



# Agenda

## Greenville City Council

November 12, 2015  
6:00 PM  
City Council Chambers  
200 West Fifth Street

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Assistive listening devices are available upon request for meetings held in the Council Chambers. If an interpreter is needed for deaf or hearing impaired citizens, please call 252-329-4422 (voice) or 252-329-4060 (TDD) no later than two business days prior to the meeting.

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**I. Call Meeting To Order**

**II. Invocation - Council Member Smith**

**III. Pledge of Allegiance**

**IV. Roll Call**

**V. Approval of Agenda**

- **Public Comment Period**

The Public Comment Period is a period reserved for comments by the public. Items that were or are scheduled to be the subject of public hearings conducted at the same meeting or another meeting during the same week shall not be discussed. A total of 30 minutes is allocated with each individual being allowed no more than 3 minutes. Individuals who registered with the City Clerk to speak will speak in the order registered until the allocated 30 minutes expires. If time remains after all persons who registered have spoken, individuals who did not register will have an opportunity to speak until the allocated 30 minutes expires.

**VI. Appointments**

1. Appointments to Boards and Commissions

**VII. New Business**

**Public Hearings**

2. Ordinance requested by East Carolina University to rezone 2.19 acres located near the northwest and northeast corners of the intersection of East 10th Street and Charles Street from CDF (Downtown Commercial Fringe) to OR (Office-Residential [High Density Multi-family])

3. Resolution Approving the Proposed Installment Financing Agreement for South Greenville Gymnasium Improvements and Additions

**Other Items of Business**

4. Request for Sanitary Sewer Connection and Waiver of Voluntary Annexation Requirement for Candlewick Area Sanitary District
5. Financial audit for the fiscal year ended June 30, 2015
6. 2015-2016 Capital Reserve Fund calculation and ordinance approving Capital Reserve Fund designations
7. 2016 City Council Meetings Schedule
8. Fiscal Year 2016-2017 and 2017-2018 Budget Schedule
9. Discussion of East 10th Street
10. Discussion of deer in residential areas

**VIII. Comments from Mayor and City Council**

**IX. City Manager's Report**

**X. Adjournment**



# City of Greenville, North Carolina

**Meeting Date:**  
**11/12/2015**  
**Time: 6:00 PM**

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**Title of Item:** Appointments to Boards and Commissions

**Explanation:** **Abstract:** The City Council fills vacancies and makes reappointments to the City's boards and commissions. Appointments are scheduled to be made to nine of the boards and commissions.

**Explanation:** City Council appointments need to be made to the Community Appearance Commission, Environmental Advisory Commission, Firefighters' Relief Fund Committee, Greenville Bicycle & Pedestrian Commission, Human Relations Council, Police Community Relations Committee, Public Transportation & Parking Commission, Sheppard Memorial Library Board, and Youth Council.

**Fiscal Note:** No direct fiscal impact.

**Recommendation:** Make appointments to the Community Appearance Commission, Environmental Advisory Commission, Firefighters' Relief Fund Committee, Greenville Bicycle & Pedestrian Commission, Human Relations Council, Police Community Relations Committee, Public Transportation & Parking Commission, Sheppard Memorial Library Board, and Youth Council.

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[Muni\\_Report\\_2015\\_Appointments\\_to\\_Boards\\_and\\_Commissions\\_998631](#)

# Appointments to Boards and Commissions

November 2015

## Community Appearance Commission

**Council Liaison:** Council Member Rick Smiley

Name	District #	Current Term	Reappointment Status	Expiration Date
Rebecca Powers	4	First term	Resigned	July 2017
Joanne Robertson	4	First term	Not seeking an additional term	April 2015
Fred Wright	4	First term	Resigned	April 2016

## Environmental Advisory Commission

**Council Liaison:** Council Member Marion Blackburn

Name	District #	Current Term	Reappointment Status	Expiration Date
J.C. Woodley <i>(Lawyer or someone with knowledge of environmental practices or regulations)</i>	5	First term	Resigned	April 2017

## Firefighters' Relief Fund Committee

**Council Liaison:** Not Applicable

Name	District #	Current Term	Reappointment Status	Expiration Date
William Franklin	4	Third term	Ineligible	January 2015

## Greenville Bicycle Pedestrian Commission

**Council Liaison:** Council Member Rick Smiley

Name	District #	Current Term	Reappointment Status	Expiration Date
Ashley Breedlove	2	First term	Did not meet	January 2018

attendance  
requirement.

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### Human Relations Council

**Council Liaison:** Council Member Rose Glover

Name	District #	Current Term	Reappointment Status	Expiration Date
Marvin Arrington	5	Second term	Ineligible	Sept. 2015
Rodney Coles	1	Second term	Ineligible	Sept. 2015
Inez Dudley	2	First term	Resigned	Sept. 2017
Robert Hudak	4	Second term	Ineligible	Sept. 2014
Maurice Whitehurst ( <i>Pitt Community College</i> )	2	Second term	Did not meet attendance Requirement	Oct. 2015

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### Police Community Relations Committee

**Council Liaison:** Council Member Rose Glover

Name	District #	Current Term	Reappointment Status	Expiration Date
Leonard Naipaul ( <i>Council Member Rose Glover</i> )	2	Filling unexpired term	Eligible	October 2015
Shawan Sutton ( <i>Council Member Kandie Smith</i> )	1	First term	Eligible	October 2015

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### Public Transportation & Parking Commission

**Council Liaison:** Council Member Richard Croskery

Name	District #	Current Term	Reappointment Status	Expiration Date
W. Scott Alford	4	Filling unexpired term	Resigned	January 2016

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### Sheppard Memorial Library Board

**Council Liaison:** Council Member Richard Croskery

Name	District #	Current Term	Reappointment Status	Expiration Date
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Patricia Rawls	2	Second term	Ineligible	October 2015
Ralph Scott	3	Second term	Ineligible	October 2015

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### **Youth Council**

**Council Liaison:** Mayor Pro-Tem Calvin Mercer

<b>Name</b>	<b>District #</b>	<b>Current Term</b>	<b>Reappointment Status</b>	<b>Expiration Date</b>
Asha Armistead		Filling unexpired term	Eligible	Sept. 2015
Jacob Barondes		Second term	Eligible	Sept. 2015
12 Available Spots				

# Applicants for Community Appearance Commission

Kellie Gonzalez  
3936 Dunhagen Rd.  
Greenville, NC

**Application Date:** 10/19/2015

**Home Phone:** (919) 791-5841

**Business Phone:**

**Email:**

**District #:**

## Applicants for Environmental Advisory Commission

Orrin Allen Beasley  
925 Spring Forest Road #7  
Greenville, NC 27858

**District #:** 1

Elaine U. Brestel  
106 Christenbury Drive  
Greenville, NC 27858

**District #:** 4

Sherryl Gregory  
1303 E. 10th Street Apt N  
Greenville, NC 27858

**District #:**

Kellie Gonzalez  
3936 Dunhagen Rd.  
Greenville, NC

**District #:**

Wendy Klein  
318 Rutledge Road  
Greenville, NC 27858

**District #:** 4

Matthew Mellis  
529 Spring Forest Road Apt. H  
Greenville, NC

**District #:** 1

**Application Date:** 2/3/2014

**Home Phone:** (252) 216-6099  
**Business Phone:** (252) 216-6099  
**Email:** oab0119@gmail.com

**Application Date:** 1/21/2014

**Home Phone:** (252) 752-2255  
**Business Phone:**  
**Email:** ebrestel@suddenlink.net

**Application Date:** 2/3/2014

**Home Phone:** (252) 559-9049  
**Business Phone:**  
**Email:**

**Application Date:** 10/19/2015

**Home Phone:** (919) 791-5841  
**Business Phone:**  
**Email:**

**Application Date:** 2/10/2014

**Home Phone:** (252) 329-7005  
**Business Phone:** (252) 902-9005  
**Email:** wakspg1@suddenlink.net

**Application Date:** 3/6/2014

**Home Phone:** (252) 702-3429  
**Business Phone:** (252) 752-5938  
**Email:** mellism@pitt.k12.nc.us



## Applicants for Firefighters' Relief Fund Committee

Mary Ellen Cole  
912 Bremerton Drive  
Greenville, NC 27858

**District #:** 5

Kellie Gonzalez  
3936 Dunhagen Rd.  
Greenville, NC

**District #:**

Crystal M Kuegel  
1200 B Glen Arthur Avenue  
Greenville, NC 28540

**District #:** 4

**Application Date:** 3/12/2015

**Home Phone:** (252) 917-1590

**Business Phone:**

**Email:** maxierules@gmail.com

**Application Date:** 10/19/2015

**Home Phone:** (919) 791-5841

**Business Phone:**

**Email:**

**Application Date:** 2/23/2015

**Home Phone:** (252) 885-9245

**Business Phone:** (252) 885-9245

**Email:** crystal.kuegel@gmail.com

# Applicants for Greenville Bicycle & Pedestrian Commission

Kellie Gonzalez  
3936 Dunhagen Rd.  
Greenville, NC

**Application Date:** 10/19/2015

**Home Phone:** (919) 791-5841

**Business Phone:**

**Email:**

**District #:**

## Applicants for Human Relations Council

Kellie Gonzalez  
3936 Dunhagen Rd.  
Greenville, NC

**Application Date:** 10/19/2015

**Home Phone:** (919) 791-5841

**Business Phone:**

**Email:**

**District #:**

Crystal M Kuegel  
1200 B Glen Arthur Avenue  
Greenville, NC 28540

**Application Date:** 2/23/2015

**Home Phone:** (252) 885-9245

**Business Phone:** (252) 885-9245

**Email:** crystal.kuegel@gmail.com

**District #:** 4

Deborah J. Monroe  
1308 Old Village Road  
Greenville, NC 27834

**Application Date:** 1/15/2015

**Home Phone:** (252) 714-0969

**Business Phone:**

**Email:** debj.monroe@gmail.com

**District #:** 1

Bridget Moore  
4128A Bridge Court  
Winterville, NC 28590

**Application Date:** 8/28/2014

**Home Phone:** (252) 355-7377

**Business Phone:** (252) 355-0000

**Email:** bmoore2004@netzero.com

**District #:** 5

Travis Williams  
3408 Evans Street Apt. E  
Greenville, NC 27834

**Application Date:**

**Home Phone:** (252) 412-4584

**Business Phone:**

**Email:**

**District #:** 5

## Applicants for Police Community Relations Committee

Mary Ellen Cole  
912 Bremerton Drive  
Greenville, NC 27858

**Application Date:** 3/12/2015

**District #:** 5

**Home Phone:** (252) 917-1590

**Business Phone:**

**Email:** maxierules@gmail.com

Kellie Gonzalez  
3936 Dunhagen Rd.  
Greenville, NC

**Application Date:** 10/19/2015

**District #:**

**Home Phone:** (919) 791-5841

**Business Phone:**

**Email:**

## Applicants for Public Transportation and Parking Commission

Richard Malloy Barnes  
206 South Elm Street, Apt. N  
Greenville, NC 27858

**Application Date:** 12/10/2014

**District #:** 3

Kellie Gonzalez  
3936 Dunhagen Rd.  
Greenville, NC

**Application Date:** 9/12/2014

**District #:**

**Home Phone:** (252) 752-5278

**Business Phone:**

**Email:** kiltedmile@aol.com

**Home Phone:** (919) 791-5841

**Business Phone:**

**Email:**

## Applicants for Sheppard Memorial Library Board

Richard Malloy Barnes  
206 South Elm Street, Apt. N  
Greenville, NC 27858

**Application Date:** 12/10/2014

**District #:** 3

**Home Phone:** (252) 752-5278  
**Business Phone:**  
**Email:** kiltedmile@aol.com

Kellie Gonzalez  
3936 Dunhagen Rd.  
Greenville, NC

**Application Date:** 10/19/2015

**District #:**

**Home Phone:** (919) 791-5841  
**Business Phone:**  
**Email:**

Mary Grier  
1704 South Elm Street  
Greenville, NC 27858

**Application Date:** 9/20/2011

**District #:** 4

**Home Phone:** (252) 756-1076  
**Business Phone:**  
**Email:** perfecttaste2002@yahoo.com

Pamela D. Hopkins  
2507 Jefferson Dr.  
Greenville, NC 27858

**Application Date:** 10/12/2015

**District #:**

**Home Phone:** (252) 916-6352  
**Business Phone:**  
**Email:**

Bridget Moore  
4128A Bridge Court  
Winterville, NC 28590

**Application Date:** 8/28/2014

**District #:** 5

**Home Phone:** (252) 355-7377  
**Business Phone:** (252) 355-0000  
**Email:** bmoore2004@netzero.com

Tyler James Russell  
3856 Forsyth Park Ct.  
Winterville, NC 28590

**Application Date:**

**District #:**

**Home Phone:** (910) 840-0337  
**Business Phone:** (252) 215-4000  
**Email:** tjr@wardandsmith.com

Tyrone O. Walston  
2706 Webb Street  
Greenville, NC 27834

**Application Date:** 6/6/2014

**District #:** 2

**Home Phone:** (252) 412-7351  
**Business Phone:** (252) 355-8736  
**Email:** walston.tyrone@gmail.com

# Applicants for Youth Council

None.



# City of Greenville, North Carolina

**Meeting Date:**  
**11/12/2015**  
**Time: 6:00 PM**

**Title of Item:** Ordinance requested by East Carolina University to rezone 2.19 acres located near the northwest and northeast corners of the intersection of East 10th Street and Charles Street from CDF (Downtown Commercial Fringe) to OR (Office-Residential [High Density Multi-family])

**Explanation:** **Abstract:** The City has received a request from East Carolina University to rezone 2.19 acres located near the northwest and northeast corners of the intersection of East 10th Street and Charles Street from CDF (Downtown Commercial Fringe) to OR (Office-Residential [High Density Multi-family]).

**Required Notices:**

Planning and Zoning meeting notice (property owner and adjoining property owner letter) mailed on October 6, 2015.  
On-site sign(s) posted on October 6, 2015.  
City Council public hearing notice (property owner and adjoining property owner letter) mailed on October 27, 2015.  
Public hearing legal advertisement published on November 2 and November 9, 2015.

**Comprehensive Plan:**

The subject area is located in Vision Area I.

The Future Land Use Plan Map recommends mixed-use/office/institutional (MOI) at the northeast corner of the intersection of East 10th Street and Cotanche Street transitioning to office/institutional/multi-family (OIMF) to the north and east.

Between Charles Boulevard/Cotanche Street and Greenville Boulevard, East 10th Street is considered a connector corridor. Connector corridors are anticipated to contain a variety of higher intensity activities and uses.



**Thoroughfare/Traffic Report Summary (PWD- Engineering Division):**

Based on the analysis comparing the existing zoning (9,000+ daily trips) and the requested rezoning, the proposed rezoning classification could generate 1,422 trips to and from the site, which is a decrease in traffic. Since the traffic analysis for the requested rezoning indicates that the proposal would generate less traffic than the existing zoning, a traffic volume report was not generated.

**History/Background:**

By 1986, the subject property was zoned CDF (Downtown Commercial Fringe).

**Present Land Use:**

Vacant

**Water/Sewer:**

Water and sanitary sewer are available.

**Historic Sites:**

There are no known effects on designated sites.

**Environmental Conditions/Constraints:**

There are no known environmental conditions/constraints.

**Surrounding Land Uses and Zoning:**

North: OR - East Carolina University Main Campus  
South: CDF - One (1) vacant lot, commercial strip center, and Arby's  
East: OR - East Carolina University Main Campus  
West: CDF - McDonald's

**Anticipated Density:**

Under the current zoning, the site could accommodate 19,166+/- square feet of fast food restaurant space.

Under the proposed zoning, the site is anticipated to accommodate 143,000+/- square feet of institutional space.

The anticipated build-out is 1-2 years.

**Fiscal Note:**

No cost to the City.

**Recommendation:** In staff's opinion, the request is in compliance with Horizons: Greenville's Community Plan and the Future Land Use Plan Map.

"In compliance with the comprehensive plan" should be construed as meaning the requested zoning is (i) either specifically recommended in the text of the Horizons Plan (or addendum to the plan) or is predominantly or completely surrounded by the same or compatible and desirable zoning and (ii) promotes the desired urban form. The requested district is considered desirable and in the public interest, and staff recommends approval of the requested rezoning.

The Planning and Zoning Commission voted to approve the request at its October 20, 2015 meeting.

If the City Council determines to approve the zoning map amendment, a motion to adopt the attached zoning map amendment ordinance will accomplish this. The ordinance includes the statutorily required statement describing whether the action taken is consistent with the comprehensive plan and explaining why Council considers the action taken to be reasonable and in the public interest.

If City Council determines to deny the zoning map amendment, in order to comply with this statutory requirement, it is recommended that the motion be as follows:

Motion to deny the request to rezone and to make a finding and determination that the rezoning request is inconsistent with the adopted comprehensive plan including, but not limited to, Objective M1 to reduce existing traffic congestion and safety problems and Objective UF 17 to prohibit "strip development" along collector and thoroughfare streets, and further that the denial of the rezoning request is reasonable and in the public interest due to the rezoning request does not promote, in addition to the furtherance of other goals and objectives, the safety and general welfare of the community by locating office/institutional/multi-family uses along transportation thoroughfares to provide transition between commercial nodes and to preserve vehicle carry capacity.

Note: In addition to the other criteria, the Planning and Zoning Commission and City Council shall consider the entire range of permitted and special uses for the existing and proposed zoning districts as listed under Title 9, Chapter 4, Article D of the Greenville City Code.

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[Attachments](#)

[Ordinance East Carolina University 1014394](#)

[Minutes East Carolina University 1014393](#)



ORDINANCE NO. 15-  
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GREENVILLE  
REZONING TERRITORY LOCATED WITHIN THE PLANNING AND ZONING  
JURISDICTION OF THE CITY OF GREENVILLE, NORTH CAROLINA

WHEREAS, the City Council of the City of Greenville, North Carolina, in accordance with Article 19, Chapter 160A, of the General Statutes of North Carolina, caused a public notice to be given and published once a week for two successive weeks in The Daily Reflector setting forth that the City Council would, on the 12<sup>th</sup> day of November, 2015, at 6:00 p.m., in the Council Chambers of City Hall in the City of Greenville, NC, conduct a public hearing on the adoption of an ordinance rezoning the following described territory;

WHEREAS, the City Council has been informed of and has considered all of the permitted and special uses of the districts under consideration;

WHEREAS, in accordance with the provisions of North Carolina General Statute 160A-383, the City Council does hereby find and determine that the adoption of the ordinance zoning the following described property is consistent with the adopted comprehensive plan and other officially adopted plans that are applicable and that the adoption of the ordinance zoning the following described property is reasonable and in the public interest due to its consistency with the comprehensive plan and other officially adopted plans that are applicable and, as a result, its furtherance of the goals and objectives of the comprehensive plan and other officially adopted plans that are applicable;

WHEREAS, as a further description as to why the action taken is consistent with the comprehensive plan and other officially adopted plans that are applicable in compliance with the provisions of North Carolina General Statute 160A-383, the City Council of the City of Greenville does hereby find and determine that the adoption of this ordinance is consistent with provisions of the comprehensive plan including, but not limited to, Objective M1 to reduce existing traffic congestion and safety problems and Objective UF 17 to prohibit "strip development" along collector and thoroughfare streets; and

WHEREAS, as a further explanation as to why the action taken is reasonable and in the public interest in compliance with the provisions of North Carolina General Statute 160A-383, the City Council of the City of Greenville does hereby find and determine that the adoption of this ordinance will, in addition to the furtherance of other goals and objectives, promote the safety and general welfare of the community by locating office/institutional/multi-family uses along transportation thoroughfares to provide transition between commercial nodes and to preserve vehicle carry capacity; and

THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES HEREBY ORDAIN:

Section 1. That the following described territory is rezoned from to CDF (Downtown Commercial Fringe) to OR (Office-Residential).

TO WIT: State of North Carolina Property

LOCATION: Located near the northwest and northeast corners of the intersection of East 10th Street and Charles Street.

DESCRIPTION: Lying and being in the City of Greenville, Pitt County, North Carolina on the north side of Tenth Street and being more particularly described as follows:

Beginning at an existing iron pipe, said point lying S75°09'35"W 2008.85 feet from N.C.G.S.M. "Messick" having NAD 83-2011 grid coordinates N (Y) = 679,941.12 E (X) = 2,486,546.65; thence S10°25'05"W 22.92 feet to an existing iron pipe; thence S79°31'31"E 18.76 feet to an existing iron pipe; thence S11°00'29"W 50.44 feet to an existing iron pipe; thence S79°23'31"E 6.93 feet to an existing iron pipe; thence S10°36'29"W 140.37 feet to a point; thence N78°55'56"W 153.63 feet to a point; thence N10°23'43"E 122.84 feet to a point; thence N60°13'12"W 53.58 feet to an existing iron pipe; thence N79°21'04"W 97.75 feet to a point; thence S11°15'02"W 140.28 feet to a point; thence N78°47'14"W 150.23 feet to an existing iron pipe; thence N79°07'11"W 73.78 feet to an existing iron pipe; thence N10°36'44"E 233.38 feet to an existing iron pipe; thence S75°57'38"E 323.59 feet to a point; thence N10°23'43"E 3.95 feet to a point; thence S78°19'48"E 50.55 feet to an existing iron pipe; thence S10°23'43"W 4.78 feet to a point; thence S78°31'14"E 129.02 feet to the point and place of beginning containing 2.19 acres more or less.

Section 2. That the Director of Community Development is directed to amend the zoning map of the City of Greenville in accordance with this ordinance.

Section 3. That all ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section 4. That this ordinance shall become effective upon its adoption.

ADOPTED this 12<sup>th</sup> day of November, 2015.

\_\_\_\_\_  
Allen M. Thomas, Mayor

ATTEST:

\_\_\_\_\_  
Carol L. Barwick, City Clerk

**Excerpt from the DRAFTED Planning & Zoning Commission Minutes (10/20/2015)**

ORDINANCE REQUESTED BY EAST CAROLINA UNIVERSITY TO REZONE 2.19 ACRES LOCATED NEAR THE NORTHWEST AND NORTHEAST CORNERS OF THE INTERSECTION OF EAST 10TH STREET AND CHARLES STREET FROM CDF (DOWNTOWN COMMERCIAL FRINGE) TO OR (OFFICE-RESIDENTIAL [HIGH DENSITY MULTI-FAMILY]) - APPROVED

Ms. Chantae Gooby, Planner II, delineated the property. It is located south of East 10<sup>th</sup> Street and east of Cotanche Street. This rezoning contains vacant lots and ECU Parking and Traffic Services. The ECU main campus is located to the north and east and the surrounding area contains a variety of uses. Since this rezoning is going from commercial to office/residential, there would be a reduction in traffic. Therefore, a traffic report was not prepared. The Future Land Use Plan Map recommends mixed-use/office/institutional (MOI) at the northeast corner of the intersection of East 10th Street and Cotanche Street transitioning to office/institutional/multi-family (OIMF) to the north and east. There is OR zoning adjacent to the rezoning site. OR zoning is considered part of the mixed-use/office/institutional (MOI) and office/institutional/multi-family (OIMF) land use categories. In staff's opinion, the request is in compliance with Horizons: Greenville's Community Plan the Future Land Use Plan Map.

Chairman Parker opened the public hearing.

No one spoke in favor or in opposition of the request.

Chairman Parker closed the public hearing.

**Motion made by Mr. Gillespie, seconded by Mr. Collins, to recommend approval of the proposed amendment, to advise that it is consistent with the comprehensive plan and other applicable plans, and to adopt the staff report which addresses plan consistency and other matters. Motion passed unanimously.**

## **EXISTING ZONING**

### **CDF (Downtown Commercial Fringe)**

#### ***Permitted Uses***

##### *(1) General:*

- a. Accessory use or building
- b. Internal service facilities
- c. On-premise signs per Article N
- e. Temporary uses; of listed district uses
- f. Retail sales; incidental
- g. Incidental assembly of products sold at retail or wholesale as an accessory to principle use

##### *(2) Residential:*

- a. Single-family dwelling
- b. Two-family attached dwelling (duplex)
- c. Multi-family development per Article 1
- k. Family care home (see also section 9-4-103)
- q. Room renting

##### *(3) Home Occupations (see all categories):\*None*

##### *(4) Governmental:*

- b. City of Greenville municipal government building or use (see also section 9-4-103)
- c. County or state government building or use not otherwise listed; excluding outside storage and major or minor repair
- d. Federal government building or use
- g. Liquor store, state ABC

##### *(5) Agricultural/ Mining:*

- a. Farming; agriculture, horticulture, forestry (see also section 9-4-103)

##### *(6) Recreational/ Entertainment:*

- f. Public park or recreational facility
- g. Private noncommercial park or recreation facility
- o. Theater; movie or drama, including outdoor facility

##### *(7) Office/ Financial/ Medical:*

- a. Office; professional and business, not otherwise listed
- c. Office; customer service not otherwise listed, including accessory service delivery vehicle parking and indoor storage
- d. Bank, savings and loan or other savings or investment institutions
- e. Medical, dental, ophthalmology or similar clinic, not otherwise listed

##### *(8) Services:*

- c. Funeral home
- e. Barber or beauty shop
- f. Manicure, pedicure, or facial salon
- g. School; junior and senior high (see also section 9-4-103)
- h. School; elementary (see also section 9-4-103)
- i. School; kindergarten or nursery (see also section 9-4-103)
- k. Business or trade school
- n. Auditorium
- o. Church or place of worship (see also section 9-4-103)
- p. Library

- q. Museum
- r. Art Gallery
- s. Hotel, motel, bed and breakfast inn; limited stay lodging (see also residential quarters for resident manager, supervisor or caretaker and section 9-4-103)
- u. Art studio including art and supply sales
- v. Photography studio including photo and supply sales
- w. Recording studio
- z. Printing or publishing service including graphic art, map, newspapers, magazines and books
- aa. Catering service including food preparation (see also restaurant; conventional and fast food)
- kk. Launderette; household users
- ll. Dry cleaners; household users
- mm. Commercial laundries; linen supply
- oo. Clothes alteration or shoe repair shop
- pp. Automobile wash

*(9) Repair:*

- d. Upholsterer; furniture
- f. Appliance; household and office equipment repair
- g. Jewelry, watch, eyewear or other personal item repair

*(10) Retail Trade:*

- a. Miscellaneous retail sales; non-durable goods, not otherwise listed
- c. Grocery; food or beverage, off premise consumption (see also Wine Shop)
- c.1 Wine shop (see also section 9-4-103)
- d. Pharmacy
- e. Convenience store (see also gasoline sales)
- f. Office and school supply, equipment sales
- h. Restaurant; conventional
- i. Restaurant; fast food
- l. Electric; stereo, radio, computer, television, etc. sales and accessory repair
- m. Appliance; household use, sales and accessory repair, excluding outside storage
- n. Appliance; commercial use, sales and accessory repair, excluding outside storage
- p. Furniture and home furnishing sales not otherwise listed
- q. Floor covering, carpet and wall covering sales
- r. Antique sales; excluding vehicles
- s. Book or card store, news stand
- v. Video or music store; records, tape, compact disk, etc. sales
- w. Florist
- x. Sporting goods sales and rental shop
- y. Auto part sales (see also major and minor repair)
- ee. Christmas tree sales lot; temporary only (see also section 9-4-103)

*(11) Wholesale/ Rental/ Vehicle- Mobile Home Trade:*

- c. Rental of cloths and accessories; formal wear, etc.
- f. Automobiles, truck, recreational vehicle, motorcycles and boat sales and service (see also major and minor repair)

*(12) Construction:*

- a. Licensed contractor; general, electrical, plumbing, mechanical, etc. excluding outside storage
- c. Construction office; temporary, including modular office (see also section 9-4-103)
- e. Building supply; lumber and materials sales, plumbing and/or electrical supply excluding outside storage
- f. Hardware store



*(13) Transportation:*

- b. Bus station; passenger and related freight
- c. Taxi or limousine service
- e. Parcel delivery service
- f. Ambulance service

*(14) Manufacturing/ Warehousing:*

- c. Bakery; production, storage and shipment facilities

*(15) Other Activities (not otherwise listed - all categories):\* None*

**CDF (Downtown Commercial Fringe)**

***Special Uses***

*(1) General:\* None*

*(2) Residential:*

- d. Land use intensity multifamily (LUI) development rating 50 per Article K
- e. Land use intensity multifamily (LUI) development rating 67 per Article K
- j. Residential quarters for resident manager, supervisor or caretaker; including mobile homes
- m. Shelter for homeless or abused
- n. Retirement center or home
- o. Nursing, convalescent center or maternity home; major care facility
- o.(1). Nursing, convalescent center or maternity home; minor care facility
- r. Fraternity or sorority house

*(3) Home Occupations (see all categories):*

- a. Home occupation; including barber and beauty shops
- c. Home occupation; including manicure, pedicure or facial salon

*(4) Governmental:*

- a. Public utility building or use

*(5) Agricultural/ Mining:\* None*

*(6) Recreational/ Entertainment:*

- d. Game center
- i. Commercial recreation; indoor and outdoor not otherwise listed
- l. Billiard parlor or pool hall
- m. Public or private club

*(7) Office/ Financial/ Medical:\* None*

*(8) Services:*

- a. Child day care facilities
- b. Adult day care facilities
- l. Convention center; private
- x. Dance studio
- bb. Civic organizations
- cc. Trade or business organizations
- hh. Exercise and weight loss studios; indoor only

*(9) Repair:*

- a. Major repair; as an accessory or principal use
- b. Minor repair; as an accessory or principal use

*(10) Retail Trade:*

- b. Gasoline or automotive fuel sales; accessory or principal use, retail
- g. Fish market; excluding processing or packing
- j. Restaurant; regulated outdoor activities
- t. Hobby or craft shop
- u. Pet shop (see also animal boarding; outside facility)

*(11) Wholesale/ Rental/ Vehicle- Mobile Home Trade:\* None*

*(12) Construction:*

- d. Building supply; lumber and materials sales, plumbing and/or electrical supply including outside storage

*(13) Transportation:*

- h. Parking lot or structure; principal use

*(14) Manufacturing/ Warehousing:*

- g. Cabinet, woodwork or frame shop; excluding furniture manufacturing or upholstery

*(15) Other Activities (not otherwise listed - all categories):*

- a. Other activities; personal services not otherwise listed
- b. Other activities; professional activities not otherwise listed
- c. Other activities; commercial services not otherwise listed
- d. Other activities; retail sales not otherwise listed

## **PROPOSED ZONING**

### **OR (Office-Residential)**

#### ***Permitted Uses***

*(1) General:*

- a. Accessory use or building
- b. Internal service facilities
- c. On-premise signs per Article N
- f. Retail sales incidental

*(2) Residential:*

- b. Two-family attached dwelling (duplex)
- c. Multi-family development per Article 1
- k. Family care home (see also section 9-4-103)
- n. Retirement center or home
- o. Nursing, convalescent center or maternity home; major care facility
- p. Board or rooming house
- q. Room renting

*(3) Home Occupations (see all categories):\*None*

*(4) Governmental:*

- b. City of Greenville municipal government building or use (see also section 9-4-103)
- c. County or state government building or use not otherwise listed; excluding outside storage and major or minor repair
- d. Federal government building or use

*(5) Agricultural/ Mining:*

- a. Farming; agriculture, horticulture, forestry (see also section 9-4-103)

*(6) Recreational/ Entertainment:*

- f. Public park or recreational facility
- g. Private noncommercial park or recreation facility

*(7) Office/ Financial/ Medical:*

- a. Office; professional and business, not otherwise listed
- b. Operational/processing center
- c. Office; customer service not otherwise listed, including accessory service delivery vehicle parking and indoor storage
- d. Bank, savings and loan or other savings or investment institutions
- e. Medical, dental, ophthalmology or similar clinic, not otherwise listed

*(8) Services:*

- c. Funeral home
- e. Barber or beauty shop
- f. Manicure, pedicure, or facial salon
- g. School; junior and senior high (see also section 9-4-103)
- h. School; elementary (see also section 9-4-103)
- i. School; kindergarten or nursery (see also section 9-4-103)
- j. College or other institutions of higher learning
- k. Business or trade school
- n. Auditorium
- o. Church or place of worship (see also section 9-4-103)
- p. Library
- q. Museum
- r. Art Gallery
- u. Art studio including art and supply sales
- v. Photography studio including photo and supply sales
- w. Recording studio
- x. Dance studio
- bb. Civic organizations
- cc. Trade or business organizations

*(9) Repair: \* None*

*(10) Retail Trade:*

- s. Book or card store, news stand
- w. Florist

*(11) Wholesale/ Rental/ Vehicle- Mobile Home Trade: \* None*

*(12) Construction:*

- a. Licensed contractor; general, electrical, plumbing, mechanical, etc. excluding outside storage
- c. Construction office; temporary, including modular office (see also section 9-4-103)

*(13) Transportation: \* None*

*(14) Manufacturing/ Warehousing: \* None*

*(15) Other Activities (not otherwise listed - all categories): \* None*

**OR (Office-Residential)  
Special Uses**

*(1) General: \* None*

*(2) Residential:*

- d. Land use intensity multifamily (LUI) development rating 50 per Article K
- e. Land use intensity dormitory (LUI) development rating 67 per Article K
- i. Residential quarters for resident manager, supervisor or caretaker; excluding mobile home
- o.(1). Nursing, convalescent center or maternity home; minor care facility
- r. Fraternity or sorority house

*(3) Home Occupations (see all categories):\* None*

*(4) Governmental:*

- a. Public utility building or use

*(5) Agricultural/ Mining:\* None*

*(6) Recreational/ Entertainment:*

- c.(1). Tennis club; indoor and outdoor facilities
- h. Commercial recreation; indoor only, not otherwise listed

*(7) Office/ Financial/ Medical:*

- f. Veterinary clinic or animal hospital (also see animal boarding; outside facility, kennel and stable)

*(8) Services:*

- a. Child day care facilities
- b. Adult day care facilities
- l. Convention center; private
- s. Hotel, motel, bed and breakfast inn; limited stay lodging (see also residential quarters for resident manager, supervisor or caretaker and section 9-4-103)
- ff. Mental health, emotional or physical rehabilitation center

*(9) Repair:\* None*

*(10) Retail Trade:*

- h. Restaurant; conventional
- j. Restaurant; regulated outdoor activities

*(11) Wholesale/ Rental/ Vehicle- Mobile Home Trade:\* None*

*(12) Construction:\* None*

*(13) Transportation:*

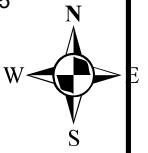
- h. Parking lot or structure; principle use

*(14) Manufacturing/ Warehousing: \* None*

*(15) Other Activities (not otherwise listed - all categories):*

- a. Other activities; personal services not otherwise listed
- b. Other activities; professional services not otherwise listed

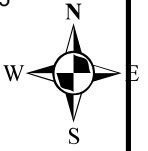
East Carolina University  
 From: CDF (Downtown Commercial Fringe)  
 To: OR (Office-Residential)  
 2.19 acres  
 October 6, 2015



**Legend**

Item #2 Area





East Carolina University  
From: CDF (Downtown Commercial Fringe)  
To: OR (Office-Residential)  
2.19 acres  
October 6, 2015







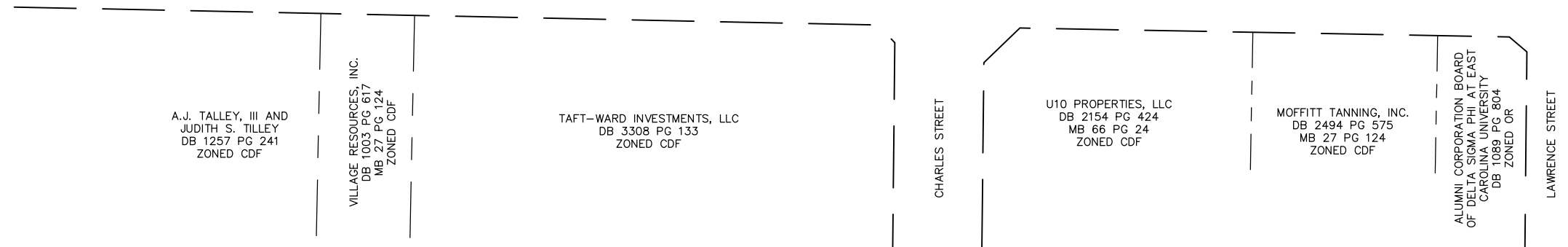
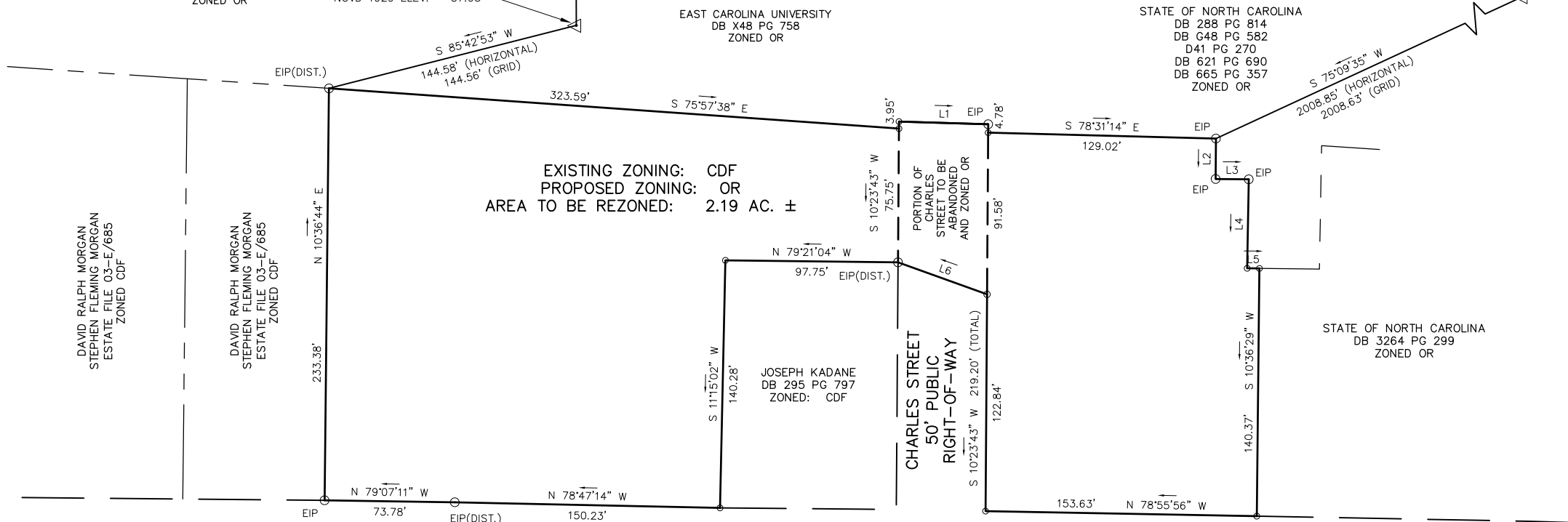
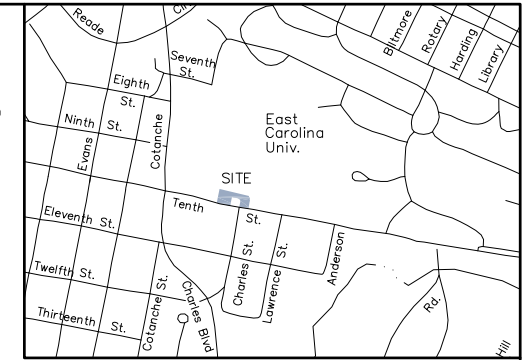
**PRELIMINARY**  
NOT FOR RECORDATION  
CONVEYANCE OR SALES

ECU CONTROL POINT #5  
N = 680,153.522 FT. (NAD 83-1986)  
E = 2,484,362.216 FT. (NAD 83-1986)  
NGVD 1929 ELEV. = 61.17'

ECU CONTROL POINT #4  
N = 679,553.841 FT. (NAD 83-1986)  
E = 2,484,258.355 FT. (NAD 83-1986)  
NGVD 1929 ELEV. = 57.95'

N.C.G.S.M. "PLANT"  
N = 682,826.34 FT. (NAD 83-2011 GRID)  
E = 2,482,032.22 FT. (NAD 83-2011 GRID)  
NAVD 1988 ELEV. = 37.1±

N.C.G.S.M. "MESSICK"  
N = 679,941.12 FT. (NAD 83-2011 GRID)  
E = 2,486,546.65 FT. (NAD 83-2011 GRID)  
NAVD 1988 ELEV. = 48.0±



STATE OF NORTH CAROLINA      PITT COUNTY

I, WILLIAM B. HILLIARD, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION, (DEED DESCRIPTION RECORDED IN BOOK        PAGE       ), THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN BOOK        PAGE       ; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000+; THAT THE GLOBAL POSITIONING SYSTEM (GPS) OBSERVATIONS WERE PERFORMED TO GEOSPATIAL POSITIONING ACCURACY STANDARDS, PART 2: STANDARDS FOR GEODETIC NETWORKS AT THE CLASS A ACCURACY CLASSIFICATION (95% CONFIDENCE) AND THE FOLLOWING INFORMATION WAS USED TO PERFECT THE GPS SURVEY:

POSITION ACCURACY:        < 0.10'

TYPE OF FIELD PROCEDURE:        RTK

DATE(S) OF SURVEY:        09/15/14

DATUM/EPOCH        NAD 83 (2011)

PUBLISHED/FIELD CONTROL MONUMENTS USED:        MESSICK & PLANT

GEIOD MODEL:        GEIOD99

COMBINED GRID FACTOR:        0.99988921

UNITS:        U.S. SURVEY FEET

THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, LICENSE NUMBER AND SEAL THIS DATE DAY OF        MONTH       , 20      .

REZONING PLAT  
FOR  
**EAST CAROLINA UNIVERSITY**  
CITY OF GREENVILLE      DATE  
PITT COUNTY      NORTH CAROLINA

OWNER : EAST CAROLINA UNIVERSITY  
ADDRESS : 1001 EAST 4TH STREET      GREENVILLE, NC 27858  
PHONE : 523-1737

**THE EAST GROUP**  
324 S. EVANS ST.      4325 LAKE BOONE TRAIL  
GREENVILLE, NC 27834      SUITE 311  
(252) 758-3746      RALEIGH, NC 27607  
CORPORATE LICENSE NO. C0206      (919) 784-9330  
*Engineering • Architecture • Surveying • Technology*

SURVEYED : GDF      PROJECT # : 20130198  
DRAWN BY : WBH      DATE : DATE  
CHECKED : WBH      SCALE : 1" = 50'

SOURCE OF TITLE  
THIS IS TO CERTIFY THAT THE LAST INSTRUMENT(S) IN THE CHAIN OF TITLE(S) OF THIS PROPERTY AS RECORDED IN THE PITT COUNTY REGISTRY AT GREENVILLE, NORTH CAROLINA IS:

DEED BOOK 3213 PAGE 703  
DEED BOOK 3213 PAGE 698  
DEED BOOK 320 PAGE 590  
MAP BOOK        PAGE         
MAP BOOK        PAGE       

**Item # 2**

N.C. REG. NO. L - 3110

LEGEND  
EIP = EXISTING IRON PIPE  
= NO POINT SET  
= NOT TO SCALE

- I, WILLIAM B. HILLIARD, PROFESSIONAL LAND SURVEYOR NO. L-4509, CERTIFY TO ONE OR MORE OF THE FOLLOWING AS INDICATED THIS,  (A) OR  (B):
- A. THAT THIS PLAT IS OF A SURVEY THAT CREATES A SUBDIVISION OF LAND WITHIN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND.
  - B. THAT THIS PLAT IS OF A SURVEY THAT IS LOCATED IN SUCH PORTION OF A COUNTY OR MUNICIPALITY THAT IS UNREGULATED AS TO AN ORDINANCE THAT REGULATES PARCELS OF LAND.
  - C. ANY OF THE FOLLOWING:
    1. THAT THE SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND AND DOES NOT CREATE A NEW STREET OR CHANGE AN EXISTING STREET;
    2. THAT THE SURVEY IS OF AN EXISTING BUILDING OR OTHER STRUCTURE, OR NATURAL FEATURE, SUCH AS A WATERCOURSE; OR
    3. THAT THE SURVEY IS A CONTROL SURVEY.
  - D. THAT THIS PLAT IS OF A SURVEY OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT-ORDERED SURVEY OR OTHER EXCEPTION TO THE DEFINITION OF SUBDIVISION.
  - E. THAT THE INFORMATION AVAILABLE TO THIS SURVEYOR IS SUCH THAT I AM UNABLE TO MAKE A DETERMINATION TO THE BEST OF MY PROFESSIONAL ABILITY AS TO PROVISIONS CONTAINED IN (A) THROUGH (D) ABOVE.

SURVEYOR      DATE

**PRELIMINARY**  
NOT FOR RECORDATION  
CONVEYANCE OR SALES

I,        REVIEW OFFICER OF  
PITT COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

REVIEW OFFICER      DATE

04/30/07

## BUFFERYARD SETBACK AND VEGETATION SCREENING CHART

For Illustrative Purposes Only

**Bufferyard Requirements:** Match proposed land use with adjacent permitted land use or adjacent vacant zone/nonconforming use to determine applicable bufferyard.

PROPOSED LAND USE CLASS (#)	ADJACENT PERMITTED LAND USE CLASS (#)					ADJACENT VACANT ZONE OR NONCONFORMING USE		PUBLIC/PRIVATE STREETS OR R.R.
	Single-Family Residential (1)	Multi-Family Residential (2)	Office/Institutional, light Commercial, Service (3)	Heavy Commercial, Light Industry (4)	Heavy Industrial (5)	Residential (1) - (2)	Non-Residential (3) - (5)	
Multi-Family Development (2)	C	B	B	B	B	C	B	A
Office/Institutional, Light Commercial, Service (3)	D	D	B	B	B	D	B	A
Heavy Commercial, Light Industry (4)	E	E	B	B	B	E	B	A
Heavy Industrial (5)	F	F	B	B	B	F	B	A

Bufferyard A (street yard)		
Lot Size	Width	For every 100 linear feet
Less than 25,000 sq.ft.	4'	2 large street trees
25,000 to 175,000 sq.ft.	6'	2 large street trees
Over 175,000 sq.ft.	10'	2 large street trees

Street trees may count toward the minimum acreage.

Bufferyard B (no screen required)	
Lot Size	Width
Less than 25,000 sq.ft.	4'
25,000 to 175,000 sq.ft.	6'
Over 175,000 sq.ft.	10'

Bufferyard C (screen required)	
Width	For every 100 linear feet
10'	3 large evergreen trees 4 small evergreens 16 evergreen shrubs

Where a fence or evergreen hedge (additional materials) is provided, the bufferyard width may be reduced to eight (8) feet.

Bufferyard D (screen required)	
Width	For every 100 linear feet
20'	4 large evergreen trees 6 small evergreens 16 evergreen shrubs

Bufferyard width may be reduced by fifty (50%) percent if a fence, evergreen hedge (additional material) or earth berm is provided.

Bufferyard E (screen required)	
Width	For every 100 linear feet
30'	6 large evergreen trees 8 small evergreens 26 evergreen shrubs

Bufferyard width may be reduced by fifty (50%) percent if a fence, evergreen hedge (additional material) or earth berm is provided.

Bufferyard F (screen required)	
Width	For every 100 linear feet
50'	8 large evergreen trees 10 small evergreens 36 evergreen shrubs

Bufferyard width may be reduced by fifty (50%) percent if a fence, evergreen hedge (additional material) or earth berm is provided.

**Parking Area:** Thirty (30) inch high screen required for all parking areas located within fifty (50) feet of a street right-of-way.




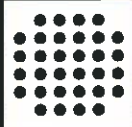
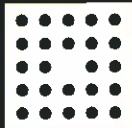

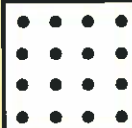

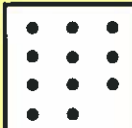
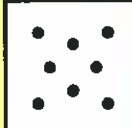
<b>Residential Density</b>		
Maximum density allowed by Zoning District based on average of 2.67 persons per dwelling unit		
<b>High Density</b>		
R6 R6-N R6-MH OR CDF	17 units per acre yields 45 persons per acre	
PUD	12 units per acre yields 32 persons per acre	
<b>Medium Density</b>		
R6-A	9 units per acre yields 24 persons per acre	
R6-S	7 units per acre yields 19 persons per acre	
R9	6 units per acre yields 16 persons per acre	
R9-S	5 units per acre yields 13 persons per acre	
<b>Low Density</b>		
RA-20 MRS	4 units per acre yields 11 persons per acre	
R15-S	3 units per acre yields 8 persons per acre	

Illustration: Maximum allowable density in Residential Zoning Districts



# City of Greenville, North Carolina

**Meeting Date:**  
**11/12/2015**  
**Time: 6:00 PM**

**Title of Item:** Resolution Approving the Proposed Installment Financing Agreement for South Greenville Gymnasium Improvements and Additions

**Explanation:** **Abstract:** Conduct a public hearing and approve the financing details for the Installment Financing Agreement for the South Greenville Gymnasium Improvements and Additions

**Explanation:** At the October 8, 2015 City Council meeting, the City Council approved a resolution calling for a public hearing on the financing for the improvements and additions to the South Greenville Gymnasium. Attached are the following:

1. Resolution approving the proposed Installment Financing Agreement with BB&T
2. Proposed Installment Financing Agreement with BB&T
3. Proposed Deed of Trust
4. South Greenville Gymnasium Project Financing Schedule

The Installment Financing Agreement will authorize the transaction between the City of Greenville and BB&T for a period of 15 years at an interest rate of 2.65%. The Agreement will provide funds to construct the improvements and additions to the South Greenville Gymnasium Project. The Deed of Trust creates the security interest in the property, including the building, improvements, and fixtures, to secure the repayment by the City.

**Fiscal Note:** The issuance amount for the Installment Financing Agreement with BB&T is not to exceed \$2.1 million. The amount of the annual debt service payment has been included in the City's General Fund budget. Total project costs will be approximately \$2.7 million, which will include a contribution of \$600,000 approved by Pitt County in September 2015.

**Recommendation:** Conduct a public hearing and adopt the proposed resolution approving the Installment Financing Agreement with BB&T.

---

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

**Attachments / click to download**

- [📄 Resolution for the Installment Financing Agreement for South Greenville 1015210](#)
  - [📄 Installment Financing Agreement 1015208](#)
  - [📄 Deed of Trust South Greenville 1015209](#)
  - [📄 Final Final South Greenville Renovation Schedule 1010424](#)
-

**RESOLUTION NO. 2015 - \_\_**

**RESOLUTION APPROVING A PROPOSED INSTALLMENT FINANCING AGREEMENT TO PROVIDE FOR THE FINANCING OF THE CONSTRUCTION, RECONSTRUCTION AND EQUIPPING OF THE SOUTH GREENVILLE GYMNASIUM IMPROVEMENTS AND ADDITIONS 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 finance the construction, reconstruction and equipping of a gymnasium and related building and sites in the City (the “Project”); and

WHEREAS, in order to effectuate the Project, the City and Branch Banking and Trust Company (the “Bank”) propose to enter into an Installment Financing Agreement (as hereinafter defined) substantially in accordance with the terms proposed by the Bank in its term sheet dated October 23, 2015, as amended, 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 Project:

(a) a draft of the proposed Installment Financing Agreement (the “Installment Financing Agreement”), between the City and the Bank, pursuant to which the Bank will make available to the City funds with which to finance 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 a mutually agreeable date (the “Deed of Trust”), from the City to a 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;

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. There is hereby approved the transaction with Branch Banking and Trust Company set forth in the Installment Financing Agreement to finance the cost of construction of the Project. The aggregate principal amount of the amount advanced to the City under the Installment Financing Agreement shall not exceed \$2,100,000 and shall be repaid at an interest rate of 2.65% per annum.

Section 3. The forms, terms and provisions of the Installment Financing Agreement and the Deed of Trust are hereby approved in all respects, and the Mayor, the City Manager, the Director of Financial Services, the City Attorney and the City Clerk (or any one of them) are hereby authorized and directed to execute and deliver the Installment Financing Agreement and the Deed of Trust, 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 4. The City hereby represents that it reasonably expects that it and all subordinate entities thereof will not issue more than \$10,000,000 of tax-exempt obligations (not counting private-activity bonds except for qualified 501(c)(3) bonds as defined in the Internal Revenue Code of 1986 as amended, the "Code") during calendar year 2015. In addition, the City hereby designates the Installment Financing Agreement as a "qualified tax-exempt obligation" for the purposes of Section 265(b)(3) of the Code.

Section 5. The Mayor, the City Manager, the Director of Financial Services, the City Attorney and the City Clerk (or any one of them) 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 and the Deed of Trust, including any agreement by and among the Bank, the City and any other party relating to the deposit of the advanced funds received under the Installment Financing Agreement.

Section 6. This resolution shall take effect immediately upon its passage.

Adopted this the 12th day of November, 2015.

---

Allen M. Thomas  
Mayor

ATTEST:

---

Carol L. Barwick  
City Clerk

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 \_\_\_\_\_, 2015

between

CITY OF GREENVILLE, NORTH CAROLINA

and

BRANCH BANKING AND TRUST COMPANY

[\$2,100,000]  
Tax-Exempt Installment Financing

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## INSTALLMENT FINANCING AGREEMENT

This INSTALLMENT FINANCING AGREEMENT, dated as of \_\_\_\_\_, 2015 (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 finance the construction, reconstruction and equipping of a gymnasium and related building and sites at 851 Howell Street, Greenville, NC 27834 (the “Project”);

WHEREAS, in order for the City to obtain the funds required for 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 Site (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 required for 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 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 duly 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 Project, including, but not limited to, filing and recording costs, settlement costs, printing costs, word processing costs, reproduction and binding costs, legal fees and charges and financing and other professional consultant fees.

“Code” means Internal Revenue Code of 1986, as amended.

“Completion Date” means the date of completion of the Project as that date shall be certified as provided in Section 7.9.

“Construction Contract” means the construction contract, dated \_\_\_\_\_, 2015, between the City and \_\_\_\_\_ for the construction of the Project in accordance with the Plans and Specifications.

“Cost” or “Costs” means all reasonable or necessary expenses incidental to the construction, installation, repair, alteration, improvement and extension of the Project, including the expenses of studies, surveys, land title and title policies, architectural and engineering services, legal and other special services and all other necessary and incidental expenses.

“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.

[“Escrow Agreement” means the escrow agreement, dated as of \_\_\_\_\_, 2015 by and among the City, the Bank and \_\_\_\_\_, as escrow agent pursuant to which the Advancement proceeds are held in the Construction Fund established therein.]

“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 Site, together with substantially all of the buildings, improvements and fixtures located or to be located thereon and the rents, issues, profits and proceeds thereof, all as more fully described in the Deed of Trust.

“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.

“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; (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 Mortgaged Property 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 2 of the Deed of Trust; and (i) any other encumbrances described in Exhibit B to the Deed of Trust.

“Plans and Specifications” means the Plans and Specifications for the Project referred to in Section 7.7, any amendments and additions thereto, and any change orders thereto.

“Project” means the construction, reconstruction and equipping of a gymnasium and related building and sites at 851 Howell Street, Greenville, NC 27834.

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

“State” means the State of North Carolina.

“Taxable Rate” means \_\_\_\_% per annum.

**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.

(h) The City has complied or will comply with any public bidding requirements that may be applicable to this Agreement and the construction of the Project.

(i) The Project, when completed in accordance with the Plans and Specifications and the Construction Contract, will result in a structurally sound building which will be in compliance with all applicable building and design codes and the City's requirements.



(j) The City has estimated that the aggregate of the Costs of the Project, constructed in accordance with the Plans and Specifications and the Construction Contract, will not exceed [\$2,700,000.]

(k) The City has good and marketable fee title to the Site.

(l) The Site is not subject to any dedication, easement, right of way, reservation in patent, covenant, condition, restriction, lien or encumbrance which would prohibit or materially interfere with the construction of the Project on the Site, as contemplated by this Agreement.

(m) All taxes, assessments or impositions of any kind with respect to the Site, except current taxes, have been paid in full.

(n) The Site is properly zoned for the purpose of the Project.

(o) The City has not made, done, executed or suffered, and warrants that it will not make, do, execute or suffer, any act or thing whereby the City's interests in any property now or hereafter included in the Project shall be or may be impaired, changed or encumbered in any manner whatsoever except as permitted by this Agreement.

(p) The City covenants to do and perform all acts and things permitted by law in order to assure that interest component of the Installment Payments which is excludable from the gross income of the Bank for federal income tax purposes on the date of this Agreement shall continue to be so excludable.

**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 shall advance [\$2,100,000] on the date hereof to the City for purposes of financing the Project and for paying Closing Costs of the transaction on the Closing. [The Bank shall deposit the Advancement in a separate account established with \_\_\_\_\_ pursuant to the Escrow Agreement designated the "City of Greenville Construction Fund" (the "Construction Fund").] The proceeds of the Advancement shall be deposited in the Construction Fund at Closing and shall be applied, together with any investment earnings thereon, in accordance with the provisions of this Article.

**SECTION 3.2. Project.** The City shall cause the Project to occur 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, the City shall subject the Mortgaged Property to the lien and security interest created by the Deed of Trust.

**SECTION 3.3. Payment of Closing Costs.** The City shall be obligated to pay all 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 the Mortgaged Property and has not at any time had physical possession of the Mortgaged Property 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 Mortgaged Property 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, THE MORTGAGED PROPERTY 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 THE PROJECT; OR ANY OTHER CHARACTERISTICS OF THE PROJECT, IT BEING AGREED THAT ALL RISKS RELATING TO THE PROJECT 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 [2.65%] 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

\_\_\_\_\_

\_\_\_\_\_

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 the Taxable Rate. 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. 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 Taxable 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.

(e) [The City represents that it is hereby designating any obligations hereunder as being within the \$10 million limitation described within Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and that it will not breach the covenants included herein or take any action which adversely affects the deductibility of any interest payments made by the City, such actions including, but not limited to, the issuance of more than \$10 million of obligations during the current calendar year in which this Agreement is executed. In the event the City breaches this representation, the interest rate payable under this Agreement shall be adjusted to preserve the Bank's after-tax economic yield with respect to the interest component of the Installment Payments, taking into account any interest expense deductions lost by the Bank as a direct or indirect result of the City's actions. In such event, the Bank shall provide the City with a new Installment Payment Schedule which reflects the new interest rate which will replace the Installment Payment Schedule set forth in Exhibit A.]

**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. NO PAYMENT SHALL BE MADE HEREUNDER OTHER THAN 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 OBTVIATE THE OCCURRENCE OF THE EVENT OF DEFAULT RESULTING FROM SUCH NONPAYMENT NOR LIMIT THE ENFORCEMENT OF THE REPAYMENT OF THE ADVANCEMENT AND ALL OTHER PAYMENTS HEREUNDER AGAINST THE MORTGAGED PROPERTY. 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, 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 and loss payee. During the construction, equipping and installation of the Project, the City shall cause to be provided, insofar as the Project is concerned, the insurance required by subparagraph (b) below in lieu of the insurance required by this subparagraph (a).

(b) During the construction, equipping and installation of the Project and in lieu of the insurance required in subparagraph (a) of this Section, the City shall procure and maintain, or cause to be procured and maintained, builder's risk-completed value insurance insuring the Project against fire, lightning and all other risks covered by the extended coverage endorsement then in use in the State to the full insurable value of the Project (subject to reasonable loss deductible clauses), but in no event shall such amount be less than the amount necessary to prevent the application of any co-insurance provisions, issued by such insurance company or companies authorized to do business in the State as may be selected by the City. Such policy or policies of insurance shall name the City and the Bank as insureds and loss payees.

(c) 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.

(d) The City shall cause to be procured and maintained a performance and payment bond to the City in accordance with the provisions of Article 3 of Chapter 44A of the North Carolina General Statutes and shall name the City and the Bank as obligees.

(e) 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.

(f) 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. 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. 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 but only 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 and the Deed of Trust, (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 to any leasehold or similar interest of 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 do 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 which will not cause an adverse effect as to the exclusion of the interest components of the installment payments from gross income for federal income tax purposes, 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. 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 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.

**SECTION 7.7. Payment for Construction, Equipping and Installation of the Project.** [Costs and expenses of every nature incurred in the construction, equipping and installation of the Project which qualify as Costs of the Project shall be paid from the Construction Fund in accordance with and subject to the terms and conditions set forth in the Escrow Agreement. The City shall cause the Project to be constructed, equipped and installed in accordance with the Plans and Specifications and the Construction Contract as promptly as practicable.]

**SECTION 7.8. Changes in the Plans and Specifications or Construction Contract or Modifications of the Project.** The City may make any changes in or modifications of the Plans and Specifications subsequent to the date of this Agreement and prior to the Completion Date, may make any changes in or modifications of the Construction Contract and may make any deletions from or substitutions or additions to the Project (such completion, changes, modifications, deletions, substitutions and additions being together herein called "change orders"), subject to satisfaction of the following conditions:

(a) Such change orders do not materially alter the size, cost, scope or character of the Project or impair the structural integrity or utility of the Project.

No change order shall be effective until delivered to the Bank in accordance with the foregoing provisions.

**SECTION 7.9. Completion Date; Excess Funds.** The Completion Date shall be evidenced to the Bank [and the Escrow Agent] upon receipt by the Bank of a Completion Certificate complying with the requirements of the Escrow Agreement. In the event that any moneys remain in the Construction Fund on the Completion Date, such moneys shall be applied as set forth in the Escrow Agreement.

**SECTION 7.10. Design, Construction and Maintenance of the Project.** The Bank shall have no responsibility in connection with the selection of the Project, any contractor, subcontractor or supplier, the Plans and Specifications or the design of the Project, their suitability for the use intended by the City, or the performance by any contractor, subcontractor or supplier in acquiring, constructing and installing the Project. The Bank shall have no obligation to construct, furnish, equip, install, erect, test, inspect, service or maintain the Project or any portion thereof under any circumstances, but such actions shall be the obligation of the City. The Bank's sole responsibility in connection with the Project is to deposit the sum in the Construction Fund to pay Costs of the Project in accordance with the terms and conditions specified in this Agreement.

**SECTION 7.11. Title to the Site.** The City covenants that title to the Site is and shall remain in the City, subject to the rights of the Bank hereunder and under the Deed of Trust.

**SECTION 7.12. Warranties.** The Bank hereby assigns to the City for and during the term of this Agreement, all of its interest in all warranties, guarantees or other contract rights against any contractor, subcontractor or supplier, expressed or implied, issued on or applicable to

the Project, and the Bank hereby authorizes the City to obtain the customary services furnished in connection with such warranties, guarantees or other contract rights at the City's expense. The City's sole remedy for the breach of such warranties, guarantees or other contract rights shall be against any contractor, subcontractor or supplier, and not against the Bank, nor shall such matter have any effect whatsoever on the rights of the Bank with respect to this Agreement, including the right to receive full and timely Installment Payments and other payments hereunder. The City expressly acknowledges that the Bank does not make nor has it made any representation or warranty whatsoever as to the existence or availability of such warranties, guarantees or other contract rights of the manufacturer or supplier of any portion of the Project.

**SECTION 7.13. DISCLAIMER OF WARRANTIES.** BANK MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE PROJECT OR ANY PART THEREOF, OR WARRANTY WITH RESPECT THERETO. IN NO EVENT SHALL BANK BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR THE CITY'S USE OF THE PROJECT OR ANY PART THEREOF.

## 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. The Bank or its assignees may assign or reassign all or any part of this Agreement, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Agreement, or making this Agreement part of a pool of obligations without the consent of the LGC, so long as such assignment or reassignment is to (a) a bank, insurance company or similar institution or any other entity approved by the LGC; or (b) a trustee for the purpose of issuing certificates of participation or other forms of certificates evidencing an undivided interest in this Agreement, provided such certificates are sold only to a bank, insurance company or similar financial institution or other entity approved by the LGC. In addition, such assignment or reassignment shall only be to a "qualified institutional buyer" as such term is set forth in Rule 144A of the Securities and Exchange Commission. The City further agrees that the Bank's interest in this Agreement may be assigned in whole or in part (subject to the limitations on assignment contained in this Section 8.1) upon terms which provide in effect that the assignor or assignee will act as a collection and paying agent for any holders of certificates of participation in this Agreement, provided the City receives notice of such assignment and such collection and paying agent covenants and agrees to maintain for the full remaining term of this Agreement a written record of each assignment and reassignment of such certificates of participation. 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 7.6.

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 it does not intend to deliver or circulate or cause the delivery or circulation by an assignee of a disclosure document in connection with the sale of the Bank's



rights in this Agreement. In the event such a disclosure document is delivered or circulated by the Bank or an assignee, the City and the LGC must expressly approve 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 lease providing for the transfer of substantially all (90% of the useable square footage) of the Mortgaged Property furnish or cause to be furnished to the Bank a true and complete copy of any such lease. The rights of the lessee to any such lease shall be made expressly subordinate to the rights and remedies provided to the Bank under the Deed of Trust;

(iii) the lease by the City providing for the transfer of substantially all of the Mortgaged Property 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 (as evidenced by an opinion of bond counsel reasonably acceptable to the Bank); and

(iv) the City shall cause to be delivered to the Bank such further documents or instruments as may be requested by it in connection with such lease.

## 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 within ten (10) days of 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 thirty (30) 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; 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 only, on any Installment Payment Date upon thirty days written notice. Such prepayment to be made 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 5<sup>th</sup> Street  
Greenville, North Carolina 27858-1824  
Attention: Director of Financial Services

If to the Bank:

Branch Banking and Trust Company

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.

**SECTION 11.9 No Advisory Services.** The City acknowledges and agrees that: (i) the transaction contemplated by this Agreement is an arm's length, commercial transaction between the City and the Bank in which the Bank is acting solely as a principal and is not acting as a municipal advisor, financial advisor or fiduciary to the City; (ii) the Bank has not assumed any advisory or fiduciary responsibility to the City with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether Bank has provided other services or is currently providing other services to the City on other matters); (iii) the only obligations the Bank has to the City with respect to the transaction contemplated hereby expressly are set forth in this Contract; and (iv) the City has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

The City acknowledges and agrees that (i) the Bank is acting solely for its own loan account and not as a fiduciary for the City or in the capacity of broker, dealer, placement agent, municipal securities underwriter, municipal advisor or fiduciary. The Bank has not provided, and will not provide, financial, legal (including securities law), tax, accounting or other advice to or on behalf of the City (including to any financial advisor or any placement agent engaged by the City) with respect to the structuring, issuance, sale or delivery of this Agreement. The Bank has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the City with respect to the transactions relating to the structuring, issuance, sale or delivery of this Agreement and the discussions, undertakings and procedures leading thereto. Each of the City and its financial advisor has sought and shall seek and obtain financial, legal (including securities law), tax, accounting and other advice (including as it relates to structure, timing, terms and similar matters and compliance with legal requirements applicable to such parties) with respect to this Agreement from its own financial, legal, tax and other advisors (and not from the undersigned or its affiliates) to the extent that the City, its financial advisor desires, should or needs to obtain such advice. The Bank expresses no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, including but not limited to the City's financial advisor, or the correctness of any legal interpretation made by counsel to any other party, including but not limited to counsel to the City's financial advisor, with respect to any such matters. The transactions between the City and

the Bank are arm's length, commercial transactions in which the Bank is acting and has acted solely as a principal and for its own interest and the Bank has not made recommendations to the City with respect to the transactions relating to this Agreement.

[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: \_\_\_\_\_  
Barbara Lipscomb  
City Manager

Attest:

\_\_\_\_\_  
Carol L. Barwick  
City Clerk

BRANCH BANKING AND TRUST COMPANY

By: \_\_\_\_\_

**[signature page to Installment Financing Agreement dated as of \_\_\_\_\_, 2015]**

Local Government Commission  
Signature Page for Installment Financing Agreement  
between the City of Greenville, North Carolina and Branch Banking and Trust Company dated  
as of \_\_\_\_\_, 2015

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

By: \_\_\_\_\_  
Secretary  
Local Government Commission

**EXHIBIT A**

INSTALLMENT PAYMENT SCHEDULE

See attached

\* Prepayment prices and premium set forth in Section 10.1.

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  
1501 K Street, N.W.  
Washington, D.C. 20037

## **DEED OF TRUST**

STATE OF NORTH CAROLINA  
COUNTY OF PITT

This DEED OF TRUST, dated as of \_\_\_\_, 2015 (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 \_\_\_\_\_, as trustee (the “Deed of Trust Trustee”), for the benefit of Branch Banking and Trust Company, a national banking association duly organized and existing under the laws of the United States of America, 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 purposes of the financing 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;

**COLLATERAL IS OR INCLUDES FIXTURES**

WHEREAS, the City has agreed to pay to the Beneficiary the sum of [\$2,100,000] 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 [June 1, 2030];

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 \$[2,100,000].

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, such certificate to be reasonably acceptable to the Beneficiary, 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 has been given to the City by the Beneficiary; 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 Beneficiary, 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;

(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; 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 five percent (5%) 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 five percent (5%) per annum. The failure to make payment on demand shall, at the option of the Beneficiary, constitute a default hereunder, giving rise to all of the remedies herein provided for an Event of Default. If the 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 five percent (5%) 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. In connection therewith, the fixtures are located on the land described on Exhibit A attached hereto, and the City is the record owner of such land. The name and address of the City, as debtor, and the Beneficiary, as secured party, are set forth in Section 16 hereof. The lien upon fixtures granted herein and perfected hereby shall be in addition to and not in lieu of any lien upon fixtures acquired under real property law.

Section 13. 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 City of Greenville, North Carolina, 200 West 5<sup>th</sup> Street, Greenville, North Carolina 27858-1824, Attention: Director of Financial Services; (b) if to the Beneficiary, to Branch Banking and Trust Company, \_\_\_\_\_ Attn: \_\_\_\_\_ 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: \_\_\_\_\_  
Barbara Lipscomb  
City Manager

Attest:

\_\_\_\_\_  
Carol L. Barwick  
City Clerk



**ACKNOWLEDGEMENT FOR CITY**

STATE OF NORTH CAROLINA

COUNTY OF PITT

This \_\_\_ day of \_\_\_, 2015, personally came before me, a Notary Public in and for the said County and State, Carol L. Barwick, 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 Barbara Lipscomb, 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 \_\_\_, 2015.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

(Notarial Seal)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

LEGAL DESCRIPTION OF THE SOUTH GREENVILLE RECREATION CENTER SITE

The tract or parcel constituting the South Greenville Recreation Center Site is as follows:

EXHIBIT B

LIST OF ENCUMBRANCES



# CITY OF GREENVILLE, NORTH CAROLINA

*Installment Purchase Agreement, Series 2015 (Gym Project)*



## FINANCING SCHEDULE

October 2015						
Su	M	Tu	W	Th	F	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

November 2015						
Su	M	Tu	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	<b>26</b>	27	28
29	30					

December 2015						
Su	M	Tu	W	Th	F	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	<b>25</b>	26
27	28	29	30	31		

**Bold Indicates Federal Holiday**

DATE	TASK	RESPONSIBILITY
July 17	Call with LGC staff	C, FA, SC
September 11	Submit letter to Joint Legislative Committee	C, FA, SC
October 8	City Council to adopt preliminary findings resolution; Adopt Reimbursement Resolution, Schedule Public Hearing	C, SC
October 9	Distribute Gym Project RFP to banks	C, FA SC, C
October 16	Deadline for submitting letter to Joint Legislative Committee	SC, C C, SC
October 23	Receive Gym Project RFP responses by 12 PM; review responses, select bank	C, FA
October 26	Notify successful bank proposer, subject to Board approval Advertise public hearing (At least 10 Days prior to public hearing)	FA, C C
November 12	City Council to hold public hearing and adopt approving resolution	C, SC
November 17	Submit LGC Application on Gym Project	FA, C
December 1	LGC approval	LGC
December 7	Pre-Closing –Gym Project	All Parties
December 8	Closing –Gym Project	All Parties

**RESPONSIBILITY**

C	Greenville, NC
SC	Special Counsel – Sidley Austin
FA	Financial Advisor – First Southwest Company
LGC	North Carolina Local Government Commission

Document # 1010424v2



# City of Greenville, North Carolina

**Meeting Date:**  
**11/12/2015**  
**Time: 6:00 PM**

**Title of Item:** Request for Sanitary Sewer Connection and Waiver of Voluntary Annexation Requirement for Candlewick Area Sanitary District

**Explanation:** **Abstract:** A request has been received from McDavid Associates, Inc., representing the Candlewick Area Sanitary District and Pitt County, to connect homes in the newly established district to the Greenville Utilities Sanitary Sewer system and also waive the request for voluntary annexation into the City of Greenville.

**Explanation:** The Candlewick subdivision was developed in 1971 with septic tanks. The Candlewick subdivision has 90 lots, with 73 homes in the subdivision. Seventeen lots are vacant. Based upon information obtained from the Pitt County Tax Assessor's office, the total value of the homes and lots is \$10,619,410. The Candlewick Area Sanitary Sewer District was created on May 20, 2009 to address septic tank failures. Currently, the subdivision is approximately 1.5± miles from the Greenville City Limits.

On August 17, 2015, the City Manager's Office received a request from McDavid Associates, Inc., on behalf of the Candlewick Area Sanitary District and Pitt County, to allow the connection of homes within the Candlewick subdivision and 17 homes (to be identified at a later time) to the Greenville Utilities sanitary sewer system. The request also included a request to waive the required annexation into the Greenville City Limits as required by the adopted policy between the City of Greenville and the Greenville Utilities Commission.

Upon receipt of the request, City of Greenville staff, Pitt County staff, and representatives from McDavid Associates met on August 24, 2015 to discuss the request. During the meeting, McDavid Associates representatives and Pitt County Planning staff reported that the Candlewick Area Sanitary District preferred that the annexation petition requirements be waived (due to costs). Days following the meeting, City staff notified James Rhodes, Pitt County Planning Director, that the connection to sanitary sewer of the Greenville Utilities Commission first required authorization by City Council and if

approved it would be the staff recommendation that a 30-year delayed voluntary annexation petition be required. On October 7, 2015, Mr. Earl Wade, Chairman of the Candlewick Area Sanitary District Board, responded that the 30-year delayed annexation petition requirement was not supported by the sewer district board.

In August of 2014, Pitt County received a \$3 million CDBG Infrastructure grant from the NC Rural Center. The application was approved in early 2015 providing funding for the connection of 54 homes to sanitary sewer within the Candlewick Subdivision. The approved grant application specified that connections would be made to the Town of Farmville's sanitary sewer system. After notification of grant application funding, McDavid Associates re-evaluated the costs associated with the sewer extensions and evaluated the possibilities of a connection to the Greenville Utilities sanitary sewer system. Connection to the Greenville Utilities Commission system appears to be the most cost effective model. However, the final determination of which system to "tie into" will be completed in early 2016 once an engineering assessment is completed. Although this area is within the Greenville Utilities service area, the service area is not protected. Greenville Utilities and the City are concerned with the possibility of future sewer connections to systems that are not part of the Greenville Utilities system but within the City of Greenville and Greenville Utilities growth areas.

McDavid Associates assisted Pitt County in preparation of the application for the sewer district. Additional grant applications from other federal sources are planned by the District, Pitt County, and by McDavid Associates to cover connection costs to the sanitary sewer system for the remaining homes in the Candlewick subdivision and 17 other homes within the sewer district.

The request for extension and connection to sanitary sewer outside of the City of Greenville's Extraterritorial Jurisdiction (ETJ) requires the approval of the Greenville City Council in accordance with the Greenville Utilities Commission Charter as amended in 1991. In the past 12 months, there have been two requests for sewer connections outside of the ETJ. The first request was considered by City Council on March 19, 2015 and involved connection to sanitary sewer approximately 7.03 miles from the corporate limits near Chicod School. That request was denied. The second request was to allow connection for an area approximately 2.5 miles from the City limits along Ivy Road at Highway NC 43 south. That request was approved. In these instances, the first location was beyond the statutory limits from the city limits to annex, and the second location was within the statutory limits from the city limits for annexation into the city. The developer agreed to annex the properties receiving Greenville Utilities sanitary sewer into the city.

Under the current policy, the request by the Candlewick Area Sanitary District requires submittal of a voluntary annexation petition. This could be accomplished by submission of a petition for immediate annexation or delayed annexation as approved by City Council. City staff supports the existing policy requiring annexation; however, this unique request presents some

consequences to both the City of Greenville and Greenville Utilities Commission. Connection of this area to the Town of Farmville sanitary sewer system could lead to additional connections to other sewer systems extended into the City of Greenville future growth and Greenville Utilities service areas and without annexation. This will result in a loss of revenues and natural future growth areas to both organizations.

**Fiscal Note:** No immediate costs are associated with the request.

**Recommendation:** City Council has the following options:

1. Permit the extension of sanitary sewer without the requirement of submittal of the voluntary annexation petition.
2. Allow the extension of sanitary sewer with the requirement that a voluntary annexation petition be submitted by homeowners prior to receiving Greenville Utilities sewer. This option could provide for the immediate annexation or delayed at the choice of City Council.
3. Deny the request for sanitary sewer extension

If City Council authorizes the connection to the sanitary sewer system, staff would urge the City Council to adopt the following condition with it's authorization.

City staff is directed to work with Pitt County and the Greenville Utilities Commission to establish a Memorandum of Agreement that outlines the procedure for sanitary sewer connections of areas outside of the City of Greenville's ETJ. The Memorandum of Agreement will also require each organization to formally recognize the sewer connection consideration process prior to submittal of any grant application that results in funding connections to the Greenville Utilities sanitary sewer system.

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Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

**Attachments / click to download**

 [candlewick information](#)

 [1991 GUC charter excerpt](#)



**Information:**

Built Between 1971 to 2005

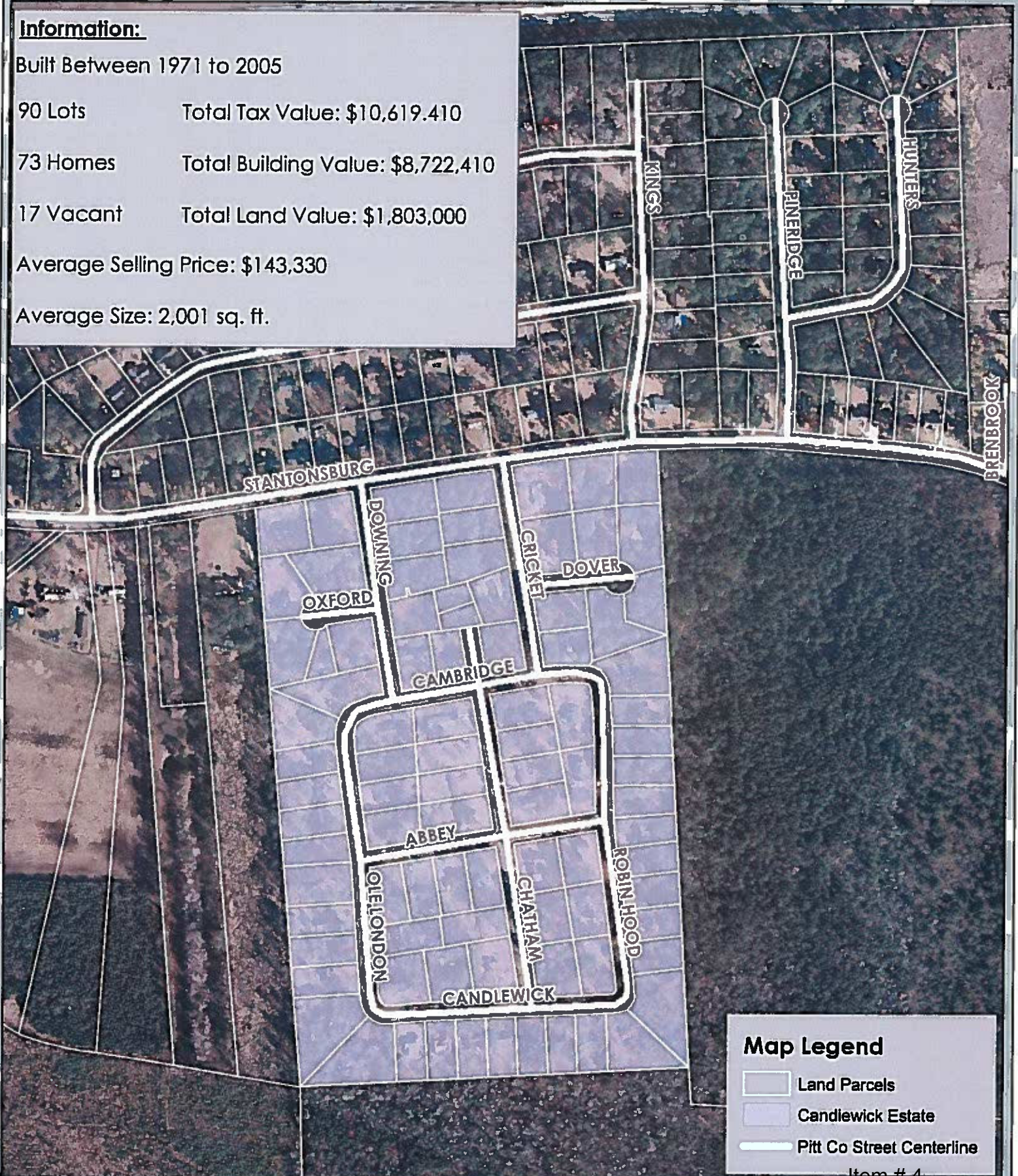
90 Lots            Total Tax Value: \$10,619,410

73 Homes        Total Building Value: \$8,722,410

17 Vacant        Total Land Value: \$1,803,000

Average Selling Price: \$143,330

Average Size: 2,001 sq. ft.



**Map Legend**

- Land Parcels
- Candlewick Estate
- Pitt Co Street Centerline

Item # 4

0            485            970            1,940 Feet





# McDAVID ASSOCIATES, INC.

*Engineers • Planners • Land Surveyors*

**CORPORATE OFFICE**  
(252) 753-2139 • Fax (252) 753-7220  
E-mail: mai@mcdavid-inc.com  
3714 N. Main Street • P.O. Drawer 49  
Farmville, NC 27828

**GOLDSBORO OFFICE**  
(919) 736-7630 • Fax (919) 735-7351  
E-mail: maigold@mcdavid-inc.com  
109 E. Walnut Street • P.O. Box 1776  
Goldsboro, NC 27533

August 10, 2015

**RECEIVED**

AUG 17 2015

Ms. Barbara Lipscomb, City Manager  
City of Greenville  
City Manager's Office  
P.O. Box 7207  
Greenville, NC 27835-7207

**CITY MANAGER'S OFFICE**

**Subject: Waiver Request  
Voluntary Annexation Requirement  
Sanitary Sewer Requirement  
Pitt County  
Candlewick Area Sanitary District**

Dear Ms. Lipscomb:

In reference to the subject project and on behalf of Pitt County and the Candlewick Area Sanitary District, McDavid Associates, Inc. has contracted with Pitt County to perform technical services related to a Community Development Block Grant - Infrastructure funding package awarded by the North Carolina Department of Environment and Natural Resources, Division of Water Infrastructure. The purpose of the awarded grant is to provide sanitary sewer to a target area that includes a portion of the defined Candlewick Area Sanitary District and seventeen (17) adjacent homes (in Bunch Lane Area) located north of NCSR 1200 - Stantonsburg Road. As part of our evaluation of available alternatives to provide central sewer services, pumping sewer to Greenville Utilities Commission managed sewer assets is a feasible alternative that merits consideration.

Pursuant to the City of Greenville and Greenville Utilities Commission Joint Statement Policy on Development, Greenville Utilities Commission Charter, and Greenville City Code, **the purpose of this letter is to request the City of Greenville waive annexation request requirements for installation of Candlewick Area Sanitary District sanitary sewer assets that connect to the City of Greenville facilities managed by Greenville Utilities Commission.** This waiver is for the present and future service area of the Candlewick Area Sanitary District and the rural residential homes located within the project target area (that are not currently located within Candlewick Area Sanitary District's legal boundary). As justification for this request, please note that Candlewick Area Sanitary District is a unit of government, with similar authority as the Town of Bethel and Town of Grimesland who currently pump their sewer to Greenville Commission managed assets.

The Candlewick Area Sanitary District (CASD) is a small unit of government that is presently comprised of approximately 90 existing single family residential homes accessed by Stantonsburg Road about 2 miles west of Greenville's corporate limits. CASD has been actively pursuing funding opportunities to provide central sewer service to existing residential homes, allowing existing on-site septic systems to be abandoned. Recently, Pitt County agreed to be an applicant for CASD and was awarded a Community Development Block Grant that provides funds to install central sewer to serve 54 existing homes with a defined target area that includes homes located within CASD's current legal boundary and

Item # 4

seventeen (17) homes located north of CASD (located within Pitt County jurisdiction). McDavid Associates, Inc. and Pitt County are currently in the process of evaluating alternatives related to installation of sewer assets and long-term sewer treatment/disposal. Installing sewer assets that discharge into City of Greenville facilities is a viable alternative under consideration.

Greenville Utilities Commission (GUC) has indicated in previous meetings a willingness to accept sewer under both bulk rate concept and a concept where homes are direct sewer customers to GUC. As part of discussions with GUC, their representatives advised that any sewer extension that connects to GUC assets requires an annexation request submittal to the City of Greenville.

Primary alternatives for disposal of sewer include pumping sewer to the Town of Farmville and pumping sewer to the City of Greenville. As part of a cost evaluation, consideration of annexation costs (City taxes, City stormwater fee, and City garbage collection fee) impact long-term cost impact to the project's beneficiaries. *We are concerned that requiring annexation requests from individual property owners will not be feasible, potentially eliminating any alternative to pump sewer to the City of Greenville.*

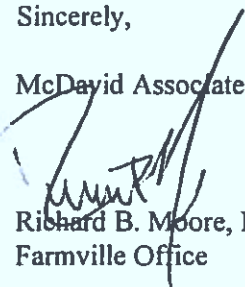
Please consider this request. As exhibits, a copy of the CASD legal boundary and copy of the Pitt County CDBG - Infrastructure project map are enclosed.

Your consideration and decision on this request is greatly appreciated. An Engineering Report document must be submitted to Pitt County by August 15, 2015 and a final draft of the Engineering Report must be submitted to the funding agency (Division of Water Resources) prior to October 8, 2015.

Thank you for your consideration. Please advise as we may provide any additional information for your review.

Sincerely,

McDavid Associates, Inc.



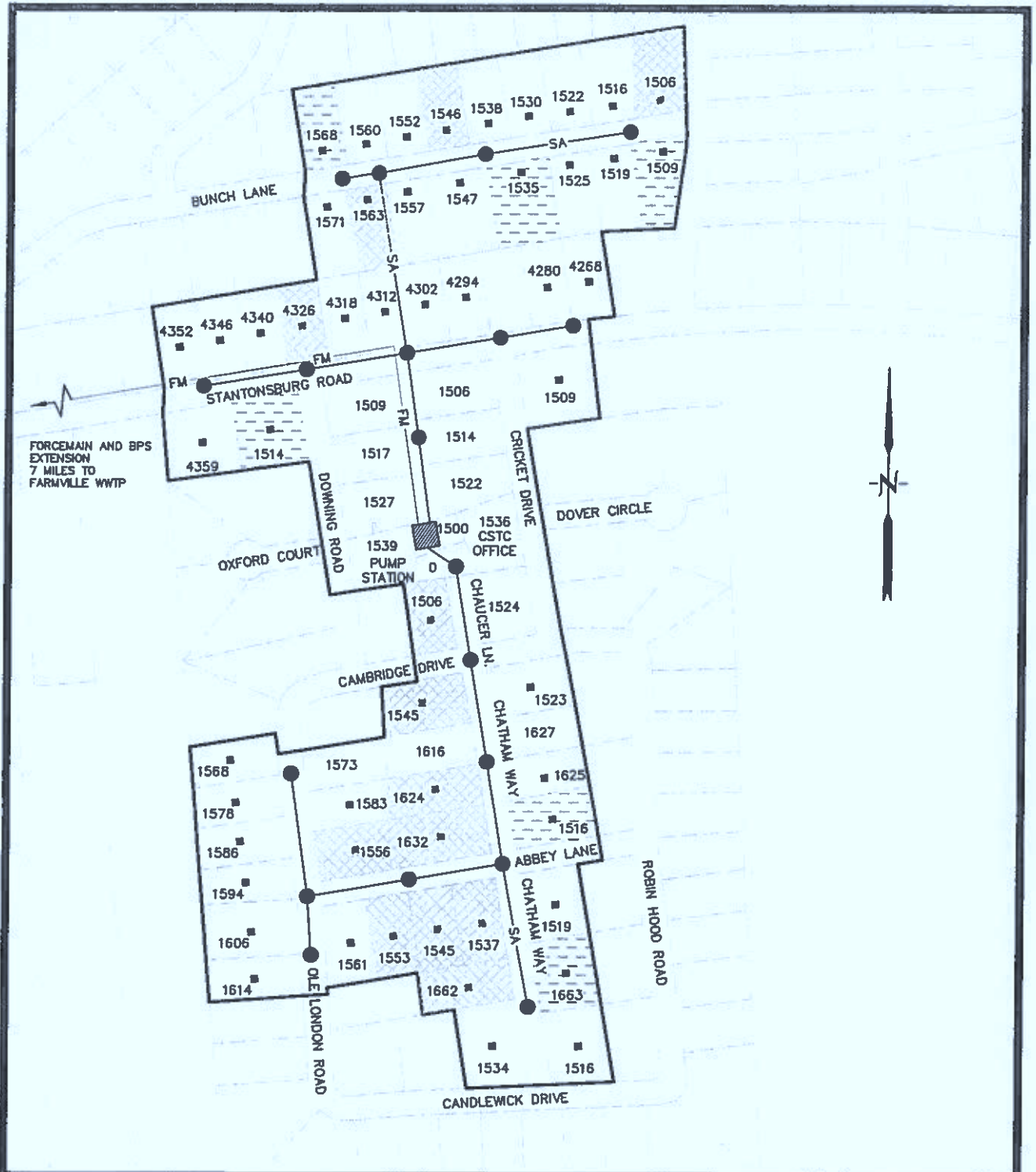
Richard B. Moore, P.E.  
Farmville Office

RBM/th

Enclosures

cc: David Holec (w/encl)  
Merrill Flood (w/encl)  
Anthony C. Cannon (w/encl)  
Randy Emory (w/encl)  
Scott Elliott (w/encl)  
James Rhodes (w/encl)  
Janis Gallagher (w/encl)  
Tim Corley (w/encl)  
Earl Wade (w/encl)  
Van Lewis (w/encl)  
Mike Barnette (w/encl)  
Andrew Parker (w/encl)





FORCEMAIN AND BPS  
EXTENSION  
7 MILES TO  
FARMVILLE WWTP

**LEGEND**

- PROGRAM UNIT
- PROJECT AREA BOUNDARY
- - - LOT LINES
- PROPOSED MANHOLE
- EXISTING MANHOLE
- ▨ FAILED SEPTIC SYSTEM
- SA — PROPOSED SANITARY SEWER
- - - SA - - - EXISTING SANITARY SEWER
- FM — PROPOSED FORCEMAIN
- - - FM - - - EXISTING FORCEMAIN
- - - VACANT
- "1516" TYPICAL STREET ADDRESS NUMBER

**PROJECT MAP  
CANDLEWICK AREA SANITARY DISTRICT  
CDBG INFRASTRUCTURE  
APPLICATION**



**McDAVID ASSOCIATES, INC.**  
Engineers • Planners • Land Surveyors  
3714 North Main Street, Farmville, NC 27828  
Telephone: (252) 753-2139

Scale : 1" = 350'  
DWG Name: Application Map.dwg  
File Path : W:\DBxx\_gen\084x\_eng\0847\_LD\Item #24 3625

## Candlewick Area Sanitary District

***Board of Directors***

Earl Wade, Chairman  
Rita Leggett, Vice Chairman  
Bonnie Heath, Treasurer

1545 Cambridge Drive  
Greenville, NC 27834  
242-531-1073

October 7, 2015

Mr. James Rhodes, AICP  
Pitt County Planning Director  
1717 W. 5th Street  
Greenville, NC 27834

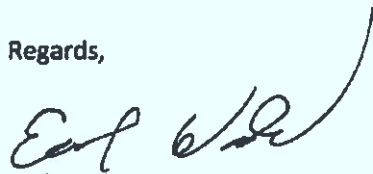
Mr. Rhodes,

On behalf of the CASD Board, I have read and understand the City of Greenville staff's recommendation to require an annexation petition from each property owner affected by the project, with annexation being delayed for at least 30 years. The CASD Board does not support the recommendation requiring annexation, even with the 30-year delay. Based on previous correspondence with property owners within CASD, obtaining a petition from 100% of the affected property owners is very unlikely, if not impossible.

The CASD Board requests the City of Greenville reconsider the annexation waiver request and provide alternative(s) to proposed 30-year delayed annexation in an effort to maintain connection to City of Greenville sanitary sewer facilities as a feasible option for the CDBG-I project.

We look forward to receiving alternative(s) from the City for consideration.

Regards,



Earl Wade  
Chairman, CASD



SESSION 1991

CHAPTER 861  
SENATE BILL 1069

AN ACT TO AMEND AND RESTATE THE CHARTER OF THE GREENVILLE  
UTILITIES COMMISSION OF THE CITY OF GREENVILLE.

The General Assembly of North Carolina enacts:

Section 1. For the proper management of the public utilities of the City of Greenville, both within the corporate limits of the City and outside the said corporate limits, a commission to be designated and known as the "Greenville Utilities Commission", is hereby created and established.

Sec. 2. The Greenville Utilities Commission shall consist of eight members, six of whom shall be bona fide residents of the City of whom one shall at all times be the City Manager of Greenville, and two of whom shall be bona fide residents of Pitt County but residing outside the city limits of Greenville, and all of whom shall be customers of the Greenville Utilities Commission. Each Greenville Utilities Commissioner shall hold office for an initial term of three years and, except as set forth herein, will be automatically reappointed to a single additional term of three years, with each term of three years expiring June 30 at the end of the designated term or until reappointed or replaced by the City Council. The first appointees shall hold their offices as follows: the Greenville City Council shall appoint an individual to serve until June 30, 1995; John W. Hughes, Sr. is hereby appointed a Greenville Utilities Commissioner to serve until June 30, 1995, and shall not be eligible for a second term; Bernard E. Kane is hereby appointed a Greenville Utilities Commissioner to serve until June 30, 1995; R. Richard Miller is hereby appointed a Greenville Utilities Commissioner to serve until June 30, 1994, and shall not be eligible for a second term; and the Greenville City Council shall appoint an individual to serve until June 30, 1993; all of whom are bona fide residents of the City. William G. Blount is hereby appointed a Greenville Utilities Commissioner to serve until June 30, 1993, and shall not be eligible for a second term; and the Pitt County Board of Commissioners shall nominate an individual under the procedure established in Section 3 of this act, to be appointed by the Greenville City Council to serve until June 30, 1994; both of whom are Greenville Utilities Commission customers and bona fide residents of Pitt County residing outside the Greenville city limits.

Sec. 3. The Greenville Utilities Commissioners otherwise than as herein provided shall be appointed by the City Council at their regularly monthly meeting in June of each year. It is the intention of this charter that the City Council shall appoint Greenville Utilities Commission members who have utilities expertise. Representation should include some members with financial, engineering, environmental, technical, or development backgrounds. The two members of the Greenville Utilities Commission

residing outside the city limits shall be nominated by the Pitt County Board of Commissioners and appointed by the City Council. The City Council has the right to reject any nominee(s) from the Pitt County Board of Commissioners and to request additional nominees. If the Pitt County Board of Commissioners fails to recommend a nominee to the City Council within 60 days of the original date requested by the City Council, then the City Council may appoint any individual meeting the residency requirement. No person shall be eligible for appointment to the Greenville Utilities Commission who is an officer or employee of the City or Pitt County except that the City Manager of the City of Greenville shall at all times be a full member of the Greenville Utilities Commission. In the event a Greenville Utilities Commissioner resigns, dies, or otherwise becomes incapable of performing his or her duties, the City Council shall appoint, according to the same process described herein for regular appointments, a Greenville Utilities Commissioner to fill the unexpired term at any regular or special meeting of the City Council. Any Greenville Utilities Commissioner filling an unexpired term shall be deemed to have filled said term for the full three-year term. Except as otherwise permitted herein, no Greenville Utilities Commissioner shall serve more than two three-year terms. Greenville Utilities Commissioners filling the first three-year term will automatically fill a second three-year term unless the City Council initiates the replacement process.

Sec. 4. The Greenville Utilities Commissioners shall organize by electing one of their members Chair, whose term of office as Chair shall be for one year unless the Chair's term on the Greenville Utilities Commission shall expire earlier, in which event his or her term as Chair shall expire with the Chair's term on the Greenville Utilities Commission. The Chair shall not be entitled to vote on any proposition before the Greenville Utilities Commission except in case of a tie vote and only for the purpose of breaking the tie. The members of the Greenville Utilities Commission are authorized to fix their own salaries provided, however, that said salaries shall not exceed one hundred fifty dollars (\$150.00) per month for the members and two hundred fifty dollars (\$250.00) per month for the Chair provided, however, the City Council may, at its own discretion, increase these caps from time to time as is appropriate to reflect inflation, and provided, however, the City Manager shall receive no pay as a member of the Greenville Utilities Commission other than his or her salary as City Manager. The Greenville Utilities Commission shall meet at least once each month at a designated time and place unless the Chair designates some other meeting time and so notifies the other members of the Greenville Utilities Commission. The Greenville Utilities Commission and the Greenville City Council shall meet at least once each year to discuss mutual interests of the City of Greenville and the Greenville Utilities Commission. Minutes shall be kept for all regular meetings of the Greenville Utilities Commission.

Sec. 5. The Greenville Utilities Commission shall have entire supervision and control of the management, operation, maintenance, improvement, and extension of the public utilities of the City, which public utilities shall include electric, natural gas, water, and sewer services, and shall fix uniform rates for all services rendered; provided, however, that any person affected by said rates may appeal from the decision of the



Greenville Utilities Commission as to rates to the City Council. With approval by the City Council, the Greenville Utilities Commission may undertake any additional public enterprise service which may lawfully be operated by a municipality.

Sec. 6. The Greenville Utilities Commission shall employ a competent and qualified General Manager whose duties shall be to supervise and manage the said public utilities, subject to the approval of the Greenville Utilities Commission. The General Manager, under the direction of and subject to the approval of the Greenville Utilities Commission, shall cause the said utilities to be orderly and properly conducted; the General Manager shall provide for the operation, maintenance, and improvement of utilities; the General Manager shall provide for the extension of all utilities, except sewer extensions made beyond the area regulated by the City of Greenville are subject to the approval of the City Council, and shall furnish, on application, proper connections and service to all citizens and inhabitants who make proper application for the same, and shall in all respects provide adequate service for the said utilities to the customers thereof; the General Manager shall attend to all complaints as to defective service and shall cause the same to be remedied, and otherwise manage and control said utilities for the best interests of the City of Greenville and the customers receiving service, and shall provide for the prompt collection of all rentals and charges for service to customers and shall promptly and faithfully cause said rentals and charges to be collected and received, all under such rules and regulations as the Greenville Utilities Commission shall, from time to time, adopt and in accordance with the ordinances of the City of Greenville in such case made and provided.

Sec. 7. All monies accruing from the charges or rentals of said utilities shall be deposited into the appropriate enterprise fund of the Greenville Utilities Commission and the Greenville Utilities Commission's Director of Finance shall keep an account of the same. The Greenville Utilities Commission shall at the end of each month make a report to the City Council of its receipts and disbursements; the Greenville Utilities Commission shall pay out of its receipts the cost and expense incurred in managing, operating, improving, maintaining, extending, and planning for future improvements and expansions of said utilities; provided, however, that should the funds arising from the charges and rentals of said utilities be insufficient at any time to pay the necessary expenses for managing, operating, improving, and extending said utilities, then and in that event only, the City Council of the City of Greenville shall provide and pay into the appropriate enterprise fund of the Greenville Utilities Commission a sum sufficient, when added to the funds that have accrued from the rents and charges, to pay the costs and expenses of managing, operating, improving, maintaining, extending, and planning for future improvements and expansions of said utilities; the Greenville Utilities Commission shall pay the principal on all such funds provided by the City Council with interest thereon; provided, further, that the Greenville Utilities Commission shall annually transfer to the City, unless reduced by the City Council, an amount equal to six percent (6%) of the difference between the electric and natural gas system's net fixed assets and total bonded indebtedness plus annually transfer an amount equal to fifty percent (50%) of the Greenville Utilities Commission's retail cost of service for the City of Greenville's public



lighting. Public lighting is defined herein to mean City of Greenville street lights and City of Greenville Parks and Recreation Department recreational outdoor lighting. The preparation of a joint financial audit of the City of Greenville and the Greenville Utilities Commission operations by a single auditing firm is intended under the provisions of this charter and existing North Carolina statutes.

Sec. 8. In compliance with the time requirements of Chapter 159 of the General Statutes, the Greenville Utilities Commission shall prepare and submit to the City Council, for approval, a budget for the coming year showing its estimated revenue, expenses, capital expenditures, debt service, and turnover to the City of Greenville. In addition, the budget ordinance must identify construction projects of the Greenville Utilities Commission which include individual contracts in excess of one-half of one percent ( $\frac{1}{2}\%$ ) of the Greenville Utilities Commission's annual budget. City Council approval of the Greenville Utilities Commission's budget will constitute approval of projects so identified and the contracts contained therein. Contracts in excess of one-half of one percent ( $\frac{1}{2}\%$ ) of the Greenville Utilities Commission's annual budget not so identified and approved in the budget ordinance will require separate City Council approval.

Sec. 9. The Greenville Utilities Commission shall approve the employment and remuneration of all officers, agents, independent contractors, and employees necessary and requisite to manage, operate, maintain, improve, and extend the service of said utilities. It is, however, the intention of this Charter that the Greenville Utilities Commission and the City of Greenville will implement and maintain mutual pay plans, personnel policies, and benefits for their respective employees. The Greenville Utilities Commission may require bond in such sum as it may deem necessary, which shall be approved by the City Council, of all officers, agents, and employees having authority to receive money for the Greenville Utilities Commission. The Greenville Utilities Commission shall have the authority to name and designate a person in its employ as secretary of the Greenville Utilities Commission.

Sec. 10. The Greenville Utilities Commission shall have authority at all times to discharge and remove any officer, agent, independent contractor, or employee of the Greenville Utilities Commission.

Sec. 11. All laws and clauses of laws in conflict with this act are hereby repealed, expressly including Chapter 146 of the Public-Local Laws of 1941, entitled "AN ACT TO PROVIDE A PERMANENT UTILITIES COMMISSION FOR THE CITY OF GREENVILLE, IN PITT COUNTY, AND TO REPEAL CHAPTER TWO HUNDRED AND ELEVEN OF THE PRIVATE LAWS OF ONE THOUSAND NINE HUNDRED AND FIVE, AND AMENDMENTS THERETO, RELATING TO THE WATER AND LIGHT COMMISSION OF THE CITY OF GREENVILLE.", except that this act does not revive any act repealed by that act.

The purpose of this act is to revise the charter of the Greenville Utilities Commission and to consolidate herein certain acts concerning the Greenville Utilities Commission. It is intended to continue without interruption those provisions of prior acts which are consolidated into this act so that all rights and liabilities that have accrued are

preserved and may be enforced. This act shall not be deemed to repeal, modify, or in any manner affect any act validating, confirming, approving, or legalizing official proceedings, actions, contracts, or obligations of any kind.

No provision of this act is intended nor shall be construed to affect in any way any rights or interest, whether public or private:

- (1) Now vested or accrued in whole or in part, the validity of which might be sustained or preserved by reference to law to any provisions of law repealed by this act.
- (2) Derived from or which might be sustained or preserved in reliance upon action heretofore taken pursuant to or within the scope of any provisions of law repealed by this act.

All existing ordinances of the City of Greenville and all existing rules and regulations of the Greenville Utilities Commission not inconsistent with provisions of this act shall continue in full force and effect until repealed, modified, or amended.

No action or proceeding of any nature, whether civil or criminal, judicial or administrative, or otherwise pending at the effective date of this act by or against the City of Greenville or the Greenville Utilities Commission shall be abated or otherwise affected by the adoption of this act. If any provisions of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 12. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 1992.

James C. Gardner  
President of the Senate

Daniel Blue, Jr.  
Speaker of the House of Representatives



# City of Greenville, North Carolina

**Meeting Date:**  
**11/12/2015**  
**Time: 6:00 PM**

**Title of Item:** Financial audit for the fiscal year ended June 30, 2015

**Explanation:** **Abstract:** Cherry Bekaert, LLP and City staff will present the audit results for the City of Greenville as of June 30, 2015, which entails receipt of an unmodified external, independent audit opinion.

**Explanation:** The City's independent auditor, Cherry Bekaert, LLP, will present the firm's unmodified opinion on the financial statements for the fiscal year ended June 30, 2015. Additionally, City staff will present the financial position of the City for the 2015 fiscal year-end along with other comparative financial information.

On November 9, 2015, the City's Audit Committee will receive a draft of the Governmental fund financial statements (highlighting the General Fund's results) for the fiscal year ending June 30, 2015. The auditor's opinion within the draft will disclose no material internal control weaknesses or material violations of laws and regulations relative to the City's major federal programs; however, there were some weaknesses identified as it pertains to levels of approval through the procurement system, which has been resolved with the implementation of the new financial software. The auditors will discuss their opinion on the results of operations and the changes in accounting principles; Governmental Accounting Standards Board (GASB) #68.

The final phase of the annual audit cycle includes submission of financial statements to the Local Government Commission (LGC) for review. Following LGC review and final revisions, the Comprehensive Annual Financial Report (CAFR) will be finalized and provided to the Mayor and City Council Members prior to December 31.

**Fiscal Note:** Detailed fiscal information is contained in the audit report.

**Recommendation:** Accept the audit report as presented by Cherry Bekaert, LLP and receive the financial information for the fiscal year ended June 30, 2015.

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# City of Greenville, North Carolina

**Meeting Date:**  
**11/12/2015**  
**Time: 6:00 PM**

**Title of Item:** 2015-2016 Capital Reserve Fund calculation and ordinance approving Capital Reserve Fund designations

**Explanation:** **Abstract:** This item is to update City Council on the transfer to the Capital Reserve Fund from the General Fund based on annual audited year-end results for the fiscal year ended June 30, 2015.

**Explanation:** Attached is a computation illustrating the portion of General Fund available for the annual Capital Reserve transfer. Historically, following completion of the annual audit, City Council considers a Manager's recommendation to transfer a portion of unassigned General Fund balance to designated capital improvement projects. The fiscal year-end results illustrate that unassigned fund balance is within the 14% financial policy guidelines.

Using the June 30, 2015 audit results, the portion of unassigned General Fund balance that can be used for capital needs is \$1,447,301.

The following documents are attached:

1. Computation of General Fund Monies Available for Transfer to Capital Reserve – This report is based on the unassigned General Fund balance in excess of the 14% reserve requirement established by City Financial Policy guidelines and the approved 2015-2016 General Fund budget expenditures, excluding Powell Bill (gas tax) funds.

2. Capital Reserve Fund - Detail of Changes in Designations – This detail shows the Capital Reserve Fund balance that was approved by City Council on November 7, 2013; changes to those designations; and the proposed designations for the November 12, 2015, City Council meeting. Since the November 7, 2013 meeting, the following transactions were approved to be moved into Capital Reserve: \$390,487 from the close of the Convention Center Phase I project (these residual funds will be used as needed in the future); \$18,369 from the receipts for metered parking (these funds will be accumulated to pay for future capital needs supporting parking meters within the City); and \$50,000 that will

accumulate to pay out the Capital Investment Grant during FY 2016. For the current 2015-16 fiscal year, \$1,501,266 is being designated to the Dickinson Avenue project(s) which includes the sidewalk project (parking lots for sidewalk project and city employees) and the Brownfield property.

Appropriations of \$1,447,301 are recommended to be transferred and designated within the Capital Reserve Fund until funds are accumulated to complete the projects.

3. Ordinance Amending the Fund -- This document reflects the proposed projects that have been included in the Capital Reserve Fund at this time. Further, the Local Budget and Fiscal Control Act requires that a transfer to the Capital Reserve Fund state (i) the approximate periods of time during which the monies are to be accumulated for each purpose, (ii) the approximate amounts to be accumulated for each purpose, and (iii) the sources from which monies for each purpose will be derived.

**Fiscal Note:**

Transfer \$1,447,301 from the General Fund to the Capital Reserve Fund. The total amount to be designated within the Capital Reserve is \$1,501,266, which includes \$53,965 in unallocated interest. If approved, this amount will be included as part of the December 2015 budget amendment.

**Recommendation:**

Review the annual update to the recommended transfer to the Capital Reserve Fund.

Approve 2015-2016 Capital Reserve Fund designations and adopt the Capital Reserve Fund ordinance.

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- [Capital Reserve Update Caculation 652347](#)
- [Capital Reserve Designations 606168](#)
- [Update to Capital Reserve Fund Ordinance 612543](#)

**Computation of 14% of Unassigned General Fund Balance  
Fiscal Year 2015-2016**

2015-2016** General Fund Budget	Percent	Total Balance Required	Unassigned* Fund Balance	Amount Available For Transfer
74,867,198	14%	10,481,408	12,426,286	1,944,878 ***
		\$ 1,944,878	Amount Available for Transfer to Capital Reserve Fund (@ 14%	
		(497,577)	Budget Ordinance Amendments (FY2015-2016), through November, 2015	
		\$ 1,447,301	Amount Available for Capital Improvement Needs	
		53,965	Capital Reserve Interest (Unallocated)	
		\$ 1,501,266	Total Amount Available for Capital Improvement Needs	

\* Audit, Exhibit C

\*\* Excluding Powell Bill (gas tax) funds





Capital Reserve Fund - Detail of Changes in Designations - November, 2015

Purpose	Approved Designations November 7, 2013	Increase	Proposed Designations November 12, 2015
Convention Center Project(s)	\$ -	A \$ 390,487	\$ 390,487
Dickinson Avenue Project(s)	\$ -	B \$ 1,501,266	\$ 1,501,266
Transportation			
Sidewalk Construction - DOT projects	\$ 52,059	\$ -	\$ 52,059
Subtotal Transportation	\$ 52,059	\$ -	\$ 52,059
Community Development			
Parking Station Reserves	\$ 12,591	A \$ 18,369	\$ 30,960
Capital Investment Grant	-	A 50,000	50,000
Subtotal Community Development	\$ 12,591	\$ 68,369	\$ 80,960
Recreation and Parks			
Open Space for Land Banking	\$ 122,153	\$ -	\$ 122,153
Subtotal Recreation and Parks	\$ 122,153	\$ -	\$ 122,153
<b>Total</b>	<b>\$ 186,803</b>	<b>\$ 1,960,122</b>	<b>\$ 2,146,925</b>

**A** Amounts transferred into the Capital Reserve during FY 2014 as a result of the project completion on Phase I of the Convention Center. This amount is to accumulate for future needs during Phase III (\$390,487). \$50,000 is for the Capital Investment Grant that will be paid out during FY 2016 and \$18,369 was transferred into the fund as a result of the 2014 annual results from the metered parking.

**B** Recommendation made during the November 12, 2015 meeting. Projects includes sidewalk project (parking lots for sidewalk project and city employees) and the Brownfield property.

ORDINANCE NO. 15-  
AN ORDINANCE AMENDING THE CAPITAL RESERVE FUND  
FOR THE CITY OF GREENVILLE

THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES  
ORDAIN:

Section I. The Capital Reserve Fund is amended as follows:

<u>Amount</u>	<u>Sources of Monies</u>	<u>Purpose</u>	<u>Accumulation Period</u>
\$ 30,960	General Fund	Parking Station Reserves	5 years
50,000	General Fund	Capital Investment Grant	5 years
52,059	General Fund	Transportation	10 years
122,153	General Fund	Open Space for Land Banking	10 years
390,487	General Fund	Convention Center Project (s)	10 years
1,501,266	General Fund	Dickinson Avenue Project (s)	5 years
<u>\$ 2,146,925</u>			

Section II. All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section III. This ordinance will become effective upon its adoption.

Adopted this 12th day of November, 2015.

\_\_\_\_\_  
Allen M. Thomas, Mayor

ATTEST:

\_\_\_\_\_  
Carol L. Barwick, City Clerk



# City of Greenville, North Carolina

**Meeting Date:**  
**11/12/2015**  
**Time: 6:00 PM**

**Title of Item:** 2016 City Council Meetings Schedule

**Explanation:** **Abstract:** A proposed schedule for 2016 City Council meetings listing the dates of meetings in accordance with Section 2-1-11 of the Greenville City Code, adjusted for City-observed holidays and other known conflicts, is presented for City Council consideration.

**Explanation:** A proposed schedule for 2016 City Council meetings has been prepared listing the dates of City Council meetings in accordance with Section 2-1-11 of the Greenville City Code and incorporating recommended adjustments for known conflicts. Potential conflicts are noted and explained below.

1. January 22 and 23 are the Friday and Saturday following the Dr. Martin Luther King, Jr. holiday, and that Friday and Saturday are typically the dates set for the Annual Planning Retreat. The US Conference of Mayors Winter Meeting and the NC City and County Clerks School both fall on January 20-22, 2016. It is, therefore, recommended that the 2016 Planning Retreat be held on January 29-30, as reflected on the proposed schedule.
2. March 7 and 10 - These regular meeting dates are in conflict with ECU's Spring Break (March 6-13) and the National League of Cities Congressional City Conference (March 5-9). It is recommended that those dates be adjusted by one week to March 14 and 17, as reflected on the proposed schedule, to resolve these conflicts.
3. September 5 - This regular meeting date is a City-observed holiday, and the recommendation is to cancel this meeting, as reflected on the proposed schedule.
4. October 24 is a regular meeting date, which will conflict with the North Carolina League of Municipalities Conference (October 23-26). The City Council may wish to eliminate this meeting from the proposed schedule.
5. November 21 is a regular meeting date which occurs in the same week as the November 24-25 Thanksgiving holidays. While there is no direct conflict, the City Council may wish to eliminate this meeting from the proposed schedule in consideration of personal and staff travel plans.

6. December 19 is a regular meeting date which occurs in the same week as the December 23-27 Christmas holidays. While there is no direct conflict, the City Council may wish to eliminate this meeting from the proposed schedule in consideration of personal and staff travel plans.

The proposed schedule for 2016 does not conflict with some other events that have been a problem in previous years. These include:

1. International City/County Managers Association Conference is September 23-28
2. Election Day is November 8, but 2016 is not a Municipal election year
3. National League of Cities Congress of Cities is November 16-19

NOTE: The Eastern Carolina Vocational Center annual banquet is held on a Thursday evening in early October. It is tentatively set for October 6, 2016, so it is assumed there will be no conflict.

**Fiscal Note:** There is no direct cost to the City.

**Recommendation:** Review options for the proposed 2016 schedule of City Council meetings, amend as necessary, and consider for adoption.

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 [2016\\_Schedule\\_of\\_City\\_Council\\_Meetings\\_1010874](#)

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# CITY OF GREENVILLE

## 2016 SCHEDULE OF CITY COUNCIL MEETINGS

(All meetings are held in the Council Chambers unless otherwise noted)

January 11 - 6:00 PM  
January 14 - 6:00 PM  
January 29 - 4:30 PM - (Planning Session, City Hall Gallery/Conf. Room 337)  
January 30 - 8:30 AM - (Planning Session, City Hall Gallery/Conf. Room 337)

February 8 - 6:00 PM  
February 11 - 6:00 PM  
February 22 - 6:00 PM

March 14 - 6:00 PM  
March 17 - 6:00 PM  
March 21 - 6:00 PM

April 11 - 6:00 PM  
April 14 - 6:00 PM  
April 25 - 6:00 PM - (Possible Joint City/GUC meeting, GUC Board Room)

May 9 - 6:00 PM  
May 12 - 6:00 PM  
May 23 - 6:00 PM

June 6 - 6:00 PM  
June 9 - 6:00 PM  
June 20 - 6:00 PM

August 8 - 6:00 PM  
August 11 - 6:00 PM  
August 22 - 6:00 PM

September 8 - 6:00 PM  
September 19 - 6:00 PM (Possible Joint City/GUC meeting, GUC Board Room)

October 10 - 6:00 PM  
October 13 - 6:00 PM  
October 24 - 6:00 PM

November 7 - 6:00 PM  
November 10 - 6:00 PM  
November 21 - 6:00 PM

December 5 - 6:00 PM  
December 8 - 6:00 PM  
December 19 - 6:00 PM



# City of Greenville, North Carolina

**Meeting Date:**  
**11/12/2015**  
**Time: 6:00 PM**

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**Title of Item:** Fiscal Year 2016-2017 and 2017-2018 Budget Schedule

**Explanation:** Attached is the proposed budget and capital improvement program schedule for the FY 2016-2017 budget and FY 2017-2018 financial plan.

**Fiscal Note:** No cost associated with adoption of the budget and capital improvement program schedule.

**Recommendation:** Adopt the attached budget and capital improvement program schedule.

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 [2016 Budget and CIP Schedule 1014946](#)

**City of Greenville, North Carolina  
Budget and Capital Improvement Program (CIP) Schedule  
Fiscal Year(s) 2016-2017 and 2017-2018**

**DRAFT**

<b>Thursday</b>	<b>November 12, 2015</b>	<b>Budget and CIP schedule presented to City Council</b>
<b>Friday and Saturday</b>	<b>January 29-30, 2016</b>	<b>City Council Strategic Planning Retreat</b>
<b>Monday</b>	<b>March 14, 2016</b>	<b>Proposed CIP presented to City Council</b>
<b>Monday</b>	<b>April 11, 2016</b>	<b>City Council preview of proposed City Budget</b>
<b>Monday</b>	<b>May 9, 2016</b>	<b>Proposed City Budget presented to City Council</b>
<b>Thursday</b>	<b>May 12, 2016</b>	<b>Proposed GUC, SML, and CVA Budgets presented to City Council</b>
<b>Monday</b>	<b>May 23, 2016</b>	<b>Further discussion of proposed Budgets by City Council (Optional)</b>
<b>Monday</b>	<b>June 6, 2016</b>	<b>Public Hearing - Fiscal Year 2016-2017 Budget and 2017-2018 Plan</b>
<b>Thursday</b>	<b>June 9, 2016</b>	<b>Consideration of adoption of the Fiscal Year 2016-2017 Budget and 2017-2018 Plan</b>





# City of Greenville, North Carolina

**Meeting Date:**  
**11/12/2015**  
**Time: 6:00 PM**

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**Title of Item:** Discussion of East 10th Street

**Explanation:** Council Member Marion Blackburn requested an item be placed on the City Council agenda to discuss East 10th Street, specifically from the intersection with Greenville Boulevard to Oxford Road.

**Fiscal Note:** No direct cost to the City.

**Recommendation:** Discuss the issue as requested by Council Member Blackburn.

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# City of Greenville, North Carolina

**Meeting Date:**  
**11/12/2015**  
**Time: 6:00 PM**

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**Title of Item:** Discussion of deer in residential areas

**Explanation:** **Abstract:** Council Member Rick Croskery requested an item be placed on the City Council agenda to discuss deer in residential areas.

**Explanation:** A call was initially made to staff inquiring about options for addressing the issue of deer in residential areas. Staff contacted the North Carolina Wildlife Resources Commission, which provided the attached information. Council Member Croskery requested a discussion by City Council.

**Fiscal Note:** No direct cost

**Recommendation:** Discuss the subject as requested by Council Member Croskery.

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 [Deer in Residential Areas](#)

## DEER PROBLEMS IN RESIDENTIAL AREAS

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The White Tailed Deer is the most important game animal in North Carolina. The economic value of deer hunting can be measured in terms of hunter expenditures for equipment, food, transportation, and license fees. Deer populations have been increasing in many areas of the state since the 1950's. Due to increasing human populations and associated development conflicts between deer and people are inevitable. Residential construction in previously undeveloped areas forces deer and other animals into smaller and smaller pockets of suitable wildlife habitat. Landscaping by landowners results in the planting of ornamentals that become expensive browse for deer that have been displaced. Residential areas are often located adjacent to lands that continue to support large numbers of deer. Hunting is generally not an option for controlling deer populations within residential areas and deer become less and less afraid of people, dogs, lights, and automobiles. The challenge is for residents to learn how to live with deer in their neighborhoods and for surrounding landowners to learn how to effectively control their deer populations.

### ***Is it a deer problem or is it really a "people problem"?***

Different people have many different perspectives on how wildlife interactions affect their lives and property. Within the same residential neighborhood there will be some people who enjoy seeing deer in their yards (and may actually be feeding them) and other people who are extremely mad that deer are browsing on their expensive plants (and want to get rid of them all). Some people are more pragmatic and simply accept the inevitable (if you live in an area

with a high deer population you shouldn't be surprised to have deer eating your plants). The deer are behaving normally - browsing on herbaceous plants is natural for them. It only becomes a problem when people place a higher value on their ornamental plants than on the wildlife that lived in the area before the houses were built.

### ***What attracts deer into a residential area?***

Many of the most popular landscaping plants are highly palatable for deer because of their high nutritional value, accessibility, and the tender new growth they provide. Azaleas and flowers are among the plants most susceptible to deer browse damage. Residents who live in areas with high deer populations must accept the reality that if they plant ornamental shrubs and flowers that are attractive to deer there is a strong possibility that they will incur damage. Landscaping plans should be adapted to utilize fences, rocks, and other materials instead of ornamental plants whenever possible. Plants that are used should be selected for their resistance to deer damage. Residents who live in areas with high deer populations must be aware of the risks if they choose to spend a lot of money on ornamental plants that may end up being expensive deer browse.

### ***Most problems are seasonal***

Most deer depredation problems in residential areas are seasonal and are worse in the winter months than at other times of the year. Deer depend primarily on hard mast (acorns) in the fall to fatten up for winter. Deer compete for hard mast with

squirrels, turkeys, bears, and other animals. Acorns are often scarce by late winter. Hard mast crops are inconsistent from year to year and occasionally a hard mast failure will leave virtually no acorns available. During years with poor mast crops deer subsist primarily by browsing on herbaceous plants and depredation problems in residential areas may become severe. The problems usually subside to some extent in spring when native vegetation begins to green up.

### ***Why not just move deer from residential areas?***

There are several reasons why moving problem deer is not an option. First and foremost, moving deer does not solve the problem. If a residential neighborhood is located near an area with a high deer population other deer will just move into the neighborhood. Trapping deer is very difficult and expensive even under the best of circumstances. It would be virtually impossible to catch enough deer in a residential situation to make any difference. Deer that have been relocated often do not survive long because of the stress involved in the trapping and transportation process and the difficulty in adapting to a new area. There are basically two trapping methods available. Using rocket nets is the most effective, but it requires large open areas (fields) where rockets and explosives would not create a hazard to houses and people. The second method, using tranquilizer darts, is very difficult and is usually ineffective. Tranquilizer guns have a very limited range and a shooter would have to be within a few yards of a deer to take a shot. It would be extremely time consuming and expensive to try to "hunt" deer (even fairly tame ones) because of their nocturnal habits and variable travel routes and schedules. Tranquilizers also take several minutes to work and a deer can run a long ways after

being struck by a dart. The chances of finding a deer in a timely manner are not good. Finally, darts and drugs are dangerous! A dart can easily be lost when shot from a dart gun. The possibility of losing a dart full of dangerous drugs in a residential area where it could later be found by children is unthinkable. In short, there is not a safe and effective way to catch and relocate deer from a residential situation.

### ***How are deer problems best handled?***

#### **1. Exclusion**

There are many types of deer fences and barriers that can be effective in certain situations. Permanent or temporary electric fences work best but most residential property owners prefer not to erect large fences to protect their yards. Smaller woven wire fencing can be used to protect individual plants until they are large enough to be less desirable for deer browse. Deer generally eat only the new growth on the tips of branches. Once they develop hard woody stems the main body of the plant is less susceptible. However the tips and buds remain vulnerable and deer browsing will prevent flowering and new growth.

#### **2. Repellants**

There are many types of commercial and home remedy repellants that may work on deer. The key is to use them early, before the deer become accustomed to browsing on your plants. Repellants may serve to keep deer out of your yard (and in the yard of your neighbors) until your neighbors start to use them. Repellants may not work if the deer are hungry enough. Most are short-lived and wash off with rain or wear off in a short period of time.

#### **3. Frightening**

Most frightening devices for deer involve loud noises which may not be suitable in a residential environment. Deer quickly

become accustomed to security lights and motion detectors. Dogs can keep deer out of a yard. However many residential areas have homeowners restrictions that prohibit large dogs.

#### 4. Shooting

The discharge of firearms is prohibited by city or county regulations in most residential areas (including bow and arrow in some cases). Ordinances may not specifically prohibit certain types of weapons and there may be some instances where a shotgun or bow and arrow might be allowed where a landowner's yard adjoins a large tract of undeveloped land. Hunting during the legally established hunting season should be the preferred method of reducing a deer population where weapons are legal. A depredation permit to kill deer out of season can be issued (to a specific landowner on his own property) by the North Carolina Wildlife Resources Commission in cases where it is deemed to be safe and practical. However in most residential situations, especially where lots are small and houses are in close proximity to each other, the discharge of any weapon (including bow and arrow) is dangerous and depredation permits will not be issued.

#### 5. Population control

The most effective way to reduce deer depredation problems in residential areas is through population management in the surrounding area. Population management can usually be achieved through the legal harvest of deer during regular hunting seasons. Landowners adjacent to the residential area must be willing to allow enough hunters to participate and enough deer of both sexes to be killed to affect the population. This is a long term solution that depends on cooperation and communication between property owners in a residential

area and adjacent landowners where high populations of deer exist.

### ***Summary***

Managing deer depredation in residential areas is often more of a people management problem than a deer management problem. There is usually one faction that wants to get rid of the deer and another faction that wants to protect the deer. There is rarely ever a way to satisfy everyone. There are some repellants and exclusion devices that may help residents to reduce damage to their ornamental plants. There are often some steps that can be taken by local landowners (if they are willing to cooperate) that will help to reduce, control, and manage deer populations in the area in the long term. However the bottom line is simple: if you live in an area with a high deer population don't spend a lot of money on expensive ornamental plants. There will probably always be a significant deer population in the area and if you choose to plant species that are attractive to deer you will always have deer depredation problems.

## Damage Prevention and Control Methods

### Exclusion

Where deer are abundant or crops are particularly valuable, fencing may be the only way to effectively minimize deer damage. Several fencing designs are available to meet specific needs. Temporary electric fences are simple inexpensive fences useful in protecting garden and field crops during. Deer are attracted to these fences by their appearance or smell, and are lured into contacting the fence with their noses. The resulting shock is a very strong stimulus and deer learn to avoid the fenced area. Permanent high-tensile electric fences provide year-round protection from deer and are best suited to high-value specialty or orchard crops. The electric shocking power and unique fence designs present both psychological and physical barriers to deer. Permanent woven-wire fences provide the ultimate deer barrier. They require little maintenance but are very expensive to build. Fencing in general is expensive. You should consider several points before constructing a fence, such as:

History of the area — assemble information on past claims, field histories, deer numbers, and movements to help you decide on an abatement method.

Deer pressure — this reflects both the number of deer and their level of dependence on agricultural crops. If deer pressure in your area is high, you probably need fences.

Crop value — crops with high market values and perennial crops where damage affects future yields and growth often need the protection fencing can provide.

Field size — in general, fencing is practical for areas of 40 acres (16 ha) or less. The cost per acre (ha) for fencing usually decreases, however, as the size of the area protected increases.

Cost-benefit analysis — to determine the cost effectiveness of fencing and the type of fence to install, weigh the value of the crop to be protected against the acreage involved, costs of fence construction and maintenance, and the life expectancy of the fence.

Rapidly changing fence technology — if you intend to build a fence your-self, supplement the following directions by consulting an expert, such as a fencing contractor. Detailed fencing manuals are also available from most fencing manufacturers and sales representatives.

### **Temporary Electric Fencing**

Temporary electric fences provide inexpensive protection for many deer depredation situations (see attached designs for the "Peanut Butter" and "Polytape" fences). They are easy to construct, do not require rigid corners, and materials are readily available. Install fences at the first sign of damage to prevent deer from establishing feeding patterns in your crops. Weekly inspection and maintenance are required. Different types of temporary electric fences are described below.

### **Permanent High-Tensile Electric Fencing**

High-tensile fencing can provide year-round protection from deer damage. Many designs are available to meet specific needs. All require strict adherence to construction guidelines concerning rigid corner assemblies and fence configurations. Frequent inspection and maintenance are required. High-tensile fences are expected to last 20 to 30 years. Different types of high-tensile electric fences are described below.

### **Tree Protectors**

Use Vexar®, Tubex®, plastic tree wrap, or woven-wire cylinders to protect young trees from deer and rabbits. Four-foot (1.2-m) woven-wire cylinders can keep deer from rubbing tree trunks with their antlers.

## **Haystack Protection**

Wooden panels have traditionally been used to exclude deer and elk from hay-stacks. Stockyards have also been protected by welded wire panels and woven wire. More recently haystacks have been protected by wrapping them with plastic Tensar® snow fence. The material comes in 8-foot (2.4-m) rolls and is relatively light and easy to use.

## **Cultural Methods and Habitat Modification**

Damage to ornamental plants can be minimized by selecting landscape and garden plants that are less preferred by deer. In many cases, original landscape objectives can be met by planting species that have some resistance to deer damage. Table 1 provides a list of plants, ranked by susceptibility to deer damage. This list, developed by researchers at Cornell University, is applicable for most eastern and northern states.

Harvest crops as early as possible to reduce the period of vulnerability to deer. Plant susceptible crops as far from wooded cover as possible to reduce the potential for severe damage. Habitat modification is not recommended. Destruction of wooded or brushy cover in hopes of reducing deer use would destroy valuable habitat for other wildlife. Also, since deer forage over a large area it is unlikely that all available deer cover would be on a farmer's or rancher's land.

## **Frightening**

One of the keys to success with frightening devices and repellants is to take action at the first sign of a problem. It is difficult to break the movements or behavioral patterns of deer once they have been established. Also, use frightening devices and repellants at those times when crops are most susceptible to damage, for example, the silking to tasseling stages for field corn or the blossom stage for soybeans.

Gas exploders set to detonate at regular intervals are the most commonly used frightening devices for deer. They can be purchased for \$200 to \$500 from several commercial sources (see Supplies and Materials). To maximize the effectiveness of exploders, move them every few days and stagger the firing sequence. Otherwise, the deer quickly become accustomed to the regular pattern. The noise level can be increased by raising exploders off the ground. Motion-activated firing mechanisms are now being explored to increase the effectiveness of exploders. Success depends on many factors and can range from good to poor. A dog on a long run or restricted by an electronic invisible fence system can keep deer out of a limited area, but care and feeding of the dog can be time-consuming. Free-running dogs are not advisable and may be illegal.

Shell crackers, fireworks, and gunfire can provide quick but temporary relief from deer damage. Equip mobile units with pyrotechnics, spotlights, and two-way radios. Patrol farm perimeters and field roads at dusk and throughout the night during times of the year when crops are most susceptible to damage. Such tactics cannot be relied on for an entire growing season.

## **Repellants**

Repellants are best suited for use in orchards, gardens, and on ornamental plants. High cost, limitations on use, and variable effectiveness make most repellants impractical on row crops, pastures, or other large areas. Success with repellants is measured in the reduction, not total elimination, of damage.

Repellants are described by mode of actions as "contact" or "area." Contact repellants, which are applied directly to the plants, repel by taste. They are most effective when applied to trees and shrubs during the dormant period. New growth that appears after treatment is unprotected. Contact repellants may reduce the palatability of forage crops and should not be used on plant parts destined for human consumption. Hinder® is an exception in that it can be applied directly on edible crops.

Area repellants are applied near the plants to be protected and repel deer by odor alone. They are usually less effective than contact repellants but can be used in perimeter applications and some situations where contact repellants cannot.

During the winter or dormant season, apply contact repellants on a dry day when temperatures are above freezing. Treat young trees completely. It will be more economical to treat only the terminal growth of older trees. Be sure to treat to a height of 6 feet (1.8 m) above expected maximum snow depth. During the growing season, apply contact repellants at about half the concentration recommended for winter use.

The effectiveness of repellants will depend on several factors. Rainfall will dissipate some repellants, so reapplication may be necessary after a rain. Some repellants do not weather well even in the absence of rainfall. Deer's hunger and the availability of other more palatable food will have a great effect on success. In times of food stress, deer are likely to ignore either taste or odor repellants. When using a commercial preparation, follow the manufacturer's instructions. Don't overlook new preparations or imaginative ways to use old ones. The following discussion of common repellants is incomplete and provided only as a survey of the wide range of repellant formulations available. The repellants are grouped by active ingredient. Trade names and sample labels for some products are provided in the Supplies and Materials section.

### **Toxicants**

No toxicants are registered for deer control. Poisoning of deer with any product for any reason is illegal and unlikely to be tolerated by the public.

### **Herd Reduction**

A reduction in a local deer population may be appropriate to alleviate deer depredation. Damage may result from a few problem deer or at locations close to a winter deer yard or other exceptional habitat. Local reductions in deer populations can usually be accomplished by allowing hunters to harvest deer during the regular established hunting seasons.

### **Live Capture**

Live capture and relocation of deer is very expensive, time consuming, and usually does not solve deer depredation problems. Other deer quickly move in and replace the deer that have been removed. The survival rate of deer relocated to other areas is poor and generally does not benefit areas with low deer populations. Live capture of deer is rarely justifiable.

### **Shooting**

Effective use of the legal deer season is probably the best way to control deer populations. By permitting hunting, landowners provide public access to a public resource while at the same time reducing deer damage problems. Because of the daily and seasonal movements of deer, only rarely does a single landowner control all the land a deer uses. As a result, neighboring landowners should cooperate. Landowners, the state wildlife agency, and local hunters should reach a consensus about a desirable population level for an area before deer are removed.

Mechanisms for managing deer population levels in a specific area already exist in most states. Either-sex seasons, increased bag limits, antlerless only permits, special depredation seasons, and a variety of other management techniques have been used successfully to reduce deer numbers below levels achieved by traditional "bucks only" regulations.

Shooting permits may be issued for removal of problem deer where they are causing damage during non-hunting season periods. Use of bait, spotlights, and rifles may increase success but techniques must be consistent with the specifications of the permits.



**Economics of Damage and Control**

A national survey conducted by USDA’s National Agricultural Statistics Service in 1992 identified deer damage as the most widespread form of wildlife damage. Forty percent of the farmers reporting had experienced deer damage. The situation is similar in most agricultural states with moderate to high deer densities. Estimates by Hesselton and Hesselton (1982) suggest that the cost of deer-vehicle collisions may exceed \$100 mil-lion each year in the United States and Canada.

Deer also damage nurseries, landscape plantings, and timber regeneration. However, as established earlier, deer are a valuable public resource. Cost estimates for control techniques were presented with the appropriate techniques. A cost/benefit analysis is always advisable before initiating a control program. Two additional economic aspects are worth consideration. One involves farmer tolerance for deer damage. Two summaries of social science research related to deer damage (Pomerantz et al. 1986, and Siemer and Decker 1991) demonstrated that a majority of farmers were willing to tolerate several hundred dollars in deer damage in exchange for the various benefits of having deer on their land. Thus “total damage” figures are misleading because only a small percentage of the farmers statewide or nationwide are suffering sufficient damage to warrant control.

**COMMERCIAL DEER REPELLANTS**

**Deer-Away® Big Game Repellent** (37% putrescent whole egg solids). This contact (odor/taste) repellent has been used extensively in western conifer plantations and reported in field studies to be 85% to 100% effective. It is registered for use on fruit trees prior to flowering, as well as ornamental and Christmas trees. Apply it to all susceptible new growth and leaders. Applications weather well and are effective for 2 to 6 months. One gallon (3.8 l) of liquid or 1 pound (0.45 kg) of powder costs about \$32 and covers 400, 3-inch (7.6-cm) saplings or 75, 4-foot (1.2-m) evergreens.

**Deer Off®.** This EPA approved product is made from natural ingredients and repels deer by taste and odor. It is biodegradable, does not harm animals or the environment, and claims to last for up to 3 months.

**Repel Deer from Valuable Trees and Plantings**

Deer Chaser and Deer Off deliver a 1-2 punch that assaults browsing deer with odors and flavors they detest. Hung from the branches of trees and bushes, our exclusive **Deer Chaser** pouches ward off deer with a heady, citrus scent. They work in any weather, and last at least a year. If deer are hungry enough to take a bite anyway, give them a mouthful of **Deer Off Spray**. Simply spray it on the leaves of your plants and the taste of egg

solids, hot pepper capsicum, and garlic will leave them wincing. Deer Off will not alter plants' appearance, nor leave any residue, and will not rinse off in the rain. Ready-to-use spray treats up to fifty 4' shrubs. Not for use on edible crops. Concentrate makes 1 gallon of spray for 4 times the coverage.



- Deer Chaser, 6 pouches \$26.95
- Deer Off Spray, 1 qt \$18.95
- Deer Off Concentrate \$26.95

## **Deer No No**

Claims to be a specially formulated citrus scent in a solid cake form that is effective at repelling deer and lasts for 10-12 months. It comes in a green mesh bag and is hung next to foliage.

**Hinder®** (15% ammonium soaps of higher fatty acids). This area repellent is one of the few registered for use on edible crops. You can apply it directly to vegetable and field crops, forages, ornamentals, and fruit trees. Its effectiveness is usually limited to 2 to 4 weeks but varies because of weather and application technique. Reapplication may be necessary after heavy rains. For small fields and orchards, you can treat the entire area. For larger areas, apply an 8- to 15-foot (2.4- to 4.6-m) band around the perimeter of the field. Apply at temperatures above 32°F (0 °C). Four gallons (15.2 l) of liquid cost about \$80, and when mixed with 100 gallons (380 l) of water will cover 1 acre (0.4 ha). Hinder is compatible for use with most pesticides.

**Thiram** (7% to 42% tetramethylthiuram disulfide). Thiram, a fungicide that acts as a contact (taste) deer repellent, is sold under several trade names-- Bonide Rabbit-Deer Repellent®, Nott's Chew-Not, and Gustafson 42-S®, among others. It is most often used on dormant trees and shrubs. A liquid formulation is sprayed or painted on individual trees. Although Thiram itself does not weather well, adhesives such as Vapor Gard® can be added to increase its resistance to weathering. Thiram-based repellents also protect trees against rabbit and mouse damage. Two gallons (7.6 l) of 42% Thiram cost about \$50 and when mixed with 100 gallons (380 l) of water will cover 1 acre (0.4 ha). Cost varies with the concentration of Thiram in the product.

**Miller's Hot Sauce® Animal Repellent** (2.5% capsaicin). This contact (taste) repellent is registered for use on ornamentals, Christmas trees, and fruit trees. Apply the repellent with a backpack or trigger sprayer to all susceptible new growth, such as leaders and young leaves. Do not apply to fruit-bearing plants after fruit set. Vegetable crops also can be protected if sprayed prior to the development of edible parts. Weatherability can be improved by adding an antitranspirant such as Wilt-Pruf® or Vapor Gard®. Hot Sauce and Vapor Gard® cost about \$80 and \$30 per gallon (3.8 l) respectively. Eight ounces (240 ml) of Hot Sauce and two quarts (1.9 l) of antitranspirant mixed with 100 gallons (380 l) of water will cover 1 acre (0.4 ha).

**Tankage** (putrefied meat scraps). Tankage is a slaughterhouse by-product traditionally used as a deer repellent in orchards. It repels deer by smell, as will be readily apparent. To prepare containers for tankage, remove the tops from aluminum beverage cans, puncture the sides in the middle of the cans to allow for drainage and attach the cans to the ends of 4-foot (1.2 m) stakes. Drive the stakes into the ground, 1 foot (0.3 m) from every tree you want to protect or at 6-foot (1.8-m) intervals around the perimeter of a block. Place 1 cup (225 g) of tankage in each can. You can use mesh or cloth bags instead of cans. You may have to replace the containers periodically because fox or other animals pull them down occasionally. Tankage is available by bulk (\$335 per ton [\$302/mt]) or bag (\$20 per 50 pounds [22.5 kg]). When prepared for hanging on stakes, it costs about \$0.20 per 1 ounce (28 g) bag and 300 bags will cover 2 acres (0.8 ha).

**Ro-pel®** (benzyl-diethyl [(2,6 xylyl-carbamoyl) methyl] ammonium saccharide (0.065%), thymol (0.035%). Ro-pel® is reported to repel deer with its extremely bitter taste. Apply Ro-pel® once each year to new growth. It is not recommended for use on edible crops. Spray at full strength on nursery and Christmas trees, ornamentals, and flowers. One gallon (3.8 l) costs \$50 and covers about 1 acre (0.4 ha) of 8- to 10-foot (2.4- to 3.0-m) trees.

**Sources for Commercial Deer Repellants**

\* Some types of deer repellants may be available at your local farm supply or hardware store.

<p><b><u>Deer-Away® Big Game Repellant</u></b> Southern States Farmer's Supply Asheville, Hendersonville</p>	<p><b><u>Miller's Hot Sauce® Animal Repellant</u></b> Unknown</p>
<p><b><u>Deer Off®.</u></b> Deer Off Inc. 58 High Valley Way Stamford, CT 06903 1-800-333-7633</p>	<p><b><u>Deer Off and Deer Chaser</u></b> Gardener's Supply Company 128 Intervale Road Burlington, VT 05401 1-800-863-1700</p>
<p><b><u>Ro-pel®</u></b> Do It Yourself Pest Control 32950 US Hwy 19 N Palm Harbor, FL 34684 1-800-742-5009</p>	<p><b><u>Deer No No</u></b> Deer No No P.O. Box 112 West Cornwall, CT (860) 672-6264</p>

**HOME REMEDY DEER REPELLANTS**

**Radio.** Put a portable radio or cassette player in the yard or garden and play it at low volume. A talk show or human voices might work better than music. It can be protected from the weather by placing it in an ammo can or tupperware container perforated to allow the sound to escape.

**Scented Blue Jeans.** Hang several pairs of old blue jeans around the yard or around damaged plants and soak them in human urine (readily available) or coyote or mountain lion urine (which can sometimes be purchased from a local nursery or trapping supply company). The blue jeans will not smell bad once they dry. Scent must be reapplied periodically.

**Plastic Bird Netting.** Plastic bird netting can be hung over sensitive plants to prevent deer damage. It can often be purchased from farm supply stores or local nurseries.

**Bar Soap.** Recent studies and numerous testimonials have shown that ordinary bars of soap applied in the same manner as hair bags can reduce deer damage. Drill a hole in each bar and suspend it with a twist tie or soft cord. Each bar appears to protect a radius of about 1 yard (1 m). Any inexpensive brand of bar soap will work. Ready-to-use bars cost about \$0.20 each.

**Plastic Tape.** Yellow plastic tape (3 inches in diameter) can be strung around plants 2½ to 3 feet apart. The movement of the tape can frighten deer.

**Hair Bags (human hair).** Human hair is an odor (area) repellant that costs very little but has not consistently repelled deer. Place two handfuls of hair in fine-mesh bags (onion bags, nylon stockings). Where severe damage occurs, hang hair bags on the outer branches of individual trees with no more than 3 feet (0.9 m) between individual bags. For larger areas, hang several bags, 3 feet (0.9 m) apart, from a fence or cord around the perimeter of the area to be protected. Attach the bags early in spring and replace them monthly through the growing season. You can get hair at local barber shops or salons.

Table 1. Ornamental plants, listed by susceptibility to deer damage

Plants Rarely Damaged:		Plants Occasionally Severely Damaged (continued)	
<u>Botanical name</u>	<u>Common name</u>	<u>Botanical name</u>	<u>Common name</u>
<i>Berberis spp</i>	Barberry	<i>Ilex (x) meserveae</i>	China Girl/Boy Holly
<i>Berberis vulgaris</i>	Common Barberry	<i>Juniperus virginiana</i>	Eastern Red Cedar
<i>Betula papyrifera</i>	Paper Birch	<i>Larix decidua</i>	European Larch
<i>Buxus sempervirens</i>	Common Boxwood	<i>Lonicera (x) heckrottii</i>	Goldflame Honeysuckle
<i>Elaeagnus angustifolia</i>	Russian Olive	<i>Ligustrum spp.</i>	Privet
<i>Ilex opaca</i>	American Holly	<i>Magnolia (x) soulangiana</i>	Saucer Magnolia
<i>Leucothoe fontanesiana</i>	Drooping Leucothoe	<i>Metasequoia lyptostroboides</i>	Dawn Redwood
<i>Picea pungens</i>	Colorado Blue Spruce	<i>Parthenocissus quinquefolia</i>	Virginia Creeper
<i>Pieris japonica</i>	Japanese Pieris	<i>Prunus avium</i>	Sweet Cherry
Plants Seldom Severely Damaged:		<i>Pseudotsuga menziesii</i>	Douglas Fir
<u>Botanical name</u>	<u>Common name</u>	<i>Pyracantha coccinea</i>	Firethorn
<i>Betula pendula</i>	European White Birch	<i>Pyrus calleryana 'Bradford'</i>	Bradford Callery Pear
<i>Calastrus scandens</i>	American Bittersweet	<i>Pyrus communis</i>	Common Pear
<i>Cornus sericea</i>	Red Osier Dogwood	<i>Quercus alba</i>	White Oak
<i>Cornus florida</i>	Flowering Dogwood	<i>Quercus prinus</i>	Chestnut Oak
<i>Cornus kousa</i>	Kousa Dogwood	<i>Quercus rubra</i>	Northern Red Oak
<i>Crataegus laevigata</i>	English Hawthorn	<i>Rhododendron spp.</i>	Deciduous Azaleas
<i>Enkianthus campanulatus</i>	Redvein Enkianthus	<i>Rhododendron carolinianum</i>	Carolina Rhododendron
<i>Fagus sylvatica</i>	European Beech	<i>Rhododendron maximum</i>	Rosebay Rhododendron
<i>Forsythia spp.</i>	Forsythia	<i>Rhus typhina</i>	Staghorn Sumac
<i>Gleditsia triacanthos</i>	Honey Locust	<i>Rosa multiflora</i>	Multiflora Rose
<i>Ilex cornuta</i>	Chinese Holly	<i>Rosa rugosa</i>	Rugosa Rose
<i>Ilex glabra</i>	Inkberry	<i>Salix spp.</i>	Willows
<i>Juniperus chinensis</i>	Chinese Junipers (green)	<i>Spiraea (x) bumalda</i>	Anthony Waterer Spiraea
<i>Juniperus chinensis</i>	Chinese Junipers (blue)	<i>Spiraea prunifolia</i>	Bridalwreath Spiraea
<i>Kalmia latifolia</i>	Mountain Laurel	<i>Syringa (x) persica</i>	Persian Lilac
<i>Kolkwitzia amabilis</i>	Beautybush	<i>Syringa reticulata</i>	Japanese Tree Lilac
<i>Picea abies</i>	Norway Spruce	<i>Syringa villosa</i>	Late Lilac
<i>Picea glauca</i>	White Spruce	<i>Tilia cordata 'Greenspire'</i>	Greenspire Littleleaf Linden
<i>Pinus nigra</i>	Austrian Pine	<i>Tilia americana</i>	Basswood
<i>Pinus rigida</i>	Pitch Pine	<i>Tsuga canadensis</i>	Eastern Hemlock
<i>Pinus mugo</i>	Mugo Pine	<i>Tsuga caroliniana</i>	Carolina Hemlock
<i>Pinus resinosa</i>	Red Pine	<i>Viburnum (x) juddii</i>	Judd Viburnum
<i>Pinus sylvestris</i>	Scots Pine	<i>Viburnum rhytidophyllum</i>	Leatherleaf Viburnum
<i>Prunus serrulata</i>	Japanese Flowering Cherry	<i>Viburnum plicatum tomentosum</i>	Doublefile Viburnum
<i>Salix matsudana tortuosa</i>	Corkscrew Willow	<i>Viburnum carlesii</i>	Koreanspice Viburnum
<i>Sassafras albidum</i>	Common Sassafras	<i>Weigela florida</i>	Oldfashion Weigela
<i>Syringa vulgaris</i>	Common Lilac	Plants Frequently Severely Damaged:	
<i>Wisteria floribunda</i>	Japanese Wisteria	<u>Botanical name</u>	<u>Common name</u>
<b>Plants Occasionally Damaged:</b>		<i>Abies balsamea</i>	Balsam Fir
<u>Botanical name</u>	<u>Common name</u>	<i>Abies fraseri</i>	Fraser Fir
<i>Abies concolor</i>	White Fir	<i>Acer platanoides</i>	Norway Maple
<i>Acer griseum</i>	Paperbark Maple	<i>Cercis canadensis</i>	Eastern Redbud
<i>Acer rubrum</i>	Red Maple	<i>Chamaecyparis thyoides</i>	Atlantic White Cedar
<i>Acer saccharinum</i>	Silver Maple	<i>Clematis spp.</i>	Clematis
<i>Acer saccharum</i>	Sugar Maple	<i>Cornus mas</i>	Cornelian Dogwood
<i>Aesculus hippocastanum</i>	Common Horsechestnut	<i>Euonymus alatus</i>	Winged Euonymus
<i>Amelanchier arborea</i>	Downy Serviceberry	<i>Euonymus fortunei</i>	Wintercreeper
<i>Amelanchier laevis</i>	Allegheny Serviceberry	<i>Hedera helix</i>	English Ivy
<i>Campsis radicans</i>	Trumpet Creeper	<i>Malus spp.</i>	Apples
<i>Chaenomeles speciosa</i>	Japanese Flowering Quince	<i>Prunus spp.</i>	Cherries
<i>Cornus racemosa</i>	Panicled Dogwood	<i>Prunus spp.</i>	Plums
<i>Cotinus coggygria</i>	Smokebush	<i>Rhododendron spp.</i>	Rhododendrons
<i>Cotoneaster spp</i>	Cotoneaster	<i>Rhododendron spp.</i>	Evergreen Azaleas
<i>Cotoneaster apiculatus</i>	Cranberry Cotoneaster	<i>Rhododendron catawbiense</i>	Catawba Rhododendron
<i>Cotoneaster horizontalis</i>	Rockspray Cotoneaster	<i>Rhododendron periclymenoides</i>	Pinxterbloom Azalea
<i>Cryptomeria japonica</i>	Japanese Cedar	<i>Rosa (x) hybrid</i>	Hybrid Tea Rose
<i>Forsythia (x) intermedia</i>	Border Forsythia	<i>Sorbus aucuparia</i>	European Mountain Ash
<i>Hamamelis virginiana</i>	Common Witchhazel	<i>Taxus spp.</i>	Yews
<i>Hibiscus syriacus</i>	Rose of Sharon	<i>Taxus baccata</i>	English Yew
<i>Hydrangea arborescens</i>	Smooth Hydrangea	<i>Taxus brevifolia</i>	Western Yew
<i>Hydrangea anomala petiolaris</i>	Climbing Hydrangea	<i>Taxus cuspidata</i>	Japanese Yew
<i>Hydrangea paniculata</i>	Panicle Hydrangea	<i>Taxus (x) media</i>	English/Japanese Hybrid Yew
<i>Ilex crenata</i>	Japanese Holly	<i>Thuja occidentalis</i>	American Arborvitae

# Wildlife Damage Management

## Deer - Temporary Fencing

### Peanut Butter Fence

The peanut butter fence is effective for small gardens, nurseries, and orchards (up to 3 to 4 acres [1.2 to 1.6 ha]) subject to moderate deer pressure. Deer are attracted by the peanut butter and encouraged to make nose-to-fence contact. After being shocked, deer learn to avoid fenced areas. Cost, excluding labor, is about \$0.11 per linear foot (\$0.30/m). This fence is not widely used.

To build a peanut butter fence follow the steps below.

- (1) Install wooden corner posts.
- (2) String one strand of 17-gauge (0.15-cm), smooth wire around the corners and apply light tension.
- (3) Set 4-foot (1.2-m) 3/8-inch (1-cm) round fiberglass rods along the wire at 45-foot (14-m) intervals.
- (4) Attach the wire to insulators on the rods 2 1/2 (0.75 m) feet above ground level and apply 50 pounds (22.5 kg) of tension.
- (5) Attach 3 x 4-inch (7 x 10-cm) foil strips to the wire at 3-foot (1-m) intervals, using 1 x 2-inch (3 x 5-cm) strips of cloth adhesive tape.
- (6) Apply a 1:1 mixture of peanut butter and vegetable oil to the adhesive tape strips and fold the foil over the tape.
- (7) Connect the wire to the positive (+) post of a well-grounded fence charger.
- (8) For fields larger than 1 acre (0.4 ha), it is more practical to apply the peanut butter mixture directly to the wire. You can make a simple applicator by mounting a free-spinning, 4-inch (10-cm) pulley on a shaft inside a plastic ice cream pail. Fill the pail with a peanut butter-vegetable oil mixture that has the consistency of very thick paint. Coat the entire wire with peanut butter by drawing the pulley along the wire. Apply peanut butter once a month. Attach foil flags to the fence near runways or areas of high deer pressure to make the fence more attractive.

Check the fence weekly for damage by deer and grounding by vegetation.

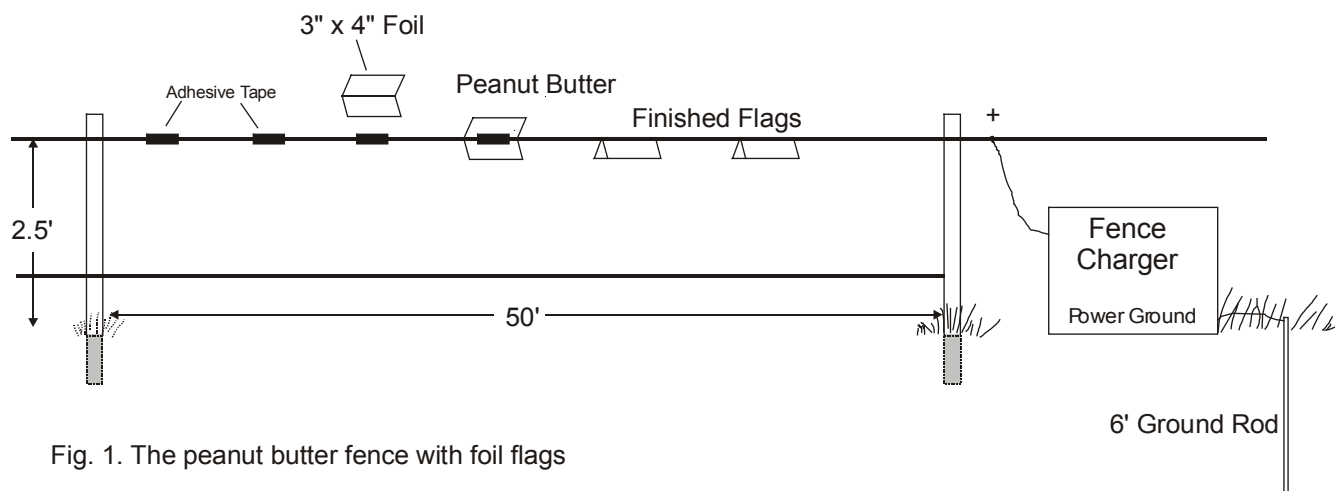


Fig. 1. The peanut butter fence with foil flags

# Wildlife Damage Management

## Deer - Temporary Fencing

### Electric Polytape Fence

Various forms of polytape or polywire, such as Visible Grazing Systems® (VGS), Baygard®, and Turbo-tape® are very strong and portable. You can use these fences to protect up to 40 acres (16 ha) of vegetable and field crops under moderate deer pressure. Deer receive shocks through nose-to-fence contact and they learn to avoid fenced areas. Cost, excluding labor, is about \$.11 per linear foot (\$0.30/m).

To build a polytape fence follow the steps below.

(1) Drive 5/8-inch (1.6-cm) round fiberglass posts 2 feet (0.6 m) into the ground at the corners.

(2) String two strands of polytape (white or yellow are most visible) around the corners and apply light tension (one strand 2 1/2 feet (0.75 m) high can be used).

(3) Use square knots or half-hitches to make splices or to secure the polytape to corner posts.

(4) Set 4-foot (1.2-m) 3/8-inch (1-cm) round fiberglass rods along the wires at 45-foot (14-m) intervals.

(5) Attach the two strands of polytape to insulators on the rods at 1 and 3 feet (0.3 and 0.9 m) above ground level and apply 50 pounds (22.5 kg) of tension.

(6) Connect the polytape to the positive (+) post of a well-grounded fence charger.

(7) Use the applicator described under Peanut Butter Fence (8) to apply 2-foot (0.6-m) swatches of peanut butter to the polytape every 6 feet (2 m) where deer presence is expected to be high.

To maintain the fence, check it weekly for damage by deer and grounding by vegetation.

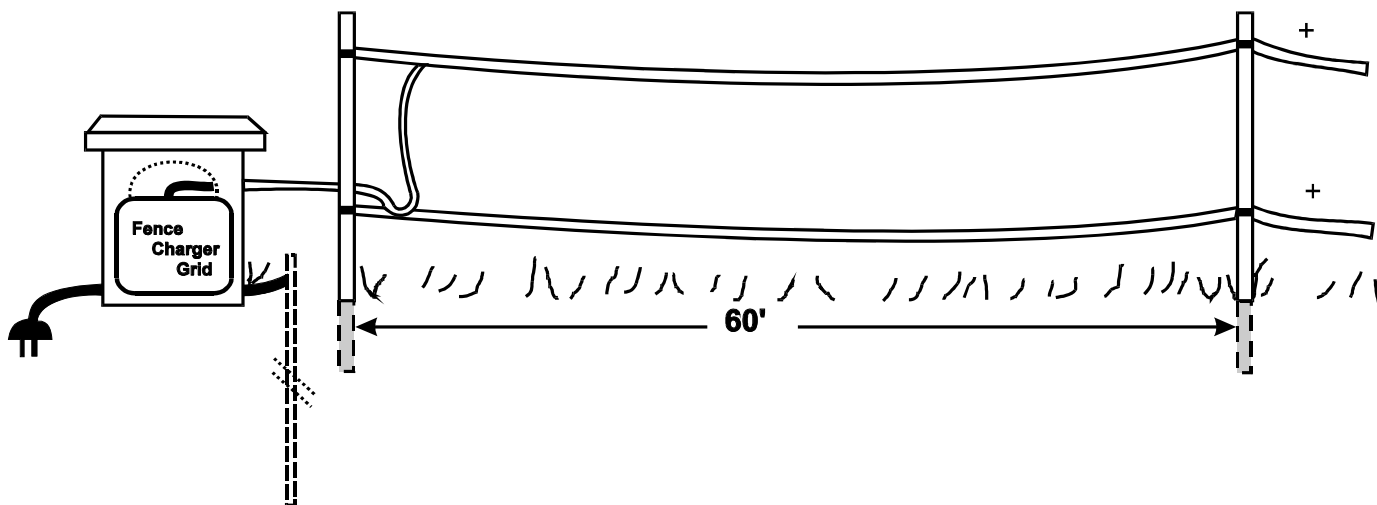
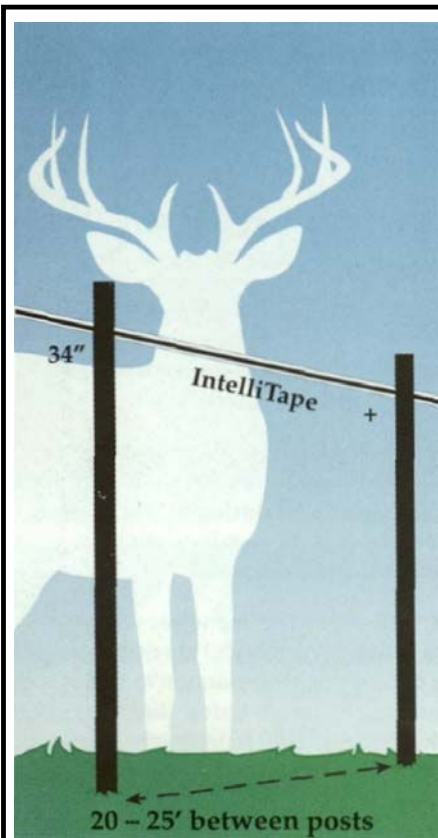


Fig. 2. The polytape fence



**Premier Fence Systems**  
2031 300<sup>th</sup> Street  
Washington, IA 52353  
(800) 282-6631



## Intellitape Quickfence

### 1 strand

*Semi-permanent (1 – 30 months). For sites with low to medium deer pressure.*

This is the least expensive deer barrier and the simplest to install and remove. If it is installed correctly, it repels deer much better than most would expect. Success is much more likely if it is installed before the deer are habituated to feeding or rubbing inside the enclosed area.

If possible, first install 3 strands around a small area. Then use the same materials to gradually expand the fence and reduce the number of strands to 1.



*The suggested height for the tape (left) is not an error. The nose height of a walking adult deer is 28 – 35 inches.*

**Conductor** – Intellitape

**Line Posts** – Powerposts or Fiber rods spaced 20 – 25 feet apart

**Corner/end posts** – Insulated steel T posts

**Energizer** - Use IntelliShock units with wide impedance (284, 506, 1306, 32B, 52B, 88B).

**Removal System** – as many XL EzeReels as needed.

**Gates** – SafeHandles with Intellitape

**Tools Needed** – A steel post driver for end posts

**Skill Level** (1 – 5) – 1

**To Install** – 45 minutes per 1000 feet

**Cost per ft.** - \$0.12 – 0.20

**Life (yrs)** – Posts 10, Tape 3

**Concerns** – Re-tension every 3 months. Check after storms. Bait with peanut butter every autumn.

**Conductor** – IntelliRope or Intellitape

**Line Posts** – Fiber rods set 10 in. deep every 25 feet for Intellitape and 35 ft. for IntelliRope

**Corner/end posts** – Insulated steel T posts or 4 in. dia. Wood posts

**Energizer** - Use IntelliShock units with wide impedance (284, 506, 1206, 32B, 52B, 88B).

**Removal System** – as many XL EzeReels as needed.

**Gates** – 42 in. Electrostop gate

**Tools Needed** – A steel post driver for end posts, side-cutting pliers

**Skill Level** (1 – 5) – 2

**To Install** – 1 hour per 1000 feet

**Cost per ft.** - \$0.24

**Life (yrs)** – Posts and rope 10, Tape 3

**Concerns** – Re-tension strands every 6 months. Check after storms. Bait with peanut butter every autumn.

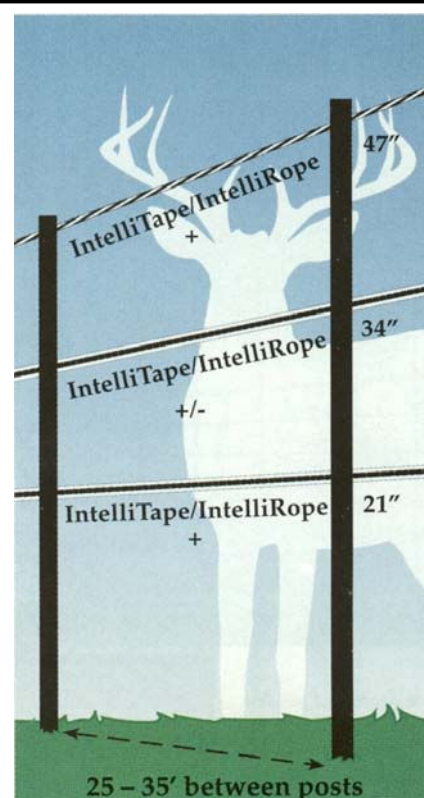
## QuickFence

### 3 strands of Intellitape or IntelliRope

*Semi-permanent (1 – 100 months)*

*For sites with low to medium deer "pressure"*

Single strand barriers because it reduces their inclination; an energized strand at an adult deer's nose height. Deer are prone to dry soils, or snow covered soils as they are in the IEG format.



# Wildlife Damage Management

## Deer – Semi-Permanent Fencing

### Electric Net Fence

Mesh fences can, in some cases, keep deer out of gardens and away from ornamental plants in yards. They are relatively easy to put up and take down, come in many different sizes, and can be fairly unobtrusive compared to other types of fencing.

### DeerGard

*Semi-permanent (1 – 100 months)  
For sites with medium to high deer  
“pressure”.*

High deer deterrence capability yet very simple and quick to install. Deliberately designed to offer the deer holes in the net large enough to attempt to crawl through the net. Alternate wires are charged positive and negative. Thus the deer receives a powerful, memorable, repellent shock. If the net is correctly placed and used the deer (and friends) will depart the area and not return.

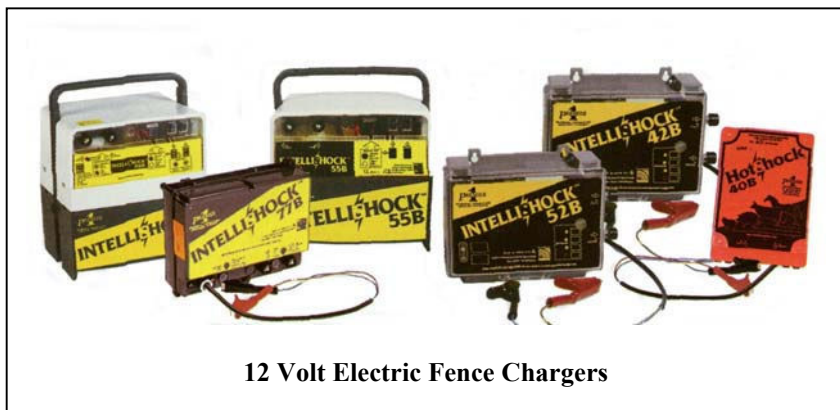
Available either in “scenic “ (low visibility) or high visibility colors.



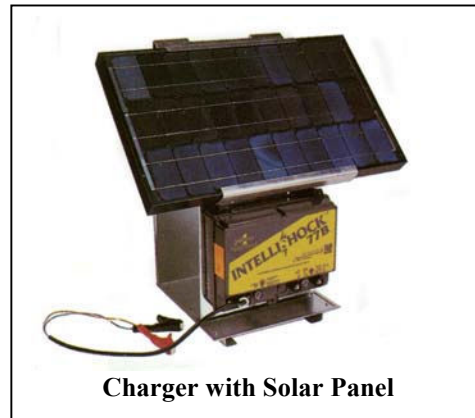
*Powerful electric shock intimidates deer. They are much less likely to jump over (or into) the source of pain.*

- Conductor(s)** – A 42 in. tall prefabricated net of 10 polywires and struts
- Line Posts** – Built-in white struts every 12 in. Black posts every 11 ft.
- Corner/end posts** – Guy line posts to ground pegs
- Energizer** - Use IntelliShock units with wide impedance (284, 506, 1306, 32B, 52B, 88B).
- Windup System** – none needed. Folds & unfolds as a package.
- Gates** – None needed. Opens easily at any end or connection.
- Tools Needed** – None.
- Skill needed to install** – None.
- To Install/remove** – 10 min. per 150 ft. roll
- Cost per ft.** - \$0.73
- Life (yrs)** – 8
- Other** – Check the fence after storms. If deer are the only concern, ask us to supply it with the lower 3 wires disconnected.

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12 Volt Electric Fence Chargers



Charger with Solar Panel



# Electric Deer Barrier Principles

If you ignore these issues, you may waste your time and money.

**1. Electric deer barriers act on the animal's brain, not its body.** Thus the best fence may fail if it is installed at the wrong time on the wrong site and managed without an awareness of how a deer herd interacts with your area and the new fence.

The only sure deer barrier is a woven wire fence or brick wall 8 ft. tall. All other deer fences involve some risk and require intelligence in placement and maintenance.

**2. Deer are creatures of habit.** Where they choose to feed or rub is a habit learned over time and reinforced every time they feed there safely. To exclude a deer herd from a food source forces the herd to break this habit. Thus the first day, week and month of denial is the key period. Once a feeding habit is broken, the change is usually easier to maintain.

**3. Deer make "cost-benefit" decisions about preferred feeding sites, trails and rubbing trees.** Pain barriers for deer use electric shock to suddenly raise the "cost" (degree of risk and effort to use an area). The goal is to persuade the deer that it is safer and less painful to feed or rub elsewhere. Do not expect success in persuading a starving deer herd to feed elsewhere if your site is its only food source.

**4. Pain barriers work best when the deer are tentative.** Therefore they are less successful when the animal is being chased or moving down a known trail or path.

So identify any deer trails entering the exclusion area and interrupt them with something new (brush?) where the trail approaches the fence. If at all possible, do this on the day the new fence is installed.

Also, never allow hunters to drive

deer towards your fence. Terrified animals do not make normal decisions. Once deer learn that they can leap over or crawl under a fence, they're more likely to do so even when they're not terrified.

**5. Don't try to repel deer from the entire area all at once.** Remember, the intent is to change the herd's "mind" and thus its behavior. Therefore, install the new fence around a very small area first. Leave it in place and working for 2 weeks. The deer will encounter it, learn to avoid it and begin to regularly feed or rub in areas not enclosed by the new pain barrier.

Progressively expand the area enclosed until 100% of the area is protected. This technique allows the first fence to have 2 - 4 strands instead of 1 - 2—thus increasing the probability of eventual complete success.

**6. Deer interpret a fence in their terms, not ours.** Their world is not color—but black, white and shades of gray. Therefore barriers that contrast with their perceived natural world are thus the most visible and most likely to get their attention.

Deer use their noses to investigate. They see moving objects more readily than stationary objects.

**7. Deer fear that which is strange and new.** So, avoid using fence conductors that they already recognize and do not fear. For example, electrified steel wire fences do not deter deer in our area as woven wire, HT wire and single strand electric steel wire fences are common. IntelliTape and IntelliRope are not. Hence rope and tape work much better *in this area*.

**8. Allow routes for escape.** When deer encounter an electric fence, they are less likely to jump over it or crawl under it if they have alternative avenues to avoid the fence. So building the fence 6-8 ft. away from a forest provides deer space to maneuver when they suddenly receive a shock. As a result they detour around an electric fence.

**9. Use a powerful fence energizer.** Because of their body shape and hollow hair, deer have higher internal resistance to electricity than most animals. Thus, it requires a more powerful energizer (in joules and volts) to produce enough fear to make them avoid an area.

**10. Never leave the fence unenergized at night—not even for an hour.** If you want to leave it off during the day, install a timer. However, leave it on continuously for the first month.

**11. Bait the energized wires** when the fence is first installed and at critical seasons of the year. It is common to wrap peanut butter inside tinfoil and hang it on the fence at 20-40 ft. intervals. The smell draws the deer's nose to fence.

**12. Keep a guard dog inside the fence during critical periods.** Large territorial breeds are best. If a dog is not feasible, **install flashing lights.** These lights are available from Premier on a buy and sell back policy.



# Wildlife Damage Management

## Deer - Permanent Fencing

### Vertical Deer Fence.

Vertical fences are effective at protecting large truck gardens, orchards, and other fields from moderate to high deer pressures. Because of the prescribed wiring, deer either attempt to go through the fence and are effectively shocked or they are physically impeded by the barrier. Vertical fences use less ground space than three-dimensional fences, but are probably less effective at inhibiting deer from jumping over fences. There is a wide variety of fence materials, wire spacings, and specific designs you can use. We recommend that you employ a local fence contractor. Costs, excluding labor, range from \$0.75 to \$1.50 per linear foot (\$2 to \$4/m).

To build a 7-wire vertical deer fence follow the steps below.

- (1) Install rigid corner assemblies where necessary (see the section on fence construction—rigid brace assemblies).
- (2) String a 12 1/2-gauge (0.26-cm) high-tensile wire around the corner assemblies and apply light tension.
- (3) Set 8-foot (2.4-m) line posts along the wire at 33-foot (10-m) intervals.
- (4) Attach a wire to insulators at 8 inches (20 cm) above ground level and apply 150 to 250 pounds (68 to 113 kg) of tension.
- (5) Attach the remaining wires to insulators at the spacing indicated in and apply 150 to 250 pounds (68 to 113 kg) of tension.
- (6) Connect the second, fourth, fifth, and seventh wires from the top, to the positive (+) post of a well-grounded, low-impedance fence charger.
- (7) Connect the top, third, and sixth wires directly to ground. The top wire should be negative for lightning protection.
- (8) Clear and maintain a 6- to 12-foot (1.8- to 3.6-m) open area outside the fence so deer can see the fence.

Maintenance includes weekly fence inspection and voltage checks.

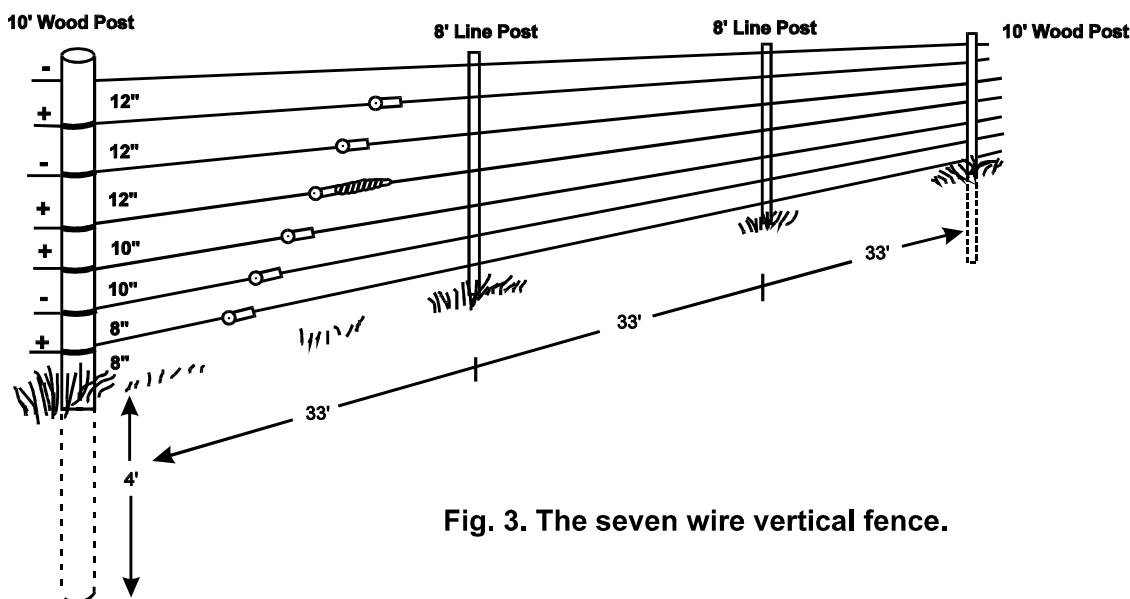


Fig. 3. The seven wire vertical fence.

# Wildlife Damage Management

## Deer - Permanent Fencing

### Offset or Double Fence

This fence is mostly for gardens, truck farms, or nurseries up to about 40 acres (0.16 ha) that experience moderate deer pressure. Deer are repelled by the shock and the three-dimensional nature of the fence. You can add wires if deer pressure increases. Cost, excluding labor, is about \$.35 per linear foot (\$1/m).

To build an offset or double fence follow the steps below.

For the outside fence:

- (1) Install swing corner assemblies where necessary (see the section on fence construction—rigid brace assemblies).
- (2) String a 12 1/2-gauge (0.26-cm) high-tensile wire around the outside of the swing corner assemblies and apply light tension.
- (3) Set 5-foot (1.5-m) line posts along the wire at 40- to 60-foot (12- to 18- intervals).
- (4) Attach the wire to insulators on the line posts, 15 inches (38 cm) above ground level and apply 150 to 250 pounds (68 to 113 kg) of tension.
- (5) String a second wire at 43 inches (109 cm) and apply 150 to 250 pounds (68 to 113 kg) of tension.

For the inside fence:

- (6) String a wire around the inside of the swing corner assemblies and apply light tension.
- (7) Set 5-foot (1.5-m) line posts along the wire at 40- to 60-foot (12- to 18- m) intervals.
- (8) Attach the wire to insulators on the line posts at 30 inches (76 cm) above ground level.
- (9) Attach all wires to the positive (+) post of a well-grounded, low impedance fence charger.
- (10) Clear and maintain a 6- to 12-foot (1.8- to 3.6-m) open area outside the fence so deer can see it.

Maintenance includes weekly fence and voltage checks.

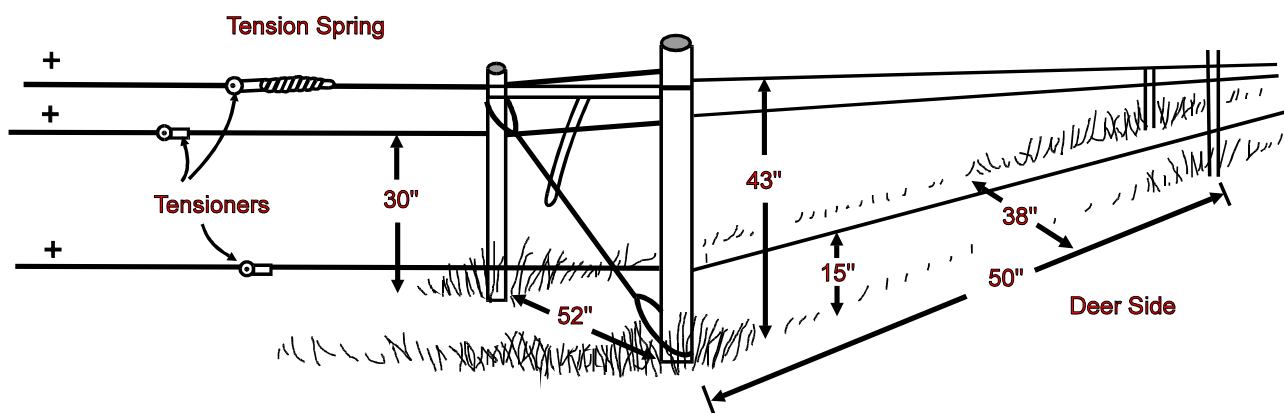


Figure 4. Offset or Double fence.

# Wildlife Damage Management

## Deer - Permanent Fencing

### Slanted Seven-Wire Deer Fence

This fence is used where high deer pressures threaten moderate-to-large sized orchards, nurseries and other high-value crops. It presents a physical and psychological barrier to deer because of its electric shock and three-dimensional nature. Cost, excluding labor, is about \$0.75 to \$2 per linear foot (\$2 to \$5.50/m).

To build a slanted seven-wire deer fence follow the steps below.

- (1) Set rigid, swing corner assemblies where necessary, (see the section on fence construction—rigid brace assemblies).
- (2) String 12 1/2-gauge (0.26-cm) high-tensile wire around the corner assemblies and apply light tension.
- (3) Set angle braces along the wire at 90-foot (27-m) intervals.
- (4) Attach a wire at the 10-inch (25-cm) position and apply 150 pounds (68 kg) of tension. (5) Attach the remaining wires at 12-inch (30-cm) intervals and apply 150 pounds (68 kg) of tension.
- (6) Place fence battens at 30-foot (9-m) intervals.
- (7) Connect the top, third, fifth, and bottom wires to the positive (+) post of a well-grounded, low-impedence fence charger.
- (8) Connect the second, fourth, and sixth wires from the top directly to ground.
- (9) Clear and maintain a 6- to 12-foot (1.8- to 3.6-m) area outside the fence so deer can see it. Maintenance includes weekly inspection and voltage checks.

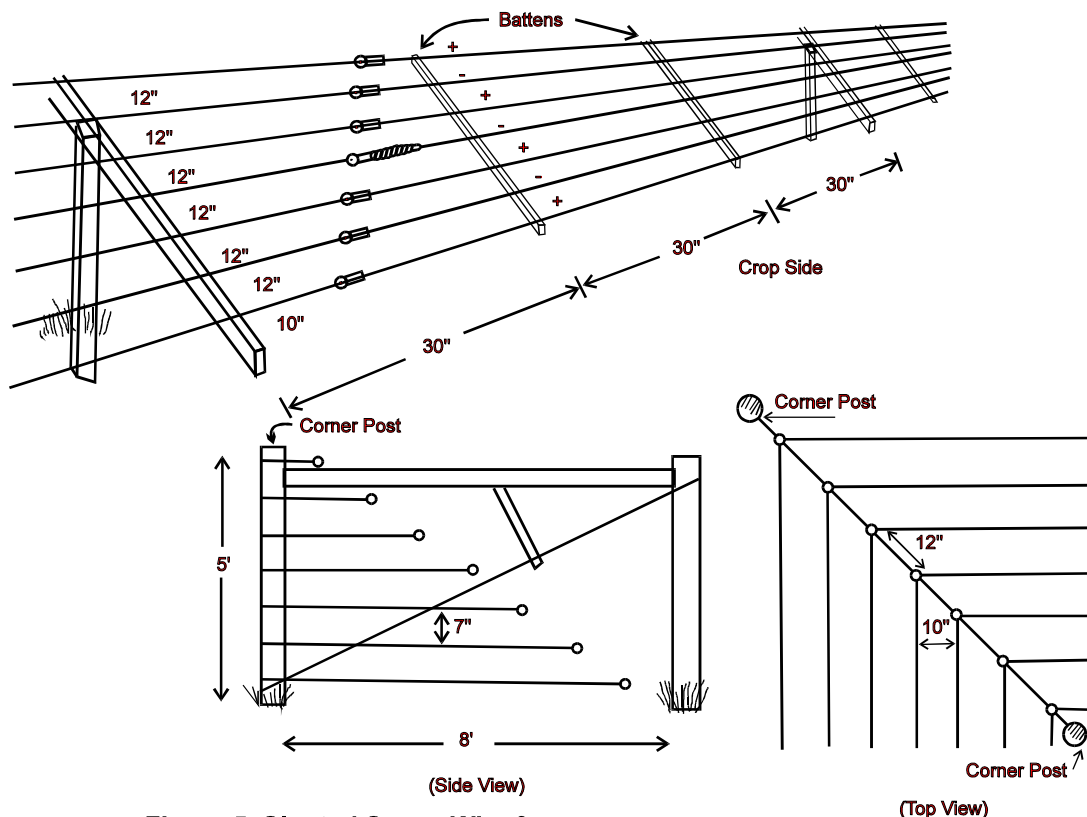


Figure 5. Slanted Seven Wire fence.

# Wildlife Damage Management

## Deer - Permanent Fencing

### Permanent Woven-Wire Fencing

Woven-wire fences are used for year-round protection of high-value crops subject to high deer pressures. These fences are expensive and difficult to construct, but easy to maintain. Before high-tensile electric fencing, woven-wire fences were used most often to protect orchards or nurseries where the high crop value, perennial nature of damage, acreage, and 20-year life span of the fences justified the initial costs. Cost, excluding labor, is about \$2 to \$4 per linear foot (\$5.50 to \$11/m). The high cost has resulted in reduced use of woven-wire fences.

To build a deer-proof woven-wire fence follow the steps below.

- (1) Set rigid corner assemblies where necessary (see the section on Fence Construction—Rigid brace ).
- (2) String a light wire between two corners and apply light tension.
- (3) Set 16-foot (4.9-m) posts along the wire at 40-foot (12-m) intervals, to a depth of 4 to 6 feet (1.2 to 1.8 m).
- (4) Roll out an 8-foot (2.4-m) roll of high-tensile woven wire along the line posts. Attach one end at ground level to a corner post with steel staples.
- (5) Apply 100 pounds (45 kg) of tension to the wire with a vehicle or fence strainers and attach the wire to line and corner posts with steel staples.
- (6) Repeat steps 4 and 5 as necessary around the perimeter of the fence.
- (7) Attach two strands of high-tensile smooth wire to the top of the fence to raise the height of the entire fence to 9 to 10 feet (2.7 to 3 m).

Minimal maintenance is required. Inspect for locations where deer can crawl under the fence.

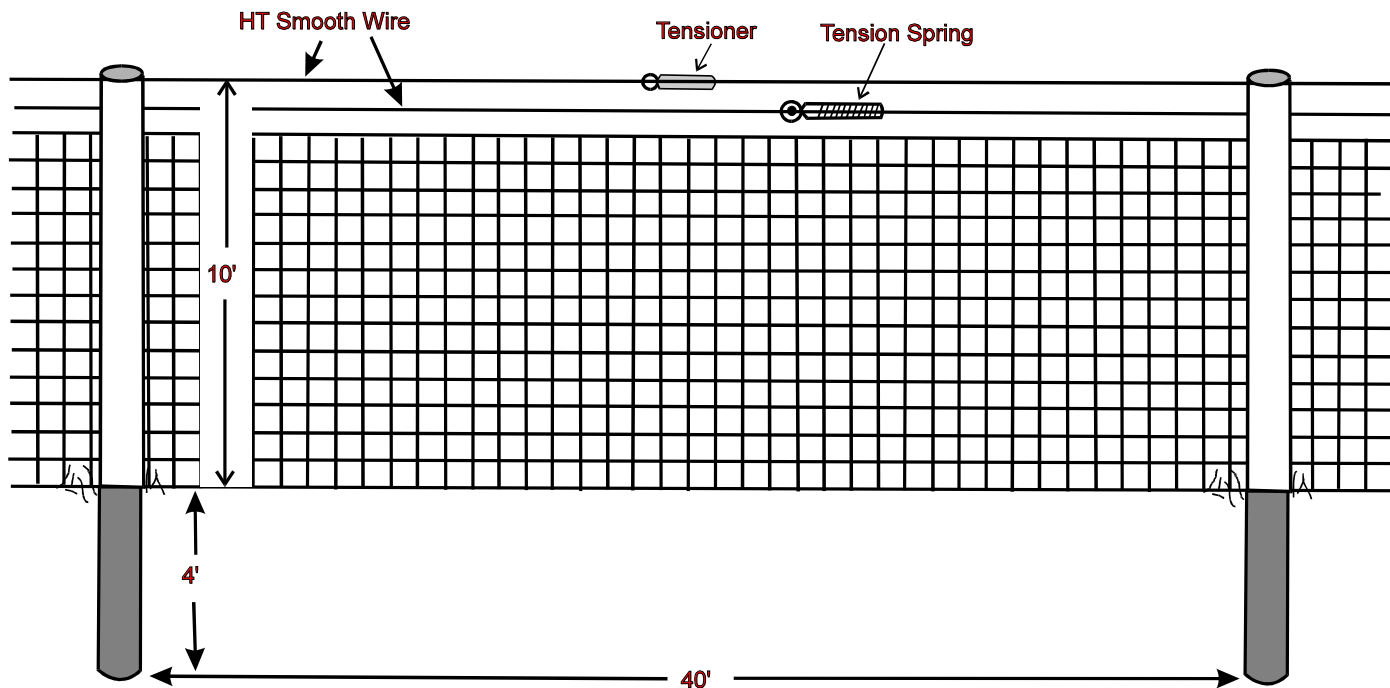


Figure 6. Permanent Woven-wire Fencing.

# Wildlife Damage Management

## Deer - Permanent Fencing

### Fencing Tips

Materials: Do not buy cheap materials to reduce costs. This will only reduce the effectiveness and life span of the fence. We recommend using:

- (1) Round fiberglass or treated wood posts.
- (2) High-quality galvanized wire and steel components. For high-tensile fences, use 11- to 14-gauge (0.31- to 0.21-cm) wire (minimum tensile strength of 200,000 pounds [90,000 kg] and a minimum breaking strength of 1,800 pounds [810 kg]), tension springs, and in-line tensioners.

- (3) Compression sleeves for splicing wires and making electrical connections.
- (4) Lightning arresters and diverters to protect chargers.
- (5) High-quality fence chargers. Chargers must be approved by Underwriters Laboratories (UL) or the Canadian Standards Association (CSA). We highly recommend 110-volt chargers. Six- and 12-volt chargers require battery recharging every 2 to 4 weeks. Use solar panels in remote areas to charge batteries continuously. For high-tensile

fences, use high-voltage, low-impedance chargers only (3,000 to 5,000 volts and current pulse duration of at most 1/1,000 second).

- (6) Gates. There is no universal gate design because of the many different fence types. Gates should be electrified, well insulated, and practical for the type of farming operation. Gates range from single strands of electrified wire with gate handles to electrified panel or tubular gates.

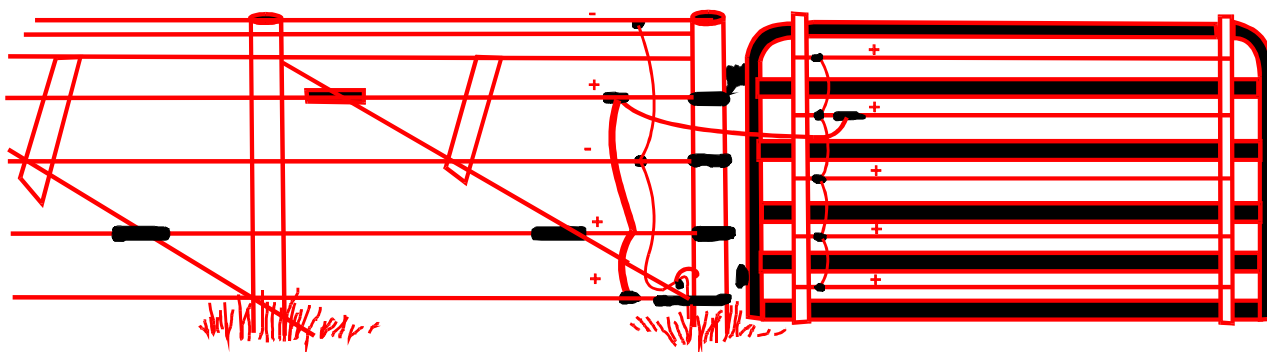


Figure 7. Fence with Electrified Gate.

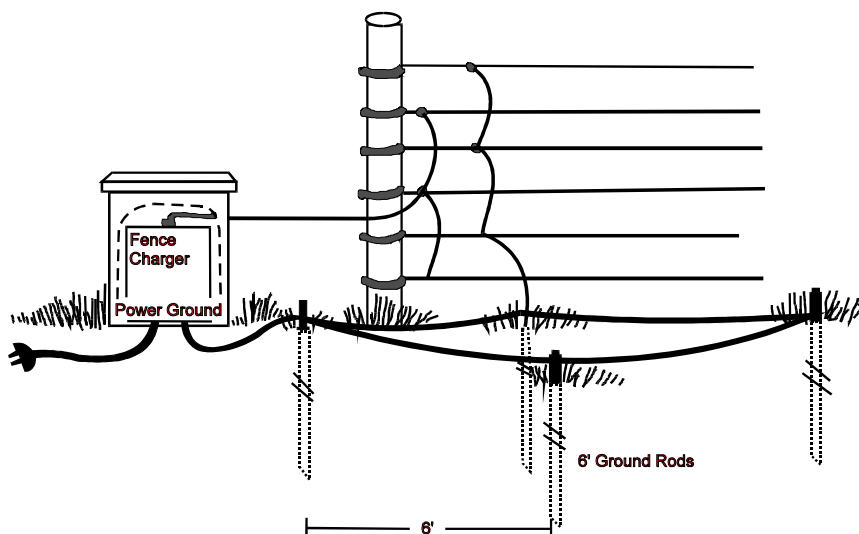


Figure 8. Electrical and grounding system for high tensile fences.



**Fence Construction.** Fences must be properly constructed--do not deviate from fence construction guidelines.

- (1) Prepare fence lines before construction. It is easier and less expensive to install and maintain fences on clear, level runs. Minimize corners to increase strength and reduce costs.
- (2) Ensure that the electrical system is well grounded at the fence charger and every 1/2 mile (880 m) of fenceline. To ground high-tensile fences, drive four to six ground rods 5 to 6 feet (1.5 to 1.8 m) deep and 6 feet (1.8 m) apart. Connect the ground post of the fence charger and the negative (-) wires of the fence to the grounding system (Fig. 1).
- (3) The wiring system in figure 1 illustrates a positive-negative fence. Such a design is especially useful with dry or frozen ground. A fence with all positive (hot) wires may be advantageous under general crop and soil moisture conditions. Consult with a fencing contractor or expert for the best choice for your needs.
- (4) Install the grounding systems and fence charger before fence construction. Energize completed parts of the fence when you are not working on the fence to gain early protection.
- (5) Rigid brace assemblies—corners, ends, and gates—make up the backbone of all high-tensile fence systems. They must be entirely rigid, constructed of the best materials, and strictly conform to design guidelines. The single-span brace assembly is the basis of all high-tensile strainer assemblies, regardless of location in the fence or fence design. This basic design is then modified to create double-” H” braces, swing corners, and gate ends.
- (6) Allow wires to slide freely through insulators on fence posts.

Fence flexibility is necessary to endure frequent temperature changes, deer hits, and obstructions.

- (7) Identify an electric fence with warning signs (Fig. 2) that are affixed at 300-foot (90-m) intervals or less.
- Maintenance. Regular inspection and maintenance are necessary to ensure the effective operation and longevity of most fences.
- (1) Control vegetation near fences by mowing or applying herbicides to avoid excessive fence grounding by weeds.
  - (2) On slopes or highly erodible soils, maintain a good sod cover beneath fences to avoid fenceline erosion.
  - (3) Always keep the fence charger on. Check the fence voltage weekly with a voltmeter. Maintain at least 3,000 volts at the furthest distance from the fence charger. Disconnect the lower wires if they are covered by snow.
  - (4) In late fall and early summer, adjust the fence tension (150 to 250 pounds [68 to 113 kg]) for high-tensile fences.

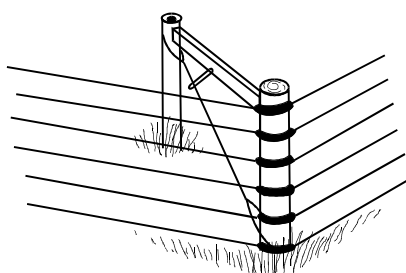


Figure 9. Swing Corner (Vertical Fence).

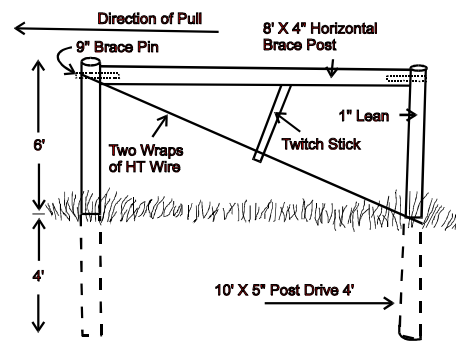


Figure 10. Single Span Brace Assembly.

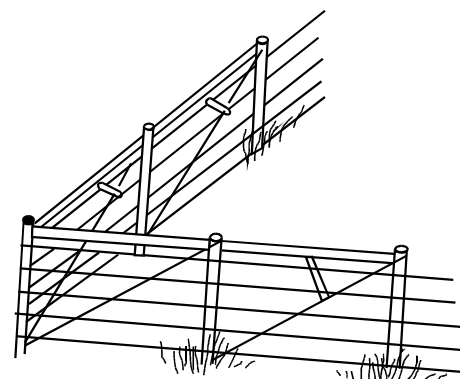


Figure 11. Double H Brace Assembly (Corner).



Figure 12. Remember to attach warning signs to your electric fence.