



TOWN OF CHAPEL HILL  
NORTH CAROLINA

Meeting Date: 6/4/2012  
AGENDA #1

EXECUTIVE SUMMARY

**Title of Agenda Item:** Adoption of a Final Resolution for Approval of the 140 West Limited Obligation Bonds (LOBs) and Refunding of Installment Financings. (R-1)

**Council Goal:** Set Course for a Sustainable Fiscal Future

**Background:** The adoption of the attached resolution is the final step in the approval process for installment financing of the Town's funding obligation under the 140 West Development Agreement and refunding of existing installment financings. The Town's obligations under the agreement include payment of up to \$7,245,000 for a single level of the development's parking structure that will accommodate about 161 parking spaces. The payment will be based on actual cost of construction which is estimated to be about \$6.2 million. As part of this transaction the Town is also contemplating improvements to existing parking structures and improvements to assets financed by the refunded bonds.

The proposed installment financings to be refunded are as follows:

- Series 2003 Installment Purchase Contract (Wallace Deck): \$4,320,000
- Series 2005 Certificates of Participation (TOC): \$17,680,000
- Series 2007 Installment Purchase Contract (Aquatic Center): \$1,395,000

**Fiscal Note:** The debt service for the 140 West Parking will be paid by the Parking Enterprise Fund. Average annual debt service is expected to be about \$440,000 per year. Based on current projections and assuming no change in the parking rate structure and no significant changes to parking operations, the Parking Fund will have sufficient cash flow to pay this additional debt service through FY2018-19.

Based on current market rates the refunding of the financing agreements will create about \$930,000 in savings that will be split between the Parking and General Funds.

**Recommendations:** That the Council adopt the resolution providing final approval of terms and documents for the Town's 2012 installment Financing for parking improvements and to refinance existing obligations. Among other things, the resolution does the following:

- Confirms the Council's decision to carry out the proposed installment financing
- Approves the forms of the documents for the installment financing and authorizes the Mayor and the Manager to execute and deliver those documents, including:
  - **Draft Installment Financing Contract** between the Town and Town of Chapel Hill Public Facilities Corporation (the Company)
  - **Deed of Trust and Security Agreement** from the Town to a deed of trust trustee providing for a security interest in the Town Operations and potentially other Town property
  - **Trust Agreement between the Company** and a Trustee providing for issuance of the limited obligation bonds
  - **Bond Purchase Agreement** providing for the underwriters obligation to purchase the

bonds

- Appoints W. Baird & Company to underwrite a public offering of the proposed limited obligation bonds and approves the draft official statement. The draft official statement is available in the Communications and Public Affairs Office and can be viewed on-line on the Town's web-site: <http://www.townofchapelhill.org/index.aspx?page=1978>
  - Authorizes refinancing of obligations with existing lenders and authorizes the Finance officer and other Town officers to take all appropriate action to carry out such modifications and refinancings
  - Authorizes the Town Manager and Finance Officer to complete closing of the transaction
  - Authorizes all Town Officers and employees to take necessary actions in furtherance of the purposes of this resolution and ratifies such prior actions
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**ATTACHMENTS:**

*Viewing attachments may require [Adobe Acrobat](#).*

Staff Memorandum

Resolution

Draft Installment Financing Contract

Draft Deed of Trust

Draft Trust Agreement

140 West Draft Financing Bond Purchase Agreement

## MEMORANDUM

TO: Roger L. Stancil, Town Manager

FROM: Kenneth C. Pennoyer, Director of Business Management

SUBJECT: Adoption of a final resolution for approval of the 140 West Limited Obligation Bonds (LOBs) and Refunding of Installment Financings

DATE: June 4, 2012

### PURPOSE

To consider the adoption of a final resolution for approval of up to \$7,200,000 of LOBs for the 140 West Parking Project and up to \$24,000,000 for Refunding of Installment Financings. This represents the final approval step for the proposed installment financing and refunding transaction.

### BACKGROUND AND DISCUSSION

On February 12, 2007, the Council entered into a Development Agreement with Ram Development Company for the 140 West Project. Among other things, the Town's obligations under the agreement include payment of up to \$7,245,000 for a single level of the development's parking structure that will accommodate about 161 parking spaces. The payment will be based on actual cost of construction. Currently the estimate of the Town's total project cost for 140 West is about \$6.2 million. As part of this transaction the Town is also contemplating improvements to existing parking structures and improvements to assets financed by the refunded bonds.

Other parking improvements proposed to be part of this financing are projects in the Wallace Parking Deck including replacement of water-proofing barriers, expansion joints replacement, improvements to the Parking Office space and concrete repair and sealing. The estimated cost of these projects is about \$500,000, bringing the total of the "new money" financing portion of the transaction to \$6,700,000.

The Town's payment for the 140 West Parking will be a "reimbursement" to the Developer, payable within 15 days of an architect's certificate of substantial completion. In order for the Town to secure financing before the payment comes due and to take advantage of the current low interest rate environment, the Financing Team is recommending that we proceed with the final steps for approval of the installment financing.

An additional factor in starting the financing process now is the possibility of refunding as much as \$24 million of outstanding installment financing. Based on current rates, refunding this debt will save approximately \$900,000 over the next 12 years. By combining the refunding, which includes the TOC and Wallace Deck certificates of participation (COPs), with the installment financing for the 140West parking we can improve the collateral and make the transaction more attractive to the market.

On April 30, 2012 the Council adopted a resolution calling a public hearing on Town installment financing for 140 West parking and refunding of certain existing obligations.

On May 14, 2012 the Council held a public hearing on the proposed financing and adopted a resolution making certain findings in support of an application to the Local Government Commission for approval of the financing agreement and refunding.

### **Method of Financing**

On April 24, 2012, the Town's Financial Advisor issued an RFP on behalf of the Town to solicit bids for funding proposals for the 140 West Project and the refunding of certain installment financings described below. Based on the responses to the RFP R.W. Baird was selected to underwrite a public offering of LOBs. As underwriter, R.W. Baird will work with the Town and the Financial Advisor to market LOBs through a public offering.

### **Fiscal Note**

The debt service for the 140 West Parking will be paid by the Parking Enterprise Fund. Average annual debt service is expected to be about \$440,000 per year. Based on current projections and assuming no change in the parking rate structure and no significant changes to parking operations, the Parking Fund will have sufficient cash flow to pay this additional debt service through FY2018-19.

The installment financings that are being considered for refunding, the principal amount currently outstanding and the major asset financed, are as follows:

Series 2003 Installment Purchase Contract (Wallace Deck)	\$ 4,320,000
Series 2005 Certificates of Participation (TOC)	17,680,000
Series 2007 Installment Purchase Contract (Aquatic Center)	<u>1,395,000</u>
<b>Total</b>	<b><u>\$23,395,000</u></b>

The estimated savings of \$930,000 for the refunding of outstanding installment financings will be split between the Parking Fund and the General Fund over the next 12 years. The actual amount that will be refunded, the savings from the refunding and the debt service payments on the parking improvements are subject to change based on interest rates at the time of the transaction.

### **Next Steps**

June 5, 2012	Local Government Commission Approval
June 14, 2012	Sale Date
June 27, 2012	Closing

### RECOMMENDATION

That the Council adopt the resolution providing final approval of terms and documents for the Town's 2012 installment Financing for parking improvements and to refinance existing obligations. Among other things, the resolution does the following:

- Confirms the Council's decision to carry out the proposed installment financing
- Approves the forms of the documents for the installment financing and authorizes the Mayor and the Manager to execute and deliver those documents, including:
  - **Draft Installment Financing Contract** between the Town and Town of Chapel Hill Public Facilities Corporation (the Company)
  - **Deed of Trust and Security Agreement** from the Town to a deed of trust trustee providing for a security interest in the Town Operations and potentially other Town property
  - **Trust Agreement between the Company** and a Trustee providing for issuance of the limited obligation bonds
  - **Bond Purchase Agreement** providing for the underwriters obligation to purchase the bonds
- Appoints W. Baird & Company to underwrite a public offering of the proposed limited obligation bonds and approves the draft official statement. The draft official statement is available in the Communications and Public Affairs Office and can be viewed on-line on the Town's web-site:  
<http://www.townofchapelhill.org/index.aspx?page=1978>
- Authorizes refinancing of obligations with existing lenders and authorizes the Finance officer and other Town officers to take all appropriate action to carry out such modifications and refinancings
- Authorizes the Town Manager and Finance Officer to complete closing of the transaction
- Authorizes all Town Officers and employees to take necessary actions in furtherance of the purposes of this resolution and ratifies such prior actions.

#### Attachments:

1. Resolution providing final approval of terms and documents for the Town's 2012 installment financing for parking improvements and to refinance existing obligations
2. Draft Installment Financing Contract
3. Draft Deed of Trust and Security Agreement
4. Draft Trust Agreement
5. Draft Bond Purchase Agreement



**A RESOLUTION PROVIDING FINAL APPROVAL OF TERMS AND DOCUMENTS FOR TOWN'S 2012 INSTALLMENT FINANCING -- FOR PARKING IMPROVEMENTS AND TO REFINANCE EXISTING OBLIGATIONS (2012-06-04/R-1)**

***WHEREAS --***

The Chapel Hill Town Council has previously determined to acquire, construct and improve parking facilities for the Town, including through the purchase of a parking facility in the 140 West Franklin development. The Council has made a tentative determination to finance the costs of this project by the use of an installment financing, as authorized under Section 160A-20 of the North Carolina General Statutes.

Town staff has further advised the Council that because of generally low market interest rates, the Town may be able to save money by refinancing some of the Town's existing installment financings.

The Council believes a single installment financing for the parking facilities and to carry out refinancings would be in the Town's best interest. This financing will include the use of limited obligation bonds, which will represent interests in the installment payments to be made by the Town that can be sold to investors.

The Town's Finance Officer has made available to the Council the draft documents listed on Exhibit A (the "Documents"), and a draft of an official statement designed to provide appropriate information about the Town and the financing to prospective investors in the bonds. All of these items relate to the Town's carrying out the financing plan.

**NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Chapel Hill, North Carolina, as follows:**

**1. *Determination To Proceed with Financing --*** The Council confirms its decision to carry out the proposed installment financing as described above. As part of this financing, the Town will refinance such existing Town installment financing obligations as the Finance Officer may determine.

**2. *Approval of Documents; Direction To Execute Documents --*** The Council approves the forms of the Documents submitted to this meeting. The Council authorizes the Mayor and the Town Manager, or either of them, to execute and deliver those Documents to which the Town is a party. The Documents in their respective final forms must be in substantially the forms presented, with such changes as the Mayor or the Town Manager may approve. The execution and delivery of any Document by an authorized Town officer will be conclusive evidence of such officer's approval of any such changes.

The Documents in final form, however, must provide for the principal amount of limited obligation bonds to not exceed \$31,500,000 and a financing term not to extend beyond

December 31, 2032. The amount financed under the Documents may include amounts to pay financing expenses and other necessary and incidental costs.

The collateral pledged to the repayment of the Town's obligations under the Documents may include any portion, or all, of the collateral pledged to the repayment of obligations that are refinanced, as the Finance Officer may approve. The Town expects that the collateral will include the Town Operations Center on Millhouse Road.

**3. *Sale of Bonds; Approval of Official Statement*** – The Council appoints Robert W. Baird & Co., Inc., and Wells Fargo Bank, National Association, to underwrite a public offering of the proposed limited obligation bonds.

The Council approves the draft official statement submitted to this meeting as the form of the preliminary official statement pursuant to which the underwriter will offer the bonds for sale. The preliminary official statement as distributed to prospective investors must be in substantially the form presented, with such changes as the Finance Officer may approve. The Council directs the Finance Officer, after the sale of the bonds, to complete and otherwise prepare the preliminary official statement as an official statement in final form.

The Council acknowledges that it is the Town's responsibility, and ultimately the Council's responsibility, to ensure that the Official Statement in its final form neither contains an untrue statement of a material fact nor omits to state a material fact required to be included therein for the purpose for which such Official Statement is to be used or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. By adopting this resolution, the Council members approve the Official Statement as materially correct and complete. The Council authorizes and approves the use of the preliminary official statement and final official statement by the underwriter in connection with the sale of the bonds.

**4. *Authorization To Refinance Obligations with Existing Lenders*** – The Council understands that for certain of the Town's outstanding installment financing obligations, it may be in the Town's best interest to modify the existing agreements with the current lenders, instead of refinancing those obligations through the issuance of the limited obligation bonds. The Finance Officer, and all other Town officers and representatives, are authorized to take all appropriate action to carry out such modifications and refinancings with the existing lenders as they may determine to be in the Town's best interests.

**5. *Authorization to Town Manager and Finance Officer To Complete Closing*** – The Town Manager, the Finance Officer and all other Town officers and employees are authorized to take all proper steps to complete the financing in accordance with the terms of this resolution.

The Council authorizes the Finance Officer to hold executed copies of all financing documents authorized or permitted by this resolution in escrow on the Town's behalf until the conditions for their delivery have been completed to such officer's satisfaction, and thereupon to release the executed documents for delivery to the appropriate persons or organizations.

Without limiting the generality of the foregoing, the Council specifically authorizes the Finance Officer (a) to approve any additional agreements appropriate to carry out the plan of financing contemplated by this resolution, including agreements for the custody or investment of financing proceeds, for the appointment of additional underwriters and for appropriate professional services, and (b) to approve changes to any documents or closing certifications previously signed by Town officers or employees, provided that such changes do not conflict with this resolution or substantially alter the intent from that expressed in the form originally signed. The Finance Officer's authorization of the release of any document for delivery will constitute conclusive evidence of such officer's approval of any changes.

In addition, the Finance Officer is authorized and directed to take all appropriate steps for the efficient and convenient carrying out of the Town's on-going responsibilities with respect to the financing. This authorization includes, without limitation, contracting with third parties for reports and calculations that may be required under the Documents, this resolution or otherwise with respect to the bonds.

**6. *Other Financing Participants*** -- Sanford Holshouser LLP will serve as the Town's bond counsel. Davenport & Company, LLC, will serve as the Town's financial adviser. US Bank, National Association, will serve as Trustee under the Trust Agreement and Escrow Agent under the Escrow Agreement. The Arbitrage Group will serve as verification agent, to verify calculations necessary to document compliance with federal tax rules related to refinancings.

**7. *Miscellaneous Provisions*** -- All Town officers and employees are authorized to take all such further action as they may consider necessary or desirable in furtherance of the purposes of this resolution. All such prior actions of Town officers and employees are ratified. Upon the unavailability or refusal to act of the Town Manager, the Mayor or the Finance Officer, any other of such officers may assume any responsibility or carry out any function assigned in this resolution. In addition, upon the unavailability of the Mayor or the Clerk, respectively, any of the rights or responsibilities assigned to such officers may be carried out or exercised by the Mayor Pro Tem or any Deputy or Assistant Clerk. Any Assistant Town Manager may act in substitution upon the unavailability of the Town Manager. All other Council proceedings, or parts thereof, in conflict with this resolution are repealed, to the extent of the conflict. This resolution takes effect immediately.

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#### **Exhibit A -- Draft Documents**

(a) A draft dated May 22, 2012, of an Installment Financing Contract to be dated on or about June 1, 2012 (the "Financing Contract"), between the Town and Town of Chapel Hill Public Facilities Corporation (the "Company), providing for the advance of funds to the Town for the Town to pay project costs and to refinance existing Town financing obligations, and further providing for the Town's obligation to repay the amounts advanced.

(b) A draft dated May 22, 2012, of a Deed of Trust and Security Agreement to be dated on or about June 1, 2012, from the Town to a deed of trust trustee for the Company's benefit, providing for a security interest in the Town Operations Center and, potentially, other Town property to secure the Town's obligations under the Financing Contract.

(c) A draft dated May 22, 2012, of a Trust Agreement to be dated on or about June 1, 2012, between the Company and a Trustee, providing for the issuance of limited obligation bonds to generate funds for the advance to the Town under the Financing Contract. The bonds are payable from amounts paid by the Town under the Financing Contract.

(d) A draft dated May 22, 2012, of an Escrow Agreement to be dated on or about June 27, 2012, between the Company and an Escrow Agent, providing for the custody of some of the bond proceeds pending their use to pay off existing financing obligations.

(e) A draft of a Bond Purchase Agreement to be dated on or about June 14, 2012, providing for the underwriter's obligations to purchase the bonds. The Bond Purchase Agreement includes a Letter of Representation to be delivered by the Town. The final form of this Agreement will set out the final principal amount, principal payment schedule and interest rates for the bonds.

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I certify as follows: that the foregoing resolution was properly adopted at a meeting of the Town Council of the Town of Chapel Hill, North Carolina; that this meeting was properly called and held on June 4, 2012; that a quorum was present and acting throughout the meeting; and that this resolution has not been modified or amended, and remains in full effect as of today.

Dated this \_\_\_\_\_ day of June, 2012.

[SEAL]

\_\_\_\_\_  
Town Clerk  
Town of Chapel Hill, North Carolina

This the 4<sup>th</sup> day of June, 2012.

SHLF draft of May 22, 2012

# **INSTALLMENT FINANCING CONTRACT**

**TOWN OF CHAPEL HILL, NORTH CAROLINA**

**and**

**TOWN OF CHAPEL HILL  
PUBLIC FACILITIES CORPORATION**

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

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Kenneth C. Pennoyer  
Finance Officer  
Town of Chapel Hill, North Carolina

## **INSTALLMENT FINANCING CONTRACT**

**THIS INSTALLMENT FINANCING CONTRACT** (the "Contract") is dated as of June 1, 2012, 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 "Company").

### **RECITALS:**

The Town desires to obtain funds to enable the Town to acquire, construct and improve parking facilities for the Town and to refinance existing obligations, as well as to pay financing costs and other related costs. The Company has agreed to advance funds to the Town for these purposes. The Town is obtaining funds for this advance by providing for the issuance of the 2012 Bonds (as defined below).

This Contract provides for the Company'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 Site (each as defined in Exhibit A).

The Company will be assigning substantially all of its rights under this contract to the Trustee, as defined in Exhibit A, pursuant to the Trust Agreement, also 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 Company advances [\$30,000,000] (the "Amount Advanced") to the Town, and the Town accepts the Amount Advanced.

The Company 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 (a) reduced by a discount for the underwriting of the 2012 Bonds, and (b) increased by an amount of original issue premium in the offering of the 2012 Bonds; the final total of the deposits to be made by the Company pursuant to this Article is \$\_\_\_\_\_.

The Town will use the Amount Advanced as provided in Article IV of 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 at the times and in the amounts set forth in Exhibit B, except as otherwise provided in this Contract.

(b) Not less than 15 days prior to each Payment Date, the Trustee must determine the amounts on deposit and available to make the payments due on such Payment Date with respect to the 2012 Bonds, whether in (i) the Interest Account or the Principal Account of the Payment Fund, or (ii) any special trust fund established pursuant to Section 7.01 of the Trust Agreement. The Trustee must notify the Town of such amounts not less than 10 days prior to the applicable Payment Date. The Town's obligation to make Installment Payments is reduced by such available amounts as determined by the Trustee. The Trustee has accepted the obligations in this Section pursuant to the Trust Agreement.

(c) The Town must make all Installment Payments in lawful money of the United States, by wire transfer or other transfer of immediately available funds to such account in the United States as the Trustee may designate to the Town from time to time.

**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 Company may (but will be under no obligation to) pay such Additional Payment. The Town agrees to reimburse the Company for any such Additional Payment, together with interest thereon at the annual rate of 4.00%.

**2.3. Prepayments.** The Town may prepay principal components of Installment Payments at its option, as and when corresponding principal payments of the 2012 Bonds may be prepaid pursuant to Section 3.01 of the Trust Agreement. Upon any such 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.** The Town is not entitled to any abatement or reduction of the Installment Payments or Additional Payments for any reason, including, but not limited to, any defense, recoupment, setoff, counterclaim, or any claim arising out of or related to the Site or the Facilities. The Town assumes and bears the entire risk of loss and damage to the Site and the Facilities from any cause whatsoever. The parties intend that the Installment Payments must 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 an appropriation for Contract Payments, the Town Council may determine not to include the appropriation in the final Town budget for such Fiscal Year. Further, the Town Council may amend an adopted budget to delete an approved appropriation.

(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, or if at any time the Town amends the annual budget to reduce the amount appropriated for Contract Payments, then the Town must send a notice to such effect to the Trustee and to the LGC, to the attention of its Secretary, at the Albemarle Building, 325 North Salisbury Street, Raleigh, NC 27603.

### **ARTICLE III**

#### **TOWN'S RESPONSIBILITIES**

**3.1. Care and Use.** The Town will use the Site and the Facilities in a careful and proper manner. The Town must keep the Mortgaged Property in good condition, repair, appearance and working order for the purposes intended.

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

**3.3. Risk of Loss.** The Town bears all risk of loss to and condemnation of the Facilities and the Site. Upon loss, damage or condemnation of the Mortgaged Property, the Town must proceed as provided in Article VI.

**3.4. Company'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 Company. The Town must then reimburse the Company for any such payments and for any associated costs and expenses, legal or otherwise, together with interest thereon at the annual rate of 4.00%, all as Additional Payments under this Contract.

**3.5. Compliance with Requirements.** The Town must 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 necessitates structural changes or improvements or interferes 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 Company has otherwise agreed in writing, the Town must not use the Mortgaged Property for any purposes other than that for which the same were intended as of the Closing Date. In no event may the Town 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.

**3.6. Use and Operation.** (a) The Town represents that the Facilities will be useful to the Town in carrying out its required functions. The Town expects that the Town will need and use the Facilities continuously during the Contract term. The Town does not expect such need or use to diminish in any material respect during the Contract term.

(b) 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. The Facilities will not be used in any private business or put to any private business use, except for such minor and occasional uses as may be consistent with their use as local government Facilities and that will not cause the Town to be in violation of its covenant as set forth in Section 6.1(i).

**3.7. Modification of Facilities; Installation of Equipment and Machinery.** The Town has the right to repair, maintain and 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 must 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 Company nor

any assignee of the Company 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 Company will reasonably determine that the Facilities would be damaged or impaired by the removal of such machinery, equipment or other tangible property.

**3.8. 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 must, 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 is 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 Company'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 Company 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 the Town must promptly pay such charges (but such payment will not in itself constitute a waiver of the right to continue to contest such charges).

**3.9. Property Damage Insurance.** (a) The Town, at its own expense, will acquire, carry and maintain broad-form extended coverage property damage insurance with respect to the Facilities in an amount equal to the estimated replacement costs. Such property damage insurance must include standard mortgagee coverage in favor of the Trustee.

(b) (i) The insurance required by this Section must be maintained with generally recognized responsible insurers and may carry reasonable deductible or risk-retention amounts. The Town must provide copies of all such policies to the Trustee upon the Trustee's request.

(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 must provide to the Trustee, upon the Trustee's request, 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 must review such programs annually for sufficiency. The Town must provide to the Trustee such evidence as to the sufficiency of any such alternative program as the Trustee may reasonably request.

(c) No Town agent or employee has 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 is not 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 Town.

#### **ARTICLE IV** **TITLE; LIENS**

**4.1. Title.** Title to the Site 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 other Permitted Encumbrances.

**4.2. No Encumbrance, Mortgage or Pledge of Mortgaged Property.** (a) The Town will not permit any mechanic's or other lien to be perfected or to remain against the Mortgaged Property or any portion thereof; provided that 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 Town is notified that, in the opinion of Independent Counsel, by nonpayment of any such items the Company's title to the Mortgaged Property or any portion thereof will be materially endangered, or will be subject to loss or forfeiture, 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 Company must 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 must 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 Bonds. The Town must 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 must reimburse the Company or 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 4.00%.

**ARTICLE V**  
**DAMAGE, DESTRUCTION AND CONDEMNATION;**  
**USE OF NET PROCEEDS**

**5.1. Damage, Destruction or Condemnation.** The Town must promptly notify the Company 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 Company in the Facilities, the Site 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 Company or the Trustee may reasonably request.

The Town must 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 must 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 5.2 and 5.3.

**5.2. Deposit and Disbursement of Net Proceeds; Security Interest**

(a) 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 has no obligation to account to the Company 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 covenants and representations in Section 6.1(i).

(b) 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 must cause the Net Proceeds to be paid to the Trustee. The Town will direct the Trustee as to the deposit of the Net Proceeds as provided in Section 5.3.

(c) The Town grants a security interest in the Net Proceeds to the Company to secure the Obligations, subject to the further provisions of this Section and Section 5.3. This Contract is intended as and constitutes a security agreement with respect to such security interest. All Net Proceeds remain subject to the security interest provided for in this subsection until expended in compliance with the requirements of this Contract.

**5.3. Use of Net Proceeds.** The Town may elect to proceed under either subsections (a), (b) or (c) of this Section 5.3 with respect to Net Proceeds deposited with the Trustee pursuant to Section 5.2(b). The Town must notify the Trustee of its election within 60 days after the date of the deposit.

(a) The Town may elect to use the Net Proceeds, together with such other available Town funds as may be necessary, to prepay or defease the 2012 Bonds in whole, but not in part, pursuant to Section 3.01 and Article VII of the Trust Agreement. In this case the Town will direct the Trustee to deposit the Net Proceeds (and such other funds as the Town may provide) into the Prepayment Account in the Bond Fund or into a special trust fund as provided for in such Article VII.

(b) (i) If the Town determines that the Net Proceeds, together with any other available funds the Town may provide in its discretion, will be sufficient to repair or restore that portion of the Facilities regarding which such Net Proceeds arose, then the Town may direct the deposit of the Net Proceeds to the Net Proceeds Fund and will then apply the Net Proceeds to repair or restoration. The Town must act with due diligence and in a commercially reasonable manner to provide for the repair and restoration.

(ii) The Trustee will disburse Net Proceeds for the payment of such costs upon receipt of requisitions substantially in the form of Exhibit C to the Trust Agreement.

(iii) The Town will not be entitled to any reimbursement of any supplemental funds it provides under 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. 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 Mortgaged Property.

(c) If the Town determines that the Net Proceeds and other funds will not be sufficient for the purposes described in (a) or (b), then the Town must direct the Trustee

to deposit the Net Proceeds into the Prepayment Account in the Bond Fund and use the Net Proceeds to prepay or defease the 2012 Bonds in whole or in part pursuant to Section 3.01 and Article VII of the Trust Agreement and as directed by a County Representative.

(d) Nothing in this Section, however, creates an option in the Town or any other party to provide for the early payment of the 2012 Bonds not provided for in Article III of the Trust Agreement.

## **ARTICLE VI**

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

**6.1. 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 political subdivision 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 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 Company and the Trustee, as the Company's assignee) in accordance with their respective terms, subject to bankruptcy, insolvency and other similar laws affecting the enforcement of creditors' rights generally and applicable principles of equity.

(c) The Town requires no further approval or consent from any governmental authority with respect to the Town's entering into or performing under this Contract or the Deed of Trust.

(d) 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 or the Deed of Trust. The Town's performance of its obligations under this Contract and the Deed of Trust, and compliance with their respective provisions, under the contemplated circumstances, 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 in such instruments), 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.

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

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

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

(h) The Town believes funds will be available to satisfy all of its obligations under this Contract.

(i) The Town will not take or permit, or omit to take or cause to be taken, any action that would cause the Obligations to be "arbitrage bonds" or "private activity bonds" within the meaning of the Code. If the Town does take or permit, or take or cause to be taken, any such action, the Town must take (or cause to be taken) all lawful actions within its power reasonably necessary to rescind or correct such actions or omissions promptly upon having knowledge of the effect of such actions.

(j) The Facilities have been 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.

**6.2. Town's Undertaking for Continuing Disclosure.** The Town undertakes, for the benefit of the beneficial owners of the Bonds, to provide the following items and information to the Municipal Securities Rulemaking Board ("MSRB"):

(a) by not later than seven months from the end of each of the Town's Fiscal Years, 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, (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 2012 Bonds under the captions “THE TOWN – Debt Information” and “ – Tax Information” (excluding any information on overlapping or underlying debt) to the extent such items are not included in the audited financial statements referred to in (a) above;

(c) in a timely manner, not in excess of ten business days after the occurrence of the event, notice of any of the following events with respect to the 2012 Bonds:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults, if material;
- (3) unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on any credit enhancements reflecting financial difficulties;
- (5) substitution of credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the 2012 Bonds, or other material events affecting the tax status of the 2012 Bonds;
- (7) modifications to rights of the beneficial owners of the 2012 Bonds, if material;
- (8) calls for redemption of 2012 Bonds (other than calls pursuant to sinking fund prepayment), if material, and tender offers;
- (9) defeasances;
- (10) release, substitution or sale of any property securing repayment of the 2012 Bonds, if material;
- (11) rating changes;
- (12) bankruptcy, insolvency, receivership or similar proceedings related to the Town, the Company or any other person or entity that may at any time become legally obligated to make Installment Payments (collectively, the “Obligated Persons”);
- (13) The consummation of a merger, consolidation, or acquisition involving an Obligated Person or the sale of all or substantially all of the assets of the Obligated Person, other than in the ordinary course of business, the entry into a definitive agreement

to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(14) Appointment of a successor or additional trustee or the change of name of a trustee, if material; and

(d) in a timely manner, 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.

For the purposes of the events identified in subparagraph (12) above, the event is considered to occur when any of the following occurs: the appointment of a receiver, fiscal agent or similar officer for an Obligated Person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Obligated Person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Obligated Person.

If the Town fails to comply with the undertaking described above, the Company may take action to protect and enforce the rights of all the beneficial owners of the 2012 Bonds 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 2012 Bonds. All actions will be instituted, had and maintained in the manner provided in this paragraph for the benefit of all beneficial owners of the 2012 Bonds.

The Town must provide the documents and other information referred to above to the MSRB in an electronic format as prescribed by the MSRB and accompanied by identifying information as prescribed by the MSRB.

The Town may discharge its undertaking as set forth in this Section by providing such information in any manner that the United States Securities and Exchange Commission subsequently authorizes in lieu of the manner described above.

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 2012 Bonds 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 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.

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

(a) The Company 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 Company 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 of such instruments, nor the consummation of the contemplated transactions, results in a breach of the terms, conditions or provisions of the Company's charter or bylaws or any agreement or instrument to which the Company is now a party or by which the Company is bound, or constitutes a default under any of the foregoing.

(c) To the best of the Company's knowledge after 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 Company challenging the validity or enforceability of this Contract, the Trust Agreement or any documents relating to the transactions contemplated by such agreements, or the Company's performance of its obligations under such agreements.

**ARTICLE VII**  
**INDEMNIFICATION**

To the extent permitted by law, the Town agrees to indemnify, protect and save (a) the Company 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 Site or the Facilities or the transactions contemplated by this Contract. The indemnification arising under this Article will survive the Contract's termination.

The parties intend that the Trustee will be a third-party beneficiary of the Town's obligations under this Article VII.

**ARTICLE VIII**  
**DISCLAIMER OF WARRANTIES**

The Town acknowledges that neither the Company nor the Trustee has designed the Facilities, that neither the Company nor the Trustee has supplied any plans or specifications with respect thereto and that neither the Company nor the Trustee (a) is a manufacturer of, nor 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 COMPANY MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO ANY OF 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; 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 Company.

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

## **ARTICLE IX**

### **DEFAULT AND REMEDIES**

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

- (a) The Town's failure to make any Installment Payment by the 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 90 days after written notice specifying such failure and requesting that it be remedied has been given to the Town, unless the Company 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 90-day notice period, no Event of Default will be deemed to have occurred so long as the Town diligently pursues the corrective action.
- (d) 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.
- (e) 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.

**9.2. Remedies on Default.** Upon the continuation of any Event of Default, the Company 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 Company's exercise of remedies is subject to the limitations set forth in Article XI.

**9.3. 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 X** **ASSIGNMENTS**

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

**10.2. Company's Assignment.** The Company will assign substantially all of its rights under this Contract, including rights to receive and enforce Contract Payments (but excluding the Company'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 Company. 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). The Company and the Town agree that the Trustee may grant consent in any circumstance where the Company's consent is required, unless this Contract explicitly states otherwise.

The Trustee (or any subsequent assignor) may make further assignment of the Company's rights only with the Town's prior written consent. The Trustee (or any subsequent assignor) must provide notice of any further assignment to the Town. The Town must keep a complete and accurate record of all assignments. After the giving of any such notice, the Town must thereafter make all payments in accordance with the notice to the assignee named therein and must, if so requested, acknowledge such

assignment in writing, but such acknowledgment should in no way be deemed necessary to make the assignment effective as between the assignor and assignee.

## **ARTICLE XI** **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 should 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 should 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 should be construed to pledge or to create a lien on any class or source of the Town's moneys (other than Net Proceeds and the funds and accounts established pursuant to the Trust Agreement as may be provided in the Trust Agreement), nor does 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 this Contract, the Trust Agreement, the Deed of Trust and the 2012 Bonds 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 takes priority.

## **ARTICLE XII** **MISCELLANEOUS**

**12.1. Town Accepts Trust Agreement Terms.** The Town accepts and agrees to be bound by its responsibilities provided for under the Trust Agreement.

**12.2. Notices.**

(a) Any communication provided for in this Contract must be in writing (not to include facsimile transmission or electronic mail).

(b) Any communication under this Contract will be sufficiently given and deemed given when delivered by hand or on the date shown as the delivery date on a United States Postal Service certified mail receipt, or a delivery receipt (or similar evidence) from a national commercial package delivery service, if addressed as follows:

(i) if to the Town, to Chapel Hill Town Manager, Re: Notice under 2012 LOBs Financing Contract, Town Hall, 405 Martin Luther King, Jr. Boulevard, Chapel Hill, NC 27514

(ii) if to the Company, to Town of Chapel Hill Public Facilities Corporation, c/o Chapel Hill Town Manager, Re: Notice under 2012 LOBs Financing Contract, Town Hall, 405 Martin Luther King, Jr. Boulevard, Chapel Hill, NC 27514

(iii) if to the Trustee, to National Trust Company, N.A.,

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(c) Any communication sent under this Contract to the Company 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.

**12.3. 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.

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

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

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

**12.7. Binding Effect.** Subject to the specific provisions of this Contract, this Contract is binding upon, inures to the benefit of and is enforceable by the parties and their respective successors and assigns.

**12.8. Third-Party Beneficiaries.** The parties intend that the Trustee is a third-party beneficiary of the obligations of all the parties under this Contract.

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

**12.10. Limitation on Liability of Officers and Agents.** No officer, agent or employee of the Town, of the LGC or the Company 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 are deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section does not relieve any such officer, agent or employee from the performance of any official duty provided by law.

**12.11. 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.

**12.12. Definitions.** Unless the context clearly requires otherwise, capitalized terms used in this Contract and not otherwise defined have the meanings set forth in Exhibit A. In addition, all capitalized terms used in this Contract and not otherwise defined have the meanings assigned to such terms in the Trust Agreement.

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

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

(SEAL)

ATTEST:

**TOWN OF CHAPEL HILL  
NORTH CAROLINA**

\_\_\_\_\_  
Sabrina Oliver  
Town Clerk

By: \_\_\_\_\_  
Roger Stancil  
Town Manager

(SEAL)

ATTEST:

**TOWN OF CHAPEL HILL  
PUBLIC FACILITIES CORPORATION**

\_\_\_\_\_  
XXXXXXXXXXXXX  
Secretary

By: \_\_\_\_\_  
XXXXXXXXXXXXX  
President

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

T. Vance Holloman  
Secretary, North Carolina  
Local Government Commission

By \_\_\_\_\_  
[T. Vance Holloman or  
Designated Assistant]

[Installment Financing Contract dated as of June 1, 2012]

- Exhibits –  
A - Definitions  
B - Payment schedule

## **EXHIBIT A – Definitions**

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

"2012 Bonds" has the meaning ascribed to that term in the Trust Agreement.

"Additional Payments" means the reasonable and customary fees and expenses of the Company or the Trustee, any of the Company'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 Company'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 Company 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 fails 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 Company from time to time to perform and carry out the duties imposed on an Appropriate Consultant.

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

"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.

"Closing Date" means the date on which this Contract is first executed and delivered by the parties, which the parties expect to be on or about June \_\_\_\_, 2012.

"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.

"Contract Payments" means Installment Payments and Additional Payments.

"Deed of Trust" means the Deed of Trust and Security Agreement, dated as of June 1, 2012, from the Town to a deed of trust trustee for the benefit of the Company 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 9.1.

"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, or any subsequent action by the Town Council to delete or reduce such an appropriation in an approved Town budget, all as contemplated in Section 2.5.

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

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

"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 Company.

"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, or (d) 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 Company 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.

"Payment Date" means each date on which an Installment Payment is due from the Town, as specified in Exhibit B.

"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 Section 3.8, (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 1-6(e)(i) of the Deed of Trust.

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

"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 Company and the Trustee, as it may be duly amended or supplemented.

"Trustee" means National Trust Company, N.A, and its successors as Trustee under the Trust Agreement.

## **EXHIBIT B – Schedule of Installment Payments**

Payments are due on the 25<sup>th</sup> day of the month preceding each June 1 and December 1, beginning with December 1, 2012.

<b>25th day of the month preceding</b>	<b>Principal Component (\$)</b>	<b>Interest component (\$)</b>	<b>Total Installment Payment (\$)</b>
12/1/2012	-- 0 --		
6/1/2013			
12/1/2013	-- 0 --		
6/1/2014			
12/1/2014	-- 0 --		
6/1/2015			
12/1/2015	-- 0 --		
6/1/2016			
12/1/2016	-- 0 --		
6/1/2017			
12/1/2017	-- 0 --		
6/1/2018			
12/1/2018	-- 0 --		
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6/1/2022			
12/1/2023	-- 0 --		
6/1/2024			
12/1/2024	-- 0 --		
6/1/2025			
12/1/2025	-- 0 --		
6/1/2026			
12/1/2026	-- 0 --		
6/1/2027			
12/1/2027	-- 0 --		
6/1/2028			
12/1/2028	-- 0 --		
6/1/2029			

12/1/2029	-- 0 --		
6/1/2030			
12/1/2030	-- 0 --		
6/1/2031			
12/1/2031	-- 0 --		
6/1/2032			

The Town's obligation on each Payment Date is the amount shown above as the "total installment payment" for such date, subject to adjustment as provided in Section 2.1.

**SHLF draft of May 22, 2012**

*Prepared by and return after recording to:*

Robert M. Jessup Jr.  
Sanford Holshouser LLP  
209 Lloyd St., Suite 350  
Carrboro, NC 27510

<b>STATE OF NORTH CAROLINA</b>	)	<b>The collateral is or includes</b>
	)	<b>fixtures.</b>
	)	
<b>ORANGE COUNTY</b>	)	<b>This Deed of Trust</b>
	)	<b>secures future advances.</b>

**DEED OF TRUST AND SECURITY AGREEMENT**

**THIS DEED OF TRUST AND SECURITY AGREEMENT** (this "Deed of Trust") is dated as of June 1, 2012, and is granted by the **TOWN OF CHAPEL HILL, NORTH CAROLINA**, a municipal corporation of the State of North Carolina (the "Town"), to \_\_\_\_\_, a resident of \_\_\_\_\_ County, North Carolina (the "Deed of Trust Trustee"), for the benefit of **TOWN OF CHAPEL HILL PUBLIC FACILITIES CORPORATION**, a North Carolina nonprofit corporation (the "Company").

**RECITALS:**

The Company is advancing [\$30,000,000] to the Town pursuant to an Installment Financing Contract dated as of June 1, 2012 (the "Financing Contract"), between the Town and the Company. The Town will use these funds, together with other available funds, to acquire, construct and improve parking facilities in the Town and to refinance existing obligations, as well as to pay financing costs and other related costs.

As a condition to entering into the Financing Contract, the Company has required the Town to secure its obligations under the Financing Contract by this conveyance of Town Operations Center on Millhouse Road (the "Facilities," as more particularly defined below), along with the real property associated with the Facilities and the other "Mortgaged Property," as defined below.

The Facilities are located on the real property described in Exhibit A. The Town is the record owner of that real property.

This Deed of Trust is given to secure current advances under the Financing Contract of [\$30,000,000] as well as potential future advances in the total maximum principal amount of [\$50,000,000]. The time during which such future advances may be made is 30 years from June 1, 2012. The current scheduled date for final repayment is on or about June 1, 2032.

*See Section 6-2(c) below for information on the assignment of the Company's rights under this Deed of Trust.*

**NOW, THEREFORE,**

(1) in consideration of the execution and delivery of the Financing Contract and other good and valuable consideration, the receipt and sufficiency of which are acknowledged,

(2) to secure the Town's performance of all its covenants under this Deed of Trust and under the Financing Contract, including the repayment of amounts advanced pursuant to the Financing Contract, and

(3) to charge the Mortgaged Property, as defined below, with such payment and performance,

the Town sells, grants and conveys to the Deed of Trust Trustee, \_\_\_\_\_ successors and assigns forever, in trust, with power of sale, the following (collectively, the "Mortgaged Property"):

(a) (i) the property described in Exhibit A, and (ii) all real property hereafter acquired by the Town in exchange for, or in consideration of the exchange of, or with the proceeds from any disposition of, all or any part of any property described in this subparagraph, and in all cases together with all easements, rights, liberties, rights-of-way and appurtenances belonging to any such property (collectively, the "Site"); and

(b) all improvements and fixtures now or hereafter attached to or used in or on the Site, including (i) all renewals and replacements thereof and all additions thereto, (ii) all articles in substitution thereof, (iii) all building materials for improvement, modification or repair of such improvements upon their delivery to the Site, and (iv) all proceeds of all the foregoing in whatever form resulting from the loss or disposition of the foregoing, including all proceeds of and unearned premiums for any insurance policies covering the Site and such improvements, proceeds of title insurance and payments related to the exercise of condemnation or eminent domain authority, and all judgments or settlements in lieu of any of the foregoing (collectively, the "Facilities");

**TO HAVE AND TO HOLD** the Mortgaged Property with all privileges and appurtenances thereunto belonging, to the Deed of Trust Trustee, \_\_\_\_\_ successors and

assigns forever, upon the trusts, terms and conditions and for the purposes set out below, in fee simple in trust;

**SUBJECT, HOWEVER,** to the encumbrances described in Exhibit B (the "Existing Encumbrances");

**BUT THIS CONVEYANCE IS MADE UPON THIS SPECIAL TRUST:** if the Town pays its "Obligations," as defined below, in full in accordance with the Financing Contract and this Deed of Trust, and the Town complies with all of the terms, covenants and conditions of the Financing Contract and this Deed of Trust, this conveyance will be null and void and will be canceled of record at the Town's request and cost, and title will revert as provided by law;

**BUT IF, HOWEVER, THERE OCCURS AN EVENT OF DEFAULT UNDER THE FINANCING CONTRACT,** then the Company will have the remedies provided for in this Deed of Trust, including directing the Deed of Trust Trustee to sell the Mortgaged Property under power of sale.

**THE TOWN COVENANTS AND AGREES** with the Deed of Trust Trustee and the Company (and their respective heirs, successors and assigns), in consideration of the foregoing, as follows:

## **1. Security Provided By This Deed of Trust**

**1-1 Security for Payment and Performance.** This Deed of Trust secures the Town's payment, as and when the same become due and payable, of all amounts payable by the Town under the Financing Contract and this Deed of Trust (the "Obligations") and the Town's timely compliance with all terms, covenants and conditions of (a) the Financing Contract, (b) this Deed of Trust, (c) the Trust Agreement dated as of June 1, 2012 (the "Trust Agreement"), between the Company and the trustee named therein, (d) the [\$30,000,000] aggregate principal amount Limited Obligation Bonds (the "Bonds") executed and delivered pursuant to the Trust Agreement, and (e) any Additional Bonds, as defined in the Trust Agreement, as may be executed and delivered pursuant to the Trust Agreement.

**1-2 Present and Future Advances.** This Deed of Trust is executed to secure all the Town's present and future obligations to the Company related to the Mortgaged Property. The making of future advances is subject to the terms and conditions of the Financing Contract, the Trust Agreement and this Deed of Trust. The amount of the present obligations secured by this Agreement is [Thirty Million] Dollars ([\$30,000,000]) and the total amount, including present and future obligations, that may be secured by this Agreement at any one time is [Fifty Million] Dollars ([\$50,000,000]). The period within which future obligations may be incurred is 30 years from June 1, 2012.

The provisions in this Deed of Trust for future advances are made only to facilitate the possible financing of additions or improvements to the Facilities, to refinance the present obligations or otherwise as provided for under the Trust Agreement. As of the date of this Deed of Trust there is no agreement or obligation by the Town to borrow, or for any person to lend, any additional funds beyond the [Thirty Million] Dollars ([\\$30,000,000]) that constitutes the present obligations.

**1-3 Security Interest in Fixtures.** This Deed of Trust is intended to be a security agreement pursuant to the North Carolina Uniform Commercial Code for the “Fixtures,” as defined below, and any portion of the Mortgaged Property deemed to be personal property (the “Personal Property Collateral”). The Town grants to the Company and the Deed of Trust Trustee a security interest in the Personal Property Collateral to secure the Obligations. The Town agrees that the security interest in the Fixtures granted in this Section 1-3 will be in addition to, and not in lieu of, any security interest in the Fixtures acquired by real property law.

The Town agrees to execute, deliver and file, or cause to be filed, in such place or places as may be requested by the Company, the Trustee or the Deed of Trust Trustee, financing statements (including any continuation statements) in such form as such party may reasonably request to evidence the security interest provided for in this Section. Upon the occurrence of an Event of Default under this Deed of Trust, the Company or the Deed of Trust Trustee is entitled to exercise all rights and remedies of a secured party under the North Carolina Uniform Commercial Code and may proceed as to the Personal Property Collateral in the same manner as provided herein for the real property.

The “Fixtures” are all articles of personal property attached or affixed to the Facilities, including but not limited to all apparatus, machinery, motors, elevators, fittings and all plumbing, heating, lighting, electrical, laundry, ventilating, refrigerating, incinerating, air-conditioning, fire and theft protection and sprinkler equipment, including all renewals and replacements thereof and all additions thereto, and all articles in substitution thereof, and all proceeds of all the foregoing in whatever form.

The Town is not obliged to renew, repair or replace any inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary Fixture. If the Town determines that any Fixture has become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary, the Town may remove such Fixture from the Facilities and sell, trade-in, exchange or otherwise dispose of it (as a whole or in part), with an amount equivalent to the fair market value of the Fixture as removed deemed to be Net Proceeds and subject to the provisions of Sections 6.2 or 6.3 of the Financing Contract.

**1-4 Town’s Obligation Limited.** Notwithstanding any other provision of this Deed of Trust, the parties intend that this transaction will comply with North

Carolina General Statutes Section 160-20. No deficiency judgment may be entered against the Town in violation of such Section 160A-20.

No provision of this Deed of Trust should 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 Deed of Trust should be construed or interpreted as an illegal delegation of governmental powers, nor 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 contingently, to secure any moneys due under this Deed of Trust.

No provision of this Deed of Trust restricts 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," as defined in Section 2-1, restrict the incurrence of additional obligations secured by the Mortgaged Property).

To the extent of any conflict between this Section and any other provision of this Deed of Trust, this Section takes priority.

**1-5 Town's Continuing Obligations.** The Town remains liable for full performance of all its covenants under the Financing Contract and this Deed of Trust (subject to the limitations described in Section 1-4), notwithstanding the occurrence of any event or circumstances whatsoever, including any of the following:

- (a) Any act or omission by the Company, or the Company's waiver of any right granted or remedy available to it;
- (b) The forbearance or extension of time for payment or performance of any obligation under this Deed of Trust, whether granted to the Town or any other person;
- (c) The sale or release of all or part of the Mortgaged Property or the release of any party who assumes all or any part of such performance; or
- (d) Another party's assumption of any of the Town's obligations under this Deed of Trust.

**1-6 Releases; Grants of Easements.**

(a) So long as no Event of Default is continuing, the Company and the Deed of Trust Trustee are required, upon the Town's request and at any time, to execute and deliver all documents necessary to effect the release of all or a portion of the Mortgaged Property from the lien of this Deed of Trust upon the Town's compliance with the requirements of this Section.

(b) In connection with the release of a portion (but less than all) of the Mortgaged Property, the Town must file with the Company and the Deed of Trust Trustee evidence that the appraised, tax or insured value of that portion of the Mortgaged Property that is proposed as the portion that is to remain subject to the lien of the Deed of Trust is not less than 50% of the aggregate outstanding principal component of the Installment Payments.

(c) In the case of a proposed release of all the Mortgaged Property, the Town must pay to the Trustee (or other fiduciary) an amount (i) which is sufficient to provide for the payment in full of all Outstanding Bonds in accordance with Article III and Article VII (if applicable) of the Trust Agreement and (ii) which is required to be used for such payment.

(d) In any event, the Town must file with the Company and the Deed of Trust Trustee (i) a certified copy of a Town Council resolution stating the purpose for which the Town desires such release, giving a brief and general description of the portion of the Mortgaged Property to be released and requesting such release, (ii) a copy of the proposed instrument of grant or release, including a complete legal description of the property to be released, (iii) a written application signed by a Town Representative requesting such instrument, and (iv) a certificate executed by a Town Representative that no Event of Default is continuing and that the grant or release will not materially impair the intended use of the Facilities.

(e) In addition to the provisions for release described above,

(i) The Town may from time to time grant easements, licenses, rights-of-way and other similar rights with respect to any part of the Mortgaged Property, and the Town may release such interests, with or without consideration. The Town must send notice of any such grant or release to the Company, along with a certificate that such grant or release will not materially impair the intended use of the Facilities.

(ii) The Town may dispose of any inadequate, obsolete, worn-out, undesirable or unnecessary Fixture in accordance with Section 1-3.

## **2. Town's Payment Obligation; Company's Advances**

**2-1 Payment of Obligations; Compliance with Covenants.** The Town must pay the Obligations as and when the same become due and payable in the manner set forth in this Deed of Trust and in the Financing Contract, and must comply in all respects with all of the terms, covenants, and conditions contained in this Deed of Trust, in the Financing Contract, in the Trust Agreement and in the Bonds (together, the "Documents").

**2-2 Taxes and Other Governmental Charges.** The Town must pay, or cause to be paid, all taxes, assessments and other governmental charges related to the Facilities as provided in the Financing Contract.

**2-3 Insurance.** The Town must obtain and continually maintain the insurance coverages (or alternative risk coverages) required by the Financing Contract.

**2-4 Net Proceeds.** The Net Proceeds of (a) any payments on insurance policies arising from any damage to the Mortgaged Property or (b) any action or proceeding in condemnation or related to condemnation, as provided for in the Financing Contract in any case will be payable and applied as provided in the Financing Contract.

**2-5 Payment of Costs and Attorney's Fees.** If the Deed of Trust Trustee or the Company employs an attorney to assist in the enforcement or collection of any Obligations, or if the Deed of Trust Trustee or the Company voluntarily or otherwise becomes a party or parties to any suit or legal proceeding (including a proceeding conducted under any state or federal bankruptcy or insolvency statute) to protect the Mortgaged Property, to protect the lien of this Deed of Trust, to enforce collection of the Obligations or to enforce compliance by the Town with any of the provisions of the Documents, the Town will pay reasonable attorneys' fees and all of the costs that may reasonably be incurred (whether or not any suit or proceeding is commenced), and such fees and costs (together with interest at the annual rate of 4.00%) are secured as Obligations under this Deed of Trust (but if any such proceeding is adverse to the Town, then only if the Deed of Trust Trustee or the Company, as the case may be, is a prevailing party in such action).

**2-6 Advances for Performance of Town's Obligations.** If the Town fails to perform any of its obligations under the Documents, the Deed of Trust Trustee and the Company are authorized, but not obligated, to perform or cause to be performed such obligation. All such expenditures, together with interest thereon at the annual rate of 4.00%, are secured as Obligations under this Deed of Trust.

### **3. Town's Other Covenants**

**3-1 Title Covenants.** The Town covenants with the Deed of Trust Trustee and the Company that the Town is seized of and has the right to convey the Mortgaged Property in fee simple, that the Mortgaged Property is free and clear of all liens and encumbrances other than Permitted Encumbrances, as defined in the Financing Contract, that title to the Mortgaged Property is marketable, and that the Town will forever warrant and defend title to the Mortgaged Property (subject to the Permitted Encumbrances, as defined in the Financing Contract) against the claims of all persons.

**3-2 Maintenance and Repairs; Additions and Demolition.** The Town must keep the Mortgaged Property in good order and repair (reasonable wear and tear

excepted) and in good operating condition, will not commit or permit any waste or any other thing to occur whereby the value or usefulness of the Mortgaged Property might be impaired, and must make from time to time all necessary or appropriate repairs.

### **3-3 Environmental Representations, Warranties, Covenants and Indemnification.**

(a) The Town warrants and represents as follows:

(i) The Town has no knowledge and, after reasonable inquiry, no reason to believe (A) that any industrial use has been made of the Mortgaged Property, (B) that the Mortgaged Property has been used for the storage, treatment or disposal of chemicals or any wastes or materials that are classified by federal, State or local laws as hazardous or toxic substances, (C) that any manufacturing, landfilling or chemical production has occurred on the Mortgaged Property, or (D) that there is any asbestos or other contaminant on, in or under the Mortgaged Property.

(ii) To the Town's knowledge, the Mortgaged Property is in compliance with all federal, State and local environmental laws and regulations. The Town will keep the Mortgaged Property, and the activities at the Mortgaged Property, in compliance with all such environmental laws and regulations. The Town will, in a timely manner, take all lawful action necessary to maintain such compliance or to remedy any lack of such compliance. Any hazardous materials or substances kept on the Mortgaged Property must be those used in the routine maintenance and operation of the Facilities and the Site and must be used in accordance with label instructions.

(iii) The Town will promptly notify the Company of any change in the nature or extent of any hazardous materials, substances or wastes maintained on, in or under the Mortgaged Property or used in connection therewith, and will promptly send to the Company copies of any citations, orders, notices or other material governmental or other communication received with respect to any other hazardous materials, substances, wastes or other environmentally regulated substances affecting the Mortgaged Property.

(b) To the extent permitted by law, the Town will indemnify and hold the Company and the Deed of Trust Trustee harmless from and against (i) any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including clean-up costs), judgments and expenses (including attorneys', consultants' or experts' fees and expenses) of every kind and nature suffered by or asserted against the Company or the Deed of Trust Trustee as a direct or indirect result of any warranty or representation made by the Town in subsection (a) being false or untrue in any material respect, or (ii) any requirement under any law or regulation which requires the elimination or removal of any

hazardous materials, substances, wastes or other environmentally regulated substances by the Company, the Town or any transferee or assignee of the Town of the Company.

(c) The Town's obligations under this Section continue in effect notwithstanding satisfaction of the Obligations or foreclosure under this Deed of Trust or delivery of a deed in lieu of foreclosure.

#### **4. The Deed of Trust Trustee**

**4-1 Deed of Trust Trustee' Liability.** The Deed of Trust Trustee will suffer no liability by virtue of \_\_\_\_ acceptance of this trust except such as may be incurred as a result of any failure on \_\_\_\_ part to account for the proceeds of any sale under this Deed of Trust.

**4-2 Substitute Trustees.** If the Deed of Trust Trustee dies, becomes incapable of acting or renounces \_\_\_\_ trust, or if for any reason the Company desires to replace the Deed of Trust Trustee, then the Company has the unqualified right to appoint one or more substitute or successor Deed of Trust Trustees by instruments filed for registration in the office of the Register of Deeds where this Deed of Trust is recorded. Any such removal or appointment may be made at any time without notice, without specifying any reason therefor and without any court approval. Any such appointee becomes vested with title to the Mortgaged Property and with all rights, powers and duties conferred upon the Deed of Trust Trustee by this Deed of Trust in the same manner and to the same effect as though such Deed of Trust Trustee were named as the original Deed of Trust Trustee.

#### **5. Defaults and Remedies; Foreclosure**

**5-1 Defaults and Remedies.** Upon the occurrence and continuation of an Event of Default, the Company may pursue its rights and remedies as provided under the Financing Contract and this Deed of Trust.

#### **5-2 Foreclosure; Sale under Power of Sale.**

(a) *Right to foreclosure or sale.* Upon the continuation of an Event of Default, at the Company's request, the Deed of Trust Trustee must foreclose this Deed of Trust by judicial proceedings or, at the Company's option, the Deed of Trust Trustee must sell (and is empowered to sell) all or any part of the Mortgaged Property (and if in part, any such sale in no way adversely affects the lien created by this Deed of Trust against the remainder) at public sale to the last and highest bidder for cash (free of any equity of redemption, homestead, dower, curtesy or other exemption, all of which the Town expressly waives to the extent permitted by law) after compliance with applicable State laws relating to foreclosure sales under power of sale. The Deed of Trust Trustee must execute and deliver a proper deed or deeds to the successful purchaser at such sale.

(b) *Company's Bid.* The Company may bid and become the purchaser at any sale under this Deed of Trust. In lieu of paying cash, the Company may make settlement for the purchase price by crediting against the Obligations the sale price net of sale expenses, including the Deed of Trust Trustee's commission, and after payment of such taxes and assessments as may be a lien on the Mortgaged Property superior to the lien of this Deed of Trust (unless the Mortgaged Property is sold subject to such liens and assessments, as provided by law).

(c) *Town's Bid.* The Town may bid for all or any part or parts of the Mortgaged Property at any foreclosure sale, but the Town may not bid less than an amount sufficient to provide for full payment of the Obligations unless the Company otherwise consents in writing.

(d) *Successful bidder's deposit.* At any sale the Deed of Trust Trustee may, at \_\_\_\_ option, require any successful bidder (other than the Company) immediately to make a deposit with the Deed of Trust Trustee against the successful bid in the form of cash or a certified check in an amount of up to 5% of the sale price. Notice of any such requirement need not be included in the advertisement of the notice of such sale.

(e) *Application of sale proceeds.* The Deed of Trust Trustee must apply the proceeds of any foreclosure sale in the manner and in the order prescribed by State law, it being agreed (i) that the expenses of any such sale will include a commission to the Deed of Trust Trustee equal to one-half of one percent of the gross sales price (but not exceeding a total of \$25,000) for all services performed by the Deed of Trust Trustee under this Deed of Trust, and (ii) that any proceeds of any such sale remaining after the payment of all obligations and the prior application thereof in accordance with State law will be paid to the Town.

**5-3 Possession of Mortgaged Property.** Upon the continuation of any Event of Default, the Company, to the extent permitted by law, is authorized to (a) take possession of the Mortgaged Property, with or without legal action, (b) lease the Mortgaged Property, (c) collect all rents and profits therefrom, with or without taking possession of the Mortgaged Property, and (d) after deducting all costs of collection and administration expenses, apply the net rents and profits to the payment of necessary maintenance and insurance costs, and then apply such amounts to the Town's account and in reduction of the Obligations in accordance with the provisions of Section 8.11 of the Trust Agreement. The Company will be liable to account only for rents and profits it actually receives.

**5-4 Execution on Personal Property.** Upon the continuation of any Event of Default and in addition to all other remedies granted in this Agreement, the Company has all the rights and remedies of a secured party under the UCC with respect to the Personal Property Collateral and may proceed as to the Personal Property Collateral in the same

manner as provided in this Deed of Trust for the real property portion, with the Company having no obligation to proceed against real or personal property in preference to the other.

## **6. Miscellaneous**

### **6-1 Notices.**

(a) Any communication provided for in this Deed of Trust must be in writing (not to include facsimile transmission or electronic mail).

(b) Any communication under this Deed of Trust will be sufficiently given and deemed given when delivered by hand or on the date shown as the delivery date on a United States Postal Service certified mail receipt, or a delivery receipt (or similar evidence) from a national commercial package delivery service, if addressed as follows:

(i) if to the Town, to Chapel Hill Town Manager, Re: Notice under 2012 LOBs Deed of Trust, Town Hall, 405 Martin Luther King, Jr. Boulevard, Chapel Hill, NC 27514

(ii) if to the Deed of Trust Trustee, to \_\_\_\_\_

(iii) if to the Company, to Town of Chapel Hill Public Facilities Corporation, c/o Chapel Hill Town Manager, Re: Notice under 2012 LOBs Deed of Trust, Town Hall, 405 Martin Luther King, Jr. Boulevard, Chapel Hill, NC 27514

(iv) if to the Trustee, to \_\_\_\_\_

(c) Any communication sent under this Deed of Trust must be sent to the Town and the Trustee along with any other parties to which the communication may be addressed.

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

### **6-2 Successors; Assignments.**

(a) This Deed of Trust is binding upon, will inure to the benefit of, and is enforceable by the Town, the Deed of Trust Trustee, the Company and any registered owner of Bonds, and \_\_\_\_\_ respective successors and assigns.

(b) Except as otherwise provided in this Deed of Trust or in the Financing Contract, the Town may not sell, lease, transfer or otherwise dispose of all or any part of

the Mortgaged Property or any interest therein without the Company's prior written consent. The Company must not unreasonably withhold its consent.

**(c) The Company is assigning substantially all of its rights under this Deed of Trust and under the Financing Contract to the Trustee pursuant to the Trust Agreement, without recourse against the Company. The Trustee is entitled to all the rights provided to the Company under this Deed of Trust, except for those rights not assigned to the Trustee under the Trust Agreement.**

**6-3 No Marshalling.** The Town waives any and all rights to require marshalling of assets in connection with the exercise of any remedies provided in this Deed of Trust or as permitted by law.

**6-4 Definitions.** All capitalized terms used in this Deed of Trust and not otherwise defined have the meanings ascribed to them in the Financing Contract or the Trust Agreement.

**6-5 Governing Law; Forum.** The Town, the Company and the Deed of Trust Trustee intend that North Carolina law will govern the interpretation of this Deed of Trust. To the extent permitted by law, the Town, the Company and the Deed of Trust Trustee agree that any action brought with respect to this Deed of Trust must be brought in the North Carolina General Court of Justice in Orange County, North Carolina.

**6-6 Limitation of Liability of Officers and Agents.** No officer, agent or employee of the Town, the Company or the Trustee (including the Deed of Trust Trustee) will be subject to any personal liability or accountability by reason of the execution of this Deed of Trust or any other documents related to the transactions contemplated by this Deed of Trust. Such officers or agents are deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section does not relieve any such officer, agent or employee from the performance of any official duty provided by law.

**6-7 Covenants Running with the Land.** All covenants contained in this Deed of Trust or in the Financing Contract run with the real estate encumbered by this Deed of Trust.

**6-8 Further Instruments.** Upon the request of the Company or the Deed of Trust Trustee, the Town will execute, acknowledge and deliver such further instruments reasonably necessary or desired by the Company or the Deed of Trust Trustee to carry out more effectively the purposes of this Deed of Trust or any other document related to the transactions contemplated by this Deed of Trust, and to 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 Deed of Trust.

**6-9 Severability.** If any provision of this Deed of Trust is determined to be unenforceable, that will not affect any other provision of this Deed of Trust.

**6-10 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 is not a Business Day, such payment may be made or act performed or right exercised on or before the next succeeding Business Day.

**6-11 Entire Agreement; Amendments.** This Deed of Trust, together with the other Documents, constitutes the Town's entire agreement with the Company, the Trustee and the Deed of Trust Trustee with respect to its general subject matter. This Deed of Trust may not be changed except in accordance with Article X of the Trust Agreement.

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

IN WITNESS WHEREOF, the Town has caused this instrument to be signed, sealed and delivered by duly authorized officers, as of the day and year first above written.

(SEAL)

ATTEST:

TOWN OF CHAPEL HILL,  
NORTH CAROLINA

\_\_\_\_\_  
Sabrina Oliver  
Town Clerk

By: \_\_\_\_\_  
Roger Stancil  
Town Manager

\* \* \* \* \*

STATE OF NORTH CAROLINA;  
ORANGE COUNTY

I, a Notary Public of such County and State, certify that Roger Stancil and Sabrina Oliver personally came before me this day and acknowledged that they are the Town Manager and the Town Clerk, respectively, of the Town of Chapel Hill, North Carolina, and that by authority duly given and as the act of such Town, the foregoing instrument was signed in the Town's name by such Town Manager, sealed with its corporate seal and attested by such Clerk.

WITNESS my hand and official stamp or seal, this \_\_\_\_ day of June, 2012.

[SEAL]

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

My commission expires: \_\_\_\_\_

[Deed of Trust and Security Agreement  
for the benefit of Town of Chapel Hill Public  
Facilities Corporation, dated as of June 1, 2012]

**EXHIBIT A – Site Description**

**EXHIBIT B -- Existing Encumbrances**



SHLF draft of May 22, 2012

# **TRUST AGREEMENT**

**by and between**

**TOWN OF CHAPEL HILL  
PUBLIC FACILITIES CORPORATION**

**and**

**NATIONAL TRUST COMPANY, N.A., as Trustee**

**Relating to the execution and delivery of**

**[\$30,000,000]**

**Limited Obligation Bonds  
Series 2012**

**THIS TRUST AGREEMENT** is dated as of June 1, 2012, is between **TOWN OF CHAPEL HILL PUBLIC FACILITIES CORPORATION**, a North Carolina nonprofit corporation (the "Company"), and **NATIONAL TRUST COMPANY, N.A.**, a national banking association having an office in \_\_\_\_\_, as trustee (the "Trustee"), and relates to the execution and delivery of [\$30,000,000] Limited Obligation Bonds (the "2012 Bonds").

### **RECITALS:**

The Company and the Town of Chapel Hill, North Carolina (the "Town"), have entered into an Installment Financing Contract also dated as of June 1, 2012 (the "Financing Contract"). The Financing Contract provides for the Company's advance to the Town of funds to be used, together with other available funds, to acquire, construct and improve Town parking facilities, to refinance existing Town financing obligations and to pay financing costs.

The Town will make "Installment Payments" under the Financing Contract in amounts sufficient to repay with interest the amount advanced under the Financing Contract. The Installment Payments in turn will be sufficient to pay the components of principal and interest represented by the 2012 Bonds.

The Company is providing for the execution and delivery of the 2012 Bonds to raise funds for the advance under the Financing Contract. The 2012 Bonds evidence proportionate and undivided interests in the Installment Payments.

As security for the payment of the Bonds, the Company has agreed to assign to the Trustee, without recourse against the Company, the specific security described below.

*Unless the context clearly requires otherwise, capitalized terms used in this Trust Agreement 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 Trust Agreement, the parties agree as follows:

## **ARTICLE I**

### **THE BONDS**

**Section 1.01. Provision for 2012 Bonds.** The Company will prepare and execute, and the Trustee will authenticate and deliver, 2012 Bonds in an aggregate principal amount of [\$30,000,000] evidencing proportionate and undivided ownership interests in the Installment Payments.

**Section 1.02. Form and Details; Payments.**

(a) The 2012 Bonds will be dated the date of their initial delivery to their initial purchaser. The 2012 Bonds are issuable only as fully registered Bonds in denominations of \$5,000 and multiples thereof. Each 2012 Bond is payable as to interest (i) from its date, if such 2012 Bond is authenticated prior to the Record Date preceding the first Payment Date, (ii) from the succeeding Payment Date, if such 2012 Bond is authenticated between a Record Date and the succeeding Payment Date, or (iii) otherwise from the Payment Date that is, or immediately precedes, the date on which such 2012 Bond is authenticated; provided, however, that if at the time of authentication of any 2012 Bond payment of interest is in default, such 2012 Bond is payable as to interest from the date to which interest has been paid. Principal, premium, if any, and interest on all Bonds are payable in lawful money of the United States of America.

(b) The 2012 Bonds will be designated "Limited Obligation Bonds, Series 2012," and will be in substantially the form of Exhibit B, with such changes as this Trust Agreement permits or requires. The 2012 Bonds will be numbered R-1 upward for identification. The 2012 Bonds are payable as to interest semiannually until payment on each Payment Date at the following rates (calculated on the basis of a 360-day year consisting of twelve 30-day months), and are payable as to principal on June 1 in the following years and amounts:

<u>Maturity Date</u>	<u>Principal Amount (\$)</u>	<u>Annual Interest Rate (%)</u>
6/1/2013		
6/1/2014		
6/1/2015		
6/1/2016		
6/1/2017		
6/1/2018		
6/1/2019		
6/1/2020		
6/1/2021		
6/1/2022		
6/1/2023		
6/1/2024		
6/1/2025		
6/1/2026		

6/1/2027		
6/1/2028		
6/1/2029		
6/1/2030		
6/1/2031		
6/1/2032		

**Section 1.03. Prepayment Dates and Prices.** The Bonds are subject to prepayment as described in Section 3.01.

**Section 1.04. Delivery of 2012 Bonds.** The Trustee will authenticate and deliver the 2012 Bonds when there have been filed with or delivered to it all of the following items:

(a) Original executed counterparts of this Trust Agreement, the Financing Contract and the Deed of Trust.

(b) Certified copies of resolutions of the Town Council and the Company's governing board, in each case approving substantially final forms of the Financing Contract and the Deed of Trust, authorizing their execution and delivery and approving the execution and delivery of the 2012 Bonds.

(c) Executed 2012 Bonds in the aggregate principal amounts, bearing interest at such rates and payable as to principal and interest at such times and in such amounts as are provided in this Trust Agreement.

(d) A request and authorization, signed by any Company officer and by a Town Representative, to the Trustee to authenticate and deliver the 2012 Bonds to such person or persons named therein upon payment to the Trustee of a specified sum.

(e) A certificate signed by a Town Representative directing the Trustee as to the application of proceeds from the sale of 2012 Bonds.

(f) An Opinion of Special Counsel to the effect that the issuance of the 2012 Bonds has been duly authorized.

**Section 1.05. Additional Bonds.** So long as the Financing Contract remains in effect, the Company may provide for Additional Bonds to be executed and delivered under this Trust Agreement to provide funds (a) to expand or improve the Facilities, (b) to refund any Outstanding Bonds, (c) to pay financing costs or establish reserves in connection with the issuance of Additional Bonds, (d) for any other purpose that may be allowed by law from time to time, including the acquisition and construction

of additional public facilities, whether or not any such facility is related to the Facilities, or (e) for any combination of such purposes.

The Trustee must authenticate and deliver the Additional Bonds when there have been filed with or delivered to it all of the following items:

(i) Certified copies of resolutions of the Town Council and the Company's governing board approving the terms and conditions under which the Additional Bonds are to be issued and authorizing the execution of an amendment to the Financing Contract providing for payment of Contract Payments as required by the issuance of the Additional Bonds.

(ii) An executed copy of the Financing Contract, as so amended, together with evidence satisfactory to the Trustee that the LGC has approved the amendment (if such approval is then required by law).

(iii) An executed copy of an amendment or supplement to this Trust Agreement providing for the issuance of the Additional Bonds, which sets out the payment and other appropriate terms of the Additional Bonds.

(iv) An executed copy of an appropriate amendment or supplement to the Deed of Trust, extending the benefit of the security provided to the Company (or its assignee) to secure the Town's performance of its obligations under the Financing Contract, Trust Agreement and Deed of Trust as so amended or supplemented.

(v) An Opinion of Special Counsel to the effect that the issuance of such Additional Bonds is permitted under the terms of this Trust Agreement and has been duly authorized.

(vi) A certificate signed by a Town Representative directing the Trustee as to the application of the proceeds from the sale of the Additional Bonds.

(vii) Evidence of the issuance or proposed issuance of one or more lender's title insurance policies (or an appropriate endorsement to an existing policy) in favor of the Trustee, in an aggregate face amount of insurance equal to the total amount of Outstanding Bonds plus the principal amount of the Additional Bonds then to be executed and delivered, and including the amendment or supplement to the deed of trust referenced in (iv) above as an insured instrument.

The Trustee is not required to authenticate and deliver any such Additional Bonds if any default under this Trust Agreement or under the Financing Contract is continuing.

Simultaneously with the delivery of the Additional Bonds, the proceeds (including any accrued interest) of the Additional Bonds will be applied as provided in the certificate described in (vi) above.

Each of the Additional Bonds executed and delivered pursuant to this Section evidences an assignment of a proportionate and undivided ownership interest in Installment Payments under the Financing Contract, as amended, proportionately and ratably secured with the 2012 Bonds and all other Additional Bonds, if any, executed and delivered pursuant to this Section, without preference, priority or distinction of any Bonds over any other. No Additional Bonds will be so proportionately and ratably secured without compliance with the provisions of this Section.

After the execution and delivery of any such Additional Bonds, such will be "Bonds" under this Trust Agreement and subject to all of its terms and conditions, except as may be provided in the supplement to this Trust Agreement provided for in (iii) above.

## ARTICLE II

### **ADDITIONAL PROVISIONS FOR THE FORM, REGISTRATION AND EXCHANGE OF BONDS**

**Section 2.01. Book-Entry-Only Form.** (a) The Bonds will be issued by means of a book-entry system, with one certificate for each maturity of each series of the Bonds immobilized at DTC, and not available for distribution to the public. In accordance with DTC's rules and procedures, Bonds registered in the name of DTC or its nominee may be held in custody by the Trustee in lieu of immobilization at DTC.

The parties agree that transfer of beneficial ownership interests in the Bonds in the principal amounts of \$5,000 or any multiple thereof will be effected on the records of DTC and its participants pursuant to rules and procedures established by DTC and its participants. Principal, premium, if any, and interest with respect to the Bonds are payable to DTC or its nominee as registered owner of the Bonds. The parties agree that transfer of principal, premium, if any, and interest to DTC participants will be DTC's responsibility, and transfer of principal, premium, if any, and interest with respect to the Bonds to beneficial owners of the Bonds by DTC participants will be the responsibility of such participants and other nominees of beneficial owners. Neither the Trustee, the Company nor the Town is responsible or liable for such transfer of payments or for maintaining, supervising or reviewing the records maintained by DTC, its participants or persons acting through such participants.

(b) If (i) DTC determines not to continue to act as securities depository for the Bonds or (ii) a Town Representative so directs, the Company must arrange to discontinue the book-entry system with DTC. If the Town designates an alternate qualified securities depository to replace DTC, that depository will replace DTC and all references to DTC in this Trust Agreement will be deemed references to such alternate depository. If the Town does not designate another qualified securities depository to replace DTC, the Company must deliver fully-registered Bonds as replacements for Bonds in book-entry form for the

Trustee to execute and deliver. Such Bonds will be in such form as the Company, with the Town's approval, may hereafter authorize.

**Section 2.02. Execution.** The Bonds must be signed on the Company's behalf by the manual or facsimile signature of its President or any Vice President, and the Company's seal must be impressed or imprinted on the Bonds by facsimile or otherwise and attested by the manual or facsimile signature of the Company's Secretary or any Assistant Secretary. If any Company officer whose signature is on a Bond no longer holds that office at the time the Trustee authenticates a Bond, that Bond is nevertheless valid. If a person signing a Bond is the proper officer on the actual date of execution, that Bond is valid even if that person is not the proper officer on the nominal date of action.

**Section 2.03. Authentication.** Each Bond must bear a certificate of authentication, substantially in the form set forth in Exhibit B, and no Bond is valid until the Trustee has duly executed the certificate of authentication and inserted the authentication date thereon. The Trustee must authenticate each Bond with the signature of an authorized officer or employee, but it is not necessary for the same person to authenticate all of the Bonds. Only such authenticated Bonds are entitled to any right or benefit under this Trust Agreement. A signed certificate on any Bond issued under this Trust Agreement is conclusive evidence that the Bond has been duly issued and is secured by the provisions of this Trust Agreement.

**Section 2.04. Registration and Exchange of Bonds; Persons Treated as Owners.** Bonds may be exchanged and transferred only on a register which the Trustee will establish and maintain. Upon surrender for transfer of any Bond to the Trustee, duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or the Owner's duly authorized attorney, the Trustee will authenticate a new Bond or Bonds in an equal total principal amount and registered in the name of the transferee; provided, however, that the Trustee is not required to exchange or register the transfer of any Bond after the giving of notice calling such Bond for prepayment.

Bonds may be exchanged for an equal total principal amount of Bonds of different but authorized denominations. The Trustee will authenticate and deliver Bonds that the Owner making the exchange is entitled to receive, bearing numbers not then Outstanding.

The Trustee will deliver to the transferee any applicable notice of prepayment when it effects a transfer or exchange of any Bond after the mailing of notice calling the Bond or any portion of the Bond for prepayment.

The Owner is the absolute owner of the Bond for all purposes, and payment of principal, premium, if any, and interest will be made only to or upon the written order of the Owner or the Owner's legal representative, except that payments will be made to the person shown as the owner of the Bond as of the applicable Record Date.

The Trustee must require the payment by an Owner requesting exchange or transfer of any tax or other governmental charge required to be paid in respect of the exchange or transfer, but must not impose any other charge.

**Section 2.05. Mutilated, Lost, Stolen or Destroyed Bonds.** If any Outstanding Bond is damaged, mutilated, lost, stolen or destroyed, the Company will execute, and the Trustee will authenticate and deliver, a replacement Bond, of the same tenor as the damaged, mutilated, lost, stolen or destroyed Bond, in the manner provided below.

(a) The Owner must apply to the Trustee for exchange and substitution of damaged, mutilated, lost, stolen or destroyed Bonds. In every case, the applicant for a replacement Bond must furnish to the Company, the Town and the Trustee such security or indemnity as each may reasonably require to save it harmless. In every case of loss, theft or destruction of a Bond, the applicant must also furnish to the Company, the Town and the Trustee evidence to their reasonable satisfaction of the loss, theft or destruction of such Bond. In the case of damage or mutilation of a Bond, the applicant must surrender the Bond so damaged or mutilated.

(b) Notwithstanding the foregoing, if any such Bond has matured, and no default is then continuing in the payment of the principal or interest with respect to such Bond, the Town may authorize the payment of the same (without surrender thereof except in the case of a damaged or mutilated Bond) instead of issuing a substitute Bond, provided security or indemnity is furnished as provided above in the case of a lost, stolen or destroyed Bond.

(c) The Trustee will charge the Owner of such Bond with all expenses in connection with the issuance of any substitute Bond. Every substitute Bond issued pursuant to the provisions of this Section because any Bond is lost, stolen or destroyed, whether or not the lost, stolen or destroyed Bond may be found at any time, or may be enforceable by anyone, is entitled to all the benefits of this Trust Agreement equally and proportionally with any and all other Bonds duly executed and delivered hereunder.

**Section 2.06. Cancellation.** Whenever a Bond is delivered to the Trustee for cancellation (upon payment, prepayment or otherwise) or for transfer, exchange or replacement, the Trustee must promptly destroy the Bond and deliver a written certificate of such destruction to the Town.

**Section 2.07. Temporary Bonds.** Prior to the preparation of Bonds in definitive form the Company may execute, and the Trustee must then authenticate and deliver, temporary Bonds in such denominations as the Town may determine, but otherwise in substantially the form set forth in Exhibit B, with appropriate variations, omissions and insertions. The Company must promptly prepare, execute and deliver to the Trustee, before the first Payment Date for such Bonds, permanent Bonds in definitive form, and thereupon, upon surrender of Bonds in temporary form, the Trustee will

authenticate and deliver in exchange therefor Bonds in definitive form of the same maturity having an equal aggregate principal amount. Until exchanged for Bonds in definitive form, Bonds in temporary form are entitled to the lien and benefit of this Trust Agreement.

**Section 2.08. Non-Presentation of Bonds.** (a) If any Bond is not presented for payment when the principal with respect to such Bond becomes due (whether at maturity, upon acceleration or call for prepayment or otherwise), all liability to the Owner thereof for the payment of such Bond will be completely discharged if funds sufficient to pay such Bond and the premium, if any, and interest due with respect thereto are held by the Trustee for such Owner's benefit. It is then the Trustee's duty to hold such funds subject to subsection (b) below, without liability for interest thereon, for the benefit of such Owner, who will thereafter be restricted exclusively to such funds for any claim of whatever nature under this Trust Agreement with respect to such Bond.

(b) Notwithstanding any provision of this Trust Agreement to the contrary, the Trustee must dispose of moneys held by it for the payment of principal, premium, if any, or interest with respect to Bonds left unclaimed for five years after the date the principal with respect to the same becomes due in accordance with N.C. Gen. Stat. Sec. 116B-51 or any successor provision. The Owners of such Bonds are thereafter entitled to look only to their remedies under N.C. Gen. Stat. Chapter 116B or any successor provision, and all liability of the Town and the Trustee with respect to such moneys ceases.

### **ARTICLE III**

#### **PREPAYMENT**

**Section 3.01. Prepayment Dates and Prices.** The 2012 Bonds are subject to prepayment only as provided in this Section.

(a) *Optional Prepayment of 2012 Bonds* – The 2012 Bonds maturing on or after June 1, 2023, are subject to prepayment at the Town's option, in whole or in part on any date on or after June 1, 2022, upon payment of the principal amount to be prepaid plus interest accrued to the prepayment date, without premium.

(b) *Sinking Fund Prepayment of 2012 Bonds* -- The 2012 Bonds maturing on June 1, \_\_\_\_\_, are required to be prepaid in part prior to maturity pursuant to the terms of the sinking fund requirements of Section 3.05 at a prepayment price equal to the principal amount to be prepaid plus interest accrued to the prepayment date, without premium.

The amendment or supplement to this Agreement providing for the issuance of Additional Bonds, as provided in Section 1.05(iii), must provide for the prepayment terms and conditions of any Additional Bonds.

**Section 3.02. Selection of Bonds for Prepayment.**

(a) If less than all of the Bonds are to be prepaid pursuant to subsection 3.01(a), they will be prepaid among maturities in such manner as the Town may elect.

(b) If less than all of the Bonds of any maturity are to be prepaid, the Trustee must select the Bonds to be prepaid by lot; provided, however, that so long as a book-entry system with DTC is used for determining beneficial ownership of Bonds, if less than all of the Bonds within a maturity are to be prepaid, the parties agree that DTC may determine which of the Bonds within any such maturity are to be prepaid in accordance with DTC's own rules and procedures.

(c) In any case, (i) the portion of any Bond to be prepaid must be in the principal amount of \$5,000 or some multiple thereof, and (ii) in selecting Bonds for prepayment, each Bond will be considered as representing that number of Bonds which is obtained by dividing the principal amount of such Bond by \$5,000. If a portion of a Bond is called for prepayment, a new Bond in principal amount equal to the unpaid portion thereof will be issued to the registered owner upon the surrender thereof.

**Section 3.03. Prepayment Notices.** (a) The Trustee, upon being satisfactorily indemnified with respect to expenses, will send notice of prepayment no less than 30 nor more than 60 days prior to the prepayment date, as follows:

(i) If DTC or its nominee is the registered owner of all the Bonds being called for prepayment, to DTC, in such manner as may be provided for under DTC's standard operating rules as then in effect (and if the Trustee is unable to determine such rules, by registered or certified mail, return receipt requested);

(ii) If no book-entry-only system of registration is in effect, to each of the registered owners of the Bonds at their addresses as shown on the Trustee's registration books, by registered or certified mail;

(iii) In any case, to the Municipal Securities Rulemaking Board for posting on its "EMMA" continuing disclosure system, or any successor system.

Failure to give any notice specified in (i) or (ii), as applicable, or any defect therein, will not affect the validity of any proceedings for the prepayment of any Bonds with respect to which no such failure has occurred. Failure to give any notice specified in (iii), or any defect therein, will not affect the validity of any proceedings for the prepayment of any Bonds with respect to which the notice specified in (i) or (ii) is correctly given. Any notice mailed as provided in this Trust Agreement will conclusively be presumed to have been given regardless of whether actually received by any Owner.

(b) (i) Any prepayment notice, except a prepayment notice in respect of a sinking fund payment date, may state that the prepayment to be effected is conditioned upon the Trustee's receipt on or prior to the prepayment date of moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be prepaid, and that if such moneys are not so received such notice will be of no force or effect and such Bonds will not be required to be prepaid. If a notice contains such a condition and the Trustee does not receive moneys sufficient to pay the principal of and premium, if any, and interest on such Bonds on or prior to the prepayment date, the prepayment will not be made and the Trustee must, within a reasonable time thereafter, give notice, in a manner in which the prepayment notice was given, that such moneys were not so received and the prepayment was not made.

(ii) Any prepayment notice, except a prepayment notice in respect of a sinking fund payment date, may state that the prepayment to be effected is subject to any other condition not unacceptable to the Trustee. If a notice contains any such condition and the condition is not fulfilled on or prior to the prepayment date, the prepayment will not be made and the Trustee must, within a reasonable time thereafter, give notice, in a manner in which the prepayment notice was given, that such condition was not fulfilled and the prepayment was not made.

(c) Each prepayment notice must specify (i) the complete designation, including Series, of the Bonds to be prepaid, (ii) the CUSIP numbers of the Bonds to be prepaid, (iii) the dated dates and maturity dates and the interest rates of the Bonds to be prepaid, (iv) the date fixed for prepayment, (v) any conditions to the prepayment, as contemplated by subsection (b) above, (vi) the principal amount of Bonds or portions thereof to be prepaid, (vii) the applicable prepayment price, (viii) the address of the place or places of payment, (ix) the Trustee's name and telephone number, and the name of a contact person, (x) that interest accrued to the date fixed for prepayment will be paid as specified in such notice, and (xi) that on and after the established prepayment date interest on Bonds which have been prepaid will cease to accrue. The Trustee must also include in any such notice any information provided by the Town for use in the notice.

In preparing such notices, the Trustee will take into account, to the extent applicable, any regulatory statement of any Federal or state administrative body having jurisdiction over the tax-exempt securities industry, including, without limitation, Release No. 34-23856 of the Securities and Exchange Commission or any subsequent amending or superseding release.

**Section 3.04. Bonds Payable on Prepayment Date; Interest Ceases To Accrue.**

If on or before the date fixed for prepayment funds are deposited with the Trustee to pay the principal, premium, if any, and interest accrued to the prepayment date with respect to the Bonds called for prepayment, the Bonds or portions thereof thus called for prepayment cease to accrue interest from and after the prepayment date, are thereafter no longer be entitled to the benefits provided by this Agreement and are thereafter not deemed to be Outstanding under this Agreement.

**Section 3.05. Mandatory Sinking Fund Prepayment.** The Trustee, from amounts received from or on behalf of the Town, will prepay 2012 Bonds maturing on June 1, \_\_\_\_\_, on June 1 in years and amounts upon payment of 100% of the principal amount thereof plus interest accrued to the prepayment date, as follows:

<u>Year</u>	<u>Amount (\$)</u>
[to come]	
_____	
*Final maturity	

Notwithstanding the foregoing, on or before the 70th day next preceding any sinking fund payment date, the Town may do either of the following:

- (a) deliver to the Trustee for cancellation Term Bonds required to be prepaid on such sinking fund payment date in any aggregate principal amount desired; or
- (b) instruct the Trustee to apply a credit against the Town's sinking fund payment obligation for any such Term Bonds that previously have been prepaid (other than through the operation of the sinking fund requirements) and canceled by the Trustee but not previously applied as a credit against any sinking fund payment obligation.

The Trustee will credit against the Town's sinking fund payment obligation on such sinking fund payment date the amount of such Bonds so purchased, delivered or previously prepaid as described in paragraphs (a) or (b) above.

Within seven days of receipt of such amount, Term Bonds or instruction to apply a credit (as described in paragraphs (a) and (b) above), any amounts remaining in the Principal Account in excess of the amount required to fulfill the remaining required sinking fund prepayment obligation on the next sinking fund payment date will, as directed by a Town Representative, either be (i) transferred to the Interest Account or (ii) used to prepay Bonds as soon as practicable. In the absence of any direction from the Town, the Trustee will deposit such amounts to the Interest Account.

## ARTICLE IV

### PROCEEDS FUND; OTHER FUNDS AND ACCOUNTS

**Section 4.01. Creation and Use of Proceeds Fund.** The Trustee will establish a special fund designated as the "Town of Chapel Hill 2012 Proceeds Fund." The Trustee will keep such Fund separate and apart from all other funds and moneys held by it, and will hold and administer such Fund as provided in this Trust Agreement.

Moneys in the Proceeds Fund will be expended only as described in Sections 4.02 and 4.03. The Trustee is not required to disburse any moneys from the Proceeds Fund during the continuation of any Event of Default.

**Section 4.02. Deposits to Proceeds Fund; Payment of Project Costs.**

(a) The Trustee will deposit into the Proceeds Fund the amount specified in the certificate referenced in Section 1.04(e), any amount to be deposited therein as specified in the certificate referenced in Section 1.05(vi) and all other amounts paid to it for deposit in the Proceeds Fund.

(b) The Trustee will disburse moneys in the Proceeds Fund from time to time, either to pay Project Costs, Refinancing Costs or Financing Costs directly or to reimburse the Town for previous expenditures for such costs, upon receipt by the Trustee of a requisition substantially in the form of Exhibit C. The Trustee may rely conclusively on such requisitions as authorization for such payments and will have no duty or responsibility to verify any matters in the requisitions.

(c) Unless otherwise directed by the Town, the Trustee will disburse moneys from the Proceeds Fund that are due to the Town by wire transfer to such bank account in the United States as the Town may designate to the Trustee from time to time.

**Section 4.03. Transfers of Unexpended Proceeds.** Upon receipt of notice from the Town that there are no more Project Costs to be paid from the Proceeds Fund, the Trustee will withdraw all remaining moneys in the Proceeds Fund and deposit such moneys in the Payment Fund to be applied to the payment of principal and interest with respect to the Bonds as directed by a Town Representative. In the absence of any direction from the Town, the Trustee will deposit such moneys in the Interest Account.

**Section 4.04. Other Funds and Accounts.** The Trustee will establish the following special funds and accounts, must keep the same separate and apart from all other funds and moneys held by it, and must hold and administer the same as provided herein

(a) Town of Chapel Hill 2012 Bond Payment Fund, and therein an Interest Account, a Principal Account and a Prepayment Account.

(b) Town of Chapel Hill 2012 Net Proceeds Fund.

**Section 4.05. Payment Fund.** (a) The Trustee must deposit in the proper account in the Payment Fund all amounts paid to it for deposit in the Payment Fund, including all amounts paid to it as the Town's Installment Payments pursuant to Section 2.1 of the Financing Contract.

(b) The Trustee must pay the principal of the 2012 Bonds from the Principal Account and the interest with respect to the 2012 Bonds from the Interest Account, as the same become due.

(c) The Trustee must determine, and notify the Town of, the credit amounts as described in Sections 2.1(b) of the Financing Contract.

(d) On the second Business Day preceding each Payment Date, the Trustee must first set aside an amount sufficient to pay the interest with respect to the Bonds becoming due and payable on such Payment Date, and then an amount sufficient to pay the principal with respect to the Bonds becoming due and payable on such Payment Date. The Trustee must then transfer on the Payment Date the amounts due to DTC as registered owner of the Bonds.

(e) If the amount on deposit in the Principal Account or the Interest Account is insufficient for the purposes thereof two Business Days before any Payment Date, the Trustee must notify the Town of the amount of such insufficiency, and the Trustee must then transfer to such Accounts such amounts as may be necessary from the Prepayment Account.

If the amount on deposit in the Interest Account on any Payment Date exceeds the amount payable on account of interest on the Bonds on such date, the Trustee must, as directed by a Town Representative, retain such excess in the Interest Account or transfer such excess to the Principal Account to be credited against subsequent required deposits to the Principal Account. In the absence of any direction from the Town, the Trustee will retain the excess in the Interest Account.

If the amount on deposit in the Principal Account on any October 1 exceeds the amount required on such date to pay principal of Bonds coming due on such date (whether by reason of maturity or mandatory redemption), then the Trustee must, as directed by a Town Representative, retain such excess in the Principal Account or transfer such excess to the Interest Account to be credited against subsequent required deposits to the Interest Account. In the absence of any direction from the Town, the Trustee will transfer the excess to the Interest Account.

(f) The Trustee must deposit in the Prepayment Account of the Payment Fund all amounts paid to it for deposit therein, and must use such amounts within 12 months of their deposit therein, as directed by a Town Representative, to pay Bonds called for prepayment on their prepayment dates.

(g) The Trustee must apply Net Proceeds deposited in the Prepayment Account pursuant to Section 5.3 of the Financing Contract and apply such amounts to the prepayment of Bonds as directed by a Town Representative.

The Trustee must transfer any amounts not so used within 12 months of their deposit in the Prepayment Account to the Interest Account in the Payment Fund for use on the next Payment Date to pay interest with respect to the Bonds, as the Town may direct, and pending such use or in the absence of such direction must invest such funds in Permitted Investments having a yield not in excess of the Restricted Yield.

Subject to retaining moneys necessary to pay Bonds that have been called for prepayment but not yet presented for payment, the Trustee must use amounts in the Prepayment Account as directed by a Town Representative to make transfers to the Interest Account or the Principal Account to the extent the balances in such Accounts may be insufficient.

**Section 4.06. Net Proceeds Fund.** (a) The Trustee must deposit in the Net Proceeds Fund (i) Net Proceeds as provided in Section 5.3 of the Financing Contract and (ii) any other amounts paid to it for deposit in that fund. The Town must direct the investment and reinvestment of all amounts on deposit in the Net Proceeds Fund only in Permitted Investments having a yield not in excess of the Restricted Yield, to the extent such amounts are on deposit therein on any date following the later of (A) the third anniversary of the Closing Date or (B) 30 days from the payment of such Net Proceeds to the Town or the Trustee, as applicable.

(b) The Trustee must disburse Net Proceeds for replacement or repair as provided in Section 5.3(b) of the Financing Contract.

## ARTICLE V

### SECURITY PROVISIONS

#### **Section 5.01. Security Provisions.**

(a) *Assignment of Rights under Financing Contract.* The Company transfers and absolutely assigns to the Trustee, for the benefit of the Owners and without recourse against the Company, all of the Company's rights under the Financing Contract, including, without limitation, (i) the right to receive and collect all of the Installment Payments, (ii) the right to take all actions and give all consents under the Financing Contract, (iii) the right to enforce the indemnification provisions in favor of the Trustee, and (iv) the right to exercise such rights and remedies conferred on the Company pursuant to the Financing Contract as may be necessary or convenient (A) to enforce payment of the Contract Payments and any other amounts required to be deposited in any Fund established under this Trust Agreement, or (B) otherwise to protect the Owners' interests if the Town defaults under the Financing Contract. Any Installment Payments collected or received by the Company will be deemed to be held and to have been collected or received by the Company as the Trustee's agent, and if received by the

Company at any time must be deposited by the Company with the Trustee within five Business Days after receipt.

(b) *Assignment of Rights under Deed of Trust.* The Company transfers and absolutely assigns to the Trustee, for the benefit of the Owners and without recourse against the Company, all of the Company's rights as beneficiary under the Deed of Trust.

(c) *Assignment of Moneys and Investments.* The Company absolutely assigns to the Trustee, for the benefit of the Owners and without recourse against the Company, all moneys and investments thereof held by the Trustee in the Funds and Accounts under this Trust Agreement. The Trustee must hold all such moneys in trust and must apply the same to the purposes specified in this Trust Agreement.

The foregoing assignments are absolute and not for the purpose of security.

Notwithstanding the foregoing assignments, the Company retains its rights to notices, indemnification and payment of costs under the Financing Contract and the Deed of Trust.

**Section 5.02. Limited Obligation.** Each Bond evidences a proportionate and undivided ownership interest in Installment Payments. The Bonds are payable solely from Installment Payments as, when and if the same are received by the Trustee, except to the extent payable from the proceeds of the Bonds, income from investments, and Net Proceeds as provided in this Trust Agreement and the Financing Contract, which Installment Payments and other moneys are pledged as provided in this Trust Agreement to secure payment of the Bonds.

## ARTICLE VI

### INVESTMENT OF MONEYS IN FUNDS

#### **Section 6.01. Investments Authorized.**

(a) Subject to the further provisions of this Article VI, the Trustee must invest and reinvest moneys held by it under this Trust Agreement in Permitted Investments upon the written direction of a Town Representative. All such investments, if registrable, must be registered in the name of the Trustee or its assignee for the benefit of the Owners and held by the Trustee. If the Town does not provide the Trustee with written direction as to any investment or reinvestment provided for under this Trust Agreement, the Trustee must invest or reinvest such moneys in the North Carolina Capital Management Trust (or its successor).

(b) The Trustee may purchase or sell, to itself or to any affiliate, as principal or agent, investments of funds held under this Trust Agreement. The Trustee may act as

purchaser or agent in the making or disposing of any investment, and may make any investment through its bond or investment department.

(c) The Trustee is not responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with this Section. The Trustee may rely on the Town's investment directions as to both the suitability and legality of any investment made at the Town's direction.

(d) The Town must direct the investment and reinvestment of all moneys in Permitted Investments having maturities not extending beyond the date on which the Town estimates such moneys are to be needed for their intended purposes. Investments will be considered as maturing on the date on which they are redeemable without penalty at the holder's option or the date on which the Trustee may require their repurchase without penalty pursuant to a repurchase agreement.

**Section 6.02. Held in Trust.** The moneys and investments held by the Trustee under this Trust Agreement are irrevocably held in trust for the benefit of the Owners, and such moneys, and any income or interest earned thereon, must be expended only as provided in this Trust Agreement. To the extent permitted by law, such moneys and investments should not be subject to levy or attachment or lien by or for the benefit of any creditor of the Company, the Trustee or the Town, other than the Owners.

**Section 6.03. Investments Part of Fund.** Any income, profit or loss on the investment of moneys held by the Trustee under this Trust Agreement must be credited to the respective fund to which such moneys are credited, except as otherwise provided in this Trust Agreement.

**Section 6.04. Accounting.** The Trustee must furnish to the Town, not less frequently than monthly, an accounting of all investments made by the Trustee in all funds and accounts held by the Trustee. Such accounting may be supplied in the form of the Trustee's customary statements. The Trustee must keep accurate records of all funds administered by it and of all Bonds paid and discharged. The Trustee is not required to provide brokerage confirmations as to any investment made under this Agreement so long as it provides the periodic accounting described in the first sentence of this Section.

**Section 6.05. Valuation.** For the purpose of determining the amount on deposit in any Fund or Account held under this Trust Agreement, the Trustee must value any investment credited to such Fund or Account at its market value. Such valuations must be made at least every six months and at such additional times as the Town may request, but in no event more frequently than monthly.

**Section 6.06. Disposition.** The Trustee must sell, or present for redemption, and reduce to cash any investment in a Fund or Account whenever the cash balance in such Fund or Account is insufficient for the purposes thereof.

**Section 6.07. Commingling of Moneys in Funds.** The Trustee must separately account for all Funds and Accounts held by it under this Agreement. With a Town Representative's approval, however, the Trustee may commingle for investment purposes any funds held under this Trust Agreement with any other separate funds.

**Section 6.08. Tax Covenants.** The Town and the Company covenant with the Owners that, notwithstanding any other provision of this Trust Agreement, they will make no use or investment of the proceeds of the Bonds which will cause the Bonds to be "arbitrage bonds" or "private activity bonds" within the meaning of the Code.

**Section 6.09. Information Concerning Investments.** The Trustee must establish and maintain written records regarding investments made under this Article VI, and must supply such information to the Town at its request, including information as to: (a) purchase date; (b) purchase price; (c) information establishing that the purchase was at a fair market value as of the purchase date (e.g., the published quoted bid by a dealer in such an investment on the purchase date); (d) any accrued interest paid; (e) face amount; (f) coupon rate; (g) periodicity of interest payments; (h) disposition price; (i) any accrued interest received; and (j) disposition date.

**Section 6.10. Restricted Yield Investments.** The Town may direct the investment of any funds held under this Trust Agreement without regard to yield, despite any provision in this Trust Agreement directing investment with regard to the Restricted Yield, but only if the Town provides the Trustee with an Opinion of Special Counsel, in form and substance reasonably acceptable to the Trustee, to the effect that such an investment would not adversely affect any exclusion from gross income that would otherwise be applicable to interest payments on the Bonds.

## ARTICLE VII

### DISCHARGE OF TRUST AGREEMENT

**Section 7.01. Bonds Deemed Paid; Discharge of Trust Agreement.** Any Bond will be deemed paid for all purposes of this Trust Agreement when (a) payment of the principal, premium, if any, and interest with respect to such Bond to the due date of such amounts (whether at maturity, upon prepayment or otherwise) either (i) has been made in accordance with the terms of the Bonds or (ii) has been provided for by irrevocably depositing with the Trustee or other fiduciary in escrow (A) cash sufficient to make such payment or (B) Federal Securities maturing as to principal and interest in such amounts and at such times as will insure, without reinvestment, the availability of sufficient moneys to make such payment (which must be evidenced or verified by a certificate or other writing, in form and substance satisfactory to the Trustee, of an Appropriate Consultant acceptable to the Trustee), and which are not subject to redemption or purchase prior to maturity at the option of anyone other than the holder, and (b) all compensation and expenses of the Trustee pertaining to each Bond in respect

of which such deposit is made have been paid or provided for to the Trustee's satisfaction. When a Bond is deemed paid, it is no longer secured by or entitled to the benefits of this Trust Agreement, and all rights to payment of such Bonds are limited to payment from moneys or Federal Securities under (a)(ii) above; provided that any such Bond may be transferred, exchanged, registered or replaced as provided in Article II.

Notwithstanding the foregoing, the Town may make no such deposit under clause (a)(ii) above until the Town has furnished the Trustee an Opinion of Special Counsel to the effect that the deposit of such cash or Federal Securities will not cause the Bonds to become "arbitrage bonds" within the meaning of the Code. Also, if a Bond is to be prepaid prior to maturity, notice of prepayment of the Bond must be given in accordance with Article III for such deposit to be deemed a payment of such Bond. If such Bond, however, is not to be paid or prepaid within the next 60 days, the Town must give the Trustee, in form satisfactory to the Trustee, irrevocable instructions (A) to provide notice to the Bondholders, as soon as practicable, that the deposit required by (a)(ii) above has been made with the Trustee, that the Bond is deemed to be paid under this Article and stating the maturity or prepayment date upon which moneys are to be available for the payment of the principal with respect to the Bond, and (B) to give notice of prepayment not less than 30 nor more than 60 days prior to the prepayment date for such Bond as provided in Section 3.03.

When all Outstanding Bonds are deemed paid under the foregoing provisions of this Section, the Trustee must, upon request from the Town, acknowledge the discharge of the lien of this Trust Agreement and the Deed of Trust and repay any excess amounts remaining on deposit in the Funds established under this Trust Agreement to the Town; provided, however, that the obligations under Article II in respect of the transfer, exchange, registration, discharge from registration and replacement of Bonds will survive the discharge of the lien of this Trust Agreement, and further provided that in the case of a deposit made under (a)(ii) above, the Bonds will continue to constitute proportionate and undivided interests in Installment Payments arising under the Financing Contract.

The Town and the Company agree that no deposits must be made or accepted and no use made of any such deposit that would cause any Bonds to be treated as "arbitrage bonds" within the meaning of the Code.

**Section 7.02. Application of Trust Money.** The Trustee must hold in trust money or Federal Securities deposited with it pursuant to Section 7.01 and must apply the deposited money and the money paid with respect to the Federal Securities in accordance with this Trust Agreement only to the payment of principal, premium, if any, and interest with respect to the Bonds.

## ARTICLE VIII

### DEFAULTS; REMEDIES

**Section 8.01. Events of Default.** An "Event of Default" is any of the following:

- (a) Default in the payment of the principal with respect to any Bond when the same becomes due and payable, whether at the stated maturity thereof or upon proceedings for mandatory (but not optional) prepayment.
- (b) Default in the payment of any installment of interest with respect to any Bond when the same becomes due and payable.
- (c) The occurrence of any Event of Default as defined in the Financing Contract.

**Section 8.02. Acceleration.** If any Event of Default occurs and is continuing, then (a) the Trustee, by notice to the Town, or (b) the Majority Owners, by notice to the Town and the Trustee, may declare the principal of and accrued interest with respect to the Bonds to be due and payable immediately, and such principal and interest will thereupon become and be immediately due and payable. The Trustee must immediately give notice of any acceleration to the Owners. The Trustee may rescind an acceleration and its consequences if all existing Events of Default have been cured or waived, if the rescission would not conflict with any judgment or decree.

**Section 8.03. Other Remedies.** If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the principal or interest with respect to the Bonds or to enforce the performance of any provision of this Trust Agreement, the Bonds, the Financing Contract or the Deed of Trust.

The Trustee may maintain a proceeding even if it does not possess any of the Bonds or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Owner in exercising any right or remedy accruing upon an Event of Default does not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

**Section 8.04. Waiver of Past Defaults.** The Majority Owners, by notice to the Trustee, may waive an existing Event of Default and its consequences. When an Event of Default is waived, it is cured and stops continuing, but no such waiver extends to any subsequent or other Event of Default or impair any right consequent to it.

**Section 8.05. Majority's Control.** The Majority Owners may, upon satisfactory indemnification of the Trustee, direct the time, method and place of conducting any

proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on it. The Trustee, however, may refuse to follow any direction that it reasonably believes conflicts with law or this Trust Agreement or, subject to Section 9.01, that the Trustee determines is unduly prejudicial to the rights of other Owners or would involve the Trustee in personal liability.

**Section 8.06. Limitation on Suits.** An Owner may not pursue any remedy with respect to this Trust Agreement or the Bonds (except as provided in Section 8.07) unless (a) the Owner gives the Trustee notice stating that an Event of Default is continuing, (b) the Majority Owners make a written request to the Trustee to pursue the remedy, (c) such Owner or Owners offer to the Trustee indemnity satisfactory to the Trustee against any loss, liability or expense, and (d) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity.

An Owner may not use this Trust Agreement to prejudice the rights of another Owner or to obtain a preference or priority over the other Owners.

**Section 8.07. Rights To Receive Payment.** The right of any Owner to receive payment of principal, premium, if any, and interest with respect to a Bond, on or after the due dates expressed in the Bond, or to bring suit for the enforcement of any such payment on or after such dates, is preserved under this Trust Agreement and may not be impaired or affected without such Owner's consent.

**Section 8.08. Collection Suit by Trustee.** If an Event of Default occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Town for the whole amount remaining unpaid.

**Section 8.09. Trustee May File Proofs of Claim.** (a) The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Owners allowed in any judicial proceedings relative to the Town, the Company, their creditors or their property and, unless prohibited by law or applicable regulations, may vote on behalf of the Owners in any election of a trustee in bankruptcy or other person performing similar functions.

(b) If the Trustee incurs expenses or renders services in any proceedings which result from an Event of Default, or from any event or occurrence which, with the passage of time, would become an Event of Default, the expenses so incurred and compensation for services so rendered are intended by the parties and the Town to constitute expenses of administration under the United States Bankruptcy Code or equivalent law.

**Section 8.10. Priorities.** If the Trustee collects any money pursuant to this Article, it must deposit the same in a special account in the Payment Fund and pay out such money in the following order:

(a) If the principal with respect to all Bonds has not become or will not have been declared due and payable, all such moneys in the Payment Fund will be applied as follows:

First, Costs and Expenses: to the payment of the costs and expenses of the Trustee and of the Owners in declaring such Event of Default, including reasonable compensation to its or their agents, attorneys and counsel;

Second, Interest: to the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available is not sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference; and

Third, Principal: to the payment to the persons entitled thereto of the unpaid principal with respect to any Bonds which have become due, whether at maturity or by call for prepayment, in the order of their due dates, with interest on the overdue principal at a rate equal to the rate paid with respect to the Bonds, and, if the amount available will not be sufficient to pay in full all of the amounts due with respect to the Bonds on any date, together with such interest, then to the payment thereof ratably, according to the amounts of principal due on such date to the persons entitled thereto, without any discrimination or preference.

(b) If the principal with respect to all Bonds has become or been declared due and payable, all such money will be applied (i) first to pay the Trustee's fees and expenses, and then (ii) to the payment of principal and interest then due with respect to the Bonds, without preference or priority of principal or interest, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or privilege.

(c) If the principal with respect to all Bonds has been declared due and payable and if such declaration thereafter has been rescinded and annulled under the provisions of Section 8.02, then, subject to the provisions of subsection (b) above, if the principal with respect to all Bonds later becomes due and payable or is declared due and payable, the money then remaining in and thereafter accruing to the Payment Fund will be applied in accordance with the provisions of subsection (a) above.

The Trustee may fix a payment date for any payment to the Owners under this Section.

**Section 8.11. Undertaking for Costs.** In any suit for the enforcement of any right or remedy under this Trust Agreement or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its

discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee or any authorized suit by any Owner or Owners.

## ARTICLE IX

### THE TRUSTEE

#### **Section 9.01. Rights and Duties.**

(a) If an Event of Default has occurred and is continuing, the Trustee must exercise its rights and powers and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Not later than August 1 of each year, the Trustee will notify the LGC and the Town of the principal amount of Bonds Outstanding as of the preceding June 30.

(c) Except during the continuance of an Event of Default:

(i) the Trustee need perform only those duties that are specifically set forth in this Trust Agreement and no other; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Trust Agreement which the Trustee actually and in good faith believes to be genuine and to have been signed or presented by the proper person. The Trustee, however, must examine the certificates and opinions to determine whether they conform to the requirements of this Trust Agreement.

(d) The Trustee is not relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of subsection (a) above;

(ii) the Trustee will not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 8.05;

(iii) no provision of this Trust Agreement requires the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it

has reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it; and

(iv) the Trustee will not be liable with respect to any information contained in any offering documents (except to the extent of information provided by the Trustee for inclusion in such a document).

(e) Every provision of this Trust Agreement that in any way relates to the Trustee is subject to all the provisions of this Section 9.01.

(f) The Trustee may refuse to perform any duty or exercise any right or power (including, but not limited to, exercising any remedies pursuant to the Deed of Trust) unless it receives indemnity satisfactory to it against any loss, liability or expense, except that the Trustee may not require indemnity as a condition to declaring the principal and interest with respect to the Bonds to be due immediately under Section 8.02. In addition, the Trustee shall not be required to foreclose on property pursuant to the Deed of Trust if in doing so the Trustee reasonably believes it would be subject to any environmental liability or if the foreclose requires the approval of any governmental authorities. No permissive right of the Trustee should be construed as a duty.

(g) The Trustee is not liable for interest on any cash held by it except as the Trustee may agree with the Town.

(h) The Trustee is not liable for any action it takes or omits to take in good faith in reliance on advice from counsel as to legal matters.

(i) If an event occurs which with the giving of notice or lapse of time would be an Event of Default, and if the event is continuing and if it is known to the Trustee, the Trustee must so notify the Owners and the LGC within 15 days after such event becomes known to the Trustee.

(j) At any and all reasonable times, the Trustee and its agents have the right to inspect the Sites, the Facilities and all books and records of the Company or of the Town related thereto or to the Bonds. Notwithstanding anything in this Trust Agreement to the contrary, the Trustee and its agents have the right to require such additional evidence, certificates or Opinions of Counsel as the Trustee may deem appropriate to establish the Town's right to the withdrawal of any funds held under this Trust Agreement or to require the Trustee's taking of any other action under this Trust Agreement.

(k) The Trustee will not be liable for any debts contracted or for damages to persons or to property injured or damaged, or for salaries or nonfulfillment of contracts, relating to the Facilities.

(l) In any judicial proceeding to which the Company or the Town is a party and which in the Trustee's opinion has a substantial bearing on the interests of Owners, the

Trustee may intervene on the Owners' behalf, and must do so if requested in writing by the Majority Owners.

(m) The Trustee may act through agents or co-trustees.

(n) The Trustee will not be responsible for the use of proceeds of the Bonds paid out in accordance with this Trust Agreement.

(o) The Trustee has no duty to inspect or oversee the construction or completion of any property to be acquired, constructed or improved through the use of Bond proceeds.

(p) The Trustee must act reasonably in approving, or disapproving, the Town's designation of an Appropriate Consultant, Independent Counsel or Special Counsel.

**Section 9.02. Trustee's Individual Rights.** The Trustee in its individual or any other capacity may become the Owner or pledgee of Bonds and may otherwise deal with the Company or with the Town or its affiliates with the same rights it would have if it were not Trustee.

**Section 9.03. Disclaimer.** The Trustee makes no representation as to the validity or adequacy of this Trust Agreement or the Bonds, and the Trustee is not accountable for the Town's use of the proceeds of the Bonds.

**Section 9.04. Eligibility.** The Company must maintain a Trustee for this Trust Agreement that is a corporation organized and doing business under the laws of the United States or any state or the District of Columbia, is authorized under such laws and the laws of the State to exercise corporate trust powers, is subject to supervision or examination by the United States, any state or the District of Columbia and has a combined capital and surplus of at least \$100,000,000 as set forth in its most recent published annual report of condition.

**Section 9.05. Resignation; Removal; Replacement.** The Trustee may resign at any time by delivering notice of its resignation to the Town at least 30 days prior to the effective date of the resignation. The Town may remove the Trustee at any time by delivering notice of the removal to the removed Trustee at least 30 days prior to the effective date of the removal, so long as no Event of Default is continuing at the time the Town sends the notice. The Majority Owners may remove the Trustee at any time by delivering notice of the removal to the Town and the removed Trustee at least 30 days prior to the effective date of the removal, and may at the same time (or at any time during the 30-day notice period) appoint a new Trustee by notice to the Town and the removed Trustee.

If the Trustee resigns or is removed or if a vacancy otherwise exists in the office of Trustee for any reason, the Town must promptly appoint a successor Trustee (except

when that right is exercised by the Majority Owners as described in the preceding paragraph). No corporation will be eligible for appointment as successor Trustee unless such corporation (a) meets the requirements of Section 9.04 and (b) is approved by the LGC for service as Trustee under this Agreement.

A successor Trustee must deliver a written acceptance of its appointment to the retiring Trustee and to the Town. Immediately upon receipt of the acceptance, the retiring Trustee must transfer all property held by it as Trustee to the successor Trustee; the resignation or removal of the retiring Trustee will then (but only then) become effective, and the successor Trustee will have all the rights, powers and duties of the Trustee under this Trust Agreement.

If the Trustee fails to meet the requirements of Section 9.04, any Owner may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Town or the Majority Owners may petition any court of competent jurisdiction for the appointment of a successor Trustee.

**Section 9.06. Successor Trustee by Merger.** If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its assets (or, in the case of a bank or trust company, its corporate trust assets) to another corporation, then the resulting, surviving or transferee corporation without any further act will be the successor Trustee.

**Section 9.07. Acceptance of Financing Contract Terms.** By its execution of this Trust Agreement, the Trustee hereby signifies its acceptance of its responsibilities under the Financing Contract, and agrees to be bound by the terms of the Financing Contract.

## ARTICLE X

### **AMENDMENTS OF AND SUPPLEMENTS TO TRUST AGREEMENT, BONDS, FINANCING CONTRACT OR DEED OF TRUST**

**Section 10.01. Without Owners' Consent.** (a) The Company and the Trustee may amend or supplement this Trust Agreement or the Bonds without notice to or consent of any Owner for the following purposes:

- (i) to cure any ambiguity, inconsistency or formal defect or omission;
- (ii) to grant to the Trustee for the benefit of the Owners additional rights, remedies, powers or authority;

(iii) to subject to this Trust Agreement additional collateral or to add other agreements of the Company or the Town;

(iv) to modify this Trust Agreement or the Bonds to permit qualification under the Trust Indenture Act of 1939 or any similar federal statute at the time in effect, or to permit the qualification of the Bonds for sale under the securities laws of the United States or of any state of the United States;

(v) to provide for Bonds in certificated, registered form pursuant to Section 2.01(b), or for the issuance of Additional Bonds;

(vi) to evidence the succession of a new Trustee; or

(vii) to make any other change that does not materially adversely affect the rights of any Owner.

(b) The Company may enter into, and the Trustee may consent to, any amendment of or supplement to the Financing Contract or the Deed of Trust, without notice to or consent of any Owner, if the amendment or supplement is required or permitted (i) by the provisions of the Financing Contract or this Trust Agreement, (ii) to cure any ambiguity, inconsistency or formal defect or omission, (iii) in connection with any authorized amendment of or supplement to this Trust Agreement, or (iv) to make any other change that does not materially adversely affect the rights of any Owner.

**Section 10.02. With Owners' Consent.** (a) If the preceding Section does not permit an amendment of or supplement to this Trust Agreement or the Bonds without any consent of Owners, the Company and the Trustee may enter into such amendment or supplement only with the consent of the Majority Owners.

(b) If the preceding Section does not permit an amendment of or supplement to the Financing Contract or the Deed of Trust without any consent of Owners, the Company may enter into, and the Trustee may consent to, such amendment or supplement only with the consent of the Majority Owners.

(c) Without the consent of each Owner affected, however, no amendment or supplement to this Trust Agreement, the Bonds, the Financing Contract or the Deed of Trust may (i) extend the maturity of the principal or interest with respect to any Bond, (ii) reduce the principal amount of, or rate of interest on, any Bond, (iii) effect a privilege or priority of any Bond or Bonds over any other Bond or Bonds, (iv) reduce the percentage of the principal amount of the Bonds required for consent to such amendment or supplement, (v) impair any exclusion of interest on the Bonds from the federal gross income of the Owner of any Bond, (vi) eliminate any mandatory prepayment of the Bonds, extend the due date for any call for mandatory prepayment, reduce the prepayment price or otherwise change the prepayment terms of such Bonds, (vii) create a lien ranking prior to or on a parity with the lien of this Trust Agreement on the property

pledged hereunder (except with respect to a parity pledge for the benefit of the Owners of Additional Bonds), or (viii) deprive any Owner of the lien created by this Trust Agreement on such property.

In addition, if moneys or Federal Securities have been deposited or set aside with the Trustee pursuant to Article VII for the payment of Bonds and those Bonds have not in fact actually been paid in full, no amendment to the provisions of that Article may be made without the consent of the Owner of each Bond affected.

### **Section 10.03. Procedure for Amendment with Owners' Written Consent.**

(a) If the consent of the Owners is required pursuant to Section 10.02 for an amendment or supplement to this Trust Agreement, the Bonds or the Financing Contract, the Trustee must establish a record date, and Owners as of such date will be the Owners with the right to consent to such amendment or supplement. This record date must be a date not later than five Business Days after the date the Trustee receives notice or direction from the Town or the Company to solicit such consents.

(b) The Trustee must send, by first-class mail, a copy of such supplement or amendment, together with a request to the Owners for their consent thereto, to each Owner at its address as set forth in the registration books maintained pursuant to Section 2.04, but failure to receive copies of such supplement or amendment and request so mailed does not affect the validity of the supplement or amendment when assented to as provided in this Section. The request mailed by the Trustee must also designate a date not more than 60 nor less than 30 days following the mailing date by which consent must be returned to be effective.

(c) Such supplement or amendment will not become effective unless there are filed with the Trustee the written consent of the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding (exclusive of Bonds disqualified as provided in Section 10.04) and notices have been mailed as hereinafter in this Section provided. Each such consent will be effective only if accompanied by proof of ownership of the Bonds for which such consent is given, which proof must be such as is permitted by Section 10.10.

(d) If DTC is the registered owner of the Bonds, the Trustee will take such actions as may be appropriate to solicit the consents provided for in this Section from beneficial owners in accordance with DTC's rules and regulations, as the same may be in effect from time to time.

(e) It is expressly contemplated and agreed that any underwriter or initial purchaser of Bonds may give consent with respect to those Bonds upon its purchase of Bonds and before its resale or redelivery of Bonds to subsequent purchasers, even if such sale or redelivery is to take place on the date of the initial delivery of those Bonds by such initial purchaser.

**Section 10.04. Disqualified Bonds.** Bonds owned or held by or for the account of the Town or the Company or by any person directly or indirectly controlling or controlled by, or under direct or indirect common control with the Town or the Company (except any Bonds held in any pension or retirement fund), are not deemed Outstanding for the purpose of any action or any calculation of Outstanding Bonds provided for in this Trust Agreement, and are not be entitled to take any action provided for in this Trust Agreement.

The Trustee may (but is not required to) provide for each Owner, before such Owner's consent is deemed effective, to certify or otherwise provide evidence to establish whether the Bonds as to which such consent is given are disqualified.

Notwithstanding the foregoing provisions of this Section, it is the intent of the Company, the Town and the Trustee that the ownership or holding of Bonds by the Company or the Town will not, by itself, give rise to an extinguishment of the Bonds or of any obligation arising under this Trust Agreement or the Financing Contract.

**Section 10.05. Effect of Consents.** After an amendment or supplement becomes effective, it binds every Owner. Any such consent is binding upon and irrevocable by the Owner of the Bond giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof), unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Trustee prior to the date when the Trustee has mailed the notice provided for in Section 10.10.

**Section 10.06. Notation on or Exchange of Bonds.** If an amendment or supplement changes the terms of a Bond, the Trustee may require the Owner of such Bond to deliver it to the Trustee. The Trustee may place an appropriate notation on the Bond about the changed terms and return it to the Owner. Alternatively, if the Trustee, the Company and the Town so determine, the Company, in exchange for the Bond, will execute, and the Trustee will authenticate and deliver, a new Bond that reflects the changed terms.

**Section 10.07. Trustee's Execution of Amendments and Supplements.** The Trustee must execute and deliver any amendment or supplement to the Trust Agreement or the Bonds authorized by this Article if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee, as the Trustee may determine in its reasonable discretion. If the amendment or supplement has such an adverse effect, the Trustee may, but need not, execute and deliver the same. In executing and delivering an amendment or supplement, the Trustee is entitled to receive and (subject to Section 9.01) is fully protected in relying on an Opinion of Counsel stating that such amendment or supplement is authorized by this Trust Agreement.

**Section 10.08. Town's Consent Required.** No amendment or supplement to this Trust Agreement, the Bonds, the Financing Contract or the Deed of Trust will become effective unless the Town delivers to the Trustee its prior written consent to the amendment or supplement.

**Section 10.09. LGC's Consent Required.** No amendment or supplement to this Trust Agreement, the Bonds, the Financing Contract or the Deed of Trust will become effective unless the LGC delivers to the Town and the Trustee its prior written consent to the amendment or supplement.

**Section 10.10. Notice of Amendments and Supplements.** The Trustee must cause notice of the execution of any supplement or amendment to this Agreement, the Bonds or the Contract to be mailed to the Owners. The notice will, at the Trustee's option, either (a) briefly state the nature of the amendment or supplement and that copies of it are on file with the Trustee for inspection by Owners, or (b) enclose a copy of such amendment or supplement.

The Trustee must also cause the notice provided for in the previous paragraph to be sent by first-class mail to Standard & Poor's Ratings Services, Attn: Public Finance – Document Change Notices, 55 Water Street, New York, NY 10041.

**Section 10.11. Owners' Consents.** Any consent or other instrument required by this Trust Agreement to be signed by Owners may be in any number of concurrent documents and may be signed by an Owner or by the Owner's agent appointed in writing. Proof of the execution of such instrument or of the instrument appointing an agent and of the ownership of Bonds, if made in the following manner, will be conclusive for any purposes of this Trust Agreement with regard to any action taken by the Trustee.

(a) The fact and date of a person's signing an instrument may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within that jurisdiction that the person signing the writing acknowledged before the officer the execution of the writing, or by an affidavit of any witness to the signing.

(b) The fact of ownership of Bonds, the amount or amounts, numbers and other identification of such Bonds and the date of holding will be proved by the registration books kept pursuant to this Trust Agreement.

## ARTICLE XI

### MISCELLANEOUS

#### **Section 11.01. Notices.**

(a) Any communication provided for in this Trust Agreement or the Bonds must be in writing (not to include facsimile or email).

(b) Any communication under this Agreement will be sufficiently given and deemed given when delivered by hand or on the date shown as the delivery date on a United States Postal Service certified mail receipt, or a delivery receipt (or similar evidence) from a national commercial package delivery service, if addressed as follows:

(i) if to the Town, to Chapel Hill Town Manager, Re: Notice under 2012 LOBs Trust Agreement, Town Hall, 405 Martin Luther King, Jr. Boulevard, Chapel Hill, NC 27514

(ii) if to the Company, to Town of Chapel Hill Public Facilities Corporation, c/o Chapel Hill Town Manager, Re: Notice under 2012 LOBs Trust Agreement, Town Hall, 405 Martin Luther King, Jr. Boulevard, Chapel Hill, NC 27514

(iii) if to the Trustee, to National Trust Company, N.A., \_\_\_\_\_

(c) Any communication sent under this Agreement must also be sent to the Town and the Trustee, along with any other parties to which the communication may be addressed.

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

**Section 11.02. Limitation of Rights.** Nothing expressed or implied in this Trust Agreement or the Bonds gives any person other than the Trustee, the Company, the Town and the Owners any right, remedy or claim under or with respect to this Trust Agreement.

**Section 11.03. Severability.** If any provision of this Trust Agreement is determined to be unenforceable, that does not affect any other provision of this Trust Agreement.

**Section 11.04. Non-Business Days.** If a Payment Date is not a Business Day, then payment may be made on the next Business Day, and no interest will accrue for the intervening period. When any other action is provided in this Trust Agreement to be done on a day or within a time period named, and the day or the last day of the period is not a Business Day, the action may be done on the next ensuing Business Day.

**Section 11.05. Governing Law; Forum.** The parties intend that North Carolina law will govern the interpretation of this Trust Agreement. To the extent permitted by law, the parties agree that any action brought with respect to this Trust Agreement must be brought in the North Carolina General Court of Justice in Orange County, North Carolina.

**Section 11.06. Limitation on Liability of Officers and Agents.** No officer, agent or employee of the Company, the Town or the LGC is subject to any personal liability or accountability by reason of such officer's execution of this Trust Agreement, the Bonds or any other documents related to the transactions contemplated by this Trust Agreement. These officers and agents are deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section does not relieve any person from the performance of any official duty provided by law or this Trust Agreement.

**Section 11.07. Records.** The Trustee must keep complete and accurate records of all moneys received and disbursed by it under this Trust Agreement. These records must be available for inspection by the Town, the Company and any Owner, or any of their agents at any time during regular business hours upon reasonable prior notice to the Trustee.

**Section 11.08. Binding Effect.** This Trust Agreement is binding upon, inures to the benefit of and is enforceable by the parties and their respective successors and assigns.

**Section 11.09. Waiver of Notice.** Whenever in this Trust Agreement the giving of notice is required, the giving of such notice may be waived in writing by the person entitled to receive such notice, and the giving or receipt of such notice will not be a condition precedent to the validity of any action taken in reliance upon such waiver.

**Section 11.10. Counterparts.** This Trust Agreement may be signed in several counterparts, including separate counterparts. Each will be an original, but all of them together constitute the same instrument.

**Section 11.11. Definitions; Rules of Construction.** Unless the context clearly requires otherwise, capitalized terms used in this Trust Agreement and not otherwise defined have the meanings set forth in Exhibit A, and this Trust Agreement will be interpreted in accordance with the rules of construction set forth in Exhibit A.

**Section 11.12. Third-Party Beneficiary.** The parties intend that the Town will be a third-party beneficiary of the obligations of all the parties under this Trust Agreement.

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

*IN WITNESS WHEREOF*, the parties hereto have caused this Trust Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

**(SEAL)**

**ATTEST:**

**TOWN OF CHAPEL HILL  
PUBLIC FACILITIES CORPORATION**

\_\_\_\_\_  
XXXXXXXXXXXXX  
Secretary

By: \_\_\_\_\_  
XXXXXXXXXXXXX  
President

**NATIONAL TRUST COMPANY, N.A., as  
Trustee**

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

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

[Trust Agreement dated as of June 1, 2012]

**Exhibit A -- Definitions; Rules of Construction**

**Definitions.** All capitalized terms used in this Trust Agreement and not otherwise defined have the meanings ascribed thereto in the Financing Contract. In addition, for all purposes of this Trust Agreement, unless the context requires otherwise, the following terms have the following meanings.

"2012 Bonds" means the [\$30,000,000] original aggregate principal amount Limited Obligation Bonds, Series 2012, issued pursuant to this Trust Agreement

"Additional Bonds" means any Bonds delivered pursuant to Section 1.05.

"Appropriate Consultant" has the meaning assigned in the Financing Contract.

"Bonds" means, together, the 2012 Bonds and all Additional Bonds.

"Business Day" means any day (a) other than a day on which banks in New York, New York, or the city to which notices to the Trustee under this Agreement are to be sent, are required or authorized to close, and (b) on which the New York Stock Exchange is not closed.

"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 Bonds. Reference to any specific Code provision includes any successor provisions.

"Company Representative" means the Company's President or any other person at the time designated to act on the Company's behalf in matters related to this Trust Agreement (or for any specific matters) by a written instrument furnished to the Trustee containing the specimen signature of such person and signed on the Company's behalf by any of its officers (other than the person being designated as a Company Representative).

"Deed of Trust" means the Deed of Trust and Security Agreement dated as of June 1, 2012, from the Town to a deed of trust trustee for the Company's benefit, as it may be duly amended or supplemented.

"DTC" means The Depository Trust Company, New York, New York, or its successors as the securities depository maintaining a book-entry system for recording beneficial ownership interests in the Bonds

"Event of Default" has the meaning set forth in Section 8.01.

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

"Federal Securities" means, to the extent such are legal investments for the Town's funds at the time of purchase, (a) direct obligations of the United States of America for which its full faith and credit are pledged, or (b) securities or obligations evidencing direct ownership interests in specified portions (principal or interest) of obligations described in (a).

"Financing Contract" means the Installment Financing Contract dated as of June 1, 2012, between the Town and the Company, as it may be duly amended or supplemented.

"Financing Costs" means all professional and administrative costs related to the authorization and issuance of the Bonds, including printing and publication costs and legal, accounting, advisory and other fees and expenses.

"Independent Counsel" has the meaning assigned in the Financing Contract.

"Interest Account" means the account of that name in the Payment Fund established in Section 4.04.

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

"Majority Owners" means, as of any date, the Owners of at least a majority in principal amount of the Bonds then Outstanding.

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

"Net Proceeds" has the meaning assigned to that term in the Financing Contract.

"Net Proceeds Fund" means the Town of Chapel Hill 2012 Net Proceeds Fund established in Section 4.04.

"Opinion of Counsel" or "Opinion of Special Counsel" means a written opinion of Independent Counsel or Special Counsel, as appropriate.

"Outstanding," when used with reference to Bonds, or "Bonds Outstanding," means all Bonds which have been authenticated and delivered by the Trustee under this Trust Agreement and not yet paid, except the following:

(a) Bonds canceled or purchased by or delivered to the Trustee for cancellation;

(b) Bonds that have become due (at maturity or on prepayment, acceleration or otherwise) and for the payment, including interest accrued to the due date, of which the Trustee holds sufficient moneys;

(c) Bonds deemed paid in accordance with Section 7.01; and

(d) Bonds in lieu of which others have been authenticated under Section 2.04 (relating to registration and exchange of Bonds) or Section 2.05 (relating to mutilated, lost, stolen, destroyed or undelivered Bonds).

"Owner," when used with reference to Bonds, means the person in whose name such Bond is registered on the registration books maintained by the Trustee.

"Payment Date" means, with respect to the 2012 Bonds, each June 1 and December 1 beginning December 1, 2012, and with respect to any Additional Bonds means the dates specified for principal and interest payments with respect to such Additional Bonds.

"Payment Fund" means the Town of Chapel Hill 2012 Bond Payment Fund established in Section 4.04.

"Permitted Investments" means such investments as from time to time are legal investments for the Town's funds, as determined at the time of investment.

"Prepayment Account" means the account of that name in the Payment Fund established in Section 4.04.

"Principal Account" means the account of that name in the Payment Fund established in Section 4.04.

"Proceeds Fund" means the Town of Chapel Hill 2012 Proceeds Fund established in Section 4.01.

"Project Costs" means all costs of the design, planning, constructing, acquiring, installing, equipping and improving public parking facilities for the Town, including the acquisition of a parking facility pursuant to a General Development Agreement between the Town and Ram Development Company dated as of February 12, 2007, as amended, all as determined in accordance with generally accepted accounting principles and that will not adversely affect the exclusion from gross income for federal income tax purposes of the designated interest component of Installment Payments payable by the Town under this Financing Contract. "Project Costs" include (a) sums required to reimburse the Town or its agents for advances made for any such costs, (b) interest during the construction period and for up to six months thereafter, and (c) all costs related to the financing of the parking improvements, carrying out the contemplated refinancings and the issuance of the 2012 Bonds through this Financing Contract and all related transactions.

"Record Date" means the end of the calendar day on the 15th day of the month (whether or not a Business Day) preceding a Payment Date.

“Refinancing Costs” means amounts used or to be used to pay principal, interest and any applicable prepayment premium on installment financing obligations previously entered into by the Town, including financings for the Town Operations Center on Millhouse Road, the Town’s Wallace Parking Deck and the Town’s Homestead Aquatic Center.

"Restricted Yield" means a "yield," within the meaning of Treas. Regs. Secs. 1.103-13(c), -13(d), 1.148-9T(a), or any successor or other provision that may be applicable, not in excess of a "yield" equal to \_\_\_\_\_%.

"Special Counsel" means such attorney or firm of attorneys nationally recognized on the subject of municipal obligations as may be selected by the Town and approved by the Trustee.

"State" means the State of North Carolina.

“Term Bonds” means any Bonds (including the 2012 Bonds maturing June 1, \_\_\_\_\_) that are subject to mandatory redemption pursuant to sinking fund requirements.

“Town” means the Town of Chapel Hill, North Carolina, or its successors.

"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 this Trust Agreement, as it may be duly amended or supplemented.

“Trustee” means the bank or trust company from time to time serving as trustee under this Trust Agreement, whether the original or a successor Trustee.

***Rules of Construction.*** Unless the context otherwise requires,

(a) an accounting term not otherwise defined has the meaning assigned to it in accordance with generally accepted accounting principles;

(b) unless otherwise indicated, references to Articles, Sections and Exhibits are to the Articles, Sections and Exhibits of this Trust Agreement;

(c) words importing the singular will include the plural and vice versa and words importing the masculine gender will include the feminine and neuter genders as well.

(d) the headings on sections and articles are solely for convenience of reference and will not constitute a part of this Trust Agreement nor will they affect its meanings, construction or effect;

(e) words importing the prepayment or calling for prepayment of Bonds will not be deemed to refer to or connote the payment of Bonds at their stated maturity; and

(f) all references to the payment of Bonds are references to payment of principal of and premium, if any, and interest with respect to the Bonds.

Exhibit B – Form of 2012 Bond

REGISTERED

Number R-X

REGISTERED

**LIMITED OBLIGATION BOND, SERIES 2012**

**representing an interest in certain payments to be made  
under an installment financing contract with**

**TOWN OF CHAPEL HILL, NORTH CAROLINA**

INTEREST RATE	MATURITY DATE	DATED DATE	CUSIP
_____ %	June 1, _____	June ___, 2012	159 432 XXX

**REGISTERED OWNER:\*\*\*\*\*CEDE & CO.\*\*\*\*\***

**PRINCIPAL AMOUNT: \*\*\*\*\_ THOUSAND DOLLARS\*\*\*\*  
\*\*\*\*(\$\_\_\_\_\_,000)\*\*\***

**UNDER THIS BOND** the registered owner, or registered assigns or legal representative, is the owner of a proportionate and undivided interest in certain payments to be made by the Town of Chapel Hill, North Carolina (the “Town”), under an Installment Financing Contract dated as of June 1, 2012 (the “Financing Contract”), between the Town and Town of Chapel Hill Public Facilities Corporation (the “Company”).

Principal is payable to such owner in the amount stated above on the maturity date stated above, subject to prepayment as described below, and interest is payable on each June 1 and December 1, beginning December 1, 2012 (the “Payment Dates”), at the annual interest rate stated above (calculated on the basis of a 360-day year consisting of twelve 30-day months).

Interest is payable (a) from the Dated Date shown above, if this Bond is authenticated prior to the Record Date, as defined below, preceding December 1, 2012, (b) from the succeeding Payment Date, if this Bond is authenticated between a Record Date and the succeeding Payment Date, or (c) otherwise from the Payment Date that is, or immediately precedes, the date on which this Bond is authenticated (unless payment of interest hereon is in default, in which case this Bond will bear interest from the date to

which interest has been paid). Principal and interest are payable in lawful money of the United States of America.

This Bond is one of an issue of [\$30,000,000] Limited Obligation Bonds, Series 2012 (the "Bonds"), of like date and tenor, except as to number, denomination, rate of interest, privilege of prepayment and maturity. The Bonds are executed and delivered under, and are equally and ratably secured by, a Trust Agreement dated as of June 1, 2012 (the "Trust Agreement"), between the Company and National Trust Company, N.A., as trustee (the "Trustee").

The Company is advancing funds under the Financing Contract to provide funds to the Town to be used, together with other available funds, to acquire, construct and improve Town parking facilities, to refinance existing Town financing obligations and to pay financing costs, as more fully described in the Trust Agreement and the Financing Contract. The Town will repay the amounts advanced by making Installment Payments, as defined in and pursuant to the Financing Contract, which are designed to be sufficient in times and amounts to provide for timely payment of the Bonds. To further secure its obligations under the Financing Contract, the Town has granted, for the Company's benefit, a security interest in certain public facilities, the underlying real property and certain other property (the "Trust Property") pursuant to the Financing Contract and a Deed of Trust and Security Agreement dated as of June 1, 2012 (the "Deed of Trust"). The Company has assigned substantially all of its rights under the Financing Contract and as beneficiary under the Deed of Trust, including its right to receive Installment Payments, to the Trustee, without recourse against the Company, for the benefit of the owners of the Bonds.

The Bonds are payable solely from amounts paid by the Town pursuant to the Financing Contract, except to the extent payable from the proceeds of the Bonds, income from investments, certain net insurance and condemnation awards and the proceeds of remedial action, which revenues and other moneys have been pledged as described in the Trust Agreement and the Financing Contract to secure payment of the Bonds. **Neither the Bonds nor the Town's obligation to make payments under the Financing Contract constitutes a pledge of the Town's faith and credit within the meaning of any constitutional provision.**

Reference is made to the Trust Agreement and all amendments and supplements thereto for a description of the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Company and the Trustee, the rights of the Owners of the Bonds and the terms upon which the Bonds are executed, delivered and secured, to all of which provisions the owner of this Bond, by the acceptance of this Bond, agrees. Additional Bonds secured by an interest in the Trust Property on a parity with the interest securing the Bonds may be issued under the terms and conditions set forth in the Trust Agreement.

The Bonds are issued by means of a book-entry system, with one certificate for each maturity immobilized at The Depository Trust Company, New York, New York ("DTC"), and not available for distribution to the public. Transfer of beneficial ownership interests in the Bonds in the principal amount of \$5,000 or any integral multiple thereof will be effected on the records of DTC and its participants pursuant to rules and procedures established by DTC and its participants. Principal and interest on the Bonds are payable to DTC or its nominee as registered owner of the Bonds. Neither the Trustee, the Company nor the Town is responsible or liable for such transfer of ownership or payments or for maintaining, supervising or reviewing the records maintained by DTC, its participants or persons acting through such participants.

If (a) DTC determines not to continue to act as securities depository for the Bonds or (b) a Town Representative so elects, the Company and the Trustee will discontinue the book-entry system with DTC. If the Town does not identify another qualified securities depository to replace DTC, the Company will prepare and execute, and the Trustee will authenticate and deliver in exchange, replacement Bonds in the form of fully-registered Bonds.

The Bonds may not be prepaid prior to maturity except as provided in this Bond and in the Trust Agreement.

Bonds maturing on or after June 1, 2023, are subject to prepayment at the Town's option in whole or in part on any date on or after June 1, 2022, upon payment of the principal amount to be prepaid plus interest accrued to the prepayment date, without premium.

The Trustee will prepay Bonds maturing on June 1, \_\_\_\_\_, upon payment of 100% of the principal amount thereof plus interest accrued to the prepayment date, on June 1 in years and amounts as follows:

<u>Year</u>	<u>Amount (\$)</u>
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\*Final maturity

The amount of Bonds to be prepaid on any sinking fund payment date may be reduced in accordance with the provisions of the Trust Agreement.

If less than all of the Bonds are to be prepaid, they will be prepaid in such manner as the Town may elect. If less than all the Bonds of any maturity are called for prepayment, the Trustee will select the Bonds to be prepaid by lot; provided, however, that so long as a book-entry system with DTC is used for recording beneficial ownership of Bonds, if less than all of the Bonds within a maturity are to be prepaid, DTC and its participants will determine which of the Bonds within any such maturity are to be prepaid.

In any case, (1) the portion of any Bond to be prepaid will be in the principal amount of \$5,000 or some multiple thereof, and (2) in selecting Bonds for prepayment, each Bond will be considered as representing that number of Bonds which is obtained by dividing the principal amount of such Bond by \$5,000. If a portion of a Bond is called for prepayment, a new Bond in principal amount equal to the unpaid portion thereof will be issued to the Owner upon the surrender thereof.

The Trustee will send notice of prepayment by registered or certified mail to DTC or its nominee as the Owner of the Bonds. The Trustee will mail such notice not more than 60 days nor less than 30 days prior to the date fixed for prepayment. Neither the Trustee, the Company nor the Town is responsible for sending notices of prepayment to anyone other than DTC or its nominee, so long as all the Bonds to be prepaid are held in a book-entry-only form with DTC.

If on or before the date fixed for prepayment funds have been deposited with the Trustee to pay the principal and interest accrued to the prepayment date with respect to the Bonds called for prepayment, the Bonds or portions thereof thus called for prepayment will cease to accrue interest from and after the prepayment date, will no longer be entitled to the benefits provided by the Trust Agreement and will not be deemed to be Outstanding under the Trust Agreement.

The Owner of this Bond has no right to enforce the provisions of the Trust Agreement or to institute action to enforce the covenants therein, or to take any action with respect to any event of default thereunder, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Trust Agreement. Changes to or supplements of the Trust Agreement may be made to the extent and in the circumstances permitted by the Trust Agreement.

The Bonds are issuable only as fully-registered Bonds without coupons in denominations of \$5,000 principal amount and any integral multiple thereof. Ownership of this Bond will be registered on the Bond Register (as defined in the Trust Agreement) to be kept for that purpose by the Trustee, which will act as Bond registrar for the Bonds. This Bond may be exchanged, and its transfer may be effected, only by the Owner hereof in person or by attorney duly authorized in writing at the aforesaid office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Trust Agreement, and upon surrender and cancellation of this Bond. Upon exchange or registration of such transfer a new registered Bond or Bonds of the same maturity and interest rate and of authorized denomination or denominations for the same aggregate principal amount will be issued in exchange therefor.

The Company and the Trustee may deem and treat the person in whose name this Bond will be registered on the Bond Register as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the Company nor the Trustee will be affected by

any notice to the contrary, except that payments will be made to the persons shown as Owners on the Trustee’s registration books at the end of the calendar day on the 15th day (whether or not a business day) (the “Record Date”) preceding each Payment Date.

All acts, conditions and things required by the Constitution and laws of the State of North Carolina to happen, exist or be performed precedent to and in the execution and delivery of this Bond have happened, exist and have been performed.

This Bond will not be entitled to any benefit under the Trust Agreement or be valid or obligatory for any purpose until the Trustee has executed the Certificate of Authentication appearing hereon.

*IN WITNESS WHEREOF*, the Company has caused this Bond to signed by its President, its seal to be affixed hereto and attested by its Secretary, and this Bond to be dated June \_\_, 2012.

(SEAL)

ATTEST:

**TOWN OF CHAPEL HILL PUBLIC FACILITIES CORPORATION**

\_\_\_\_\_  
XXXXXXXXXX  
Secretary

By: \_\_\_\_\_  
XXXXXXXXXX  
President

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds referred to in the within-mentioned Trust Agreement.

Date of Authentication: \_\_\_\_\_

**NATIONAL TRUST COMPANY,  
N.A., as Trustee**

By: \_\_\_\_\_  
Authorized Officer

**ASSIGNMENT**

***FOR VALUE RECEIVED*** the undersigned hereby sell(s), assign(s) and transfer(s) unto

---

(Please print or type transferee's name and address, including zip code)

PLEASE INSERT SOCIAL SECURITY OR OTHER  
IDENTIFYING NUMBER OF TRANSFEREE:

the within certificate and all rights thereunder, hereby irrevocably constituting and appointing \_\_\_\_\_, Attorney, to transfer said certificate on the books kept for the registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed:

---

(Signature of Owner)

---

NOTICE: Signature(s) must be guaranteed by a participant in the Securities Transfer Agent Medallion Program ("STAMP") or similar program

NOTICE: The signature above must correspond with the name the Owner as it appears on the front of this certificate in every particular without alteration or enlargement or any change whatsoever.

**Exhibit C – Form of Requisition***[To Be Prepared on Town's Letterhead for Submission]*

[Date] \_\_\_\_\_

National Trust Company, N.A.

Regarding: Requisition under 2012

Trust Agreement for Town of Chapel Hill (North Carolina)

[Address]

RE: Request by the Town of Chapel Hill, North Carolina (the "Town"), for disbursement of funds from a Proceeds Fund created under a Trust Agreement dated as of June 1, 2012, with Town of Chapel Hill Public Facilities Corporation

To the Trustee:

Pursuant to the terms and conditions of the above-referenced Trust Agreement, the Town authorizes and requests the disbursement of funds from the "Town of Chapel Hill Proceeds Fund" established under such Trust Agreement for the costs described below. Capitalized terms used in this requisition and not otherwise defined have the meanings ascribed in the Trust Agreement.

This is requisition number \_\_\_\_ from the Proceeds Fund.

<b>Total Amount for Disbursement</b>	
<b>Payee</b>	
<b>Payee's address</b>	

The Town of Chapel Hill makes this requisition pursuant to the following representations:

1. The Town has appropriated in its current fiscal year funds sufficient to pay the Installment Payments and estimated Additional Payments due in the current fiscal year.
2. The purpose of this disbursement is for payment of Project Costs, Financing Costs or Refinancing Costs as provided for in the Trust Agreement.
3. The requested disbursement has not been subject to any previous requisition.

4. No notice of any lien, right to lien or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable herein to any of the persons, firms or corporations named herein has been received, or if any notice of any such lien, attachment or claim has been received, such lien, attachment or claim has been released or discharged or will be released or discharged upon payment of this requisition.
5. This requisition contains no items representing payment on account of any percentage entitled to be retained on the date of this requisition.
6. No Event of Default is continuing, and no event or condition is existing which, with notice or lapse of time or both, would become an Event of Default.
7. The Town has insurance in place that complies with the insurance requirements of the Financing Contract.
8. No portion of the amounts set forth in this requisition represents amounts paid or payable as North Carolina state sales taxes.

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

**TOWN OF CHAPEL HILL,  
NORTH CAROLINA**

By: ***[Exhibit Form Only – Do Not Sign]***

Title: \_\_\_\_\_

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**CONTRACT OF PURCHASE**

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June 15, 2012

Town of Chapel Hill Public Facilities Corporation  
Chapel Hill, North Carolina

*[\$Amount]  
Limited Obligation Bonds, Series 2012  
Evidencing Proportionate and Undivided  
Ownership Interests in the Installment Payments to be Made  
Pursuant to an Installment Financing Contract with the  
TOWN OF CHAPEL HILL, NORTH CAROLINA*

Ladies and Gentlemen:

The undersigned Robert W. Baird & Co., on its own behalf and on behalf of Wells Fargo Bank, National Association (collectively, the “*Underwriters*”), offers to enter into this Contract of Purchase (this “*Purchase Contract*”) with the Town of Chapel Hill Public Facilities Corporation (the “*Corporation*”) for the purchase and sale by the Underwriters of the Limited Obligation Bonds, Series 2012 (the “*2012 Bonds*”), evidencing proportionate and undivided ownership interests in the Installment Payments to be made pursuant to an Installment Financing Contract dated as of June 1, 2012 (the “*Contract*”), between the Corporation and the Town of Chapel Hill, North Carolina (the “*Town*”). This offer is made subject to the terms and provisions of this Purchase Contract and satisfaction of each of the following conditions (1) acceptance by the Corporation and (2) delivery to the Underwriters of a Letter of Representation dated the date hereof in the form attached hereto as Exhibit A and duly executed by the Town (the “*Letter of Representation*”). On satisfaction of the foregoing conditions, this Purchase Contract will be in full force and effect in accordance with its terms and will be binding on the Corporation and the Underwriters. If the foregoing conditions are not satisfied as provided above, this offer is subject to withdrawal by the Underwriters on written notice delivered to the Corporation at any time prior to acceptance.

This offer is made subject to your mutual acceptance of this Purchase Contract on or before 12:00 noon on June 15, 2012.

All terms not otherwise defined herein have the same meanings as set forth in the Official Statement described herein.

1. ***Purchase and Sale of 2012 Bonds.*** On the terms and conditions and in reliance on the respective representations, warranties and covenants herein and in the Letter of Representation, the Underwriters hereby agree to purchase from the Corporation, and the Corporation hereby agrees to sell to the Underwriters all (but not less than all) of \$[Amount] aggregate principal amount of the 2012 Bonds at the purchase price (the “*Purchase Price*”) of \$[ ] (equal to the par amount of the 2012 Bonds less an underwriters’ discount of \$[ ], [plus a net original issue premium] of \$[ ]). The 2012 Bonds will be executed and delivered pursuant to and secured by a Trust Agreement dated as of June 1, 2012 (the “*Trust*”

*Agreement*”), by and between the Corporation and U.S. Bank National Association, as trustee (the “*Trustee*”), and will mature as more fully described in the Trust Agreement. The 2012 Bonds will bear interest from their date at the rate or rates, and will have such other terms and provisions, as described in Schedule I attached hereto and in the Final Official Statement (hereinafter defined in Section 2).

The 2012 Bonds are being executed and delivered to (1) refinance certain existing financing obligations of the Town, one of which financed the acquisition and construction of the Town’s Operations Center, (2) finance the cost of construction of approximately 161 parking spaces to be used by Town residents and improvements to one of the Town’s existing parking facilities, each as described in the Official Statement, and (3) pay certain costs incurred in connection with the issuance of the 2012 Bonds. The Contract provides for payment by the Town of certain payments sufficient to pay the scheduled payments on the 2012 Bonds and all other expenses of the Corporation associated with the financing. As security for the 2012 Bonds, the Corporation assigned to the Trustee for the benefit of the registered owners of the 2012 Bonds (the “*Owners*”) substantially all its rights under the Contract and certain moneys and securities held by the Trustee under the Trust Agreement. As security for its obligations under the Contract, the Town will execute and deliver to a deed of trust trustee for the benefit of the Corporation a Deed of Trust and Security Agreement dated as of June 1, 2012 (the “*Deed of Trust*”). The Deed of Trust grants, among other things, a first lien (subject to Permitted Encumbrances) on the Town’s Operations Center financed with proceeds of the 2005 Certificates and the Town’s interest in certain real property related thereto. Pursuant to the Contract, Installment Payments payable by the Town thereunder will be paid directly to the Trustee.

The Underwriters agree to make a bona fide public offering of all of the 2012 Bonds at the initial offering prices or yields set forth on the cover of the Final Official Statement. The Underwriters, however, reserve the right to change such initial offering prices or yields as the Underwriters deem necessary in connection with the marketing of the 2012 Bonds and to offer and sell the 2012 Bonds to certain dealers (including dealers depositing the 2012 Bonds into investment trusts, including investment trusts managed by the Underwriters) and others at prices lower than the initial offering prices or yields set forth in the final Official Statement. The Underwriters also reserve the right to over-allot or effect transactions which stabilize or maintain the market price of the 2012 Bonds at a level above that which might otherwise prevail in the open market and to discontinue such stabilizing, if commenced, at any time. The Underwriters will provide to Sanford Holshouser LLP (“*Bond Counsel*”) and others such evidence of the initial public sale price of the 2012 Bonds as the Corporation or the Town may request and will supplement such information as may be necessary to continue its accuracy. The Underwriters represent and warrant that the 2012 Bonds will be offered only pursuant to the Official Statement and only in states where the offer and sale of the 2012 Bonds are legal, either as exempt securities, as exempt transactions or as a result of registration of the 2012 Bonds for sale in any such state.

## **2. *Official Statement.***

(a) The Corporation agrees to cause the Town to deliver to the Underwriters, at such addresses as the Underwriters specify, as many copies of the Official Statement dated June 15, 2012 relating to the 2012 Bonds (the “*Final Official Statement*”) as the Underwriters reasonably request as necessary to comply with paragraph (b)(4) of Rule 15c2-12 of the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the “*Rule*”) and with Rule G-32 and all other applicable rules of the Municipal Securities Rulemaking Board. The Corporation agrees to cause the Town to deliver such Final Official Statements within seven business days after the execution hereof. It is understood that, in undertaking to cause the Town to deliver Final Official Statements pursuant to this subparagraph (a), the Corporation is not undertaking any responsibility for the accuracy or completeness of the information in the Final Official Statement concerning the Town. The Underwriters represent that a copy of the Official Statement will be

electronically delivered before the “end of the underwriting period” (as such expression is used in Rule 15c2-12) with the Municipal Securities Rulemaking Board at [www.MSRB.org/msrb1/control/default.asp](http://www.MSRB.org/msrb1/control/default.asp).

(b) The Corporation will take all actions and provide all information reasonably requested by the Underwriters to ensure that the Official Statement at all times during the initial offering and distribution of the 2012 Bonds does not contain any untrue statement of a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading. Neither the Corporation nor the Town will amend or supplement, or approve any amendment or supplement of, the Official Statement without the prior written consent of the Underwriters (which consent will not be unreasonably withheld); provided, however, that, if between the date of this Purchase Contract and 25 days from the end of the underwriting period, as defined below, any event occurs or any fact is disclosed which might cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the Corporation or the Town, as the case may be, will promptly notify the Underwriters, and, if in the opinion of the Underwriters such event or disclosure requires the preparation and publication of a supplement or amendment to the Official Statement, the Corporation or the Town will supplement or amend the Official Statement in form and manner approved by the Underwriters. For the purposes of this Purchase Contract, unless otherwise notified by the Underwriters, the “end of the underwriting period” will mean the date 60 days after the closing.

(c) The Corporation agrees to, and agrees to cause the Town to, authorize and approve the Preliminary Official Statement dated June 6, 2012 and the Final Official Statement (the Final Official Statement, the Preliminary Official Statement and any amendments or supplements that may be authorized for use with respect to the 2012 Bonds are herein referred to collectively as the “*Official Statement*”), to consent to their distribution and use by the Underwriters and to authorize the execution of the Final Official Statement by a duly authorized officer of the Town.

(d) The Underwriters shall give notice to the Corporation and the Town on the date after which no participating underwriter, as such term is defined in the Rule, remains obligated to deliver Final Official Statements pursuant to paragraph (b)(4) of the Rule.

3. ***Representations and Warranties of the Corporation.*** The Corporation represents and warrants to the Underwriters that:

(a) the Corporation is a nonprofit corporation duly created and validly existing and in good standing under the laws of the State of North Carolina and has the power and authority and all necessary licenses and permits to conduct its business as described in the Preliminary Official Statement and the Official Statement;

(b) both at the time of its acceptance hereof and at the date of Closing (hereinafter defined), the statements and information contained in the Official Statement are and will be true, correct and complete in all material respects and do not and will not contain any untrue statement of a material fact or omit any statement or information which is necessary to make the statements and information therein, in light of the circumstances under which they were made, not misleading in any material respect;

(c) the Corporation will cooperate with the Underwriters and their counsel in taking all necessary action to qualify the Certificates for offer and sale under the securities or “Blue Sky” laws of such jurisdictions as the Underwriters may reasonably request and authorizes the Underwriters, at the Underwriters’ sole expense, to make any necessary filings on behalf of the Corporation in taking any such necessary action; provided, however, that the Corporation will not be required to execute a special or general consent to service of process or qualify as a foreign corporation in connection with such qualification;

(d) the execution and delivery by the Corporation of this Purchase Contract, the Trust Agreement, the Contract, and the Official Statement were duly approved by the Corporation’s Board of Directors in complete conformity with the Articles of Incorporation and the By Laws of the Corporation and North Carolina law;

(e) the approval, execution and delivery of this Purchase Contract, the Trust Agreement and the Contract and compliance with the provisions thereof and hereof under the circumstances contemplated thereby and hereby, do not and will not conflict with, constitute a breach of or default under, or result in the creation of a lien on any property of the Corporation (except as contemplated therein) pursuant to applicable law or any indenture, bond order, deed of trust, mortgage, agreement or other instrument to which the Corporation is a party except as described in the Official Statement, or conflict with or violate any applicable law, administrative rule, regulation, judgment, court order or consent decree to which the Corporation is subject;

(f) there is no claim, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, or public board or body, pending or, to the best of its knowledge, threatened (1) contesting the corporate existence or powers of the Corporation or the titles of the officers of the Corporation to their respective offices, (2) seeking to prohibit, restrain or enjoin the collection of revenues by the Corporation or the application of the proceeds of the Certificates wherein an unfavorable decision, ruling or finding would materially adversely affect the financial position of the Corporation or the validity or enforceability of the 2012 Bonds, the Trust Agreement, the Contract or this Purchase Contract, (3) contesting or affecting the validity of the Trust Agreement, the Contract or this Purchase Contract or (4) contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement (nor, to the best knowledge of the Corporation, is there any basis therefor);

(g) the Corporation is not in default in the payment of the principal of or interest on any indebtedness for borrowed money or under any instrument under or subject to which any indebtedness has been incurred, and to the best of its knowledge, no event has occurred or is continuing that, with the lapse of time or the giving of notice or both, would constitute an event of default under any such agreement;

(h) any certificate signed by the President or Vice President of the Corporation and delivered to the Underwriters will be deemed to be a representation and warranty by the Corporation to the Underwriters as to the statements made therein;

(i) when duly executed and delivered at the Closing in accordance with the provisions of this Purchase Contract, the Trust Agreement and the Contract will have been duly authorized, executed and delivered by the Corporation and will constitute valid and binding agreements of the Corporation enforceable in accordance with their terms; and

(j) when duly executed and delivered at the Closing in accordance with the provisions of this Purchase Contract, the 2012 Bonds will constitute valid and binding proportionate and undivided interests in the Corporation's rights to receive revenues pursuant to the Contract enforceable in accordance with their terms.

4. ***Corporation to Cause Town to Act.*** The Corporation will cause the Town to deliver, at the signing hereof, a Letter of Representation in the form of Exhibit A hereto, and at the Closing, a certificate signed by the Town Manager of the Town to the effect that:

(a) at the date of Closing, the statements and information contained in the Official Statement with respect to the affairs of the Town were provided to the Corporation and do not contain any untrue statement of a material fact or omit any statement or information which is necessary to make the statements and information therein, in light of the circumstances under which they were made, not misleading in any material respect;

(b) the Town is, on the date of Closing, a political subdivision, validly organized and existing under the laws of the State of North Carolina;

(c) except as otherwise described in the Official Statement, the Town has received and there remain currently in full force and effect, or will receive prior to the delivery of the 2012 Bonds, all governmental consents and approvals that would constitute a condition precedent to, or the absence of which would materially adversely affect, the performance by the Town of its obligations under the Contract and the Deed of Trust;

(d) at a meeting of the Town Council of the Town that was duly called and at which a quorum was present and acting throughout, the Town duly approved the execution and delivery by the Town of the Contract, the Escrow Agreement and the Deed of Trust;

(e) since June 30, 2011, there has been no material adverse change in the financial position, results of operations or condition, financial or otherwise, of the Town, and the Town has not incurred liabilities that would materially affect the ability of the Town to discharge its obligations under the Contract, direct or contingent, other than as set forth in or contemplated by the Official Statement;

(f) the Town has received and there remain currently in full force and effect, or will receive prior to the delivery of the 2012 Bonds, all governmental consents and approvals that would constitute a condition precedent to, or the absence of which would materially adversely affect, the performance by the Town of its obligations under the Contract, the Escrow Agreement and the Deed of Trust;

(g) the approval, execution and delivery of the Contract, the Escrow Agreement and the Deed of Trust by the Town and compliance with the provisions thereof, under the circumstances contemplated thereby and hereof, do not and will not conflict with, constitute a breach of or default under, or result in the creation of a lien on any property of the Town (except as contemplated therein) pursuant to applicable law or any indenture, trust agreement, bond order, deed of trust, mortgage, agreement or other instrument to which the Town is a party or by which the Town is bound, or conflict with or violate any applicable law, administrative rule, regulation, judgment, court order or consent decree to which the Town is subject;

(h) there is no claim, action, suit, proceeding, inquiry or investigation, at law or in equity before or by any court, governmental agency, or public board or body, pending or, to the

best of its knowledge, threatened (1) contesting the corporate existence or powers of the Town or the titles of the officers of the Town to their respective offices, (2) seeking to prohibit, restrain or enjoin the collection of revenues by the Town or the application of the proceeds of the 2012 Bonds wherein an unfavorable decision, ruling or finding would materially adversely affect the financial position of the Town or the operation of its facilities or the validity or enforceability of the Contract, the Escrow Agreement and the Deed of Trust, (3) contesting or affecting the validity of the Contract, the Escrow Agreement and the Deed of Trust, (4) contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement (nor, to the best knowledge of the Town, is there any basis therefor), (5) challenging the right of the Town to construct, acquire and equip the projects financed with the proceeds of the Contract or the 2005 Certificates, or (6) challenging the transactions contemplated hereby;

(i) when duly executed and delivered, the Contract, the Escrow Agreement and the Deed of Trust will constitute valid and binding obligations of the Town enforceable in accordance with their terms (except insofar as the enforcement thereof may be limited by bankruptcy, insolvency or similar laws relating to the enforcement of creditors' rights);

(j) the Town is not in default on the payment of the principal of or interest on any indebtedness for borrowed money or under any instrument relating to such indebtedness and no event has occurred and is continuing which, with the lapse of time or the giving of notice or both, might constitute an event of default under any such instrument, and no event has occurred which with the passage of time or the giving of notice, or both, would constitute an event of default as defined in the Contract; and

(k) any certificate signed by any official of the Town and delivered to the Underwriters will be deemed to be a representation by the Town to the Underwriters as to the statements made therein.

5. **Closing.** At 10:00 a.m. (New York time) on June 27, 2012 or at such other time or date as has been mutually agreed on by the Corporation, the Town and the Underwriters (the "*Closing Date*"), the Corporation will deliver, or cause to be delivered, to the Underwriters, at the offices of The Depository Trust Company ("*DTC*"), 55 Water Street, New York, New York 10041, or at such other place as the Underwriters, the Corporation and the Town may mutually agree on, the 2012 Bonds in definitive form, duly executed and authenticated and registered in such names and in such denominations as the Underwriters will have requested in writing not less than 2 business days before the Closing Date, together with the other documents hereinafter mentioned; and the Underwriters will accept such delivery and pay the Purchase Price of the 2012 Bonds with bank wire transfer in federal funds payable to the order of the Trustee on behalf of the Town.

The activities relating to the final execution and delivery of the 2012 Bonds, the Contract, the Deed of Trust and the Trust Agreement and the payment therefor and the delivery of all certificates, opinions and other instruments described in Section 7 of this Purchase Contract shall occur at the offices of Robert W. Baird & Co., 380 Knollwood Road, Suite 440, Winston-Salem, North Carolina. The payment for the 2012 Bonds and simultaneous delivery of the 2012 Bonds to the Underwriters is herein referred to as the "*Closing*." The 2012 Bonds will be delivered in book-entry form as definitive registered 2012 Bonds initially as one certificate for each maturity, registered in the name of Cede & Co., as nominee of DTC, as registered owner of all of the 2012 Bonds, duly executed and authenticated, with CUSIP identification numbers typed thereon. Neither the failure to type such numbers on any 2012 Bond nor any error in them will constitute cause for a failure or refusal by the Underwriters to accept delivery of the 2012 Bonds and pay the Purchase Price of the 2012 Bonds. The 2012 Bonds will be made available to the Trustee, on DTC's behalf, not less than 24 hours prior to the Closing and the closing will

be conducted under the FAST system, unless otherwise agreed by the Underwriters, the Town and the Trustee.

6. ***Termination of Purchase Contract.*** The Underwriters have the right to cancel their obligation to purchase the 2012 Bonds by notifying the Town of its election to do so, if between the date hereof and the Closing Date:

(a) a tentative decision with respect to legislation shall be reached by a committee of the House of Representatives or the Senate of the Congress of the United States, or legislation is favorably reported or re-reported by such a committee or introduced, by amendment or otherwise, in or passed by the House of Representatives or the Senate, or recommended to the Congress of the United States for passage by the President of the United States or enacted or a decision by a federal court of the United States or the United States Tax Court is rendered, or a ruling, release, order, regulation or official statement by or on behalf of the United States Treasury Department, the Internal Revenue Service or other governmental agency is or proposed to be made having the purpose or effect, or any other action or event has occurred which has the purpose or effect, directly or indirectly, of adversely affecting the federal income tax consequences of owning the 2012 Bonds or of any of the transactions contemplated in connection herewith, including causing the interest portion of the Installment Payments to be included in gross income for purposes of federal income taxation, or imposing federal income taxation upon revenues or other income of the general character to be derived by or by any similar body under the Contract and the Trust Agreement or similar documents or upon interest received on obligations of the general character of the 2012 Bonds, which, in the opinion of the Underwriters, materially adversely affects (i) the market price of or the marketability of the 2012 Bonds or the market generally for obligations of the general character of the 2012 Bonds or (ii) the ability of the Underwriters to enforce contracts or orders for the sale of the 2012 Bonds at the contemplated offering prices; or

(b) legislation is enacted, or actively considered for enactment with an effective date prior to the Closing, or a decision by a court of the United States is rendered, the effect of which is that the 2012 Bonds, including any underlying obligations, or the Trust Agreement, as the case may be, is not exempt from the registration, qualification or other requirements of the Securities Act of 1933, as amended and as then in effect, the Securities Exchange Act of 1934, as amended and as then in effect, or the Trust Indenture Act of 1939, as amended and as then in effect; or

(c) a decision, stop order, ruling, regulation, proposed regulation or official statement by or on behalf of the Securities and Exchange Commission or any other governmental agency having jurisdiction of the subject matter is issued or made or any other event occurs, the effect of which is that the initial execution, delivery, offering and sale of the 2012 Bonds, including any underlying obligations, or the execution and delivery of the Trust Agreement as contemplated hereby or by the Official Statement, is or would be in violation of any provision of the federal securities laws, including the Securities Act of 1933, as amended and as then in effect, the Securities Exchange Act of 1934, as amended and as then in effect, or the Trust Indenture Act of 1939, as amended and as then in effect; or

(d) any event has occurred or any information has become known to the Underwriters which causes the Underwriters to reasonably believe that the Official Statement as then amended or supplemented includes an untrue statement of a material fact, or omits to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; or

(e) there occurs any outbreak or escalation of hostilities or any national or international calamity or crisis, including a financial crisis, or any escalation of activities, the effect of which on the financial markets of the United States is such as, in the reasonable judgment of the Underwriters, would materially adversely affect (i) the market price of or the marketability of the 2012 Bonds or the market generally for obligations of the general character of the 2012 Bonds or (ii) the ability of the Underwriters to enforce contracts or orders for the sale of the 2012 Bonds at the contemplated offering prices; or

(f) a decision, ruling or finding is entered by any court or governmental authority since the date of this Purchase Contract (and not reversed or appealed or otherwise set aside) which has any of the effects described in Section 2(h) of the Letter of Representation; or

(g) there is in force a general suspension of trading on the New York Stock Exchange, or minimum of maximum prices for trading fixed and in force, or maximum ranges for prices of securities required and in force on the New York Stock Exchange, whether by virtue of a determination by the New York Stock Exchange or by order of the Securities and Exchange Commission or any other governmental authority having jurisdiction, the effect of which on the financial markets of the United States is such as, in the reasonable judgment of the Underwriters, would materially adversely affect (i) the market price of or the marketability of the 2012 Bonds or the market generally for obligations of the general character of the 2012 Bonds or (ii) the ability of the Underwriters to enforce contracts or orders for the sale of the 2012 Bonds at the contemplated offering prices; or

(h) a general banking moratorium is declared by federal, New York or State authorities; or

(i) any proceeding is pending or threatened by the Securities and Exchange Commission against the Town; or

(j) additional material restrictions not in force as of the date hereof are imposed on trading in securities generally by any governmental authority or by any national securities exchange; or

(k) the New York Stock Exchange or other national securities exchange or any governmental authority, imposes, as to the 2012 Bonds or obligations of the general character of the 2012 Bonds, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, Underwriters; or

(l) federal or North Carolina legislation or a decision by a court of the United States or any action taken by the Securities and Exchange Commission or other federal or North Carolina governmental agency which, in the opinion of counsel to the Underwriters, has the effect of requiring the 2012 Bonds or any related instrument to be registered under the Securities Act of 1933, as amended, or the Investment Company Act of 1940, as amended, or requiring the Trust Agreement or any related instrument to be qualified under the Trust Indenture Act of 1939, as amended; or

(m) any material adverse change in the affairs of the Corporation or the Town making it impracticable to market the 2012 Bonds on the terms and in the manner contemplated in this Purchase Contract as determined by the reasonable judgment of the Underwriters; or

(n) a supplement or amendment made to the Official Statement subsequent to the date of this Purchase Contract which, in the reasonable judgment of the Underwriters, materially and adversely affects (1) the market price or the marketability of the 2012 Bonds or the market generally for obligations of the general character of the 2012 Bonds, or (2) the ability of the Underwriters to enforce contracts or orders for the sale of the 2012 Bonds at the contemplated offering prices; or

(1) by not later than seven months after the end of each Fiscal Year, the audited financial statements of the Town 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 then available, unaudited financial statements of the Town for such Fiscal Year to be replaced subsequently by audited financial statements of the Town to be delivered within 15 days after such audited financial statements become available for distribution;

(2) by not later than seven months after the end of each Fiscal Year, (a) the financial and statistical data as of a date not earlier than the end of the preceding Fiscal Year for the type of information included under the captions **“THE TOWN--DEBT INFORMATION”** and **“--TAX INFORMATION”** in Appendix A relating to the 2012 Bonds (excluding any information on overlapping or underlying debt) and (b) the combined budget of the Town for the current Fiscal Year, to the extent such items are not included financial information listed above;

(3) in a timely manner not in excess of ten business days after the occurrence of the event, notice of any of the following events with respect to the 2012 Bonds:

(4) principal and interest payment delinquencies;

(5) non-payment related defaults, if material;

(6) unscheduled draws on debt service reserves reflecting financial difficulties;

(7) unscheduled draws on credit enhancements reflecting financial difficulties;

(8) substitution of credit or liquidity providers, or their failure to perform;

(9) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the 2012 Bonds, or other material events affecting the tax status of the 2012 Bonds;

(10) modifications to rights of holders of the 2012 Bonds, if material;

(11) calls for redemption of the 2012 Bonds, if material, and tender offers;

(12) defeasances;

(13) release, substitution, or sale of property securing repayment of the securities, if material;

(14) rating changes;

(15) bankruptcy, insolvency, receivership or similar proceedings related to the Town, the Corporation or any other person or entity that may at any time become legally obligated to make Installment Payments (collectively, the “*Obligated Persons*”);

(16) the consummation of a merger, consolidation, or acquisition involving an Obligated Person or the sale of all or substantially all of the assets of the Obligated Person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(o) appointment of a successor or additional trustee or the change of name of a trustee, if material

(p) any default (or event which would become a default unless cured) with respect to any indebtedness of the Corporation, or proceedings under any federal or North Carolina laws instituted by or against the Corporation or the Town, in either case the effect of which, in the reasonable judgment of the Underwriters, is to materially and adversely affect (1) the market price or the marketability of the 2012 Bonds or the market generally for obligations of the general character of the 2012 Bonds, or (2) the ability of the Underwriters to enforce contracts or orders for the sale of the 2012 Bonds at the contemplated offering prices; or

(q) any proceedings instituted under federal bankruptcy laws by or against any state of the United States or any city or Town in the United States having a population over 1,000,000, the effect of which on the financial markets of the United States, in the reasonable judgment of the Underwriters, is to materially adversely affect (1) the market price or the marketability of the 2012 Bonds or the market for obligations having the general character of the 2012 Bonds, or (2) the ability of the Underwriters to enforce contracts or orders for the sale of the 2012 Bonds at the contemplated offering prices; or

(r) the withholding of registration, exemption or clearance by the “Blue Sky” or securities authorities of any state because of a change in or new interpretation of law occurring after the date of this Purchase Contract, the effect of which, in the reasonable judgment of the Underwriters, is to materially adversely affect (1) the market price or marketability of a substantial portion of the 2012 Bonds or the market for obligations having the general character of the 2012 Bonds, or (2) the ability of the Underwriters to enforce contracts or orders for the sale of a substantial portion of the 2012 Bonds at the contemplated offering prices.

7. ***Conditions to Obligations of the Underwriters.*** The obligation of the Underwriters to purchase the 2012 Bonds is subject:

(a) to the performance by the Corporation of its obligations to be performed hereunder at and before the Closing;

(b) to the performance by the Town of its obligations to be performed under the Letter of Representation at and prior to the Closing;

(c) to the accuracy of the representations and warranties of herein as of the date hereof and as of the time of the Closing;

(d) to the accuracy of the representations and warranties of the Town in the Letter of Representation as of the date hereof and as of the time of the Closing; and

(e) to the following conditions, including the delivery by the Town of such documents as are enumerated herein in form and substance satisfactory to Parker Poe Adams & Bernstein LLP, Counsel to the Underwriters:

(i) At the time of Closing;

(1) the Official Statement, this Purchase Contract, the Contract, the Deed of Trust, the Escrow Agreement and the Trust Agreement are in full force and effect and have not been amended, modified or supplemented from the date hereof except as may have been agreed to in writing by the Underwriters;

(2) the proceeds of the sale of the 2012 Bonds are deposited and applied as described in the Official Statement; and

(3) the Town has duly adopted and there are in full force and effect such resolutions as, in the opinion of Sanford Holshouser LLP, Carrboro, North Carolina ("*Bond Counsel*"), are necessary in connection with the transactions contemplated hereby.

(ii) Receipt of the 2012 Bonds, the Contract, the Escrow Agreement, the Deed of Trust and the Trust Agreement at or before the Closing. The terms of the 2012 Bonds, as delivered, must in all instances be as described in the Final Official Statement. The terms of the Contract, as delivered, shall, among other things, specify the Town's and any other obligated person's undertaking to provide continuing disclosure in accordance with the Rule and Section 2(n) of the Letter of Representation.

(iii) At or prior to the Closing, the Underwriters receive two copies of the following documents:

(1) Final approving opinion of Bond Counsel dated the Closing Date, in substantially the form set forth in Exhibit C to the Official Statement.

(2) Supplemental opinion of Bond Counsel addressed to the Underwriters and dated the Closing Date, in substantially the form attached hereto as Exhibit B.

(3) An opinion of Ralph D. Karpinos, Esq., Town Attorney, dated the Closing Date, addressed to the Underwriters, in a form satisfactory to the Underwriters and their Counsel.

(4) Memoranda from Counsel to the Underwriters addressed to the Underwriters indicating the jurisdictions in which the 2012 Bonds may be sold in compliance with the securities or “Blue Sky” laws of such jurisdictions.

(5) Opinion[s] of Parker Poe Adams & Bernstein LLP, Counsel to the Underwriters **[and the Corporation]**, dated the Closing Date, in forms satisfactory to the Underwriters.

(6) The Final Official Statement executed on behalf of the Town by duly authorized officers thereof.

(7) Certified copies of all resolutions of the Town relating to the 2012 Bonds and the Contract.

(8) Certified copies of such documents of the Corporation approving the execution and delivery of the Contract, the Trust Agreement and this Purchase Contract as may be required by Bond Counsel.

(9) A specimen 2012 Bond.

(10) Letters from Moody’s and S&P to the effect that the 2012 Bonds have been assigned a rating of “[ ]” and “[ ]”, respectively, which ratings are in effect as of the date of Closing.

(11) A certificate, in form and substance satisfactory to the Underwriters and their Counsel, of the President or any duly authorized officer or official of the Corporation satisfactory to the Underwriters and their Counsel, dated as of the Closing Date, to the effect that: (a) each of the Corporation’s representations, warranties and covenants contained herein are true and correct as of the Closing Date; (b) the Contract, the Trust Agreement and this Purchase Contract have been entered into by the Corporation and are in full force and effect and (c) the 2012 Bonds have been duly executed and delivered by the Corporation.

(12) A certificate, in form and substance satisfactory to the Underwriters and their counsel, dated the Closing Date, executed by an appropriate official of the Town to the effect that (a) the representations and warranties of the Town in the Letter of Representation are true and correct in all material respects as of the date of Closing and (b) the Contract, the Escrow Agreement and the Deed of Trust have been entered into by the Town and are in full force and effect.

(13) Executed copies of the Town’s Certificate as to non-arbitrage and other matters relative to the tax status of the 2012 Bonds under Section 148 of the Internal Revenue Code of 1986, as amended.

(14) Evidence that the Deed of Trust has been duly recorded.

(15) A copy of a title insurance policy issued by **[Name of Title Insurer]**, naming the Trustee as a beneficiary and in an amount not less than \$[Amount].

(16) An executed copy of the Letter of Representations addressed to The Depository Trust Company.

(17) A report of [Verification Agent], verifying the mathematical accuracy of certain computations contained in the schedules provided to them by the Underwriters, which schedules relate to the sufficiency of the maturing principal of and interest on the Federal Securities held in the Escrow Fund (as described in the Escrow Agreement), together with any other funds deposited in the Escrow Fund, to pay when due, the principal, interest and prepayment requirements relating to the refunding of the Refunded 2005 Certificates.

(18) An opinion of Bond Counsel dated the Closing Date, addressed to the Underwriters, in form satisfactory to the Underwriters and their Counsel, to the effect that that the Refunded 2005 Certificates are no longer Outstanding within the meaning of the trust agreement relating to the 2005 Certificates.

(19) Such additional legal opinions, certificates, proceedings, instruments and other documents as Counsel to the Underwriters, Bond Counsel, or Counsel to the Town may reasonably request to evidence compliance by the Corporation or the Town with legal requirements, the truth and accuracy, as of the time of Closing, of the respective representations of the Corporation and the Town herein contained and the due performance or satisfaction by each of them at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by each of them.

The Underwriters have entered into this Purchase Contract in reliance on the respective representations, warranties and covenants of the Corporation and the Town contained in this Purchase Contract and in the Letter of Representation. Unless excused by the Underwriters, the Underwriters' obligations under this Purchase Contract are at all times subject to the conditions set forth in this Section 7 and any other express condition contained in any other Section of this Purchase Contract. If any condition to the Underwriters' obligations is not excused or satisfied on or before the Closing Date (or in the case of events described in Section 6 above, immediately on the occurrence of such event), the Underwriters' obligation and, except as otherwise provided in this Purchase Contract, the obligations of the Corporation and the Town will be immediately discharged, and the Underwriters may terminate this Purchase Contract at any time. If, however, the Corporation is unable to satisfy the conditions to the obligations of the Underwriters contained in this Purchase Contract, or if the obligations of the Underwriters to purchase and accept delivery of the 2012 Bonds is terminated for any reason permitted by this Purchase Contract, this Purchase Contract shall terminate and neither the Underwriters nor the Corporation shall be under further obligation hereunder; except that the respective obligations to pay expenses, as provided in Section 10, shall continue in full force and effect. All of the opinions, letters, certificates, instruments and other documents mentioned in this Purchase Contract will be deemed to be in compliance with the provisions of this Purchase Contract if, but only if, in the reasonable judgment of the Underwriters and Counsel to the Underwriters, they are satisfactory in form and substance. The Underwriters hereby expressly reserve the right to waive any of the conditions to its obligations contained in this Purchase Contract.

8. ***Mutual Performance.*** The obligations of the Corporation under this Purchase Contract are subject to the performance by the Underwriters of their obligations under this Purchase Contract.

9. ***Continuation of Obligations.*** All representations, warranties and agreements of the Corporation remain operative and in full force and effect, regardless of any investigations made by or on

behalf of the Underwriters or the Town and survive the Closing. The obligations of the Corporation under Section 10 survive any termination of this Purchase Contract by the Underwriters pursuant to the terms hereof.

10. **Expenses.** The Corporation will cause the Town to pay, but only from the proceeds of the 2012 Bonds or moneys made available pursuant to the Trust Agreement, all expenses incident to the performance of its obligations under this Purchase Contract, including, but not limited to, mailing or delivery of the 2012 Bonds, costs of printing the 2012 Bonds, the Preliminary and Final Official Statements, any amendment or supplement to the Preliminary or Final Official Statements and this Purchase Contract, the cost of preparation (including printing, copying and distribution) of the Contract, the Deed of Trust, the Escrow Agreement and the Trust Agreement, fees and disbursements of Bond Counsel, fees and disbursements of Corporation's Counsel, fees and disbursements of Counsel to the Underwriters, fees and disbursements of Trustee's Counsel, if any, fees and expenses of the Town's accountants, if any, any fees charged by investment rating agencies for the rating of the 2012 Bonds, fees of the Local Government Commission and the North Carolina Municipal Council, fees of the Financial Advisor, fees of the Trustee and Escrow Agent and any paying agent fees and additional miscellaneous fees and costs incurred in connection with and related to the transaction.

The Underwriters shall pay all advertising expenses and blue sky expenses in connection with the public offering of the 2012 Bonds and all other expenses incurred by the Underwriters in connection with their public offering and distribution of the 2012 Bonds, including the CUSIP Service Bureau service charge for the assignment of CUSIP numbers for the 2012 Bonds.

11. **Notices.** Any notice or other communication to be given to the Town under this Purchase Contract may be given by delivering the same in writing to Town of Chapel Hill, 405 Martin Luther King Jr. Blvd, Chapel Hill, North Carolina 27516, Attention: Director of Business Management, and a notice or other communication to be given to the Corporation under this Purchase Contract may be given by delivering the same in writing to the address set forth on page one to this Purchase Contract. Any notice or other communication to be given to the Underwriters under this Purchase Contract may be given by delivering the same in writing to Robert W. Baird & Co., 380 Knollwood Road, Suite 440, Winston-Salem, North Carolina 27103. Attention: Ryan Maher.

12. **Benefits of Purchase Contract.** This Purchase Contract is made solely for the benefit of the Underwriters and their successors or assigns, and no other person, including any purchaser of the 2012 Bonds, shall acquire or have any right hereunder or by virtue hereof.

13. **Approvals by Underwriters.** The approval of the Underwriters in connection with this Purchase Contract or any document contemplated by it will be in writing signed by the Underwriters and delivered to the Corporation or the Town.

14. **Assignment.** This Purchase Contract may not be assigned by the Corporation or the Town without the prior written consent of the Underwriters. Any assignment for which consent is not given will be void.

15. **Business Days.** The term "business day" as used in this Purchase Contract means any day on which the New York Stock Exchange is open for business.

16. **Severability.** If any one or more of the provisions of this Purchase Contract is, for any reason, held to be illegal or invalid, such illegality or invalidity will not affect any other provisions of this Purchase Contract and this Purchase Contract will be construed and enforced as if such illegal or invalid provisions had not been contained herein.

17. ***Governing Law.*** This Purchase Contract is governed by and is to be construed in accordance with the laws of the State of North Carolina.

18. ***Effective Date; Counterparts.*** This Purchase Contract is effective on your acceptance hereof. This Purchase Contract may be simultaneously executed in several counterparts, each of which is an original and all of which constitute but one and the same instrument.

19. ***Survival of Representations and Warranties.*** Notwithstanding any provisions herein to the contrary, any and all representations, warranties and agreements in this Purchase Contract survive regardless of (a) any investigation or any statement in respect thereof made by or on behalf of the Underwriters, (b) delivery of any payment by the Underwriters for the 2012 Bonds hereunder and (c) any termination of this Purchase Contract.

20. ***No Advisory or Fiduciary Role.*** The Corporation acknowledges and agrees that (a) the purchase and sale of the 2012 Bonds pursuant to this Purchase Contract is an arm's-length commercial transaction between the Corporation and the Underwriters, (b) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriters are and have been acting solely as a principal and are not acting as agents or fiduciaries of the Corporation or the Town, (c) the Underwriters have not assumed an advisory or fiduciary responsibility in favor of the Corporation or the Town with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriters have provided other services or are currently providing other services to the Town on other matters) and the Underwriters have no obligation to the Corporation or the Town with respect to the offering contemplated hereby except the obligations expressly set forth in this Purchase Contract and (d) the Corporation has consulted its own legal, financial and other advisors to the extent it has deemed appropriate.

Very truly yours,

**ROBERT W. BAIRD & CO., ON ITS OWN BEHALF AND ON  
BEHALF OF WELLS FARGO BANK, NATIONAL  
ASSOCIATION**

By: \_\_\_\_\_  
Ryan Maher  
Director

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

[COUNTERPART SIGNATURE PAGE TO THE PURCHASE CONTRACT—  
LIMITED OBLIGATION BONDS, SERIES 2012  
TOWN OF CHAPEL HILL, NORTH CAROLINA]

ACCEPTED AND CONFIRMED AS OF  
THE DATE FIRST ABOVE WRITTEN:

**TOWN OF CHAPEL HILL PUBLIC FACILITIES CORPORATION**

By: \_\_\_\_\_  
Florentine Miller  
President

## SCHEDULE I

## TO THE PURCHASE CONTRACT

*[\$Amount]  
 Limited Obligation Bonds, Series 2012  
 Evidencing Proportionate and Undivided  
 Ownership Interests in Installment Payments to be Made  
 Pursuant to an Installment Financing Contract with the  
 TOWN OF CHAPEL HILL, NORTH CAROLINA*

## MATURITIES, AMOUNTS, INTEREST RATES AND YIELDS

## [\$Amount]\* Serial 2012 Bonds

<u>DUE JUNE 1</u>	<u>PRINCIPAL AMOUNT</u>	<u>INTEREST RATE</u>	<u>YIELD</u>	<u>DUE JUNE 1</u>	<u>PRINCIPAL AMOUNT</u>	<u>INTEREST RATE</u>	<u>YIELD</u>
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\$[ ] \_\_% Term 2012 Bonds due June 1, 20\_\_, Yield \_\_%

**PREPAYMENT PROVISIONS**

***Optional Prepayment.*** The 2012 Bonds maturing on or after June 1, 20\_\_ are subject to prepayment from any available moneys in whole or in part on any date on or after June 1, 20\_\_ at the option of the Town, if the Town exercises its option under the Contract to prepay in whole or in part the principal components of the Installment Payments, at a prepayment price equal to the principal with respect to such 2012 Bonds to be prepaid, together with accrued interest to the date fixed for prepayment.

***Mandatory Sinking Fund Prepayment.*** The 2012 Bonds maturing on June 1, 20\_\_ (the “*Term Bonds*”) are subject to mandatory prepayment prior to maturity, upon payment of 100% of the principal amount thereof plus interest accrued to the prepayment date, on June 1 in the years and amounts as follows:

<u>YEAR</u>	<u>PRINCIPAL AMOUNT</u>
-------------	-----------------------------

\* Maturity

Notwithstanding the foregoing, on or before the 70th day next preceding any sinking fund payment date, the Town may (a) deliver to the Trustee for cancellation Term Bonds required to be prepaid on such sinking fund payment date in any aggregate principal amount desired or (b) instruct the Trustee to apply a credit against the Town's sinking fund payment obligation for any such Term Bonds that previously have been prepaid (other than through the operation of the sinking fund requirements) and canceled by the Trustee but not previously applied as a credit against any sinking fund payment obligation. The Trustee will credit against the Town's sinking fund payment obligation on such sinking fund payment date the amount of such Bonds so purchased, delivered or previously prepaid as described in (a) or (b) above.

**EXHIBIT A****LETTER OF REPRESENTATION**

June 15, 2012

Robert W. Baird & Co.  
Winston-Salem, North Carolina

*§[Amount]*  
***Limited Obligation Bonds, Series 2012***  
***Evidencing Proportionate and Undivided***  
***Ownership Interests in Installment Payments to be Made***  
***Pursuant to an Installment Financing Contract with the***  
***TOWN OF CHAPEL HILL, NORTH CAROLINA***

Ladies and Gentlemen:

This letter is being delivered to Robert W. Baird & Co., on its own behalf and on behalf of Wells Fargo Bank, National Association (collectively, the “*Underwriters*”) in consideration for your entering into a Purchase Contract dated the date hereof (the “*Purchase Contract*”) with the Town of Chapel Hill Public Facilities Corporation (the “*Corporation*”) for the purchase of the above-referenced Limited Obligation Bonds (the “*2012 Bonds*”). Pursuant to the Purchase Contract, the Underwriters have agreed to purchase from the Corporation, and the Corporation has agreed to sell to the Underwriters the 2012 Bonds. In order to induce the Corporation to enter into the Purchase Contract and as consideration for the execution, deliver and sale of the 2012 Bonds by the Corporation and the purchase of them by the Underwriters, the Town makes the representations, warranties and covenants contained in this letter. Unless the context clearly indicates otherwise, each capitalized term used in this Letter of Representation has the meaning set forth in the Purchase Contract.

1. ***Approval of Official Statement.*** The Town hereby authorizes and approves the Preliminary Official Statement dated June 6, 2012 (the “*Preliminary Official Statement*”) and the Final Official Statement dated June 15, 2012 (the “*Final Official Statement*”, the Preliminary Official Statement and any amendments or supplements that may be authorized for use with respect to the 2012 Bonds are herein referred to collectively as the “*Official Statement*”), and consents to their distribution and use by the Underwriters.

The Town agrees to deliver to the Underwriters, at such addresses as the Underwriters specify, as many copies of the Final Official Statement as the Underwriters reasonably request as necessary to comply with paragraph (b)(4) of Rule 15c2-12 of the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the “*Rule*”) and with Rule G-32 and all other applicable rules of the Municipal Securities Rulemaking Board. The Town agrees to deliver such Final Official Statements within seven business days after the execution hereof.

The Town will take all actions and provide all information reasonably requested by the Underwriters to ensure that the Official Statement at all times during the initial offering and distribution

of the 2012 Bonds does not contain any untrue statement of a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading. Neither the Corporation nor the Town will amend or supplement, or approve any amendment or supplement of, the Official Statement without the prior written consent of the Underwriters (which consent will not be unreasonably withheld); provided, however, that, if between the date of this Purchase Contract and 25 days from the end of the underwriting period, as defined below, any event occurs or any fact is disclosed which might cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the Corporation or the Town, as the case may be, will promptly notify the Underwriters, and, if in the opinion of the Underwriters, such event or disclosure requires the preparation and publication of a supplement or amendment to the Official Statement, the Corporation or the Town will supplement or amend the Official Statement in the form and manner approved by the Underwriters. For the purpose of this Purchase Contract, the “end of the underwriting period” will mean the date 60 days after the Closing Date.

The Town represents and warrants that (a) it has deemed the Preliminary Official Statement final as of its date except for omitted information permitted under paragraph (b)(1) of the Rule and (b) the Official Statement constitutes as of this date a final official statement within the meaning of paragraph (e)(3) of the Rule.

2. ***Representations, Warranties and Covenants of Town.*** The Town represents and warrants to and agrees with the Underwriters that:

(a) the Town is a municipal corporation, validly organized and existing under the laws of the State of North Carolina;

(b) on the date hereof and at the Closing Date, the statements and information contained in the Official Statement with respect to the affairs of the Town, including the information contained under the captions “**THE TOWN**,” “**THE PLAN OF FINANCE**” and “**LEGAL MATTERS – LITIGATION**” (as it relates to the Town) and in Appendix A thereto, are and will be true, correct and complete in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which it was made, not misleading;

(c) the audited financial reports of the Town for the year ended June 30, 2011, included in Appendix B to the Official Statement, present fairly the financial position of the Town for the periods specified, and such financial reports and statements have been prepared in conformity with generally accepted accounting principles consistently applied in all material respects to the periods involved, except as otherwise stated in the notes thereto;

(d) other than as set forth in or contemplated by the Official Statement, since June 30, 2011, there has been no material adverse change in the general affairs, financial position, results of operations or condition, financial or otherwise, of the Town, and the Town has not incurred liabilities that would materially affect the ability of the Town to discharge its obligations under this Letter of Representation, the Contract and the Escrow Agreement, direct or contingent;

(e) the Town has received and there remain currently in full force and effect, or will receive prior to the delivery of the 2012 Bonds, all consents, approvals, authorizations and orders of governmental or regulatory authorities that would constitute a condition precedent to, or the absence of which would materially adversely affect, the performance by the Town of its

obligations under this Letter of Representation, the Contract, the Escrow Agreement and the Deed of Trust;

(f) at meetings of the Town Council of the Town that was duly called and at which a quorum was present and acting throughout, the Town duly approved the execution and delivery by the Town of this Letter of Representation, the Contract, the Escrow Agreement and the Deed of Trust;

(g) the approval, execution and delivery of this Letter of Representation, the Contract, the Escrow Agreement and the Deed of Trust by the Town and compliance with the provisions thereof, under the circumstances contemplated thereby and hereof, do not and will not conflict with, constitute a breach of or default under, or result in the creation of a lien on any property of the Town (except as contemplated therein) pursuant to applicable law or any indenture, bond order, deed of trust, mortgage, agreement or other instrument to which the Town is a party or by which the Town is bound, or conflict with or violate any applicable law, administrative rule, regulation, judgment, court order or consent decree to which the Town is subject;

(h) to the best of its knowledge, after due and reasonable investigation, there is no claim, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, or public board or body, pending or threatened (1) contesting the corporate existence or powers of the Town or the titles of the officers of the Town to their respective offices, (2) seeking to prohibit, restrain or enjoin the collection of revenues by the Town or the application of the proceeds of the 2012 Bonds wherein an unfavorable decision, ruling or finding would materially adversely affect the financial position of the Town or the operation of its facilities or the validity or enforceability of this Letter of Representation, the Contract, the Escrow Agreement and the Deed of Trust, (3) contesting, questioning or affecting the validity of this Letter of Representation, the Contract, the Escrow Agreement and the Deed of Trust, or (4) contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Final Official Statement (nor, to the best knowledge of the Town, is there any basis therefor);

(i) the Town is not in default on the payment of the principal of or interest on any indebtedness for borrowed money or under any instrument relating to such indebtedness and no event has occurred and is continuing which, with the lapse of time or the giving of notice or both, might constitute an event of default under any such instrument, and no event has occurred which with the passage of time or the giving of notice, or both, would constitute an event of default as defined in the Contract;

(j) the Town will furnish such information and will cooperate with the Underwriters in taking such actions as the Underwriters may reasonably request to qualify the 2012 Bonds for offer and sale under the Blue Sky or other securities laws and regulations of any state and other jurisdictions of the United States which the Underwriters may designate;

(k) the Town will take all action and provide all information required to be taken or provided by the Corporation under the Purchase Contract in connection with the preparation and distribution of the Official Statement, and the terms and conditions of the Purchase Contract relating to such preparation and distribution, including without limitation the provisions of Section 2 thereof, are incorporated by reference in this Letter of Representation, mutatis mutandis;

(l) on the Closing Date, this Letter of Representation, the Contract, the Escrow Agreement and the Deed of Trust will have been duly authorized, executed and delivered and will constitute valid and binding obligations of the Town enforceable in accordance with their terms (except insofar as the enforcement thereof may be limited by bankruptcy, insolvency or similar laws relating to the enforcement of creditors' rights).

(m) if, at any time prior to the earlier of (1) receipt of notice from the Underwriters pursuant to Section 2(d) of the Purchase Contract that Official Statements are no longer required to be delivered under the Rule (as defined in the Purchase Contract) or (2) 90 days after the Closing, any event occurs as a result of which the Preliminary Official Statement or the Final Official Statement as then amended or supplemented might include an untrue statement of a material fact, or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the Town shall promptly notify the Underwriters thereof in writing; provided, however, that the Town shall have such obligations with respect to information in the Preliminary Official Statement and Final Official Statement concerning and supplied by the Underwriters only to the extent the Town has actual knowledge or notice of any such event; any information supplied by the Town for inclusion in any amendments or supplements to the Preliminary Official Statement or Final Official Statement will not contain any untrue or misleading statement of a material fact relating to the Town or omit to state any material fact relating to the Town necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and on the request of the Underwriters therefor, the Town shall prepare and deliver to the Underwriters at the Town's expense as many copies of an amendment or supplement which will correct any untrue statement or omission as the Underwriters may reasonably request.

(n) the Town will comply with the information reporting requirements adopted by the Securities and Exchange Commission or the Municipal Securities Rulemaking Board with respect to tax-exempt obligations such as the 2012 Bonds; in particular, the Town will undertake, in accordance with the requirements of the Rule, in the Contract to provide or cause to be provided:

(1) by not later than seven months after the end of each Fiscal Year, the audited financial statements of the Town 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 then available, unaudited financial statements of the Town for such Fiscal Year to be replaced subsequently by audited financial statements of the Town to be delivered within 15 days after such audited financial statements become available for distribution;

(2) by not later than seven months after the end of each Fiscal Year, (a) the financial and statistical data as of a date not earlier than the end of the preceding Fiscal Year for the type of information included under the captions "**THE TOWN--DEBT INFORMATION**" and "**--TAX INFORMATION**" in Appendix A to the Official Statement relating to the 2012 Bonds (excluding any information on overlapping or underlying debt) and (b) the combined budget of the Town for the current Fiscal Year, to the extent such items are not included financial information listed above;

(3) in a timely manner not in excess of ten business days after the occurrence of the event, notice of any of the following events with respect to the 2012 Bonds:

- (a) principal and interest payment delinquencies;
- (b) non-payment related defaults, if material;
- (c) unscheduled draws on debt service reserves reflecting financial difficulties;
- (d) unscheduled draws on credit enhancements reflecting financial difficulties;
- (e) substitution of credit or liquidity providers, or their failure to perform;
- (f) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the 2012 Bonds, or other material events affecting the tax status of the 2012 Bonds;
- (g) modifications to rights of holders of the 2012 Bonds, if material;
- (h) calls for redemption of the 2012 Bonds, if material, and tender offers;
- (i) defeasances;
- (j) release, substitution, or sale of property securing repayment of the securities, if material;
- (k) rating changes;
- (l) bankruptcy, insolvency, receivership or similar proceedings related to the Town, the Corporation or any other person or entity that may at any time become legally obligated to make Installment Payments (collectively, the “*Obligated Persons*”);
- (m) the consummation of a merger, consolidation, or acquisition involving an Obligated Person or the sale of all or substantially all of the assets of the Obligated Person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (n) appointment of a successor or additional trustee or the change of name of a trustee, if material.

### **3. *Indemnification.***

- (a) To the fullest extent permitted by applicable law, the Town agrees to indemnify and hold harmless the Underwriters against any and all losses, damages, expenses (including reasonable legal and other fees and expenses), liabilities or claims (or actions in respect thereof), to which the Underwriters or the other persons described in subsection (b) of this Section may become subject under any federal or state securities laws or other statutory law or at common law or otherwise, caused by or arising out of or based upon any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact contained in the Official Statement or caused by any omission or alleged omission from the Official Statement of any material fact required to be stated therein or necessary in order to make the

statement made therein, in the light of the circumstances under which they were made, not misleading.

(b) The indemnity provided under this Section will extend to the fullest extent permitted by applicable law upon the same terms and conditions to each officer, director, employee or agent of the Underwriters, and each person, if any, who controls the Underwriters within the meaning of Section 15 of the Securities Act of 1933 or Section 20 of the Securities Exchange Act of 1934. Such indemnity will also extend, without limitation, to any and all expenses whatsoever reasonably incurred by any indemnified party in connection with investigation, preparing for or defending against, or providing evidence, producing documents or taking any other reasonable action in respect of, any such loss, damage, expense, liability, or claim (or action in respect thereof), whether or not resulting in any liability, and will include the aggregate amount paid in settlement of any litigation, commenced or threatened, or of any claim whatsoever as set forth herein if such settlement is effected with the written consent of the Town.

(c) Within a reasonable time after an indemnified party under subsections (a) and (b) of this Section has been served with the summons or other first legal process or have received written notice of the threat of a claim in respect of which an indemnity may be claimed, such indemnified party must, if a claim for indemnity in respect thereof is to be made against the Town under this Section, notify the Town in writing of the commencement thereof; but the omission to so notify the Town will not relieve it from any liability that it may have to any indemnified party other than pursuant to subsections (a) and (b) of this Section. The Town will be entitled to participate at its own expense in the defense, and if the Town so elects within a reasonable time after receipt of such notice, or if all indemnified parties seeking indemnification in such notice so direct, the Town must, to the fullest extent permitted by applicable law, assume the defense of any suit brought to enforce any such claim, and such defense will be conducted by counsel chosen promptly by the Town and reasonably satisfactory to the indemnified party; provided, however, that, if the defendants in any such action include such an indemnified party and the Town, or include more than one indemnified party, and any such indemnified party has been advised by its counsel that there may be legal defenses available to such indemnified party that are different from or additional to those available to the Town or another indemnified party, and that in the reasonable opinion of such counsel are sufficient to make it undesirable for the same counsel to represent such indemnified party and the Town, or another defendant indemnified party, such indemnified party will have the right to employ separate counsel in such action (and the Town will not be entitled to assume the defense thereof on behalf of such indemnified party), and in such event the reasonable fees and expenses of such counsel will, to the fullest extent permitted by applicable law, be borne by the Town. Nothing contained in this subsection (c) will preclude any indemnified party, at its own expense, from retaining additional counsel to represent such party in any action with respect to which indemnity may be sought from the Town hereunder.

(d) If the indemnification provided for in subsections (a) and (b) of this Section is unavailable to or insufficient to hold harmless and indemnify any indemnified party in respect of any losses, damages, expenses, liabilities, or claims (or actions in respect thereof) referred to therein, then the Town, to the fullest extent permitted by applicable law, on the one hand, and the Underwriters, on the other hand, will contribute to the amount paid or payable by the indemnified party as a result of such losses, damages, expenses, liability or claims (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Town on the one hand and the Underwriters on the other hand from the offering of the 2012 Bonds. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law, or if the indemnified party failed to give the notice required under the subsection

(c) above, then the Town, to the fullest extent permitted by applicable law, on the one hand and the Underwriters on the other hand will contribute to such amount paid or payable by the indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Town on the one hand and the Underwriters on the other in connection with the statements or omissions that resulted in such losses, damages, expenses, liabilities or claims (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Town on the one hand and the Underwriters on the other hand will be deemed to be in such proportion so that the Underwriters are responsible for that portion represented by the percentage that the underwriting discount payable to the Underwriters hereunder (i.e., the excess of the aggregate public offering price for the 2012 Bonds as set forth on the cover page of the Official Statement over the price to be paid by the Underwriters to the Town upon delivery of the 2012 Bonds as specified in Section 1 of the Purchase Contract) bears to the aggregate public offering price as described above, and the Town is responsible for the balance. The relative fault will be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Town on the one hand or the Underwriters on the other hand and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

If the Underwriters have knowledge of a claim subject to the contribution provided by this subsection (d), the Underwriters agree, within a reasonable time of obtaining such knowledge, to convey notice of such claim to the Town. It is agreed and understood that if the Underwriters fail, under the circumstances set forth in the preceding sentence, to convey the above referenced notice to the Town, then the Town will not be obligated to provide contribution pursuant to this subsection (d).

The Town and the Underwriters agree that it would not be just and equitable if contribution pursuant to this subsection (d) were determined by any method of allocation that does not take account of the equitable considerations referred to above in this subsection (d). The amount paid or payable by an indemnified party as a result of the losses, damages, expenses, liabilities or claims (or actions in respect thereof) referred to in this subsection (d) will be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim.

(e) The indemnity and contribution provided by this Section will be in addition to any other liability that the Town may otherwise have hereunder, at common law or otherwise, and is provided solely for the benefit of the Underwriters and each director, officer, employee, agent, attorney and controlling person referred to therein, and their respective successors, assigns and legal representatives, and no other person will acquire or have any right under or by virtue of such provisions of this Letter of Representation.

4. ***Survival of Representations, Warranties and Covenants.*** All representations, warranties and agreements in this Letter of Representation survive regardless of (a) any investigation or any statement in respect thereof made by or on behalf of the Underwriters, (b) delivery of any payment by the Underwriters for the 2012 Bonds hereunder, and (c) any termination of the Purchase Contract.

5. ***Binding on Successors and Assigns.*** This Letter of Representation is binding on the Town and the successors and assigns of the Town and inures solely to the benefit of the Corporation and, to the extent set forth herein, any director, officer, employee, or agent of the Corporation, and the Underwriters and, to the extent set forth herein, persons controlling the Underwriters and their personal representatives, successors and assigns, and no other person or firm or entity will acquire or have any

right under or by virtue of this Letter of Representation. Acceptance of this Letter of Representation by the Corporation or the Underwriters is waived.

6. ***No Advisory or Fiduciary Role.*** The Town acknowledges and agrees that (a) the purchase and sale of the 2012 Bonds pursuant to this Purchase Contract is an arm's-length commercial transaction between the Corporation and the Underwriters, (b) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriters are and have been acting solely as a principal and is not acting as the agent or fiduciary of the Town, (c) the Underwriters have not assumed an advisory or fiduciary responsibility in favor of the Town with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriters have provided other services or are currently providing other services to the Town on other matters) and the Underwriters have no obligation to the Town with respect to the offering contemplated hereby except the obligations expressly set forth in this Purchase Contract and (d) the Town has consulted its own legal, financial and other advisors to the extent it has deemed appropriate.

**TOWN OF CHAPEL HILL, NORTH CAROLINA**

By: \_\_\_\_\_  
Kenneth C. Pennoyer  
Director of Business Management

**EXHIBIT B**

[Letterhead of Sanford Holshouser LLP]

Robert W. Baird & Co.  
Winston-Salem, North Carolina

Wells Fargo Bank, National Association  
Charlotte, North Carolina

*§[Amount]*  
***Limited Obligation Bonds, Series 2012***  
***Evidencing Proportionate and Undivided***  
***Ownership Interests in Installment Payments to be Made***  
***Pursuant to an Installment Financing Contract with the***  
***TOWN OF CHAPEL HILL, NORTH CAROLINA***

Ladies and Gentlemen:

We have acted as Bond Counsel to the Town of Chapel Hill, North Carolina (the “Town”) in connection with the execution and delivery on the date hereof of the above-referenced bonds (the “2012 Bonds”), evidencing proportionate and undivided ownership interests in Installment Payments to be made pursuant to the an Installment Financing Contract dated as of June 1, 2012 (the “Contract”) between the Town of Chapel Hill Public Facilities Corporation (the “Corporation”) and the Town. The 2012 Bonds are being purchased today by Robert W. Baird & Co. and Wells Fargo Bank, National Association (collectively, the “Underwriters”), pursuant to a Contract of Purchase dated June 15, 2012 (the “Purchase Contract”), between the Corporation and the Underwriters. Capitalized terms used herein and not otherwise defined shall have the meaning given such terms in the Purchase Contract.

In our capacity as Bond Counsel, we have on this date delivered our principal opinion relating to the Contract and the 2012 Bonds and the legality of the authorization and execution and delivery thereof, the tax status of the portion of the installment payments designated and paid as interest with respect to the 2012 Bonds and certain other matters, which opinion may be relied upon by you to the same extent as if addressed to you.

In connection with this opinion, we have examined and are familiar with originals or copies, certified or otherwise identified to our satisfaction, of various documents, certificates and opinions of counsel (including the opinions dated the date hereof of Ralph D. Karpinos, Esq., Chapel Hill, North Carolina, Town Attorney, and Parker Poe Adams & Bernstein LLP, Raleigh, North Carolina, Counsel to the Corporation) and the final Official Statement dated June 15, 2012, with respect to the 2012 Bonds (the “Official Statement”), and have examined such other documents, certificates, opinions of counsel, instruments and records, and have made such investigations of law, as we have deemed necessary and appropriate as a basis for the opinions hereinafter expressed. In our examination, we have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or photostatic copies, and the authenticity of originals of such copies. As to any facts material to this opinion that we did not independently establish or verify, we have relied upon statements and representations of officers and other representatives of the Town, the Corporation and others.

On the basis of and in reliance upon the foregoing, we are of the opinion that :

1. The statements in the Official Statement on the cover page and under the headings **“INTRODUCTION—SECURITY”** and **“—THE 2012 BONDS,”** **“THE 2012 BONDS,”** **“SECURITY AND SOURCES OF PAYMENT OF 2012 BONDS”** and **“CONTINUING DISCLOSURE OBLIGATION”** and in Appendix C - **“SUMMARY OF PRINCIPAL LEGAL DOCUMENTS,”** to the extent such statements purport to summarize certain terms of the Contract, the Deed of Trust, the Trust Agreement and the 2012 Bonds, fairly and accurately summarize such terms. The statements contained in the Official Statement under the headings **“INTRODUCTION—TAX STATUS”** and **“TAX TREATMENT”** present fairly and accurately the matters referred to therein.

2. The 2012 Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Trust Agreement is not subject to qualification as an indenture under the Trust Indenture Act of 1939, as amended.

This opinion is furnished to you solely for your benefit and may not be used, circulated, quoted or otherwise referred to without our prior written consent.

Very truly yours,