all applicable ordinances and statutes and requirements of all regularly constituted authorities having jurisdiction over the same. The City shall cause the Refinancing to occur at or prior to Closing in compliance with all applicable ordinances and statutes and requirements of all regularly constituted authorities having jurisdiction over the same. Prior to or simultaneously with the disbursement of the proceeds of the Advancement to pay the purchase price for the Project, the City shall subject the Mortgaged Property to the lien and security interest created by the Deed of Trust.

SECTION 3.3. Payment of Project Costs and Closing Costs. The City shall be obligated to pay all Project Costs and the Closing Costs when the same become due and payable from the proceeds of the Advancement or other available funds of the City.

SECTION 3.4. Disclaimer of Bank. The City acknowledges and agrees that the Bank (a) has not made any recommendation, given any advice nor taken any other action with respect to (i) the acquisition of the Project or any component part thereof or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Project or any component part thereof or any property or rights relating thereto at any stage of the acquisition thereof, (b) has not at any time had physical possession of the Project or any component part thereof or made any inspection thereof or any property or rights relating thereto, and (c) has not made any warranty or other representation, express or implied, that the Project or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly used, or will accomplish the results which the City intends therefor, or (iii) is safe in any manner or respect.

THE BANK MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE PROJECT OR ANY COMPONENT PART THEREOF TO THE CITY 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; COMPLIANCE THEREOF WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO; ANY LATENT DEFECT; THE TITLE TO OR INTEREST OF THE BANK THEREIN BEYOND THAT TITLE OR INTEREST WHICH THE CITY OBTAINS FROM THE BANK PURSUANT HERETO; THE ABILITY THEREOF TO PERFORM ANY FUNCTION; THAT THE PROCEEDS DERIVED FROM THE ADVANCEMENTS WILL BE SUFFICIENT, TOGETHER WITH ANY OTHER AVAILABLE FUNDS OF THE CITY, TO PAY THE COST OF ACQUIRING THE PROJECT; OR ANY OTHER CHARACTERISTICS OF THE PROJECT, IT BEING AGREED THAT ALL RISKS RELATING TO THE PROJECT, THE ACQUISITION THEREOF OR THE TRANSACTIONS CONTEMPLATED HEREBY ARE TO BE BORNE BY THE CITY, AND THE BENEFITS OF ANY AND ALL IMPLIED WARRANTIES AND REPRESENTATIONS OF THE BANK ARE HEREBY WAIVED BY THE CITY.

ARTICLE IV

REPAYMENT OF THE ADVANCEMENT; SECURITY FOR REPAYMENT

SECTION 4.1. Repayment of the Advancement. (a) The City shall repay the Advancement, with interest, computed at the rate of [3.79% per annum (calculated based upon the a 360-day year consisting of twelve 30-day months)], in installments due at the times and in the amounts set forth in Exhibit A.

(b) All payments required to be made to the Bank hereunder shall be made by wire transfer to

[Branch Banking and Trust Company
ABA #: _____
For credit to Account # _____
City of Greenville
Telephone: _____]

or as may otherwise be directed by the Bank.

(c) In the event of a Determination of Taxability, the interest rate relating to the Advancement payable under this Agreement, from and after the Inclusion Date, shall be adjusted to preserve the Bank's after-tax economic yield with respect to the interest components of the Installment Payments relating to the Advancement. [In the event that there is a final determination by the Internal Revenue Service or a court of competent jurisdiction that, from the date of issuance, the Advancement or any portion thereof is not a "qualified tax-exempt obligation" as defined in Section 265(b)(3) of the Internal Revenue Code of 1986, as amended, the interest rate relating to the Advancement or any portion thereof will be increased __ basis points (__%) retroactive to the date of issuance.] In addition, the City shall pay to the Bank (i) an amount necessary to reimburse the Bank for any interest, penalties, or other charges assessed by the Internal Revenue Service and the Department of Revenue by reason of the Bank's failure to include the interest portion of the Installment Payments relating to the Advancement in its gross income for income tax purposes, and (ii) upon request of the Bank, additional interest as a result of the increase in the interest rate on all previous payments made by the City after the Inclusion Date. In the event of a Determination of Taxability, the Bank shall provide the City with a new Installment Payment Schedule with respect to the Advancement which reflects the new interest rate which will replace the Installment Payment Schedule set forth in Exhibit A.

(d) The City agrees to give prompt written notice to the Bank upon the City'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.

SECTION 4.2. Budget and Appropriation. (a) The officer of the City at any time charged with the responsibility for formulating budget proposals shall include in the budget proposals for review and consideration by the City Council in any Fiscal Year in which this Agreement shall be in effect, items for all Installment Payments and any estimated Additional

Payments required for such Fiscal Year under this Agreement or the Deed of Trust. Any budget item referred to in this Section shall be deleted from the applicable budget by the City Council only by the adoption of a resolution to such effect containing a statement of its reasons therefor, which resolution shall be adopted by roll-call vote and shall be spread upon the minutes of the City Council. The City shall furnish the Bank with copies of its annual budget promptly after its adoption and copies of any amended budget affecting appropriations for Installment Payments or Additional Payments required under this Agreement or the Deed of Trust. The City shall promptly provide written notice to the Bank of any Event of Nonappropriation.

(b) If within 15 days after the beginning of any Fiscal Year the City has not appropriated an amount equal to the Installment Payments and estimated Additional Payments coming due during such Fiscal Year, then the Director of Financial Services shall send a notice to such effect to the Bank and to the LGC, to the attention of its Secretary, at the Albemarle Building, 325 North Salisbury Street, Raleigh, North Carolina 27603.

(c) The actions required of the City and its officers pursuant to this Section shall be deemed to be and shall be construed to be in fulfillment of ministerial duties, and it shall be the duty of each and every City official to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the actions required pursuant to this Section and the remainder of this Agreement to be carried out and performed by the City.

(d) NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT 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 CITY WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE. THIS AGREEMENT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE CITY TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE SOLE DISCRETION OF THE CITY FOR ANY FISCAL YEAR IN WHICH THIS AGREEMENT IS IN EFFECT; PROVIDED, HOWEVER, THAT ANY FAILURE OR REFUSAL BY THE CITY TO APPROPRIATE FUNDS WHICH RESULTS IN THE FAILURE BY THE CITY TO MAKE ANY PAYMENT COMING DUE HEREUNDER WILL IN NO WAY OBLVIATE THE OCCURRENCE OF THE EVENT OF DEFAULT RESULTING FROM SUCH NONPAYMENT. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE CITY IN ANY ACTION FOR BREACH OF A CONTRACTUAL OBLIGATION UNDER THIS AGREEMENT AND THE TAXING POWER OF THE CITY IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY MONEYS DUE UNDER THIS AGREEMENT.

No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the City's moneys (other than the lien created in the Project Fund Agreement on any portion of the Advancement on deposit in the Project Fund), nor shall any provision of this Agreement restrict the future issuance of any of the City's bonds or moneys. To the extent

of any conflict between this Section and any other provision of this Agreement, this Section shall take priority.

SECTION 4.3. Deed of Trust. In order to secure its obligations under this Agreement, including its obligation to make the Installment Payments hereunder, the City will execute and deliver the Deed of Trust simultaneously with the execution and delivery of this Agreement.

SECTION 4.4. No Set-Off; Recoupment, Etc. Subject to Section 4.2 and the Enforcement Limitation, the obligation of the City to make the Installment Payments hereunder and to perform and observe the other covenants of this Agreement shall be absolute and unconditional, and the City will pay without abatement, diminution or deduction all such amounts regardless of any cause or circumstance whatsoever, including, without limitation, any defense, set-off, recoupment or counterclaim that the City may have against the Bank.

ARTICLE V

INSURANCE

SECTION 5.1. Comprehensive General Liability. The City shall at its own expense, acquire, carry and maintain or cause to be maintained throughout the term of this Agreement, a comprehensive general liability policy or policies in an amount not less \$2,000,000 for personal injury or death and \$2,000,000 for property damage in protection of the City, its officers, agents and employees. Said policy shall cover such losses and for such amounts (equal to or in excess of the amounts set forth above) and shall have such deductible amounts as shall be satisfactory to the City Council and, in the judgment of the City Council, shall protect the City against losses not protected under the principles of sovereign immunity. The net proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid. Such policies shall include the Bank as an additional insured with respect to occurrences at the Mortgaged Property.

SECTION 5.2. Workers' Compensation. The City shall maintain workers' compensation insurance issued by a responsible carrier authorized under the laws of the State to insure its employees against liability for compensation under the laws now in force in the State, or any act hereafter enacted as an amendment or supplement thereto or in lieu thereof. The proceeds of such workers' compensation insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.

SECTION 5.3. Insurance. (a) The City shall procure and maintain, or cause to be procured and maintained, throughout the term of this Agreement, insurance against loss or damage to any portion of the Mortgaged Property by fire and lightning, with extended coverage, and vandalism, theft and malicious mischief insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke, broken windows and other structural glass, falling objects, water damage and such other hazards as are normally covered by such insurance. Such insurance policies shall name the Bank as a mortgagee.

(b) If any buildings, fixtures or other improvements are located on any portion of the Mortgaged Property that is located in a special flood hazard area according to the Federal Emergency Management Agency ("FEMA"), then the City must maintain a flood insurance policy on the Mortgaged Property. If at any time during the term of the Agreement, such portion of the Mortgaged Property is classified by FEMA as being located in a special flood hazard area, flood insurance will be mandatory. Should this occur, federal law requires the Bank to notify the City of the reclassification. If, within forty-five (45) days of receipt of notification from the Bank that any portion of the Mortgaged Property has been reclassified by the FEMA as being located in a special flood hazard area, the City has not provided sufficient evidence of flood insurance, the Bank is mandated under federal law to purchase flood insurance on behalf of the City, and any amounts so expended shall, subject to Section 4.2 and the Enforcement Limitation, immediately become debts of the City, shall bear interest at the rate specified in the Agreement, and payment thereof shall be secured by the Deed of Trust.

(c) Such insurance required by this Section shall be in an amount equal to 100% of the replacement cost of the Mortgaged Property (except that such insurance may be subject to a reasonable and customary deductible clause for any one loss); provided, however, that in no event shall such insurance be maintained in an amount less than the aggregate Installment Payments designated as principal.

(d) The Net Proceeds of such insurance required by this Section shall be applied as provided in Section 6.1 or Section 6.2.

SECTION 5.4. Title Insurance. The City shall obtain at the time of execution of this Agreement, and cause to be maintained, a mortgagee's title insurance policy on the Mortgaged Property insuring the City's fee simple interest in the Mortgaged Property, subject only to Permitted Encumbrances, in an amount equal to the aggregate Installment Payments designated as principal, naming the Bank as the named insured.

SECTION 5.5 General Insurance Provisions. (a) The City shall pay or cause to be paid when due the premiums for all insurance policies required by this Agreement.

(b) All insurance policies required by this Article shall be issued by a responsible carrier authorized to do business under the laws of the State.

(c) The Bank shall not be responsible for the sufficiency or adequacy of any insurance herein required and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the Bank.

(d) In lieu of obtaining the policies of insurance required by Section 5.1, Section 5.2 and Section 5.3, the City may, upon the consent of the Bank, adopt alternative risk management programs which the City determines to be reasonable, including, without limitation, to self-insure in whole or in part, individually or in connection with other units of local government or other institutions, to participate in programs of captive insurance companies, to participate with other units of local government or other institutions in mutual or other cooperative insurance or other risk management programs, to participate in State or federal insurance programs, to take advantage of State or federal laws now or hereafter in existence limiting liability, or to establish or participate in other alternative risk management programs, all as may be reasonable and appropriate risk management by the City.

(e) The insurance coverage required under Section 5.3 may be maintained under a blanket policy covering other properties of the City.

(f) The City shall cause to be delivered to the Bank annually on or about July 1 of each year a certificate stating that the insurance policies or alternative risk management programs required or permitted by this Agreement are in full force and effect.

(g) The City shall cooperate fully with the Bank in filing any proof of loss with respect to any insurance policy maintained pursuant to this Article and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Mortgaged Property or any portion thereof.

(h) No City agent or employee shall have the power to adjust or settle any property damage loss greater than \$50,000 with respect to the Mortgaged Property, whether or not covered by insurance, without the Bank's prior written consent.

ARTICLE VI

DAMAGE AND DESTRUCTION; USE OF NET PROCEEDS; CONDEMNATION; DUE ON SALE

SECTION 6.1. Obligation of the City to Repair and Replace the Mortgaged Property. Unless applied to the payment in full of the remaining Installment Payments pursuant to Section 6.2, in the event that the Net Proceeds arising from any single event, or any single substantially related sequence of events, is more than \$50,000, then the City shall cause such Net Proceeds to be paid to an escrow agent (which shall be a bank, trust company or similar entity exercising fiduciary responsibilities) for deposit in a special escrow fund to be held by such escrow agent. Except as set forth in Section 6.2, the City shall provide for the application of all Net Proceeds to the prompt completion, repair or restoration of the Mortgaged Property, as the case may be. The escrow agent shall disburse Net Proceeds for the payment of such costs upon receipt of requisitions in substantially the form of Exhibit A to the Project Fund Agreement. Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of such Net Proceeds shall be the property of the City, subject to the Deed of Trust and Permitted Encumbrances, and shall be included as part of the Mortgaged Property under this Agreement.

SECTION 6.2. Insufficiency of Net Proceeds; Discharge of the Obligation of the City to Repair the Mortgaged Property. (a) If the Net Proceeds shall be insufficient to pay in full the cost of repair, restoration or replacement of the Mortgaged Property, the City may elect to complete the work and pay any cost in excess of the amount of the Net Proceeds, and the City agrees that, if by reason of any such insufficiency of the Net Proceeds, the City shall make any payments pursuant to the provisions of this subsection, the City shall not be entitled to any reimbursement therefor from the Bank, nor shall the City be entitled to any diminution of the Installment Payments payable under Section 4.1.

(b) If the City elects not to apply the Net Proceeds to the repair, restoration or replacement of the Mortgaged Property, the City may apply the Net Proceeds of such insurance policies to the prepayment of the principal component of the Installment Payments in accordance with Section 10.1. In the event the amount of such Net Proceeds exceeds the amount necessary to prepay the principal component of all remaining Installment Payments, plus the interest component of the Installment Payments accrued to the date of prepayment, such excess shall be paid to or retained by the City.

Within 90 days following the receipt of Net Proceeds, unless a further extension is approved by the Bank, the City shall commence the repair, restoration or replacement of the Mortgaged Property, or shall elect, by written notice to the Bank, to apply the Net Proceeds to the prepayment of the Installment Payments under the provisions of Section 10.1. For purposes of this subsection, "commence" shall include the retention of an engineer in anticipation of the repair, restoration, modification, improvement or replacement of the Mortgaged Property. In the event that the City shall, after commencing the repair, restoration, modification, improvement or replacement of the Mortgaged Property, determine that the Net Proceeds (plus any amount withheld therefrom by reason of any deductible clause) shall be insufficient for the accomplishment thereof, the City may, subject to the proviso set forth above, elect to apply the

Net Proceeds to the prepayment of the Installment Payments under the provisions of Section 10.1.

SECTION 6.3. Cooperation of the Bank. The Bank shall cooperate fully with the City in filing any proof of loss with respect to any insurance policy covering the events specified in Section 5.1. In no event shall the Bank or the City 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.

SECTION 6.4. Condemnation. (a) The City shall immediately notify the Bank if any governmental authority shall institute, or shall notify the City of any intent to institute, any action or proceeding for the taking of, or damages to, all or any part of the Mortgaged Property or any interest therein under the power of eminent domain, or if there shall be any damage to the Mortgaged Property due to governmental action, but not resulting in a taking of any portion of the Mortgaged Property. The City shall file and prosecute its claims for any such awards or payments in good faith and with due diligence and cause the same to be collected and paid over to the Bank, and to the extent permitted by law hereby irrevocably authorizes and empowers the Bank or the Deed of Trust Trustee, in the City's name or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claims. If the City receives any Net Proceeds arising from any such action, the City shall apply such Net Proceeds in the same manner as provided in Section 6.1.

(b) If any of the real or personal property acquired or improved by the City (in whole or in part) using any portion of the Advancement consists of or is located on any real property acquired by the City through the exercise of the power of eminent domain, or through the threat of the exercise of the power of eminent domain, then during the term of this Agreement the City may not transfer any interest in such real property to any entity other than a local governmental unit without the Bank's prior express written consent.

SECTION 6.5. Due on Sale Provision; Acceleration. The Bank may, at its option, require the immediate payment in full of the Installment Payments and all other sums secured by this Agreement upon the sale, transfer, conveyance or encumbrance of all or any part of the Mortgaged Property, or any legal or beneficial interest in the Mortgaged Property, without the Bank's prior written consent. This option applies whether the sale, transfer, conveyance or encumbrance is voluntary, involuntary, by operation of law or otherwise, and includes (i) any creation of lien or encumbrance, whether or not subordinate to the lien created pursuant to this Agreement, (ii) the creation of any easement, right-of-way or similar interest other than such as would constitute a Permitted Encumbrance, or (iii) the grant of any leasehold or similar interest or any option to purchase, right of first refusal or similar interest.

ARTICLE VII
COVENANTS OF THE CITY

SECTION 7.1. Installation of Additional Improvements. The City may at any time and from time to time, in the sole discretion of the City, and at its own expense, construct real property improvements and install items of equipment or other personal property in or upon any portion of the Mortgaged Property that does not materially impair the effective use, nor materially decrease the value, of the Mortgaged Property; provided, however, that the City shall repair and restore any and all damage resulting from the construction, installation, modification or removal of any such items. All such items provided by the City shall be subject to the lien of the Deed of Trust.

SECTION 7.2. Access to the Mortgaged Property. The City agrees that the Bank and its agents and employees, shall have the right, at all reasonable times during normal business hours of the City upon the furnishing of reasonable notice to the City under the circumstances, to enter upon the Mortgaged Property or any portion thereof to examine and inspect the same. The City further agrees that the Bank and the Bank's successors, assigns or designees shall have such rights of access to the Mortgaged Property as may be reasonably necessary to cause the proper maintenance of the Mortgaged Property in the event of failure by the City to perform its obligations hereunder. No right of inspection shall be deemed to impose on the Bank any duty or obligation whatsoever to undertake any inspection, and no inspection made by the Bank shall be deemed to impose upon the Bank any duty or obligation to identify any defects in the Mortgaged Property or to notify any person with respect thereto.

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

SECTION 7.3. Maintenance, Utilities, Taxes and Assessments. (a) Subject to the Enforcement Limitation, the City shall provide for the repair and replacement of any portion of the Mortgaged Property required on account of ordinary wear and tear or want of care.

(b) Subject to the Enforcement Limitation, the City shall also pay, or provide for the payment of, all taxes and assessments, including, but not limited to, utility charges of any type or nature levied, assessed or charged against any portion of the Mortgaged Property; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid as and when the same become due.

(c) The City may, at the City's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such

contest and any appeal therefrom; provided, however, that prior to such nonpayment, the City shall furnish to the Bank an opinion of counsel acceptable to the Bank to the effect that, by nonpayment of any such items, the interest of the Bank in the Mortgaged Property will not be materially endangered and that all or any portion of the Mortgaged Property will not be subject to loss or forfeiture. Otherwise, subject to the Enforcement Limitation, the City shall promptly pay such taxes, assessments or charges or make provisions for the payment thereof.

SECTION 7.4. Modification of the Mortgaged Property. The City shall, in its sole discretion and at its own expense, have the right to make additions, modifications and improvements to any portion of the Mortgaged Property if such additions, modifications or improvements are necessary or beneficial for the use of the Mortgaged Property. Such additions, modifications and improvements shall not in any way damage any of the Mortgaged Property (unless such damage is to be repaired as provided in Section 6.1) or cause the Mortgaged Property to be used for purposes other than those authorized under the provisions of law, and the Mortgaged Property, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is not less than the value of the Mortgaged Property immediately prior to the making of such additions, modifications and improvements. Such modification to the Mortgaged Property shall be subject to the lien of the Deed of Trust.

Except for Permitted Encumbrances, the City shall not permit any lien to be established or remain against the Mortgaged Property for labor or materials furnished in connection with any additions, modifications or improvements made by the City pursuant to this Section; provided, however, that if any such lien is established, the City may, at its own expense and in its name, in good faith contest any lien filed or established against the Mortgaged Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, provided that the City shall furnish to the Bank full security against any loss or forfeiture which might arise from the nonpayment of any such item in form satisfactory to the Bank.

SECTION 7.5. Encumbrances. Except as provided in this Article (including, without limitation, Section 7.4 and this Section), the City shall not, directly or indirectly, create, incur, assume or suffer to exist any pledge, lien, charge, encumbrance or claim, as applicable, on or with respect to the Mortgaged Property, other than Permitted Encumbrances. Except as expressly provided in this Article and subject to the Enforcement Limitation, the City shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such pledge, lien, charge, encumbrance or claim for which it is responsible if the same shall arise at any time; provided, however, that the City may contest any such lien, charge, encumbrance or claim if it desires to do so and if it provides the Bank with full security against any loss or forfeiture which might arise from the nonpayment of any such item in form satisfactory to the Bank.

SECTION 7.6. Indemnification of the Bank. To the fullest extent permitted by law, the City covenants to defend, indemnify and hold harmless the Bank, the LGC and its officers, directors, members, employees and agents (collectively, the “Indemnified Parties”) against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such Indemnified Parties may become subject under any statute or at law or in equity or otherwise in connection with the transactions contemplated

by this Agreement or the Deed of Trust and shall reimburse any such Indemnified Parties for any legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of the transactions contemplated by this Agreement or the Deed of Trust; provided, however, that the right to indemnification set forth in this Section shall not apply to any losses arising from any action taken by, or failure to act by, the Bank or any of its officers, directors, members, employees and agents. In particular, without limitation, the City shall and hereby agrees to indemnify and save the Indemnified Parties harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of any breach or default on the part of the City in the performance of any of its obligations under this Agreement or the Deed of Trust.

SECTION 7.7. Financial Statements. The City agrees that it will furnish the Bank, when the same become available, but in no event later than 270 days after the end of the Fiscal Year, its annual audited financial statements and, at the Bank's request, will furnish the Bank information regarding its annual budget as submitted or approved.

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

ARTICLE VIII

ASSIGNMENT, LEASING AND AMENDMENT

SECTION 8.1. Assignment by the Bank. The Bank may, at any time and from time to time, assign to any bank, insurance company or similar financial institution all or any part of its interest in the Mortgaged Property or this Agreement, including, without limitation, the Bank'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. The City agrees that this Agreement may become part of a pool of obligations at the Bank's or its assignee's option. The Bank or its assignees may assign or reassign either the entire pool or any partial interest herein to any bank, insurance company or similar financial institution. Notwithstanding the foregoing, no assignment or reassignment of the Bank's interest in the Mortgaged Property or this Agreement shall be effective unless and until the City 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 City covenants and agrees with the Bank and each subsequent assignee of the Bank to maintain for the full term of this Agreement a written record of each such assignment or reassignment. The City agrees to execute any document reasonably required by the Bank in connection with any assignment. Notwithstanding any assignment by the Bank of its interest in this Agreement, the City shall not be obligated to provide any financial or other information to any assignee of the Bank except as set forth in Section 7.7.]

After the giving of notice described above to the City, the City 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 Bank covenants that any disclosure document circulated by it or an assignee in connection with the sale of the Bank's rights in this Agreement will contain a statement to the effect that the City has not reviewed and is not responsible for the disclosure document. The Bank covenants to defend, indemnify and hold harmless the City 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 City shall have expressly approved the use of such disclosure document.

SECTION 8.2. Assignment by the City. (a) This Agreement may not be assigned by the City.

(b) The City may lease all or any portion of the Mortgaged Property, subject to each of the following conditions:

(i) the obligation of the City to make Installment Payments hereunder shall remain obligations of the City;

(ii) the City shall within thirty (30) days prior to the execution and delivery of any such lease, furnish or cause to be furnished to the Bank, a true and complete copy of the form of such lease; and

(iii) the lease by the City shall not cause the Mortgaged Property to be used for a purpose other than a governmental or proprietary function of the City authorized under the provisions of the Constitution and laws of the State and shall not cause the interest component in the Installment Payments to be includable in gross income of the Bank for federal income tax purposes.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

SECTION 9.1. Events of Default Defined. The following shall be “events of default” under this Agreement and the terms “events of default” and “default” shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) The failure by the City to pay any Installment Payment required to be paid hereunder when due.

(b) The occurrence of an Event of Nonappropriation.

(c) Failure by the City to observe and perform any warranty, covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto other than as referred to in clause (a) or (b) of this Section, for a period of ninety (90) days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Bank; provided, however, that if the failure stated in the notice cannot be corrected within the applicable period and if corrective action is instituted by the City within the applicable period and diligently pursued, upon the consent of the Bank, the City shall have such additional period of time to correct the failure as shall be necessary to correct such failure so long as such correction is diligently pursued.

(d) The City becomes insolvent or the subject of insolvency proceedings; or is unable, or admits in writing its inability, to pay its debts as they mature; or makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its property; or files a petition or other pleading seeking reorganization, composition, readjustment or liquidation of assets, or requesting similar relief; or applies to a court for the appointment of a receiver for it or for the whole or any part of its property; or has a receiver or liquidator appointed for it or for the whole or any part of its property (with or without the consent of the City) and such receiver is not discharged within ninety (90) consecutive days after his appointment; or becomes the subject of an “order for relief” within the meaning of the United States Bankruptcy Code; or files an answer to a creditor’s petition admitting the material allegations thereof for liquidation, reorganization, readjustment or composition or to effect a plan or other arrangement with creditors or fail to have such petition dismissed within sixty (60) consecutive days after the same is filed against the City.

(e) The occurrence of an “Event of Default” under the Deed of Trust as defined therein.

(f) The City shall fail to pay the principal of or the interest or any redemption premium on any general obligation bonds or notes of the City as required by such bonds or notes or the documents providing for the issuance thereof.

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

SECTION 9.2. Remedies on Default. Upon the occurrence of any event of default under Section 9.1, the Bank may, without any further demand or notice, exercise any one or more of the following remedies:

(a) declare the entire amount of the principal component of the Installment Payments and the accrued and unpaid interest component to the date of declaration to be immediately due and payable;

(b) exercise all remedies available at law or in equity or under the Deed of Trust, including sale of the Mortgaged Property, and apply the proceeds of any such sale or other disposition, after deducting all costs and expenses, including court costs and reasonable attorneys' fees incurred with the recovery, repair, storage and other sale or other disposition costs, toward the principal component and accrued and unpaid interest of the balance of Installment Payments due;

(c) As provided in the Project Fund Agreement, pay over any balance remaining in the Project Fund to be applied against outstanding Installment Payments in any manner the Bank may reasonably deem appropriate; and

(d) subject to the Enforcement Limitation, proceed by appropriate court action to enforce performance by the City of the applicable covenants of this Agreement or to recover for the breach thereof.

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

SECTION 9.3. No Remedy Exclusive. No remedy conferred herein upon or reserved to the Bank is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. To the extent permitted by law, any delay or omission to exercise any right or power accruing upon any default shall not impair any such right or power nor shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Bank to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required in this Article or by law.

SECTION 9.4. Agreement to Pay Attorneys' Fees and Expenses. In the event the City should default under any of the provisions hereof and the Bank should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the City contained herein, the City

agrees that it will pay on demand to the Bank, subject to the limitations and provisions of Section 6-21.2 of the General Statutes of North Carolina, as amended, the reasonable fees of such attorneys and such other expenses so incurred by the Bank. For purposes of this Section, the reasonable fees of attorneys shall mean attorneys' fees actually incurred at such attorneys' standard hourly rate for such services and shall not be based on any percentage of the outstanding amount due; provided, however that such attorneys' fees shall not exceed the maximum amount permitted by law.

SECTION 9.5. No Additional Waiver Implied by One Waiver. In the event any provision contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder except as may be provided by law.

ARTICLE X

PREPAYMENT OF INSTALLMENT PAYMENTS

SECTION 10.1. Prepayment of Installment Payments. The principal component of the Installment Payments may be prepaid in whole on a scheduled Installment Payment Date, [with at least three (3) days' prior written notice to the Bank], by payment of an amount equal to the principal amount to be prepaid, plus accrued interest to the prepayment date, plus a prepayment fee of 1% of the principal amount to be prepaid.]

ARTICLE XI

MISCELLANEOUS

SECTION 11.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received upon the earlier of actual receipt or three days after deposit in the United States first-class, registered or certified mail (unless otherwise provided herein), postage prepaid, at the following addresses:

If to the City:

City of Greenville, North Carolina
200 West 5th Street
Greenville, North Carolina 27858-1824
Attention: Director of Financial Services

If to the Bank (only effective upon actual receipt, which can be shown by registered or certified mail or national delivery service receipt) :

Branch Banking and Trust Company
BB&T Governmental Finance
Attn: Account Administration/Municipal
5130 Parkway Plaza Boulevard
Building 9
Charlotte, North Carolina 28217

The City and the Bank, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

SECTION 11.2. Further Instruments. Upon the Bank's request, the City shall execute, acknowledge and deliver such further instruments reasonably necessary or desired by the Bank to carry out more effectively the purposes of this Agreement or any other document related to the transactions contemplated hereby, and subject to the liens and security interests hereof and thereof all or any part of the Mortgaged Property intended to be given or conveyed hereunder or thereunder, whether now given or conveyed or acquired and conveyed subsequent to the date of this Agreement.

SECTION 11.3. Bank's Performance of City's Obligations. If the City fails to perform any of its obligations under this Agreement, the Bank is hereby authorized, but not obligated, to perform such obligation or cause it to be performed. All expenditures incurred by the Bank (including any advancement of funds for payment of taxes, insurance premiums or other costs of maintaining the Mortgaged Property, and any associated legal or other expenses), together with interest thereon, shall be secured as Additional Payments under this Agreement. The City promises to pay all such amounts to the Bank immediately upon demand.

SECTION 11.4. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the City and the Bank and their respective successors and assigns. Whenever in

this Agreement either the City or the Bank is named or referred to, such reference shall be deemed to include the successors or assigns thereof and all the covenants and agreements in this Agreement contained by or on behalf of the City or the Bank shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 11.5. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 11.6. Execution in Counterparts. This Agreement 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 11.7. Commitment Letter. The terms of this Agreement shall supersede the terms of any commitment letter, proposal or other term sheet provided by the Bank. To the extent of any conflict between this Agreement and such other documents, this Agreement shall take priority.

SECTION 11.8. Applicable Law. This Agreement shall be construed and governed in accordance with the laws of the State of North Carolina.

[signatures to follow]

IN WITNESS WHEREOF, the City and the Bank have caused this Agreement to be executed in their respective names by their respective duly authorized officers as of the date first above written.

CITY OF GREENVILLE, NORTH CAROLINA

[SEAL]

By: _____
City Manager

Attest:

City Clerk

BRANCH BANKING AND TRUST COMPANY

By: _____

[signature page to Installment Financing Agreement dated as of June 9, 2009]

Local Government Commission
Signature Page for Installment Financing Agreement
amount of [\$12,100,000] between the City of Greenville, North Carolina and Branch Banking
and Trust Company dated as of June 9, 2009

This Agreement has been approved under the provisions of Article 8, Chapter 159 of the
General Statutes of North Carolina.

By: _____
T. Vance Holloman, Secretary
Local Government Commission

EXHIBIT A

INSTALLMENT PAYMENT SCHEDULE

<u>Installment Payment Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
_____, 2010		\$	\$
_____, 2011			
_____, 2012			
_____, 2013			
_____, 2014			
_____, 2015			
_____, 2016			
_____, 2017			
_____, 2018			
_____, 2019			
_____, 2020			
_____, 2021			
_____, 2022			
_____, 2023			
_____, 2024			

Sidley Austin Draft 5/15/09

After filing, please return to:

David A. Holec, Esq.
City Attorney
200 West 5th Street
Greenville, North Carolina 27858-1824

This document was prepared by:

Eric Hebert, Esq.
Sidley Austin LLP
787 Seventh Avenue
New York, New York 10019

DEED OF TRUST

STATE OF NORTH CAROLINA
COUNTY OF PITT

This DEED OF TRUST, dated as of [June 9, 2009] (the “Deed of Trust”), from the CITY OF GREENVILLE, NORTH CAROLINA, a municipal corporation duly organized and validly existing under the Constitution and laws of the State of North Carolina (the “City”), to F. Louis Loyd, III, as trustee (the “Deed of Trust Trustee”), for the benefit of BRANCH BANKING AND TRUST COMPANY, a national banking association organized and existing under the laws of the United States, and its successors and assigns hereinafter mentioned (the “Beneficiary”),

WITNESSETH:

WHEREAS, the City has entered into an Installment Financing Agreement, of even date herewith (the “Agreement”), with the Beneficiary, whereby the Beneficiary agrees to advance moneys to the City for acquisition of the Project (as defined in the Agreement), and the City agrees to repay the moneys advanced to the City in installments due at the times and in the amounts set forth in Exhibit A to the Agreement (the “Installment Payments”) and to pay certain Additional Payments (as defined in the Agreement) as more fully provided therein;

WHEREAS, pursuant to the Agreement, the City is delivering this Deed of Trust to secure the repayment by the City to the Beneficiary of the moneys advanced and all other sums payable under the Agreement and to secure the other obligations of the City under the Agreement;

WHEREAS, the City has agreed to pay to the Beneficiary the sum of \$[12,100,000] for moneys advanced, as evidenced by, and payable as provided in, the Agreement, with interest payable at the times and rate specified therein, with the last Installment Payment of principal and interest being due and payable on _____, 20[24];

WHEREAS, the City desires to secure (a) the payment of the Installment Payments due under the Agreement, (b) the payment by the City of all Additional Payments required to be paid by the City under the Agreement and the performance by the City of all of the additional covenants of the City set forth in the Agreement and (c) the performance of the covenants and agreements contained in this Deed of Trust, and any amendments and supplements thereto; and

WHEREAS, the City desires to execute and deliver this Deed of Trust as security for the payment of the amounts described above and the performance of the covenants described above;

NOW, THEREFORE, the City, subject to Permitted Encumbrances (as defined in the Agreement), as security for the Installment Payments and other payments to be made by the City under the Agreement and for the performance by the City of all of its obligations under the Agreement and this Deed of Trust, and in further consideration of the sum of \$1.00 paid to the City by the Deed of Trust Trustee, receipt and sufficiency of which are hereby acknowledged, has given, granted, bargained and sold, and by these presents does give, grant, bargain, sell and convey unto the Deed of Trust Trustee, its successors and assigns, in trust, with power of sale, the real property lying and being in Pitt County in the State of North Carolina, constituting so much thereof as constitutes real property or fixtures, and more particularly described as set forth in Exhibit A attached hereto and made a part hereof; TOGETHER with all buildings, improvements and fixtures of every kind and description now or hereafter erected or located thereon, all rights, appurtenances, easements, privileges, remainders and reversions appertaining thereto and all materials intended for construction, reconstruction, alteration and repair of such buildings and improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises hereby conveyed immediately upon the delivery thereof to the aforesaid real property, and all apparatus, equipment, fixtures and articles of personal property now or hereafter attached thereto as fixtures, and replacements thereof, including, but not limited to, all heating, refrigerating, air conditioning, gas, plumbing and electric apparatus and equipment, all boilers, engines, motors, power equipment, piping and plumbing fixtures, pumps, tanks, lighting equipment and systems, fire prevention and sprinkling equipment and systems, and other things now or hereafter thereon or therein, including all interests of any owner thereof in any of such items, and all renewals or replacements thereof or articles in substitution thereof; TOGETHER with all rents, issues, profits and revenues of the aforesaid real property, fixtures and other property and all of the right, title and interest of the City in and to any and all leases and contracts now or hereafter affecting the real property, fixtures and other property covered hereby or any part thereof; TOGETHER with all proceeds of any of the foregoing real property and fixtures including, without limitation, proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, all awards and other payments as a result of or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain by any governmental authority ("Eminent Domain"), all insurance proceeds and claims therefor as a result of damage to or destruction of all or any part of any of the foregoing, and all proceeds of title insurance with respect to all or any part of any of the foregoing (the real property, fixtures and proceeds granted

to the Deed of Trust Trustee pursuant to the foregoing provisions hereof being collectively referred to as the “Mortgaged Property”);

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

AND THE CITY COVENANTS to and with the Deed of Trust Trustee and the Beneficiary that the City is seized of the Mortgaged Property in fee, that the City has the right to convey the Mortgaged Property in fee simple, that the Mortgaged Property is free and clear from all encumbrances and restrictions not specifically mentioned in Exhibit B attached hereto and made a part hereof, and that the City does hereby forever warrant and will forever defend the title to the Mortgaged Property (except for those matters set forth in Exhibit B) against the claims of all persons whatsoever; provided, however, that

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

This Deed of Trust secures an obligation incurred for the construction of an 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.

THE CITY FURTHER COVENANTS, REPRESENTS AND AGREES AS FOLLOWS:

Section 1. Amount Secured; Maintenance and Modification of Mortgaged Property by City. This Deed of Trust secures all present and future indebtedness owing by the City under the Agreement and this Deed of Trust. The principal amount of the indebtedness is [\$12,100,000].

The Deed of Trust Trustee shall not be under any obligation to operate, maintain or repair the Mortgaged Property. The City agrees that it will at its own expense (a) keep the Mortgaged Property in as reasonably safe condition as its operations shall permit, (b) keep the Mortgaged Property in good repair and in good operating condition, (c) comply with all applicable governmental requirements imposed upon the Mortgaged Property or in connection with its use and (d) make from time to time all necessary repairs thereto and renewals and replacements thereof.

Subject to the provisions of the Agreement, the City may also, at its own expense, make from time to time any additions, modifications or improvements to the real property covered hereby that it may deem desirable and that do not materially impair the effective use, nor materially decrease the value, of the Mortgaged Property. All such additions, modifications and improvements so made by the City within the boundaries of the Mortgaged Property shall become a part of the Mortgaged Property. The City will do, or cause to be done, all such things

as may be required by law in order fully to protect the security and all rights of the Beneficiary under this Deed of Trust. The City shall not cause or permit the lien of this Deed of Trust to be impaired in any way.

Section 2. Grant and Release of Easements. If no Event of Default under this Deed of Trust shall have occurred and shall continue to exist, the City may at any time or times grant easements, licenses, rights of way and other rights or privileges in the nature of easements with respect to any part of the Mortgaged Property, and the City 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 (a) a copy of the instrument of grant or release, (b) a written application signed by an authorized representative of the City requesting such instrument and (c) a certificate executed by an authorized representative of the City stating that the grant or release (i) is not detrimental to the proper conduct of the operations of the City at the Mortgaged Property and (ii) will not impair the effective use of or interfere with the operations of the City at the Mortgaged Property and will not diminish the value of the security under this Deed of Trust in contravention of the provisions hereof.

Section 3. Default; Remedies of the Deed of Trust Trustee and Beneficiary Upon Default. (a) If any of the following events shall occur:

(i) default in any payment under the Agreement or default in any of the other terms or conditions of the Agreement secured hereby and the expiration of any applicable grace or notice periods provided thereby;

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

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

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

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

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

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

(iii) The Deed of Trust Trustee shall have the right to assign to any other person, for lawful consideration, any rents, revenues, earnings, income, products and profits receivable under this Deed of Trust, provided that the proceeds of any such assignment shall be applied as provided in this Deed of Trust.

(iv) The Deed of Trust Trustee is hereby authorized and empowered to expose to sale and to sell the Mortgaged Property or such part or parts thereof or interests therein as the Deed of Trust Trustee deems prudent at public auction for cash, and upon collection of the proceeds from such sale to make and deliver a deed therefor, after first having complied with all applicable requirements of North Carolina law with respect to the exercise of powers of sale contained in deeds of trust. The City agrees that in the event of a sale hereunder, the Beneficiary shall have the right to bid at it and to become the purchaser. The Deed of Trust Trustee may require the successful bidder at any sale to deposit immediately with the Deed of Trust Trustee cash or a certified check in an amount not to exceed five percent (5%) of his bid, provided notice of such requirement is contained in the advertisement of the sale. The bid may be rejected if the deposit is not

immediately made and thereupon the next highest bidder may be declared to be the successful bidder. Such deposit shall be refunded in case a resale is had; otherwise it shall be applied to the purchase price. The sale of the Mortgaged Property or any part thereof or any interest therein, whether pursuant to judicial foreclosure, foreclosure under power of sale or otherwise under this Deed of Trust, shall forever bar any claim with respect to the Mortgaged Property by the City.

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

(vi) The Beneficiary may proceed against the fixtures referred to in Section 12 as provided in and in accordance with the applicable provisions of the Uniform Commercial Code as adopted by the State of North Carolina, as amended (the "UCC") or, at its election, may proceed and may instruct the Deed of Trust Trustee to proceed as to the portion of the Mortgaged Property constituting fixtures, in accordance with its rights and remedies with respect thereto and those granted to the Deed of Trust Trustee, all as set forth in this Deed of Trust. Subject to any limitations imposed by the applicable provisions of the UCC, the Beneficiary may sell, lease, or otherwise dispose of all or any part of the fixtures, at public or private sale, for cash or on credit, as a whole or in part, and the Beneficiary may at such sale or sales purchase the fixtures or any part thereof. The proceeds of such sale, lease, collection or other disposition shall be applied first to the costs and expenses of the Beneficiary incurred in connection with such sale, lease, collection or other disposition, and then to such outstanding balance due on any and all indebtedness owed to the Beneficiary. Further, the Beneficiary may require the City to assemble the fixtures, or evidence thereof, and make them reasonably available to the Beneficiary at one or more places to be designated by the Beneficiary which are reasonably convenient to the Beneficiary, and the Beneficiary may take possession of the

fixtures and hold, prepare for sale, lease or other disposition and sell, lease or otherwise dispose of the fixtures. Any required notice by the Beneficiary of sale or other disposition or default, when mailed to the City at its address set forth herein, shall constitute reasonable notice to the City. In addition to, but not in limitation of, any of the foregoing, the Beneficiary may exercise any or all of the rights and remedies afforded to the Beneficiary by the provisions of the UCC or otherwise afforded to the Beneficiary under this Deed of Trust, with all such rights and remedies being cumulative and not alternative, and the City agrees, to the extent permitted by law, to pay the reasonable costs of collection, including, in addition to the costs and disbursements provided by statute, reasonable attorneys' fees and legal expenses which may be incurred by the Beneficiary subject to the procedures and limitations set forth in Section 6-21.2 of the General Statutes of North Carolina, as amended.

In all such cases, the Beneficiary shall have the right to direct the Deed of Trust Trustee to exercise the remedies granted hereunder.

(c) The City also agrees that any of the foregoing rights and remedies of the Beneficiary may be exercised at any time independently of the exercise of any other such rights and remedies, and the Beneficiary may continue to exercise any or all such rights and remedies until the Event(s) of Default of the City are cured with the consent of the Beneficiary or until foreclosure and the conveyance of the Mortgaged Property to the high bidder or until the indebtedness secured hereby is otherwise satisfied or paid in full.

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

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

(f) NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NO DEFICIENCY JUDGMENT SHALL BE RENDERED AGAINST THE CITY IN ANY ACTION FOR BREACH BY THE CITY OF ITS OBLIGATIONS UNDER THE AGREEMENT OR THIS DEED OF TRUST, OR FOLLOWING THE EXERCISE BY THE CITY OF ITS RIGHT OF TERMINATION OF ITS OBLIGATION TO MAKE THE INSTALLMENT PAYMENTS AND ANY ADDITIONAL PAYMENTS UNDER THE AGREEMENT; THE REMEDIES PROVIDED UNDER THIS DEED OF TRUST, INCLUDING FORECLOSURE AND SALE OF THE MORTGAGED PROPERTY UNDER THIS DEED OF TRUST, BEING THE SOLE REMEDY GRANTED HEREBY.

THE TAXING POWER OF THE CITY IS NOT AND MAY NOT BE PLEDGED IN ANY WAY, DIRECTLY OR INDIRECTLY TO SECURE THE PAYMENT OF ANY MONEYS DUE UNDER THE AGREEMENT, INCLUDING THE INSTALLMENT PAYMENTS UNDER THE AGREEMENT OR ANY OTHER INSTRUMENT CONTEMPLATED HEREBY OR THEREBY.

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

First: The costs and expenses of sale, reasonable attorneys' fees actually incurred at standard hourly rates to the extent permitted by Section 6-21.2 of the General Statutes of North Carolina, as amended, the Beneficiary's fees and expenses, court costs, any other expenses or advances made or incurred in the protection of the rights of the Beneficiary or in the pursuance of any remedies hereunder and the Deed of Trust Trustee's commission payable under Section 5 hereof;

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

Third: Any indebtedness secured by this Deed of Trust and at the time due and payable (whether by acceleration or otherwise), including all amounts of principal and interest at the time due and payable with respect to the Installment Payments, and interest on any overdue principal of at a rate per annum equal to the original interest rate payable with respect to the Installment Payments; and

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

Section 5. Deed of Trust Trustee's Commission. In the event of a consummated sale under the power of sale contained herein, the Deed of Trust Trustee's commission shall be a reasonable commission for services rendered not to exceed _____ percent (_%) of the highest bid thereat.

It is further provided that in the event foreclosure is terminated upon the request of the City prior to delivery of the deed by the Deed of Trust Trustee, the City shall pay the Deed of Trust Trustee all costs and expenses incident to the foreclosure, including reasonable compensation for services rendered; together with attorneys' fees actually incurred at standard hourly rates to the extent permitted by Section 6-21.2 of the General Statutes of North Carolina, as amended.

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

Section 6. General Covenant. The City shall pay the amounts due under the Agreement and shall observe and perform all covenants, conditions and agreements contained in the Agreement, and any amendments and supplements thereto.

Section 7. Payment of Costs, Attorneys' Fees and Expenses. The City shall pay, to the extent permitted by law, any and all costs, attorneys' fees and other expenses of whatever kind incurred by the Beneficiary or the Deed of Trust Trustee in connection with (a) obtaining possession of the Mortgaged Property, (b) the protection and preservation of the Mortgaged Property, (c) the collection of any sum or sums secured hereby, (d) any litigation involving the Mortgaged Property, this trust, any benefit accruing by virtue of the provisions hereof, or the rights of the Deed of Trust Trustee or the Beneficiary, (e) the presentation of any claim under any administrative or other proceeding in which proof of claim is required by law to be filed, (f) any additional examination of the title to the Mortgaged Property which may be reasonably required by the Beneficiary or the Deed of Trust Trustee, (g) taking any steps whatsoever in enforcing this Deed of Trust, claiming any benefit accruing by virtue of the provisions hereof, or exercising the rights of the Beneficiary hereunder, or (h) any proceeding, legal or otherwise, which the Beneficiary shall deem necessary to sustain the lien of this Deed of Trust or its priority. If the City shall fail to make any payment required to be made by the foregoing covenant, however, such amount shall be payable solely from the amounts realized upon the enforcement of the remedies set forth in Section 3 of this Deed of Trust.

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

Section 9. No Assignment or Encumbrance of Mortgaged Property. Except as permitted by the Agreement and this Deed of Trust, the City shall not sell, transfer, exchange, lease, mortgage, encumber, pledge, assign or otherwise dispose of the Mortgaged Property or any interest therein or part thereof without the prior written consent of the Beneficiary. Any such disposition or encumbrance of the Mortgaged Property or any interest therein or any part thereof other than Permitted Encumbrances without such prior written consent shall, at the option of the Beneficiary, constitute a default hereunder, giving rise to all of the remedies herein provided for an Event of Default.

Section 10. Advances by Beneficiary. The Beneficiary is authorized, but is not required to, for the account of the City, to make any required payments under any lien prior hereto or under this Deed of Trust, the non-payment of which would constitute a default, including but not limited to principal payments, interest payments, premium payments, if any, taxes and insurance premiums. All sums so advanced shall attach to and become part of the debt secured hereby, shall become payable at any time on demand therefor and, from the date of the advance to the date of repayment, any sum so advanced shall bear interest at a rate of _____ percent (_%) per annum. The failure to make payment on demand shall, at the option of the Beneficiary,

constitute a default hereunder, giving rise to all of the remedies herein provided for an Event of Default. If the City shall fail to make any payment required to be made by the foregoing covenant, however, such amount shall be payable solely from the amounts realized upon the enforcement of the remedies set forth in Section 3 of this Deed of Trust.

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

Section 12. Security Interest in Fixtures. **COLLATERAL IS OR INCLUDES FIXTURES.** With respect to any portion of the Mortgaged Property which is or may become fixtures, this Deed of Trust shall constitute a financing statement filed as a fixture filing. The lien upon fixtures granted herein and perfected hereby shall be in addition to and not in lieu of any lien upon fixtures acquired under real property law.

Section 13. Leases. The City shall keep, observe and perform all of the covenants, agreements, terms, conditions and provisions on its part to be kept, observed or performed under any leases involving all or any part of the Mortgaged Property, shall require tenants to keep, observe and perform all of the covenants, agreements, terms, conditions and provisions on their part to be kept, observed or performed under any such leases and shall not suffer or permit any breach or default to occur with respect to the foregoing. In the event of a default by the City under any lease involving all or any part of the Mortgaged Property, the Beneficiary shall have the right to perform or to require performance of any such covenants, agreements, terms, conditions or provisions of such leases, and to add any expense incurred in connection therewith to the debt secured hereby. Any such expense incurred by the Beneficiary shall be immediately due and payable. If the City shall fail to make any payment required to be made by the foregoing covenant, however, such amount shall be payable solely from the amounts realized upon the enforcement of the remedies set forth in Section 3 of this Deed of Trust.

Section 14. Additional Documents. The City agrees to execute and deliver to the Beneficiary, concurrently with the execution of this Deed of Trust and upon the request of the Beneficiary from time to time hereafter, all financing statements and other documents reasonably required to perfect and maintain the lien or security interest created hereby. For the period in which the indebtedness of the City to the Beneficiary remains unpaid, the City hereby irrevocably makes, constitutes and appoints the Beneficiary as the true and lawful attorney in fact of the City, to the extent permitted by law, to sign the name of the City on any financing statement, continuation of financing statement or similar document required to perfect or continue such security interests.

Section 15. Environmental Issues. The City for itself, its successors and assigns represents, warrants and agrees that, except as disclosed in writing to the Beneficiary by the City, (a) neither the City nor, to the best of the City's knowledge, any other person has improperly used or installed any Hazardous Material (as hereinafter defined) on the Mortgaged Property or received any notice from any governmental agency, entity or other person with regard to Hazardous Materials on, from or affecting the Mortgaged Property; (b) neither the City nor, to the best of the City's knowledge, any other person has violated any applicable Environmental Laws (as hereinafter defined) relating to or affecting the Mortgaged Property; (c) to the best of the City's knowledge, the Mortgaged Property is presently in compliance with all Environmental Laws and there are no circumstances presently existing upon or under the Mortgaged Property, or relating to the Mortgaged Property which may violate any applicable Environmental Laws, and there is not now pending, or threatened, any action, suit, investigation or proceeding against the City relating to the Mortgaged Property (or against any other party relating to the Mortgaged Property) seeking to enforce any right or remedy under any of the Environmental Laws; (d) the Mortgaged Property shall be used to generate, manufacture, refine, transport, treat, store, handle, dispose, produce or process Hazardous Materials only in accordance with all applicable Environmental Laws; (e) the City shall not cause nor permit the improper installation of Hazardous Materials in the Mortgaged Property nor a release of Hazardous Materials on the Mortgaged Property; (f) the City shall at all times comply with and ensure compliance by all other parties with all applicable Environmental Laws relating to or affecting the Mortgaged Property and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to any applicable Environmental Laws; (g) the City has obtained and will at all times continue to obtain and/or maintain all licenses, permits, and/or other governmental or regulatory actions necessary to comply with Environmental Laws with respect to the Mortgaged Property (the "Permits"), and the City is in full compliance with the terms and provisions of the Permits and will continue to comply with the terms and provisions of the Permits; (h) the City shall immediately give the Beneficiary oral and written notice in the event that the City receives any notice from any governmental agency, entity, or any other party with regard to Hazardous Materials on, from or affecting the Mortgaged Property and shall conduct and complete all investigations, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Mortgaged Property in accordance with all applicable Environmental Laws. To the extent permitted by law, the City hereby agrees to defend and indemnify the Deed of Trust Trustee and the Beneficiary and hold them harmless from and against any and all losses, liabilities, damages, injuries (including, without limitation, attorneys' fees) and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against the Deed of Trust Trustee or the Beneficiary for, with respect to, or as a direct or indirect result of (a) the presence on, or under, or the escape, spillage, emission or release from the Mortgaged Property of any Hazardous Material regardless of whether or not caused by or within the control of the City, (b) the violation of any Environmental Laws relating to or affecting the Mortgaged Property, whether or not caused by or within the control of the City, (c) the failure by the City to comply fully with the terms and provisions of this paragraph, or (d) any warranty or representation made by the City in this paragraph being false or untrue in any material respect. In the event that the Beneficiary elects to control, operate, sell or otherwise claim property rights in the Mortgaged Property, the City shall deliver the Mortgaged Property free of any and all Hazardous Materials so that the conditions of the Mortgaged Property shall conform with all applicable Environmental Laws. To the extent

permitted by law, prior to any such delivery of the Mortgaged Property, the City shall pay to the Beneficiary from its own funds any amounts required to be paid under the indemnification provisions set forth above. For purposes of this Deed of Trust, "Hazardous Material" means and includes petroleum products, any flammable explosives, radioactive materials, hazardous materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous waste, substance or material defined as such in (or for the purpose of) the Environmental Laws. For the purposes of this Deed of Trust, "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Hazardous Materials Transportation Act, the Oil Pollution Act of 1990, the Emergency Planning and Right-to-Know Act, the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, the Resource Conservation and Recovery Act, any "Super Fund" or "Super Lien" law (including in all cases any regulations promulgated thereunder), or any other federal, state, or local law, regulation or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials, as may now or at any time hereafter be in effect. The obligations and liabilities of the City under this paragraph shall survive the foreclosure of the Deed of Trust, the delivery of a deed in lieu of foreclosure, and the cancellation of this Deed of Trust; or if otherwise expressly permitted in writing by the Beneficiary, the sale or alienation of any part of the Mortgaged Property.

Section 16. Miscellaneous. (a) Notices. All notices, approvals, consents, requests and other communications hereunder shall be in writing and, unless otherwise provided herein, shall be deemed to have been given when delivered or mailed by registered or certified mail, postage prepaid, addressed as follows: (a) if to the City, at 200 West 5th Street, Greenville, North Carolina 27858-1824, Attention: Director of Financial Services; (b) if to the Beneficiary, to Branch Banking Trust Company, BB&T Governmental Finance, Attn: Account Administration/Municipal, 5130 Parkway Plaza Boulevard, Building 9, Charlotte, North Carolina; and (c) if to the Deed of Trust Trustee, _____, _____, _____, _____.

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

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

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

(d) Amendments and Supplements. This Deed of Trust may be amended and supplemented only as provided in the Agreement.

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

(f) Execution in Counterparts. This Deed of Trust may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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

IN WITNESS WHEREOF, the City has caused this Deed of Trust to be executed in its name by the City Manager of the City and its seal to be impressed hereon and attested by the City Clerk of the City, all as of the date first above written.

CITY OF GREENVILLE, NORTH CAROLINA

[SEAL]

By: _____
City Manager

Attest:

City Clerk

ACKNOWLEDGEMENT FOR CITY

STATE OF NORTH CAROLINA

COUNTY OF PITT

This ____ day of June, 2009, personally came before me, a Notary Public in and for the said County and State, Wanda T. Elks, who, being by me duly sworn, says that she is the City Clerk of the City of Greenville, North Carolina, a municipal corporation existing under the laws of the State of North Carolina and acting through its City Council, and by authority duly given and as the act of said City, the foregoing instrument was signed in its name by Wayne Bowers, as the City Manager of said City, sealed with its seal and attested by herself as the City Clerk.

Witness my hand and notarial seal this ____ day of January, 2009.

Notary Public

My commission expires:

(Notarial Seal)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

LEGAL DESCRIPTION OF THE MAIN LIBRARY SITE

The tracts or parcels constituting the Main Library Site are as follows:

LEGAL DESCRIPTION FOR PROPERTY OWNED BY THE CITY OF GREENVILLE AS DESCRIBED IN DEED BOOK J-26 PAGE 438, DEED BOOK X-45 PAGE 324, DEED BOOK 1120 PG 499 AND AS SHOWN IN MAP BOOK 50 PAGE 134 AND MAP BOOK 69 PAGE 13.

LYING AND BEING IN THE CITY OF GREENVILLE, PITT COUNTY, NORTH CAROLINA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE INTERSECTION OF THE SOUTHERN RIGHT-OF-WAY OF DICKINSON AVENUE AND THE WESTERN RIGHT-OF-WAY OF EVANS STREET, SAID POINT LYING S03°50'09"E 1046.65 FEET FROM AN EAST GROUP CONTROL POINT HAVING AND 83 GRID COORDINATES N (Y) = 681,942.206 E (X) = 2,483,370.522; THENCE FROM SAID POINT OF BEGINNING ALONG THE WESTERN RIGHT-OF-WAY OF EVANS STREET S10°50'15"W 270.06 FEET TO A POINT IN THE INTERSECTION OF THE NORTHERN RIGHT-OF-WAY OF READE CIRCLE AND THE WESTERN RIGHT-OF-WAY OF EVANS STREET; THENCE ALONG THE NORTHERN RIGHT-OF-WAY OF READE CIRCLE N79°58'06"W 48.43 FEET TO A POINT; THENCE N74°09'31"W 50.00 FEET TO A POINT; THENCE N70°16'14"W 50.00 FEET TO A POINT; THENCE N66°28'53"W 47.45 FEET TO A POINT; THENCE N62°52'11"W 45.35 FEET TO A POINT; THENCE N58°14'55"W 23.89 FEET TO A POINT; THENCE LEAVING SAID RIGHT-OF-WAY THENCE N32°44'01"E 38.04 FEET TO A POINT; THENCE N10°47'04"E 140.55 FEET TO A POINT; THENCE N53°42'19"E 11.87 FEET TO A POINT IN THE SOUTHERN RIGHT-OF-WAY OF DICKINSON AVENUE; THENCE ALONG SAID RIGHT-OF-WAY ALONG A CURVE TO THE LEFT HAVING A CHORD BEARING AND DISTANCE OF N64°35'51"E 30.85 FEET AND A RADIUS OF 175.00 FEET TO A POINT; THENCE N59°32'28"E 27.45 FEET TO A POINT; THENCE ALONG A CURVE TO THE RIGHT HAVING A CHORD BEARING AND DISTANCE OF N80°11'19"E 88.15 FEET AND A RADIUS OF 125.00 FEET TO A POINT; THENCE S79°09'50"E 84.64 FEET TO A POINT; THENCE ALONG A CURVE TO THE RIGHT HAVING A CHORD BEARING AND DISTANCE OF S34°09'50"E 35.36 FEET AND A RADIUS OF 25.00 FEET TO THE POINT AND PLACE OF BEGINNING CONTAINING 1.52 ACRES MORE OR LESS.

LEGAL DESCRIPTION OF JAYCEE PARK RECREATION
CENTER/EAST BRANCH LIBRARY SITE

The tracts or parcels constituting the Jaycee Park Recreation Center/East Branch Library Site are as follows:

Being all of the certain tracts of land lying in the City of Greenville, in Greenville Township, Pitt County, North Carolina, being located north of the end of Laura Lane (Map Book 26 Page 76) existing rights of way and east of East Wright Road (Map Book 8 Page 85(1)). The point of beginning being located N 57°37'00" E 101.21' from the northeast intersection of Fletcher Place and Laura Lane rights of ways to a point, thence S 32°26'00" E 50.00' to the point of beginning, said point being an existing concrete monument. Thence from the point of beginning N 32°26'00" W 643.38' to new iron pipe in line, thence continuing with the same line N 32°26'00" W 25.00' to a non-monumented point located in the center of Reedy Branch, thence with the center of Reedy Branch S 76°44'06" E 12.30', thence N 77°15'40" E 18.64', thence N 55°37'35" E 77.88', thence N 66°27'51" E 66.30', thence N 44°05'08" E 14.37', thence N 52°38'04" E 44.89', thence N 25°37'04" E 35.18', thence N 47°37'33" E 84.07', thence N 10°43'03" E 33.71', thence N 00°56'13" W 24.99', thence N 20°26'24" E 91.13', thence N 12°21'01" W 31.54', thence N 19°43'05" E 102.66', thence N 06°16'54" E 41.63', thence N 12°49'58" W 49.49' to a non-monumented point located in the center of Reedy Branch, thence S 50°15'00" E 25.00' to a new iron pipe in line, thence continuing with the same line S 50°15'00" E 902.04' to a new nail set in the western rights of way of Cedar Lane, thence with the western rights of way S 39°45'00" W 16.00' to a new nail set at the end of Cedar Lane's western rights of way, thence with the southern end of Cedar Lane's rights of way and beyond S 53°27'00" E 77.07' to a new iron pipe, thence S 57°37'00" W 880.21' to the point of beginning. Being all of Deed Book E-45 Page 181, Deed Book 325 Page 397, Deed Book Y-39 Page 234 and Map Book 25 Page 43 of the Pitt County Registry, containing 13.06 acres more or less. Reference is made to the map recorded in Map Book 50, Page 133 of the Pitt County Registry for a more accurate description.

LEGAL DESCRIPTION OF THE
SOUTHSIDE RECREATION CENTER SITE

The tracts or parcels of land constituting the Southside Recreation Center Site are as follows:

Lying and being in Winterville Township, Pitt County, North Carolina, and being located west of NCSR 1709 (Corey Road), and BEGINNING at a nail found in the centerline of NCSR 1709 at a point located the following calls and distances from a P.K. nail found in the intersection of the centerline of said road with the centerline of NCSR 1711 (D.H. Conley Road): N 18-10-58 W 612.132 feet to a nail found in the centerline of NCSR 1709, and N 17-57-38 W 267.828 feet to the point of BEGINNING; and from said point of BEGINNING running along the line of Phillip W. Worthington in the centerline of a ditch as described in Deed Book W53 at page 821 of the Pitt County Registry S 65-47-22 W 200.00 feet; thence continuing along the centerline of said ditch and the line of David Norman Worthington as described in Deed Book J-28 at Page 90 of the Pitt County Registry the following calls and distances: S 68-59-42 W 193.254 feet, S 53-25-

04 W 94.930 feet, S 69-51-56 W 221.679 feet, S 75-12-51 W 163.702 feet, S 74-48-15 W 94.511 feet, S 85-34-00 W 87.320 feet, S 88-25-05 W 205.766 feet, S 76-41-10 W 165.875 feet, N 83-40-21 W 105.439 feet, S 76-11-11 W 65.533 feet, and S 58-38-55 W 190.445 feet to a 36 inch gum with old wire at the end of said ditch; thence continuing along the David Norman Worthington line N 88-13-54 W 1545.354 feet to a new iron pipe set in a corner and N 01-43-00 E 171.600 feet to a 36 inch gum with wire in the property line of Julian J. Worthington as described in Deed of record in Deed Book G24, at Page 146 of the Pitt County Registry; thence along said line of Julian J. Worthington and continuing on to the property of Eva Corbett as described in Deed Book C20 at Page 279 of the Pitt County Registry N 35-43-00 E 248.505 feet to a new iron pipe; thence continuing along the line of Eva Corbett the following calls and distances: N 12-48-37 E 662.638 feet to a new iron pipe, N 85-38-08 E 214.951 feet to a new iron pipe, N 17-47-24 E 301,521 feet, and N 15-47-53 E 119.280 feet to a new iron pipe in the line of Cleveewood Subdivision, Section II, Phase II, as shown in Plat Book 36 at Page 137 of the Pitt County Registry; thence along said line of Cleveewood Subdivision S 88-01-11 E 97.356 feet to a point in the line of Vance Taylor Corey as shown in Deed Book D44 at Page 608 of the Pitt County Registry; thence along the line of Vance Taylor Corey the following calls and distances: S 86-13-29 E 628.686 feet to a new iron pipe at a corner, N 01-00-17 W 316.800 feet to a new iron pipe at a corner, S 87-15-17 E 221.100 feet to a point in the centerline of a ditch, thence continuing along the centerline of the ditch N 75-44-43 E 135.300 feet, S 70-38-48 E 124.883 feet, S 57-56-09 E 175.094 feet, S 76-28-37 E 91.238 feet, S 76-142-44 E 228.790 feet, S 76-50-33 E 399.186 feet, and S 62-36-10 E 354.849 feet to a P.K. nail set in the centerline of NCSR 1709; thence along the centerline of NCSR 1709 the following calls and distances: along an arc curving to the left S 14-42-53 E a chord distance of 301.299 feet, S 17-06-25 E 299.806 feet, and S 17-19-21 E 246.389 feet to the point and place of BEGINNING; containing 92.21 acres, more or less; as shown on "Survey for Sue W. Taylor and Jimmy R. Worthington" by McDavid Associates, Inc. dated June 2, 1992, revised June 23, 1992, reference to which is directed.

EXHIBIT B

LIST OF ENCUMBRANCES

Draft of May 14, 2009

PROJECT FUND AGREEMENT

THIS PROJECT FUND AGREEMENT is dated June ___, 2009, and is by and between the **CITY OF GREENVILLE, NORTH CAROLINA**, a public body of the State of North Carolina (the "City"), and **BRANCH BANKING AND TRUST COMPANY -- GOVERNMENTAL FINANCE** ("BB&T").

RECITALS

The City is, simultaneously with the execution and delivery of this Project Fund Agreement, executing and delivering an Installment Financing Agreement dated June ___, 2009 (the "Financing Agreement"). The purpose of the Financing Agreement is to provide for BB&T's advance of [\$12,100,000.00] to the City to finance the "Project," as defined in the Financing Agreement, which includes the refinancing of prior City obligations and the "New Money Project," as defined in the Financing Agreement. In partial consideration for BB&T's entering into the Financing Agreement, the City has agreed to provide for certain financing proceeds to be deposited and disbursed pursuant to this Project Fund Agreement.

NOW, THEREFORE, the parties agree as follows:

SECTION 1. DEFINITIONS

In this Project Fund Agreement, the term "***Project Costs***" means all costs of the design, planning, constructing, acquiring, installing and equipping of the New Money Project, as determined in accordance with generally accepted accounting principles and that will not adversely affect the exclusion from gross income for federal income tax purposes of the designated interest component of Installment Payments payable by the City under the Financing Agreement, including (a) sums required to reimburse the City or its agents for advances made for any such costs, (b) interest during the construction process and for up to six months thereafter, and (c) all costs related to the financing of the New Money Project through the Financing Agreement and all related transactions.

In addition, any capitalized terms used in this Project Fund Agreement and not otherwise defined shall have the meanings assigned thereto in the Financing Agreement.

SECTION 2. PROJECT FUND.

2.1. Project Fund; Other Deposit. (a) On the Closing Date, BB&T will deposit [\$4,860,000.00] into a special account of the City at Branch Banking and Trust Company to be designated "2009-1 City of Greenville Project Fund" (the "Project Fund"). This account

will be held separate and apart from all other funds of the City. The Project Fund is the City's property, but the City will withdraw amounts on deposit in the Project Fund only as provided in the Project Fund Agreement and only for application from time to time to the payment of Project Costs. Pending such application, such amounts shall be subject to a lien and charge in favor of BB&T to secure the City's obligations under the Financing Agreement.

(b) On the Closing Date, BB&T will pay the remainder of the amount financed pursuant to the Financing to [refunding deposit].

2.2. Requisitions from Project Fund. (a) The City may withdraw funds from the Project Fund only after authorization from BB&T. BB&T will disburse funds from the Project Fund only to the City and only upon its receipt of one or more written requisitions signed by one of the below listed designated City Representatives substantially in the form of Exhibit A.

[name/title]

[name/title]

The City may designate additional representatives to sign requisitions upon written notification to BB&T.

Upon receipt of a requisition from the City, BB&T will promptly undertake such review of the matters referred to in such requisition as it shall deem appropriate, and will then promptly notify the City of its approval of the requisition or the reasons for its disapproval.

(b) Notwithstanding any other provision of this Project Fund Agreement, BB&T will not be obligated to honor any requisition for disbursements after 30 days from the Closing Date until the City provides to BB&T a final title policy, in form and substance acceptable to BB&T, insuring the priority of BB&T's lien position under the Financing Agreement.

2.3. Disposition of Project Fund Balance.

(a) *Upon completion* -- Promptly after the New Money Project has been completed to the point that the financed facilities are suitable for carrying out substantially all the purposes they are to serve for the City, the City must deliver to BB&T (i) a certificate to such effect signed by a City Representative and by a licensed architect or engineer

reasonably acceptable to BB&T, and (ii) an opinion of counsel to the City that there are no liens or encumbrances on the Site other than Permitted Encumbrances. BB&T will then withdraw any balance remaining in the Project Fund (and not required to be retained to pay Project Costs incurred but not yet paid) and apply such balance against outstanding Required Payments.

(b) ***Upon default*** -- Upon the occurrence of an Event of Default, BB&T may withdraw any balance remaining in the Project Fund and apply such balance against outstanding Required Payments.

(c) ***After delay or inactivity*** -- If (i) more than two years have elapsed from the Closing Date or (ii) at least six months has passed from BB&T's most recent receipt of a requisition for Project Costs, then BB&T, upon 30 days' notice from BB&T to the City, may withdraw any balance remaining in the Project Fund and apply such balance against outstanding Required Payments.

(d) ***Application of Project Fund balance*** -- BB&T will apply any amounts paid to it pursuant to this section (i) first against all Additional Payments then due and payable, and (ii) then to interest accrued and unpaid to the Project Fund disposition date. Such prepayment, however, will not affect any other City payment obligation under the Financing Agreement. BB&T will notify the City of any withdrawal from the Project Fund made under this Section 2.3, and in the notice will describe its application of the funds withdrawn.

At the time of the disposition of the project fund and closure of the Project Fund, accrued interest will post to the Fund only through the last complete calendar month the Fund is open. If the Fund is closed prior to a month's end, accrued but unposted interest will be forfeited.

2.4. Investment. (a) The City and BB&T agree that money in the Project Fund will be continuously invested and reinvested in a BB&T public funds money rate savings account.

(b) From and after the date that is three years from the Closing Date, the City will not purchase or hold any investment which has a "yield," as determined under the Code, in excess of the "yield" on the City's obligations under the Financing Agreement, unless the City has supplied BB&T with a Bond Counsel Opinion to the effect that such investment will not adversely affect the exclusion from gross income for federal income tax purposes to which the interest components of Installment Payments would otherwise be entitled.

(c) Investment obligations acquired with money in the Project Fund shall be deemed at all times to be part of the Project Fund. The interest accruing thereon and any

profit or loss realized upon the disposition or maturity of any such investment shall be credited to or charged against the Project Fund.

- (d) All earnings on moneys in the Project Fund must be used for Project Costs.

SECTION 3. MISCELLANEOUS.

3.1. Notices. Any notice or other communication required or contemplated by this Project Fund Agreement shall be deemed to be delivered if in writing, addressed as provided below and if (a) actually received by such addressee, or (b) in the case of mailing, when indicated to have been delivered by a signed receipt returned by the United States Postal Service after deposit in the United States mails, postage and registry fees prepaid, and clearly directed to be transmitted as registered or certified mail:

(i) If intended for the City, addressed to it at the following address: City of Greenville, Attention: Director of Financial Services, 200 West 5th Street, Greenville, North Carolina 27858.

(ii) If intended for BB&T, addressed to it at the following address: BB&T Governmental Finance, Attention: Account Administration/Municipal – Project Fund Agreement Notice, 5130 Parkway Plaza Boulevard, Building 9, Charlotte, North Carolina 28217.

Any party may designate a different or alternate address for notices by notice given under this Project Fund Agreement.

3.2. Survival of Covenants and Representations. All covenants, representations and warranties made by the City in this Project Fund Agreement and in any certificates delivered pursuant to this Project Fund Agreement shall survive the delivery of this Project Fund Agreement.

3.3. Choice of Law. The parties intend that North Carolina law will govern this Project Fund Agreement.

3.4. Amendments. This Project Fund Agreement may not be modified or amended unless such amendment is in writing and signed by BB&T and the City.

3.5. No Third-Party Beneficiaries. There are no parties intended to be or which shall be deemed to be third-party beneficiaries of this Project Fund Agreement.

3.6. Successors and Assigns. All of the covenants and conditions of this Project Fund Agreement shall be binding upon and inure to the benefit of the parties to this Project Fund Agreement and their respective successors and assigns.

3.7. Severability. If any court of competent jurisdiction shall hold any provision of this Project Fund Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Project Fund Agreement.

3.8. Counterparts. This Project Fund Agreement may be executed in any number of counterparts, including separate counterparts, each executed counterpart constituting an original but all together only one agreement.

3.9. Termination. Except as otherwise provided in this Project Fund Agreement, this Project Fund Agreement shall cease and terminate upon payment of all funds (including investment proceeds) from the Project Fund.

(The remainder of this page has been left blank intentionally.)

IN WITNESS WHEREOF, each of the parties has caused this Project Fund Agreement to be signed and delivered by a duly authorized officer, all as of the date first above written.

(SEAL)

**CITY OF GREENVILLE,
NORTH CAROLINA**

ATTEST:

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

**BRANCH BANKING AND
TRUST COMPANY –
GOVERNMENTAL FINANCE**

By: _____

Printed Name: _____

Title: _____

[Project Fund Agreement dated June ____, 2009]

EXHIBIT A

PROJECT FUND REQUISITION

[To Be Prepared on City's Letterhead for Submission]

[Date] _____

Martha Bisacquino
Project Specialist
BB&T Governmental Finance
5130 Parkway Plaza Boulevard, Building 9
Charlotte, North Carolina 28217

RE: Request for disbursement of funds from the Project Fund related to Contract No. 003-xxxxxxx with City of Greenville, North Carolina, dated June ____, 2009.

Dear Ms. Bisacquino,

Pursuant to the terms and conditions of the Project Fund Agreement dated June ____, 2009, the City of Greenville, North Carolina (the "City"), requests the disbursement of funds from the Project Fund established under the Project Fund Agreement for the following Project Costs:

This is requisition number ____ from the Project Fund.

Disbursements will be to the City of Greenville, North Carolina.

Amount:

Applicable Vendor Invoices:

Project Description:

Location of Equipment/New Money Project:

To receive funds via wire transfer please include:

ABA Routing Number:

Account Number:

Physical address of City:

City of Greenville makes this requisition pursuant to the following representations:

1. The City has appropriated in its current fiscal year funds sufficient to pay the Installment Payments and estimated Additional Payments due in the current fiscal year.
2. The purpose of this disbursement is for partial payment on the project provided for under the Contract referenced above.
3. The requested disbursement has not been subject to any previous requisition.
4. No notice of any lien, right to lien or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable herein to any of the persons, firms or corporations named herein has been received, or if any notice of any such lien, attachment or claim has been received, such lien, attachment or claim has been released or discharged or will be released or discharged upon payment of this requisition.
5. This requisition contains no items representing payment on account of any percentage entitled to be retained on the date of this requisition.
6. No Event of Default is continuing under the Financing Agreement, and no event or condition is existing which, with notice or lapse of time or both, would become an Event of Default.
7. The City will execute any Uniform Commercial Code financing statements with respect to this portion of the New Money Project that BB&T may request to evidence its security interest.
8. The City has in place insurance on this portion of the New Money Project that complies with the insurance provisions of the above-referenced Contract.

Each amount requested for payment in this requisition either (a) represents reimbursement to the City for a Project Cost expenditure previously made, or (b) will be used by the City promptly upon the receipt of funds from BB&T to make the payments to third parties described in this requisition.

Attached is evidence that the amounts shown in this requisition are properly payable at this time, such as bills, receipts, invoices, architects' payment certifications or other appropriate documents.

**CITY OF GREENVILLE,
NORTH CAROLINA**

By: _____

Title: _____



City of Greenville, North Carolina

Meeting Date: 6/1/2009
Time: 6:00 PM

Title of Item: Fiscal Year 2009-2010 Budget

Explanation: On May 11, 2009, presentations were made to the City Council on the proposed budgets for Greenville Utilities Commission, Sheppard Memorial Library, Convention and Visitors Authority, and City of Greenville.

The June 1 meeting is scheduled for discussion of the proposed City budget. Staff will report on any changes recommended since the May 11 budget presentation. As requested by the City Council, information will be provided on the cost of implementing the two recommended actions to increase recycling, the work being performed by the Building Inspections staff during this time of reduced building permit activity, and retiree health insurance costs as determined by the Other-Post Employment Benefits (OPEB) accounting guidelines.

Fiscal Note: The total proposed City budget for all funds is \$83,338,723 with the General Fund comprising \$70,299,166 of the total amount.

Recommendation: Discuss the proposed 2009-2010 budget.

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