

**SHLF draft of March 17, 2005**

**TOWN OF CHAPEL HILL PUBLIC FACILITIES CORPORATION**

**and**

**TOWN OF CHAPEL HILL, NORTH CAROLINA**

**INSTALLMENT FINANCING CONTRACT**

**Dated as of May 1, 2005**

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

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Kay Johnson  
Finance Officer  
Town of Chapel Hill, North Carolina

## **INSTALLMENT FINANCING CONTRACT**

**THIS INSTALLMENT FINANCING CONTRACT** (the "Contract") is dated as of May 1, 2005, and is between the **TOWN OF CHAPEL HILL, NORTH CAROLINA**, a municipal corporation of the State of North Carolina (the "Town"), and **TOWN OF CHAPEL HILL PUBLIC FACILITIES CORPORATION**, a North Carolina nonprofit corporation (the "Corporation").

### **RECITALS:**

The Town desires to obtain funds to enable the Town to acquire, construct and improve a new Town "Operations Center" and other public improvements. The Corporation has agreed to advance funds to the Town for such purpose. The Town is obtaining funds for such advance by providing for the issuance of the 2005 Certificates (as defined below).

This Contract provides for the Corporation's obligation to advance the funds, and the Town's obligation to repay the funds with interest. In accordance with the Town's authority under Section 160A-20 of the North Carolina General Statutes, the Town will secure its obligations under this Contract by a security interest in the Facilities and the Sites (each as defined in Exhibit A).

*Unless the context clearly requires otherwise, capitalized terms used in this Contract and not otherwise defined will have the meanings set forth in Exhibit A.*

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

### **ARTICLE I** **ADVANCE**

The Corporation advances \$25,000,000 (the "Amount Advanced") to the Town, and the Town accepts the Amount Advanced.

The Corporation is advancing the Amount Advanced by providing for the transfer and deposit of such Advance as provided in the Trust Agreement. The Town acknowledges that the total of such deposits is being reduced by a discount for the underwriting of the 2005 Certificates. The final total of the deposits to be made by the Corporation pursuant to this Article is \$\_\_\_\_\_.

The Town will use the Amount Advanced to pay Project Costs as provided in this Contract and in the Trust Agreement.

## **ARTICLE II**

### **CONTRACT PAYMENTS**

**2.1. Installment Payments.** (a) The Town will repay the Amount Advanced by making Installment Payments directly to the Trustee in lawful money of the United States, in immediately available funds to such account in the United States as the Trustee may designate from time to time, at the times and in the amounts set forth in Exhibit B, except as otherwise provided in this Contract.

(b) There will be credited against the amount of Installment Payments otherwise payable under this Contract amounts on deposit (i) in the Interest Account or the Principal Account of the Payment Fund and available to make corresponding payments of principal or interest with respect to 2005 Certificates or (ii) in any special trust fund established pursuant to Section 7.01 of the Trust Agreement. The Trustee will determine the amounts of such credits and will notify the Town thereof not less than 15 days prior to the applicable payment date.

(c) If the Town fails to pay any Installment Payment within two Business Days of its due date, then (to the extent permitted by law) the Town must pay additional interest on the principal component of the late Installment Payment at the annual rate of 8.00% from the original due date.

**2.2. Additional Payments.** The Town will pay all Additional Payments on a timely basis directly to the person or entity to which such Additional Payments are owed in lawful money of the United States. If the Town fails to pay any Additional Payment when due, the Corporation may (but will be under no obligation to) pay such Additional Payment. The Town agrees to reimburse the Corporation for any such Additional Payment, together with interest thereon at the annual rate of 8.00%.

**2.3. Prepayments.** (a) The Town may prepay principal components of Installment Payments at its option to the extent corresponding optional prepayments of principal with respect to the 2005 Certificates are permitted in accordance with the provisions of Section 3.01(a) of the Trust Agreement.

(b) The Town may prepay principal components of Installment Payments pursuant to Sections 6.3(a) and 6.3(b) by directing the Trustee to apply amounts in the Net Proceeds Fund to prepayment of principal with respect to the 2005 Certificates in accordance with the provisions of Sections 3.01(c) and 4.06 of the Trust Agreement.

(c) Upon any prepayment, the Trustee will recalculate the schedule of Installment Payments to reflect the prepayment, and will then deliver a substitute Exhibit B to the Town reflecting the recalculated payment schedule.

**2.4. No Abatement.** There will be no abatement or reduction of the Installment Payments or Additional Payments by the Town for any reason, including, but not limited to, any defense, recoupment, setoff, counterclaim, or any claim arising out of or related to the Sites or the Facilities. The Town assumes and will bear the entire risk of completion, loss and damage to the Sites and the Facilities from any cause whatsoever, it being the parties' intention that the Installment Payments will be made in all events unless the Town's obligation to make Installment Payments is terminated as provided in this Contract.

**2.5. Appropriations.**

(a) The Town will cause the Budget Officer to include in the initial proposal for each of the Town's annual budgets the amount of all Installment Payments and estimated Additional Payments coming due during the Fiscal Year to which such budget applies. Notwithstanding that the initial proposed budget includes such an appropriation for Installment Payments and estimated Additional Payments, the Town Council may determine not to include such an appropriation in the final Town budget for such Fiscal Year.

(b) If within 15 days after the beginning of any Fiscal Year the Town has not appropriated an amount equal to the Installment Payments and estimated Additional Payments coming due during such Fiscal Year, then the Town must send a notice to such effect to the Trustee and to the LGC, to the attention of its Secretary, at 4505 Fair Meadow Lane, Suite 102, Raleigh, North Carolina 27607-6449.

## **ARTICLE III**

### **CONSTRUCTION**

**3.1. Construction; Changes.** (a) The Town will comply with the provisions of the Article 8 of Chapter 143 and any other applicable provisions of the North Carolina General Statutes and enter into the Construction Contracts. The Town will provide for the construction of the Facilities to be carried on continuously in accordance with the Plans and Specifications and all applicable State and local laws and regulations. The Town will provide for the Facilities to be constructed on the Sites and will insure (i) that none of the Facilities encroaches upon nor overhangs any easement or right-of-way and (ii) that the Facilities, when erected, will be wholly within any applicable building restriction lines, however established, and will not violate applicable use or other restrictions contained in prior conveyances or applicable protective covenants or restrictions. The Town will provide for all utility lines, septic systems and streets serving the Sites to be completed in accordance with health department standards and other applicable regulations of any governmental agency having jurisdiction.

(b) The Town may approve changes to the Plans and Specifications and the Construction Contracts in its discretion except that the Town may not, without the Corporation's consent, approve any changes which (i) increase total estimated Project Costs above the amounts previously identified and designated therefor, or (ii) result in the use of the Facilities for purposes substantially different from those initially proposed.

**3.2. Right of Entry and Inspection.** The Corporation and its representatives and agents will have the right to enter upon the Sites and inspect the Facilities from time to time during construction and at any other time during the Contract term, and the Town will cause any contractor or subcontractor to cooperate with any such parties and agents during such inspections.

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

**3.3. Completion of Construction.** When the construction of the Facilities has been substantially completed to the Town's satisfaction, the Town will promptly prepare and deliver to the Corporation and the Trustee (a) a certificate to that effect, together with (b) a certificate from an Appropriate Consultant estimating the amount of Project Costs remaining to be paid, and (c) a survey showing the location of the Facilities "as built" on the Sites.

The Trustee will hold in the Project Fund any amounts needed to pay remaining Project Costs, as shown on the Certificate of the Appropriate Consultant. The Trustee will disburse any other funds in the Project Fund not required to be so retained pursuant to Section 4.03 of the Trust Agreement.

**3.4. Contractors' Performance and Payment Bonds.** The Town will provide for each contractor entering into a Construction Contract to furnish a performance bond and a separate labor and material payment bond as required by Article 3, Chapter 44A of the North Carolina General Statutes. The Town will provide copies of such bonds to the Corporation. Each such bond will include the Corporation as a dual obligee.

Upon any material default by a contractor under any Construction Contract, or upon any material breach of warranty with respect to any materials, workmanship or performance, the Town will promptly proceed, either separately or in conjunction with others, to pursue diligently its remedies against such contractor or against the surety of any bond securing the performance of such Construction Contract.

**3.5. Contractors' General Public Liability and Property Damage Insurance.** The Town will provide for each contractor entering into a Construction Contract to procure and maintain standard form (a) comprehensive general public liability and property damage insurance, at such contractor's own cost and expense, during the duration of such contractor's Construction Contract, in the amount of at least \$1,000,000, and (b) comprehensive automobile liability insurance on owned, hired and nonowned vehicles for not less than \$1,000,000. Such policies will include the Corporation and the Trustee as additional named insureds or loss payees. The Town will provide to the Trustee a certificate of insurance in a form acceptable to the Trustee, with respect to each contractor and subcontractor. Such insurance will provide protection from all claims for bodily injury, including death, property damage and contractual liability, products/completed operations, broad form property damage and XCU (explosive, collapse and underground damage), where applicable.

**3.6. Contractors' Builder's Risk Completed Value Insurance.** The Town will provide for each contractor entering into a Construction Contract to purchase and maintain property insurance (builder's risk) upon all construction, acquisition, installation and equipping of the Facilities (excluding contractor's tools and equipment) at the Sites at the full insurable value thereof. This insurance will include the Corporation and the Trustee as additional insureds or loss payees, and will insure against "all risk" subject to standard policy conditions and exclusions. The contractor will purchase and maintain similar property insurance for portions of the work stored off the Sites or in transit when such portions of the work are to be included in an application for payment. The contractor will be responsible for the payment of any deductible amounts associated with this insurance.

**3.7. Contractors' Workers' Compensation Insurance.** The Town will provide for each contractor entering into a Construction Contract to procure and maintain workers' compensation insurance during the term of such Construction Contract, covering the contractor's employees working thereunder. A certificate of insurance evidencing such coverage, in form acceptable to the Town and the Corporation, will be provided to the Town and the Corporation with respect to each contractor entering into a Construction Contract. Each Construction Contract must also provide that each subcontractor of any contractor who is a party to such Construction Contract shall be required to furnish similar workers' compensation insurance.

**3.8. Cooperation.** The Corporation and the Town will cooperate fully with each other in filing any claim or proof of loss with respect to any bond or insurance policy described in this Contract. In no event will the Corporation or the Town voluntarily settle, or consent to the settlement of, any proceeding arising out of any claim with respect to the Facilities without the other's written consent.

## **ARTICLE IV**

### **TOWN'S RESPONSIBILITIES**

**4.1. Care and Use.** The Town will use the Sites and the Facilities in a careful and proper manner and in compliance with all applicable laws and governmental regulations, and will keep the Sites and the Facilities in good condition, repair, appearance and working order for the purposes intended.

**4.2. Utilities.** The Town will pay all charges for utility services furnished to or used on or in connection with the Sites and the Facilities.

**4.3. Risk of Loss.** The Town will bear all risk of loss to and condemnation of the Facilities and the Sites. Upon loss, damage or condemnation of the Mortgaged Property, the Town will proceed as provided in Article VI.

**4.4. Corporation's Performance of Town's Responsibilities.** Any performance required of the Town or any payments required to be made by the Town for the insurance, maintenance or preservation of the Mortgaged Property may, if not timely performed or paid, be performed or paid by the Corporation. The Town will then reimburse the Corporation for any such payments and for any associated costs and expenses, legal or otherwise, together with interest thereon at the annual rate of 8.00%.

**4.5. Compliance with Requirements.** The Town will promptly and faithfully comply with all requirements of governmental authorities relating to the use or condition of the Mortgaged Property, the violation of which would adversely affect the use, value or condition of the Mortgaged Property, whether or not such requirement will necessitate structural changes or improvements or interfere with the use or enjoyment of the Mortgaged Property (or be diligently and in good faith contesting such requirements). Unless required by applicable law or unless the Corporation has otherwise agreed in writing, the Town will not use the Mortgaged Property for any purposes other than that for which the same were intended as of the date of this Contract. The Town will in no event use the Mortgaged Property or any part thereof nor allow the same to be used for any unlawful purpose or in violation of any certificate of occupancy or other permit or certificate, or any law, ordinance or regulation.

**4.6. Use and Operation.** The acquisition and construction of the Facilities will be useful to the Town in carrying out its governmental functions. The Town has an immediate need for the Facilities, and the Town expects to make immediate use of the Facilities upon their completion. The Town does not expect such need or use to diminish in any material respect during the Contract term. The Town will be solely responsible for the operation of the Facilities, and will not contract with any other person or entity for such operation.

**4.7. Modification of Facilities; Installation of Equipment and Machinery.** The Town has the right to remodel the Facilities or make substitutions,



additions, modifications and improvements to the Facilities, at its own cost and expense; provided, however, that such substitutions, additions, modifications and improvements will not in any way damage the Facilities or result in the use of the Facilities for purposes substantially different from those initially proposed; and provided further that the Facilities, as improved or altered, upon completion of such substitutions, additions, modifications and improvements, will be of a value not less than the value of the Facilities immediately prior to such making of substitutions, additions, modifications and improvements.

The Town may also, from time to time in its sole discretion and at its own expense, install machinery, equipment and other tangible property in or on the Facilities. All such property will remain the Town's sole property in which neither the Corporation nor any assignee of the Corporation will have any interest; provided, however, that any such property which becomes permanently affixed to the Facilities will be subject to this Contract and the lien and security interest arising under the Deed of Trust if the Corporation will reasonably determine that the Facilities would be damaged or impaired by the removal of such machinery, equipment or other tangible property.

**4.8. Taxes and Other Governmental Charges.** If the Mortgaged Property or any portion thereof is, for any reason, deemed subject to taxation, assessments or charges lawfully made by any governmental body, the Town will, during the Contract term, pay the amount of all such taxes, assessments and governmental charges as Additional Payments. With respect to special assessments or other governmental charges which may be lawfully paid in installments over a period of years, the Town will be obligated to provide for Additional Payments only for such installments as are required to be paid during the Contract term. The Town must not allow any liens for taxes, assessments or governmental charges with respect to the Mortgaged Property or any portion thereof to become delinquent (including, without limitation, any taxes levied upon the Mortgaged Property or any portion thereof which, if not paid, will become a charge on any interest in the Mortgaged Property, including the Corporation's interest, or the rentals and revenues derived therefrom or hereunder).

The Town may, at its own expense and in its own name, in good faith contest any such taxes, assessments and utility and other charges and, in the event of any such contest, may permit such charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Corporation notifies the Town that, in the opinion of Independent Counsel, by nonpayment of any such items the security afforded pursuant to this Contract or the Deed of Trust will be materially endangered

or the Mortgaged Property or any portion thereof will be subject to loss or forfeiture, in which event such charges will be paid forthwith (but such payment will not in itself constitute a waiver of the right to continue to contest such charges).

**4.9. Property Damage Insurance.** (a) From and after substantial completion of the Facilities, the Town will, at its own expense, acquire, carry and maintain broad-form extended coverage property damage insurance with respect to the Facilities in an amount equal to their estimated replacement cost. Such property damage insurance must include the Corporation and the Trustee as loss payees. The Town will provide evidence of such coverage to the Corporation and the Trustee promptly upon substantial completion.

(b) (i) All insurance will be maintained with generally recognized responsible insurers and may carry reasonable deductible or risk-retention amounts. All such policies will be deposited with the Trustee, provided that in lieu of such policies there may be deposited with the Trustee a certificate or certificates of the respective insurers attesting the fact that the insurance required by this Section is in force. Prior to the expiration of any such policy, the Town will furnish the Trustee evidence satisfactory to the Trustee that the policy has been renewed or replaced or is no longer required by this Contract.

(ii) In the alternative, the Town may maintain the insurance required by subsection (a) above (A) by one or more blanket or umbrella insurance policies or (B) by means of an adequate self-insurance fund or risk-retention program, or by participation in a group risk pool or similar program.

(iii) If the Town obtains blanket or umbrella coverage, the Town will deposit with the Trustee a certificate or certificates of the respective insurers evidencing such coverage and, with respect to property insurance, stating the amount of coverage provided with respect to the Facilities (or any covered portion thereof). If the Town provides for any such alternative risk management programs, the Town's risk manager or an independent insurance consultant will review such programs annually for sufficiency. The Trustee may rely on any such certificate as to the sufficiency of any such alternative program.

(c) No Town agent or employee will have the power to adjust or settle any property damage loss greater than \$1,000,000 with respect to the Facilities, whether or not covered by insurance, without the Trustee's prior written consent.

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

(e) The Town will deliver to the Trustee annually by each June 30 a certificate stating that the risk coverages required by this Contract are in effect.

## **ARTICLE V**

### **TITLE; LIENS**

**5.1. Title.** Title to the Sites and the Facilities and any and all additions, repairs, replacements or modifications thereto will at all times be in the Town, subject to the lien of the Deed of Trust and to the Permitted Encumbrances. Simultaneously with the execution and delivery of this Contract, the Town will deliver to the Corporation the Deed of Trust in form mutually satisfactory to the Corporation and the Town.

#### **5.2. No Encumbrance, Mortgage or Pledge.**

(a) The Town will not permit any mechanic's or other lien to be perfected or remain against the Mortgaged Property or any portion thereof; provided that subsequent to the Completion Date, if the Town first notifies the Trustee of the Town's intention to do so, the Town may in good faith contest any mechanic's or other lien filed or perfected against the Mortgaged Property or any portion thereof. In such event the Town may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless the Trustee notifies the Town that, in the opinion of Independent Counsel, by nonpayment of any such items the Corporation's title to the Mortgaged Property or any portion thereof will be materially endangered, in which event the Town will promptly pay and cause to be satisfied and discharged all such unpaid items (but such payment will not in itself constitute a waiver of the right to continue to contest such items). The Corporation will cooperate fully with the Town in any such contest, upon the request and at the expense of the Town.

(b) Except as provided in subsection (a) above, the Town will not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Mortgaged Property, except Permitted

Encumbrances, or encumbrances incurred in connection with the authorization, execution and delivery of Additional Certificates. The Town will promptly, at its own expense, take such action as may be appropriate to discharge any such mortgage, pledge, lien, charge, encumbrance or claim not excepted above which it will have created, incurred or suffered to exist.

(c) The Town will reimburse the Trustee for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, security interest, encumbrance or claim, together with interest thereon at the annual rate of 8.00%.

## **ARTICLE VI**

### **DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS**

**6.1. Damage, Destruction or Condemnation.** The Town will promptly notify the Corporation, and the Trustee if (a) the Mortgaged Property, or any portion thereof is destroyed or damaged by fire or other casualty, (b) any governmental authority takes, or notifies the Town of any intent to take, title to, or the temporary or permanent use of the Mortgaged Property or any portion thereof, or the estate of the Town or the Corporation in the Mortgaged Property or any portion thereof, under the power of eminent domain, (c) a material defect in the construction of the Facilities becomes apparent, or (d) title to or the use of all or any portion of the Mortgaged Property is lost by reason of a defect in title.

Each such notice must describe generally the nature and extent of such damage, destruction or taking. The Town must provide any additional information concerning such matter as the Corporation may reasonably request.

The Town will file its claims under insurance coverages and claims for awards or payments in the nature of condemnation awards resulting from any such damage, destruction or taking. The Town will prosecute all such claims for such awards or payments in good faith and with due diligence. Any Net Proceeds received by the Town as a result of such claims will be used as provided in Sections 6.2 and 6.3.

### **6.2. Security Interest in Net Proceeds; Deposit and Disbursement.**

(a) The Town grants a security interest in the Net Proceeds to the Trustee to secure the Town's obligations under this Contract, subject to the further provisions of

this Section. This Contract is intended as and constitutes a security agreement with respect to such security interest. All Net Proceeds will remain subject to the security interest provided for in this Section 6.2(a) until expended in compliance with the requirements of this Contract.

(b) If the amount of Net Proceeds received by the Town from any single event or any single series of related events is less than \$1,000,000, then the Town will have no obligation to account to the Corporation or any other person or entity with respect to the use of such Net Proceeds. The Town, however, acknowledges that its use of such funds may be constrained by the requirements of the Code and the Town's covenant in Section 7.1(k).

(c) If the amount of Net Proceeds received by the Town from any single event or any single series of related events is at least \$1,000,000, the Town will cause such Net Proceeds to be paid to the Trustee (i) for deposit in the Project Fund, if received before the Completion Date, or (ii) if received thereafter, for deposit in the Net Proceeds Fund. The Town will thereafter provide for the application of all Net Proceeds so deposited in accordance with Section 6.3.

**6.3. Use of Net Proceeds.** The Town may elect to proceed under either subsection (a), (b) or (c) with respect to Net Proceeds deposited with the Trustee; provided, however, that subsections (a) and (b) will be available to the Town only if no Event of Default is continuing. The Town will notify the Corporation and the Trustee of its election within 60 days after the date of the deposit.

(a) If the amount of Net Proceeds is equal to at least 75% of the outstanding principal of the Certificates, then the Town may provide additional funds from any legal source and use such Net Proceeds and additional Town funds to prepay the Certificates in full pursuant to Section 3.01(c) of the Trust Agreement;

(b) If as a result of event (or series of events) giving rise to the Net Proceeds (i) the Town has lost beneficial use of at least 51% of the Facilities of which it had beneficial use prior to such event or (ii) the damaged portion of the Facilities cannot be restored to its prior condition within six months of the event (or series of events) with respect to which the Net Proceeds have been collected, then the Town may use the Net Proceeds (and only the Net Proceeds) to prepay the Certificates in part pursuant to Section 3.01(c) of the Trust Agreement; or

(c) Otherwise the Town will use the Net Proceeds and other available funds for the completion or for repair and restoration of the Mortgaged Property. The Town will not be entitled to any reimbursement of any funds paid pursuant to this subsection, nor will the Town be entitled to any postponement or diminution of its obligation to make Contract Payments as a result of any such contribution.

Determinations as to the extent of loss described in (b) above will be made by an Appropriate Consultant and will be in form and substance reasonably acceptable to the Trustee.

If the Town decides to proceed pursuant to subsection (c) above, the Trustee will disburse Net Proceeds for the payment of such costs upon receipt of requisitions in substantially the form of Exhibit C to the Trust Agreement, but the Trustee need not honor any such requisition if an Event of Default is continuing. Any repair or replacement paid for in whole or in part out of such Net Proceeds will be the Town's property and will be part of the Facilities.

## **ARTICLE VII**

### **WARRANTIES, REPRESENTATIONS AND COVENANTS**

**7.1. By the Town.** The Town warrants, represents and covenants (all such warranties, representations and covenants being continuing) as follows:

(a) The Town is a duly organized and validly existing municipal corporation of the State. The Town has all powers necessary to enter into the transactions contemplated by this Contract and the Deed of Trust and to carry out its obligations under this Contract.

(b) The Town will take no action that would adversely affect its existence as a municipal corporation in good standing in the State, cause the Town to be consolidated with or merge into another municipal corporation or political subdivision of the State or permit one or more other municipal corporations or political subdivisions of the State to consolidate with or merge into it, unless the municipal corporation or political subdivision of the State created thereby expressly assumes in writing the Town's obligations under this Contract.

(c) The Town has duly and validly authorized, executed and delivered this Contract and the Deed of Trust. Assuming due authorization, execution and delivery

thereof by the other parties thereto, this Contract and the Deed of Trust constitute valid, legal and binding obligations of the Town, enforceable (in the case of the Deed of Trust, by the Deed of Trust Trustee, the Corporation and the Trustee, as the Corporation's assignee) in accordance with their respective terms, subject to bankruptcy, insolvency and other similar laws affecting the enforcement of creditors' rights generally and such principals of equity as a court having jurisdiction may impose.

(d) No further approval or consent is required from any governmental authority with respect to the Town's entering into or performing under this Contract or the Deed of Trust.

(e) There is no action, suit or proceeding at law or in equity before or by any court, public board or body pending or, to the best of the Town's knowledge, threatened, against or affecting the Town (or any official thereof in an official capacity) challenging the validity or enforceability of this Contract, Deed of Trust or any other documents relating hereto. The Town's performance of its obligations under this Contract and the Deed of Trust, and compliance with the provisions hereof and thereof, under the circumstances contemplated hereby or thereby, does not and will not in any material respect constitute on the Town's part a breach of or default under, or result in the creation of a lien or other encumbrance on any Town property (except as contemplated herein or therein), pursuant to any agreement or other instrument to which the Town is a party, or any existing law, regulation, court order or consent decree to which the Town is subject.

(f) No Town representation, covenant or warranty in this Contract is false, misleading or erroneous in any material respect.

(g) The Town is vested with fee simple title to the Sites. There are no liens or encumbrances on the Facilities or the Sites other than the Existing Encumbrances, as defined in the Deed of Trust.

(h) The resolutions relating to the Town's performance of this Contract, the Deed of Trust and the transactions contemplated hereby and thereby have been duly adopted, are in full force and effect, and have not been in any respect modified, revoked or rescinded.

(i) The Town reasonably believes funds will be available to satisfy all of its obligations hereunder.

(j) The Facilities have been or will be designed and constructed so as to comply with all applicable subdivision, building and zoning ordinances and regulations, if any, and any and all applicable federal and State standards and requirements relating to the Facilities. The Facilities have not been and will not be used in any private business or put to any private business use.

(k) The Town will not take or permit, or omit to take or cause to be taken, any action that would cause its obligations under this Contract to be "arbitrage bonds" or "private activity bonds" within the meaning of the Code, or otherwise adversely affect the exclusion from gross income for federal income tax purposes of the designated interest component of Installment Payments to which such components would otherwise be entitled and, if it should take or permit, or omit to take or cause to be taken, any such action, the Town will take or cause to be taken all lawful actions within its power necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

(l) To the extent information is available on the Closing Date, and based upon the Town's examination of the Sites and of the Plans and Specifications and estimated Project Costs provided by an Appropriate Consultant, the Facilities can be constructed, acquired and equipped for a total price within the total amount of funds to be available therefor in the Project Fund, income anticipated to be derived from the investment thereof and other funds expected to be available for such purposes. If the total amount available for such purposes in the Project Fund will be insufficient to pay the entire cost of constructing, acquiring and equipping the Facilities, the Town will pay any such excess costs, with no resulting reduction or offset in the amounts otherwise payable by the Town.

(m) The Town will send to the Trustee a copy of the Town's audited financial statements for each Fiscal Year within 30 days of the Town's acceptance of such statements, but in any event within 120 days of the completion of such Fiscal Year.

**7.2. Town's Undertaking for Continuing Disclosure.** The Town undertakes, for the benefit of the beneficial owners of the Certificates and with regard to Rule 15c2-12 of the United States Securities and Exchange Commission (the "SEC"), to provide the following:

(a) by not later than seven months from the end of each of the Town's Fiscal Years (beginning with the Fiscal Year ending June 30, 2005), to each nationally



recognized municipal securities information repository ("NRMSIR"), and the state information depository for the State of North Carolina ("SID"), if any, audited Town financial statements for such fiscal year, if available, prepared in accordance with Section 159-34 of the General Statutes of North Carolina, as it may be amended from time to time, or any successor statute, or, if such audited financial statements are not available by seven months from the end of any fiscal year, unaudited Town financial statements for such fiscal year, to be replaced subsequently by audited Town financial statements to be delivered within 15 days after such audited financial statements become available for distribution;

(b) by not later than seven months from the end of each of the Town's Fiscal Years (beginning with the Fiscal Year ending June 30, 2005), to each NRMSIR, and to the SID, if any, (i) the financial and statistical data as of a date not earlier than the end of the preceding fiscal year (which data will be prepared at least annually, will specify the date as to which such information was prepared and will be delivered with any subsequent material events notices specified in subparagraph (c) below) for the type of information included under the headings in the final Official Statement relating to the 2005 Certificates under the captions "THE TOWN -- Debt Information" (excluding information set forth in such section regarding overlapping units) and "-- Tax Information," to the extent such items are not included in the audited financial statements referred to in (a) above;

(c) in a timely manner, to each NRMSIR or to the Municipal Securities Rulemaking Board ("MSRB"), and to the SID, if any, notice of any of the following events with respect to the 2005 Certificates, if material:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults;
- (3) unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on any credit enhancements reflecting financial difficulties;
- (4) substitution of credit or liquidity providers, or their failure to perform;

(6) adverse tax opinions or events affecting the tax-exempt status of the 2005 Certificates;

(7) modifications to rights of the beneficial owners of the 2005 Certificates;

(8) 2005 Certificate calls (other than calls pursuant to sinking fund prepayment);

(9) defeasances;

(10) release, substitution or sale of any property securing repayment of the 2005 Certificates; and

(11) rating changes; and

(d) in a timely manner, to each NRMSIR or to the MSRB, and to the SID, if any, notice of a failure of the Town to provide required annual financial information described in (a) or (b) above on or before the date specified.

If the Town fails to comply with the undertaking described above, the Corporation may take action to protect and enforce the rights of all the beneficial owners of the 2005 Certificates with respect to such undertaking, including an action for specific performance; provided, however, that failure to comply with such undertaking will not be an Event of Default and will not result in any acceleration of payment of the Certificates. All actions will be instituted, had and maintained in the manner provided in this paragraph for the benefit of all beneficial owners of the 2005 Certificates.

The Town reserves the right to modify from time to time the information to be provided to the extent necessary or appropriate in the Town's judgment, provided that:

(A) any such modification may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of the Town;

(B) the information to be provided, as modified, would have complied with the requirements of Rule 15c2-12 as of the date of the final Official Statement, after taking into account any amendments or interpretations of Rule 15c2-12, as well as any changes in circumstances; and

(C) any such modification does not materially impair the interests of the beneficial owners, as determined either by parties unaffiliated with the Town or by the approving vote of the registered owners of a majority in principal amount of the 2005 Certificates pursuant to the terms of the Trust Agreement, as it may be amended from time to time, at the time of the amendment.

Any annual financial information containing modified operating data or financial information will explain, in narrative form, the reasons for the modification and the impact of the change in the type of operating data or financial information being provided.

The Town, at its option, may make any filing required by this undertaking solely by transmitting such filing to the Texas Municipal Advisory Council (the “MAC”) as provided at <http://www.disclosureusa.org>, unless the SEC has withdrawn the interpretive advice in its letter to the MAC dated September 7, 2004.

The provisions of this Section will terminate upon payment, or provision having been made for payment, in a manner consistent with Rule 15c2-12, in full of the Installment Payments.

**7.3. By the Corporation.** The Corporation warrants, represents and covenants (all such warranties, representations and covenants continuing) as follows:

(a) The Corporation is a nonprofit corporation duly organized, existing and in good standing under and by virtue of State law and has the power to enter into this Contract and the Trust Agreement. The Corporation has duly authorized this Contract and the Trust Agreement and has caused each to be executed on its behalf in accordance with the State law.

(b) Neither the execution and delivery of this Contract or the Trust 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, results in a breach of the terms, conditions or provisions of the Corporation’s charter or bylaws or any agreement or instrument to which the Corporation is now a party or by which the Corporation is bound, or constitutes a default under any of the foregoing.

(c) To the best of the Corporation’s knowledge after due and reasonable investigation, 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 Corporation challenging the validity or enforceability of this Contract, the Trust Agreement or any documents relating hereto and the performance of the Corporation's obligations hereunder and thereunder.

## **ARTICLE VIII**

### **INDEMNIFICATION**

To the extent permitted by law, the Town agrees to indemnify, protect and save (a) the Corporation and its officers and directors, (b) the LGC and its members and employees, and (c) the Trustee and its officers and employees, harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including attorneys' fees, arising out of, connected with, or resulting directly or indirectly from the Sites or the Facilities or the transactions contemplated by this Contract. The indemnification arising under this Article will survive the Contract's termination.

## **ARTICLE IX**

### **DISCLAIMER OF WARRANTIES**

The Town acknowledges that neither the Corporation nor the Trustee has designed the Facilities, that neither the Corporation nor the Trustee has supplied any plans or specifications with respect thereto and that neither the Corporation nor the Trustee (a) is a manufacturer of, or a dealer in, any of the component parts of the Facilities or similar facilities, (b) has made any recommendation, given any advice nor taken any other action with respect to (1) the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Facilities or any component part thereof or any property or rights relating thereto, or (2) any action taken or to be taken with respect to the Facilities or any component part thereof or any property or rights relating thereto at any stage of the construction thereof, (c) has at any time had physical possession of the Facilities or any component part thereof or made any inspection thereof or any property or rights relating thereto, and (d) has made any warranty or other representation, express or implied, that the Facilities or any component part thereof or any property or rights relating thereto (1) will not result in or cause injury or damage to persons or property, (2) has been or will be properly designed, or will accomplish the results which the Town intends therefor, or (3) is safe in any manner or respect.

THE CORPORATION MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE FACILITIES OR ANY COMPONENT PART THEREOF, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE, and further including the design or condition thereof; the safety, workmanship, quality or capacity thereof; compliance thereof with the requirements of any law, rule, specification or contract pertaining thereto; any latent defect; the ability of the Facilities to perform any function; that the Amount Advanced will be sufficient to pay all Project Costs; or any other characteristic of the Facilities; it being agreed that the Town is to bear all risks relating to the Facilities, the completion thereof or the transactions contemplated by this Contract or by the Deed of Trust or the Trust Agreement, and the Town waives the benefits of any and all implied warranties and representations of the Corporation.

The provisions of this Article will survive the Contract's termination.

## **ARTICLE X**

### **DEFAULT AND REMEDIES**

**10.1. Events of Default.** An "Event of Default" is any of the following:

- (a) The Town's failure to make any Installment Payment by the first day of the calendar month following the due date.
- (b) The occurrence of an Event of Nonappropriation.
- (c) The Town breaches or fails to perform or observe any term, condition or covenant of this Contract, the Deed of Trust or the Trust Agreement on its part to be observed or performed, other than as referred to in subsections (a) or (b) above, including payment of any Additional Payment, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the Town, unless the Corporation agrees in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in the notice cannot reasonably be corrected within the applicable period and the Town institutes corrective action within the applicable period, no Event of Default will be deemed to have occurred so long as the Town diligently pursues the same.

(d) Proceedings under any bankruptcy, insolvency, reorganization or similar law are instituted by or against the Town as a debtor, or a receiver, custodian or similar officer is appointed for the Town or any of its property.

(e) Any warranty, representation or statement made by the Town in this Contract, in the Deed of Trust or in the Trust Agreement is found to be incorrect or misleading in any material respect as of the Closing Date.

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

(g) The Town fails to pay when due any principal of or interest on any of its general obligation bonds.

**10.2. Remedies on Default.** Upon the continuation of any Event of Default, the Corporation may, without any further demand or notice, exercise any one or more of the following remedies:

(a) Declare the unpaid principal components of the Installment Payments, and the accrued interest thereon, immediately due and payable;

(b) Proceed by appropriate court action to enforce performance by the Town of the applicable covenants of this Contract, the Deed of Trust or the Trust Agreement or to recover for the breach thereof; and

(c) Avail itself of all available remedies under the Deed of Trust, including foreclosure on the Facilities and recovery of attorneys' fees and other expenses, and of all other remedies available at law or in equity.

The Corporation's exercise of remedies is subject to the limitations set forth in Article XII.

**10.3. No Remedy Exclusive; Delay Not Waiver.** All remedies under this Contract are cumulative and may be exercised concurrently or separately. The exercise of any one remedy will not be deemed an election of such remedy or preclude the exercise of any other remedy. If any Event of Default occurs and is thereafter waived,

such waiver will be limited to the particular breach so waived and will not be deemed a waiver of any other breach under this Contract.

## **ARTICLE XI** **ASSIGNMENTS**

**11.1. Town's Assignments.** The Town will not sell or assign any interest in this Contract without the Corporation's prior written consent.

**11.2. Corporation's Assignment.** The Corporation will assign substantially all of its rights under this Contract, including rights to receive and enforce Contract Payments (but excluding the Corporation's rights to indemnification and payment of costs and its rights to receive notices) to the Trustee pursuant to the Trust Agreement, without recourse against the Corporation. The Town consents to such assignment, and agrees to accept performance, direction and any other action by the Trustee to the same extent provided in this Contract for the action of the Corporation, and to render performance to the Trustee to the same extent provided in this Contract for performance to the Corporation (in each case, except with respect to the Corporation's reserved rights).

Notice of any further assignment must be provided to the Town. The Town will keep a complete and accurate record of all assignments. After the giving of any such notice, the Town will thereafter make all payments in accordance with the notice to the assignee named therein and will, if so requested, acknowledge such assignment in writing, but such acknowledgment will in no way be deemed necessary to make the assignment effective.

## **ARTICLE XII** **TOWN'S LIMITED OBLIGATION**

Notwithstanding any other provision of this Contract, the parties intend that this transaction comply with North Carolina General Statutes Section 160A-20. No deficiency judgment may be entered against the Town in violation of such Section 160A-20.

No provision of this Contract will be construed or interpreted as creating a pledge of the Town's faith and credit within the meaning of any constitutional debt

limitation. No provision of this Contract will be construed or interpreted as an illegal delegation of governmental powers or as an improper donation or lending of the Town's credit within the meaning of the North Carolina constitution. The Town's taxing power is not and may not be pledged directly or indirectly or contingently to secure any moneys due under this Contract.

No provision of this Contract will be construed to pledge or to create a lien on any class or source of the Town's moneys (other than the funds and accounts established pursuant to the Trust Agreement as may be provided in the Trust Agreement), nor will any provision of this Contract restrict the Town's future issuance of any of its bonds or other obligations payable from any class or source of the Town's moneys (except to the extent the Documents restrict the incurrence of additional obligations secured by the Mortgaged Property).

To the extent of any conflict between this Article and any other provision of this Contract, this Article will take priority.

### **ARTICLE XIII** **MISCELLANEOUS**

**13.1. Town's Acceptance of Trust Agreement Terms.** The Town accepts its responsibilities under the Trust Agreement, and agrees to be bound thereby.

**13.2. Notices.**

(a) Any communication provided for in this Contract must be in writing.

(b) Any communication under this Contract will be sufficiently given and deemed given when delivered by hand or on the date shown as the date of delivery on a United States Postal Service return receipt, if addressed as follows:

(i) if to the Town, to Town of Chapel Hill, Attention: Town Manager, Regarding: Notice under 2005 COPS Financing Contract, Town Hall, 405 Martin Luther King Jr. Blvd., Chapel Hill, North Carolina 27514.

(ii) if to the Corporation, to Town of Chapel Hill Public Facilities Corporation, Attention: Ralph D. Karpinos, Registered Agent, Regarding: Notice under 2005 COPS Financing Contract, Chapel Hill Town Hall, 405



Martin Luther King Jr. Blvd., Chapel Hill, North Carolina 27514.

(iii) if to the Trustee, to First-Citizens Bank & Trust Company, Corporate Trust Services Division, Regarding: Notice under 2005 COPS Financing Contract for Chapel Hill, North Carolina, Mailcode DAC61, 100 East Tryon Rd., Raleigh, NC 27603.

(c) Any communication sent under this Contract to the Corporation must also be sent to the Town and the Trustee.

(d) Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others.

**13.3. Non-Business Days.** If the date for making any payment or the last day for performance of any act or the exercising of any right will not be a Business Day, such payment may be made or act performed or right exercised on or before the next succeeding Business Day.

**13.4. Governing Law.** The parties intend that North Carolina law will govern this Contract. To the extent permitted by law, the parties agree that any action brought with respect to this Contract will be brought in the North Carolina General Court of Justice in Orange County, North Carolina.

**13.5. Severability.** If any provision of this Contract is determined to be unenforceable, that will not affect any other provision of this Contract.

**13.6. Amendments.** This Contract will not be changed except in accordance with Article X of the Trust Agreement.

**13.7. Binding Effect.** Subject to the specific provisions of this Contract, this Contract will be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

**13.8. Third-Party Beneficiary.** The parties intend that the Trustee be a third-party beneficiary of this Contract.

**13.9. Time.** Time is of the essence of this Contract and each and all of its provisions.

**13.10. Limitation on Liability of Officers and Agents.** No officer, agent or employee of the Town, of the LGC or the Corporation will be subject to any personal liability or accountability by reason of the execution of this Contract or any other documents related to the transactions contemplated by this Contract. Such officers, agents or employees will be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section will not relieve any such officer, agent or employee from the performance of any official duty provided by law.

**13.11. Counterparts.** This Contract may be executed in several counterparts, including separate counterparts. Each will be an original, but all of them together constitute the same instrument.

**13.12. Definitions.** Unless the context clearly requires otherwise, capitalized terms used in this Contract and not otherwise defined will have the meanings set forth in Exhibit A.

*[The remainder of this page has been left blank intentionally.]*

**IN WITNESS WHEREOF**, the Town and the Corporation have caused this instrument to be executed as of the day and year first above written by duly authorized officers.

**ATTEST: (SEAL)**

**TOWN OF CHAPEL HILL  
NORTH CAROLINA**

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Sabrina Oliver  
Town Clerk

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Kevin C. Foy  
Mayor

**ATTEST: (SEAL)**

**TOWN OF CHAPEL HILL  
PUBLIC FACILITIES  
CORPORATION**

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[name]  
Secretary

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[name]  
President

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

Janice T. Burke  
Secretary, North Carolina  
Local Government Commission

By \_\_\_\_\_  
[Janice T. Burke or  
Designated Assistant]

[Installment Financing Contract dated as of May 1, 2005]

Exhibits –

- A - Definitions
- B - Payment schedule

## **EXHIBIT A – Definitions**

For all purposes of this Contract, unless the context requires otherwise, the following terms will have the following meanings:

"2005 Certificates" has the meaning ascribed to that term in the Trust Agreement.

"Additional Payments" means the reasonable and customary fees and expenses of the Corporation or the Trustee, any of the Corporation's or the Trustee's expenses (including attorneys' fees) in prosecuting or defending any action or proceeding in connection with this Contract and any taxes or any other expenses, including, but not limited to, the Corporation's administrative or legal costs (including costs of maintaining its existence and good standing), licenses, permits, state and local sales and use or ownership taxes or property taxes which the Corporation is required to pay as a result of this Contract, inspection and reinspection fees, or any other amounts payable by the Town as a result of its covenants under this Contract, under the Deed of Trust or under the Trust Agreement (together with interest that may accrue on any of the above if the Town will fail to pay the same, as set forth in this Contract).

"Amount Advanced" has the meaning assigned in Article I.

"Appropriate Consultant" means one or more independent public accountants or firms of public accountants, or architects or firms of architects, engineers or firms of engineers, professional management consultants or firms of management consultants, or such other independent persons, having (at the time retained for the purposes of this Contract) a favorable reputation for skill and experience in an appropriate area of expertise, as may be selected by the Town and approved by the Corporation (which approval will not be unreasonably withheld) from time to time to perform and carry out the duties imposed on an Appropriate Consultant by this Contract.

"Budget Officer" means the Town officer from time to time charged with preparation of the draft Town budget initially submitted to the Town Council for its consideration.

"Certificates" has the meaning ascribed to that term in the Trust Agreement.

"Closing Date" means the date on which this Contract is first executed and delivered by the parties.

"Code" means the Internal Revenue Code of 1986, as amended, including regulations, rulings and revenue procedures promulgated thereunder or under the Internal Revenue Code of 1954, as amended, as applicable to the Town's obligations under this Contract. Reference to any specific Code provision will be deemed to include any successor provisions thereto.

"Completion Certificate" means the certificate evidencing substantial completion of the Facilities provided for in Section 3.3.

"Completion Date" means the date on which the Town delivers the Completion Certificate.

"Construction Contracts" means the contracts between the Town and one or more contractors selected and hired by the Town for the construction of the Facilities.

"Construction Period" means the period between the Closing Date and the Completion Date.

"Contract Payments" means Installment Payments and Additional Payments.

"Deed of Trust" means the Deed of Trust and Security Agreement, dated as of May 1, 2005, from the Town to a deed of trust trustee for the benefit of the Corporation and its assigns, as it may be duly amended or supplemented.

"Event of Default" means one or more events of default as defined in Section 10.1.

"Event of Nonappropriation" means a determination by the Town Council not to include an appropriation for Contract Payments in the Town budget for any Fiscal Year, as contemplated in Section 2.5(a), or any subsequent action by the Town Council to delete such an appropriation from an approved Town budget.

"Facilities" has the meaning ascribed to that term in the Deed of Trust, and generally includes the planned new Town Operations Center.

"Fiscal Year" means the Town's fiscal year beginning July 1, or such other fiscal year as the Town may later lawfully establish.

"Force Majeure" means, without limitation, acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the federal or State government or any of their departments, agencies or officials or any civil or military authority; insurrection; riots; landslides; earthquakes; fires; storms; droughts; floods; falling space debris; explosions; breakage or accidents to machinery, transmission pipes or canals; or any other cause or event not within the Town's control but not due to the Town's negligence.

"Independent Counsel" means an attorney duly admitted to the practice of law before the highest court in the State that is selected by the Town and approved by the Corporation (which approval will not be unreasonably withheld).

"Installment Payments" means the payments payable by the Town pursuant to Section 2.1.

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

"Mortgaged Property" has the meaning assigned in the Deed of Trust.

"Net Proceeds" means all payments and proceeds derived from (a) claims made on account of insurance coverages required under this Contract, (b) any exercise of condemnation or eminent domain authority related to all or any portion of the Mortgaged Property, (c) proceeds of title insurance related to the Mortgaged Property, (d) payments on any bonds required by Section 3.4, (e) any amounts recovered from any contractor on an action for default or breach, as described in Section 3.4, or (f) any sale of the Facilities, as well as all judgments, settlements or other payments in lieu of any of the foregoing, in any case reduced by the sum of (i) all expenses (including attorneys' fees and costs) incurred in the collection of such proceeds and (ii) all amounts expended by the Town, the Corporation or the Trustee to remedy the event giving rise to such proceeds, all of which amounts will be paid or reimbursed from the gross proceeds.

"Permitted Encumbrances" means, as of any particular time, (a) the "Existing Encumbrances," as defined in the Deed of Trust, (b) liens for taxes and assessments not then delinquent, or liens which may remain unpaid pursuant to Sections 4.8 or 5.2,

(c) the Deed of Trust, (d) any lien or encumbrance made by its terms expressly subordinate to the lien of the Deed of Trust, and (e) easements and rights-of-way granted by the Town pursuant to Section 1-7(e)(i) of the Deed of Trust.

"Plans and Specifications" means the plans and specifications for the Facilities as prepared for the Town by an Appropriate Consultant.

"Project Costs" means all costs properly chargeable and charged to a capital account of the Facilities as determined in accordance with generally accepted accounting principles and as will not adversely affect the exclusion from gross income for federal income tax purposes of the designated interest component of Installment Payments payable under this Contract, including (a) all costs of the design, planning, constructing, acquiring, installing and equipping of the Facilities, (b) costs of, and related to, the demolition of the facilities previously used by the Town for the purposes to be served by the new Facilities, (c) sums required to reimburse the Town or its agents for advances made for any such costs, (d) interest during the construction process and for up to six months thereafter, and (e) all costs related to the financing of the Facilities through this Contract and all related transactions.

"Sites" has the meaning ascribed to that term in the Deed of Trust, and generally includes the real property upon which the Facilities are to be constructed.

"State" means the State of North Carolina.

"Town Council" means the Town's governing board as from time to time constituted.

"Town Representative" means the Town Manager, Town finance officer or any other person or persons at the time designated, by a written certificate furnished to the Trustee and signed on the Town's behalf by the Town Manager or the Town's Mayor, to act on the Town's behalf for the purpose of performing any act (or any specified act) under this Contract.

"Trust Agreement" means the Trust Agreement of even date between the Corporation and the Trustee, as it may be duly amended or supplemented.

"Trustee" means First-Citizens Bank & Trust Company, Raleigh, North Carolina, and its successors as Trustee under the Trust Agreement.

In addition, all capitalized terms used herein and not otherwise defined have the meanings assigned thereto in the Trust Agreement.



**EXHIBIT B – Schedule of Installment Payments**

<b>Date – 25th of the month <u>prior to –</u></b>	<b><u>Principal Component</u></b>	<b><u>Interest Component</u></b>	<b><u>Total</u></b>