

STATE OF NORTH CAROLINA

TOWN OF NAGS HEAD

**DEED OF TRUST
AND SECURITY AGREEMENT**

This **DEED OF TRUST AND SECURITY AGREEMENT**, is made and entered into as of January 1, 2002 (this "**Deed of Trust**"), from the **TOWN OF NAGS HEAD, NORTH CAROLINA** (hereinafter called the "**Grantor**"), to **ASHLEY L. HOGWOOD, JR.**, a resident of Mecklenburg County, North Carolina, whose address is 401 S. Tryon Street, Charlotte, NC 28202, as deed of trust trustee (hereinafter called the "**Trustee**"), for the benefit of **BANK OF AMERICA, N.A.**, a national banking association, whose address is [Address] (the "**Bank**") (the Bank and its successors and assigns hereinafter called the "**Beneficiary**").

PREAMBLES

WHEREAS, the Grantor and the Bank have entered into an Installment Financing Contract, dated as of January 1, 2002 (the "**Installment Financing Contract**"), pursuant to which (1) the Bank has agreed to advance certain monies to enable the Grantor to acquire and construct the Project (as defined in the Installment Financing Contract), and (2) the Grantor has agreed to make the Installment Payments (as defined in the Installment Financing Contract) to the Bank;

WHEREAS, this Deed of Trust has been executed and delivered to secure (1) the obligations of the Grantor to make the Installment Payments, and (2) the payment and performance of all of the other liabilities and obligations, whether now existing or hereafter arising, of the Grantor to the Bank under the Installment Financing Contract, all such obligations and liabilities described in (1) or (2) above hereinafter collectively called the "**Indebtedness**";

WHEREAS, it is intended that this Deed of Trust comply with the provisions of Sections 45-67, *et. seq.*, of the General Statutes of North Carolina, as amended; and for purposes of complying with such provisions, the Grantor hereby represents as follows:

(a) That this Deed of Trust has been executed and delivered by the Grantor to secure present and future Indebtedness which may be incurred from time to time under the Installment Financing Contract;

(b) That the principal amount of present Indebtedness secured by this Deed of Trust is \$3,833,000;

**COLLATERAL IS OR INCLUDES FIXTURES
THIS DEED OF TRUST SECURES
PRESENT AND FUTURE ADVANCES**

Drawn by and Mail to:
Parker, Poe, Adams & Bernstein L.L.P.
401 S. Tryon Street
Charlotte, North Carolina 28202
Attention: Ashley L. Hogewood, Jr.

(c) That the maximum principal amount, including present and future Indebtedness, which may be secured by this Deed of Trust at any one time is \$10,000,000 (exclusive of advances that may be made under the terms of the Installment Financing Contract or this Deed of Trust for the protection of collateral, payment of taxes, impositions and assessments, attorneys' fees and costs and other sums which the Grantor is required by the terms of said instruments to repay), subject to the limitation that at no time shall the total principal amount of Indebtedness secured hereby exceed said maximum principal sum of \$10,000,000 plus interest, attorneys' fees and costs and other sums for the protection of collateral, payment of taxes, impositions and assessments and similar sums advanced by the Beneficiary which the Grantor is obligated to repay hereunder, under the Installment Financing Contract, or otherwise; *provided, however*, that the foregoing limitation shall apply only to the lien upon real property located in the State of North Carolina created by this Deed of Trust and shall not in any manner limit, affect or impair any grant of a security interest in or lien on any other real property or any personal property in favor of the Beneficiary;

(d) That the period within which such future Indebtedness may be incurred shall expire on a date not later than 15 years from the date of this Deed of Trust; and

(e) It shall not be a requirement for any such future Indebtedness to be secured hereby that the Grantor sign an instrument or other notation stipulating that such Indebtedness is secured by this Deed of Trust, as no such future Indebtedness is required, under the Installment Financing Contract or otherwise, to be evidenced by a written instrument or notation; and

WHEREAS, the Grantor desires to secure (1) the payment of the Indebtedness and any renewals, modifications or extensions thereof, in whole or in part, and (2) the additional payments hereinafter agreed to be made by or on behalf of the Grantor, by a conveyance of the lands and security interests hereinafter described;

NOW, THEREFORE, in consideration of the above preambles and for the purposes aforesaid, and in further consideration of the sum of Ten Dollars (\$10) paid to the Grantor by the Trustee and other valuable consideration, receipt of which is hereby acknowledged, the Grantor has given, granted, bargained and sold, and by these presents does give, grant, bargain, sell and convey unto the Trustee, its heirs, successors and assigns, the following property (hereinafter collectively referred to as the "**Premises**"):

(a) The real property lying and being in the Town of Nags Head, North Carolina and described below in the legal description attached as Exhibit A hereto (hereinafter referred to as the "**Real Property**"):

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

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

(c) All gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, fire extinguishers and any other safety equipment required by governmental regulation or law, washers, dryers, water heaters, mirrors, mantels, air conditioning apparatus, refrigerating plants, refrigerators, cooking apparatus and appurtenances, window screens, awnings and storm sashes

and other machinery, equipment or other tangible personal property, which are or shall be so attached to the Improvements, including all extensions, additions, improvements, betterments, renewals, replacements and substitutions, or proceeds from a permitted sale of any of the foregoing, as to be deemed to be fixtures under North Carolina law (collectively, the "**Fixtures**") and accessions to the Real Property and a part of the Premises as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the Indebtedness. The location of the collateral described in this paragraph is also the location of the Real Property, and the record owner of the Real Property is the Grantor.

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

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

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

And the Grantor covenants with the Trustee that the Grantor is lawfully seized of the Premises in fee simple and has the right to convey the same in fee simple; that, except for Permitted Encumbrances (as defined in Exhibit B attached hereto and specifically incorporated herein by reference), the same are free and clear of all encumbrances, and that the Grantor will warrant and defend the title to the same against the claims of all persons whomsoever arising by, under or through the Grantor.

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

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

ARTICLE I

Section 1.01. **Payment of Indebtedness.** The Grantor will pay the Indebtedness and all other sums now or hereafter secured hereby promptly as the same shall become due.

Section 1.02. ***Taxes, Liens and Other Charges.***

(a) The Grantor will pay, before the same become delinquent, all taxes, liens, assessments and charges of every character including all utility charges, whether public or private, already levied or assessed or that may hereafter be levied or assessed upon or against the Premises; and will furnish the Beneficiary, on or before the final date whereon the same can be paid without penalty, evidence of the due and punctual payment of all such taxes, assessments and other fees and charges. Nothing contained herein shall require the payment or discharge of any such tax, lien, assessment or charge by the Grantor for so long as the Grantor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings provided that such proceedings shall prevent (1) the collection thereof or other realization thereof and the sale or forfeiture of the Premises or any part thereof to satisfy the same or (2) the enforcement thereof, against the Grantor, the Trustee, the Beneficiary and the Premises and so long as the Grantor first deposits with the Beneficiary in escrow such sums or other security as the Beneficiary may reasonably require to assure Beneficiary of the availability of sufficient monies to pay such tax, lien, assessment or charge if and when the same is finally determined to be due.

(b) The Grantor will not suffer any mechanic's, materialman's, laborer's, statutory or other lien to be created and to remain outstanding upon all or any part of the Premises. The Grantor shall be entitled to discharge such liens by bonds or to contest any such liens pursuant to the same procedure as the Grantor is entitled to contest taxes in the preceding Subsection 1.02(a).

Section 1.03. ***Insurance.***

(a) The Grantor shall procure for, deliver to and maintain for the benefit of the Beneficiary, during the term of this Deed of Trust, the insurance coverage required by the Installment Financing Contract and the Lease.

(b) The Beneficiary is hereby authorized and empowered and, at its option, with the participation of the Grantor, to adjust or compromise any loss under any insurance policies maintained pursuant to this Section 1.03, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to the Grantor and the Beneficiary jointly. The net proceeds from any such policy or policies shall be applied as provided in the Installment Financing Contract. The Beneficiary shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(c) For the portion of such insurance which is not self-insurance, at least thirty (30) days prior to the expiration date of each policy maintained pursuant to this Section 1.03, a renewal or replacement thereof satisfactory to the Beneficiary shall be delivered by the Grantor to the Beneficiary. In the event of the foreclosure of this Deed of Trust or any other transfer of title to the Premises in extinguishment of the Indebtedness secured hereby, all right, title and interest of the Grantor in and to all insurance policies then in force shall pass to the purchaser or Beneficiary, as appropriate.

Section 1.04. ***Condemnation.*** In the event there hereafter occurs a condemnation (which term when used in this Deed of Trust shall include any damage or taking by any governmental authority or other entity having the power of eminent domain, and any transfer by private sale in lieu thereof), resulting in any damage or taking, either temporarily or permanently, of (1) the entire Premises, (2) so much of the Premises as causes the remainder of the Premises to be in violation of any zoning laws, restrictive covenants or similar laws, regulations or restrictions affecting the Premises, and the Grantor fails to cure

such violation within thirty (30) days of the condemnation or such violation does not prevent the Grantor's continued use of the Premises in the ordinary course of its business or (3) so much of the Premises that, in the sole reasonable opinion of the Beneficiary, the value of the Premises is materially and adversely affected, then, and in any one of said events, the entire Indebtedness shall, at the option of the Beneficiary and to the extent permitted by law, become immediately due and payable. To the extent permitted by law, the Beneficiary shall be entitled to receive all compensation, awards and other payments or relief thereof. The Beneficiary is hereby authorized, at its option, to commence, appear in and prosecute, in its own or in the Grantor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Grantor to the Beneficiary. After deducting from said condemnation proceeds all of its expenses incurred in the collection and administration of such sums, including reasonable attorneys' fees, the Beneficiary shall apply the net proceeds as provided in Section 9.2 of the Lease Agreement dated as of January 1, 2002 (the "*Lease Agreement*") among the Bank, the Town, and the Young Men's Christian Association of South Hampton Roads (the "*YMCA*"). Any balance of such monies then remaining shall be paid to the YMCA (unless the Town has exercised its rights under the last paragraph of Section 13.2 of the Lease Agreement, in which case remaining moneys shall be paid to the Town). The Grantor hereby agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds as the Beneficiary may require.

Section 1.05. *Care of Premises.*

(a) The Grantor will keep the buildings, parking areas, roads and walkways, recreational facilities, landscaping and all other improvements of any kind now or hereafter erected on the Real Property or any part thereof in good condition and repair, will not commit or suffer any waste, and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Premises or any part thereof.

(b) Except in the ordinary course of its business, the Grantor will not remove or demolish nor alter the structural character of any improvement located on the Real Property without the prior written consent of the Beneficiary.

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

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

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

(f) If all or any part of the Premises shall be damaged by fire or other casualty, the Grantor will promptly restore the Premises to the equivalent of its condition immediately prior to the fire or other casualty; and if a part of the Premises shall be damaged through condemnation, the Grantor will promptly restore, repair or alter the remaining portions of the Premises in a manner satisfactory to the Beneficiary. Notwithstanding the foregoing, the Grantor shall not be obligated to so restore unless in each instance, the Beneficiary agrees to make available to the

Grantor (pursuant to a procedure satisfactory to the Beneficiary) any net insurance or condemnation proceeds actually received by the Beneficiary hereunder in connection with such casualty loss or condemnation, to the extent such proceeds are required to defray the expense of such restoration; provided, however, that the insufficiency of any such insurance or condemnation proceeds to defray the entire expense of restoration shall in no way relieve the Grantor of its obligation to restore. Notwithstanding the foregoing, for so long as the Lease Agreement is in effect, the provisions of Article IX of the Lease Agreement shall govern with respect to (1) the repair and replacement of the Premises in the event of damage or destruction and (2) the use of Net Proceeds of insurance or condemnation in any such event.

Section 1.06. ***Leases and Other Agreements Affecting Property.*** The Grantor will duly and punctually perform all terms, covenants, conditions and agreements binding upon the Grantor under any lease or any other agreement of any nature whatsoever which involves or affects the Premises or any part thereof. The Grantor will, at the request of the Beneficiary, furnish the Beneficiary with executed copies of all leases now or hereafter created upon the Premises or any part thereof, and all leases now or hereafter entered into will be in form and substance subject to the prior written approval of the Beneficiary. The Grantor will not, without the express written approval of the Beneficiary (which approval will not be unreasonably withheld or delayed), modify, surrender or terminate, either orally or in writing, any lease now existing or hereafter created upon the Premises or any part thereof, nor will the Grantor permit an assignment or a subletting by any tenant without the prior express written approval of the Beneficiary. The Grantor will not accept payment of rent more than one (1) month in advance without the prior express written approval of the Beneficiary.

Section 1.07. ***Security Agreement.*** With respect to the Fixtures, this Deed of Trust is hereby made and declared to be a security agreement in favor of the Beneficiary encumbering each and every item of such property included herein as a part of the Premises, in compliance with the provisions of the Uniform Commercial Code as enacted in the State of North Carolina, and the Grantor hereby grants a security interest to the Beneficiary in and to all of such Fixtures. Upon request by the Beneficiary, at any time and from time to time, a financing statement or statements reciting this Deed of Trust to be a security agreement affecting all of such property shall be executed by the Grantor and the Beneficiary and appropriately filed. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Deed of Trust shall be (1) as prescribed herein, or (2) as prescribed by general law, or (3) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at the Beneficiary's sole election. The mention in any such financing statement or statements of the rights in and to (1) the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) the Grantor's interest as lessor in any present or future lease or rights to rents, issues or awards growing out of the use and/or occupancy of the Premises, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of the Beneficiary as determined by this Deed of Trust or affect the priority of the Beneficiary's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement or statements is solely for the protection of the Beneficiary in the event any court shall at any time hold with respect to the foregoing clauses (1), (2) or (3) of this sentence, that notice of the Beneficiary's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records.

Section 1.08. ***Further Assurances; After Acquired Property.*** At any time, and from time to time, upon request by the Beneficiary, the Grantor will make, execute and deliver or cause to be made, executed and delivered, to the Beneficiary and/or the Trustee and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Beneficiary, any and all such other and further deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance,

certificates and other documents as may, in the opinion of the Beneficiary, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve (1) the obligations of the Grantor under the Installment Financing Contract or this Deed of Trust and (2) the lien of this Deed of Trust as a first and prior lien, subject to Permitted Encumbrances, upon and security title in and to all of the Premises, whether now owned or hereafter acquired by the Grantor. Upon any failure by the Grantor so to do, the Beneficiary may make, execute, record, file, re-record and/or refile any and all such deeds of trust, security agreements, financing statements, continuation statements, instruments, certificates, and documents for and in the name of the Grantor and the Grantor hereby irrevocably appoints the Beneficiary as its agent and attorney-in-fact to do so.

Section 1.09. **Expenses.** The Grantor will pay or reimburse the Beneficiary and the Trustee, upon demand therefor, for all reasonable attorneys' fees, costs and expenses actually incurred by the Beneficiary and the Trustee in any suit, action, legal proceeding or dispute of any kind in which the Beneficiary and/or the Trustee is made a party or appears as party plaintiff or defendant, affecting the Indebtedness secured hereby, this Deed of Trust or the interest created herein, or the Premises, including, but not limited to, the exercise of the power of sale contained in this Deed of Trust, any condemnation action involving the Premises or any action to protect the security hereof, but excepting therefrom any negligence or willful misconduct by the Beneficiary or any breach of this Deed of Trust by the Beneficiary; and all such amounts paid by the Beneficiary shall be added to the Indebtedness.

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

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

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

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

Section 1.14. **Changes in Ownership.** The Grantor hereby acknowledges to the Beneficiary that (1) the identity and expertise of the Grantor were and continue to be material circumstances upon which the Beneficiary has relied in connection with, and which constitute valuable consideration to the Beneficiary for, the extending to the Grantor of the Indebtedness and (2) any change in such identity or expertise could materially impair or jeopardize the security for the payment of the Indebtedness granted to the Beneficiary by this Deed of Trust. The Grantor therefore covenants and agrees with the Beneficiary, as part of the consideration for the extending to the Grantor of the Indebtedness, that the entire

Indebtedness shall, at the option of the Beneficiary, become immediately due and payable, should the Grantor further encumber, pledge, convey, transfer or assign any or all of its interest in the Premises or any portion thereof without the prior written consent of the Beneficiary or except as otherwise permitted herein.

Section 1.15. *Use and Management of the Premises.* The Grantor shall not alter or change the use of the Premises or abandon the Premises without the prior written consent of the Beneficiary.

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

Section 1.17. *Hazardous Material.*

(a) The Grantor represents, warrants and agrees that, except as previously disclosed to the Bank in writing: (1) the Grantor has not used or installed any Hazardous Material (as hereinafter defined) in violation of applicable Environmental Laws on, from or in the Premises and to the Grantor's actual knowledge no other person has used or installed any Hazardous Material on, from or in the Premises; (2) to the Grantor's knowledge, no other person has violated any applicable Environmental Laws (as hereinafter defined) relating to or affecting the Premises or any other property owned by the Grantor except as previously disclosed to the Beneficiary; (3) to the best of the Grantor's knowledge the Premises are presently in compliance with all applicable Environmental Laws, and there are no facts or circumstances presently existing upon or under the Premises, or relating to the Premises, which may violate any applicable Environmental Laws, and there is not now pending or, to the best knowledge of the Grantor, threatened any action, suit, investigation or proceeding against the Grantor or the Premises (or against any other party relating to the Premises) seeking to enforce any right or remedy against the Grantor or the Premises under any of the Environmental Laws; (4) the Premises shall be kept free of Hazardous Materials to the extent required by applicable Environmental Laws, and shall not be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, or process Hazardous Materials other than the processing of materials in the ordinary course of the Grantor's business as of the date hereof; (5) the Grantor shall not cause or permit the installation of Hazardous Materials in, on, over or under the Premises or a Release (as hereinafter defined) of Hazardous Materials unto or from the Premises or suffer the presence of Hazardous Materials in, on, over or under the Premises in violation of applicable Environmental Laws; (6) the Grantor shall comply with Environmental Laws applicable to the Premises, all at no cost or expense to the Beneficiary or the Trustee; (7) the Grantor has obtained and will at all times continue to obtain and/or maintain all licenses, permits and/or other governmental or regulatory actions necessary for the Premises to comply with applicable Environmental Laws (the "*Permits*") and the Grantor will be and at all times remain in full compliance with the terms and provisions of the Permits; (8) to the best of the Grantor's knowledge there has been no Release of any Hazardous Materials on or from the Premises in violation of applicable Environmental Laws, whether or not such Release emanated from the Premises or any contiguous real estate which has not been abated and any resulting violation of applicable Environmental Laws abates; (9) the Grantor shall immediately give the Beneficiary oral and written notice in the event that the Grantor receives any notice from any governmental agency, entity, or any other party with regard to Hazardous Materials on, from or affecting the Premises and the Grantor shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Premises in accordance with all applicable Environmental Laws.

(b) The Grantor hereby agrees to indemnify the Beneficiary and the Trustee and hold the Beneficiary and the Trustee harmless from and against any and all liens, demands, defenses, suits, proceedings, disbursements, liabilities, losses, litigation, damages, judgments, obligations, penalties, injuries, costs, expenses (including, without limitation, attorneys' and experts' fees) and claims of any and every kind whatsoever paid, incurred, suffered by, or asserted against the Beneficiary, the Trustee and/or the Premises for, with respect to, or as a direct or indirect result of: (1) the presence of Hazardous Materials in, on or under the Premises, or the escape, seepage, leakage, spillage, discharge, emission or Release on or from the Premises of any Hazardous Materials regardless of whether or not caused by or within the control of the Grantor; (2) the violation of any Environmental Laws applicable to the Premises or the Grantor, whether or not caused by or within the control of the Grantor; (3) the failure by the Grantor to comply fully with the terms and provisions of this Section 1.17; (4) the violation of any of the Environmental Laws in connection with any other property owned by the Grantor, which violation gives or may give rise to any rights whatsoever in any party with respect to the Premises by virtue of any of the Environmental Laws, whether or not such violation is caused by or within the control of the Grantor; or (5) any warranty or representation made by the Grantor in paragraph (a) of Section 1.17 being false or untrue in any material respect.

(c) In the event the Beneficiary has a reasonable basis to suspect that the Grantor has violated any of the covenants, warranties, or representations contained in this Section 1.17, or that the Premises are not in compliance with the applicable Environmental Laws for any reason, the Grantor shall take such steps as the Beneficiary reasonably requires by written notice to the Grantor in order to confirm or deny such occurrences, including, without limitation, the preparation of environmental studies, surveys or reports. In the event that the Grantor fails to take such action, the Beneficiary may take such action as the Beneficiary reasonably believes necessary to protect its interest, and the cost and expenses of all such actions taken by the Beneficiary, including, without limitation, the Beneficiary's reasonable attorneys' fees, shall be added to the Indebtedness.

(d) For purposes of this Deed of Trust: (1) "**Hazardous Material**" or "**Hazardous Materials**" means and includes, without limitation, (A) solid or hazardous waste, as defined in the Resource Conservation and Recovery Act of 1980, as amended, or in any applicable state or local law or regulation, (B) hazardous substances, as defined in CERCLA, or in any applicable state or local law or regulation, (C) gasoline, or any other petroleum product or by-product, (D) toxic substances, as defined in the Toxic Substances Control Act of 1976, as amended, or in any applicable state or local law or regulation or (E) insecticides, fungicides, or rodenticides, as defined in the Federal Insecticide, Fungicide, and Rodenticide Act of 1975, as amended, or in any applicable state or local law or regulation, as each such Act, statute or regulation may be amended from time to time; (2) "**Release**" shall have the meaning given such term, in the Environmental Laws, including, without limitation, Section 101(22) of CERCLA; and (3) "**Environmental Law**" or "**Environmental Laws**" shall mean any "**Super Fund**" or "**Super Lien**" law, or any other federal, state or local statute, law, ordinance or code, regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials as may now or at any time hereafter be legally in effect, including, without limitation, the following, as same may be amended or replaced from time to time, and all regulations promulgated and officially adopted thereunder or in connection therewith: the Super Fund Amendments and Reauthorization Act of 1986, as amended ("**SARA**"); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("**CERCLA**"); The Clean Air Act, as amended ("**CAA**"); the Clean Water Act, as amended ("**CWA**"); The Toxic Substance Control Act, as amended ("**TSCA**"); the Solid Waste Disposal Act, as amended ("**SWDA**"), as amended by the Resource Conservation and Recovery Act, as amended ("**RCRA**"); the Hazardous Waste Management System; and the

Occupational Safety and Health Act of 1970, as amended (“*OSHA*”). The obligations and liabilities of the Grantor under this Section 1.17 which arise out of events or actions occurring prior to the satisfaction of this Deed of Trust shall survive the exercise of the power of sale under or foreclosure of this Deed of Trust, the delivery of a deed in lieu of foreclosure of this Deed of Trust, the cancellation or release of record of this Deed of Trust, and/or the payment in full of the Indebtedness.

(e) The parties expressly agree that an event under the provisions of Section 1.17 which may be deemed to be a default under this Deed of Trust shall not be a default until the Grantor has received notice of such event. Further, in terms of compliance with future governmental laws, regulations or rulings applicable to environmental conditions, the Grantor shall be permitted to afford itself of any defense or other protection against the application or enforcement of any such law, regulation or ruling.

ARTICLE II

Section 2.01. ***Events of Default.*** The terms “*Default*”, “*Event of Default*” or “*Events of Default*”, wherever used in this Deed of Trust, shall mean any one or more of the following events:

(a) Failure by the Grantor to pay any principal component or interest component of the Installment Payments when due as required by the Installment Financing Contract or by this Deed of Trust; or

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

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

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

(e) All terms and conditions of the Installment Financing Contract upon which the Installment Financing Contract hereby secured was predicated are specifically incorporated herein by this reference and made a part hereof and should the Grantor default with respect to any term or provisions thereof, such default shall constitute a default herein and under the Installment Financing Contract hereby secured.

Section 2.02. ***Acceleration upon Default, Additional Remedies.*** In the event an Event of Default shall have occurred and is continuing, the Beneficiary may declare all Indebtedness to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter, the Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Premises, or any part thereof, in its own name or in the name of the Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Premises, or part thereof or interest therein, increase the income

therefrom or protect the security hereof, and, with or without taking possession of the Premises, sue for or otherwise collect the rents and issues thereof, including those rents and issues past due and unpaid, and apply the same, less costs and expenses of operation and collection including attorney's fees, upon any Indebtedness, all in such order as the Beneficiary may determine. The entering upon and taking possession of the Premises, the collection of such rents and issues and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of Event of Default hereunder or invalidate any act done in response to such Default or pursuant to such notice of Default and notwithstanding the continuance in possession of the Premises or the collection, receipt and application of rents and issues, the Trustee or the Beneficiary shall be entitled to exercise every right provided for in any instrument securing or relating to the Indebtedness or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

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

(c) Exercise any or all of the remedies available to a secured party under the Uniform Commercial Code of North Carolina or under any other applicable laws.

(d) Notwithstanding any provision to the contrary in this Deed of Trust, no deficiency judgment may be rendered against the Grantor in any action to collect any of the Indebtedness secured by this Deed of Trust and the taxing power of the Grantor is not and may not be pledged directly or indirectly or contingently to secure any monies due or secured under this Deed of Trust.

(e) On the occurrence of an Event of Default, the YMCA shall have the right, for the benefit of the Town, to do and perform all acts and things contemplated in the Contract to be done or performed by Town, as may be accomplished by the YMCA in accordance with Section 11.4 of the Contract and Section 7.8 of the Lease Agreement.

Section 2.03. **Foreclosure by Power of Sale.** Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall notify the Trustee and shall deposit with the Trustee this Deed of Trust and such receipts and evidence of expenditures made and secured hereby as the Trustee may require. Upon application of the Beneficiary, it shall be lawful for and the duty of the Trustee, and the Trustee is hereby authorized and empowered to expose to sale and to sell the Premises at public auction for cash, after having first complied with all applicable requirements of North Carolina law with respect to the exercise of powers of sale contained in deeds of trust and upon such sale, the Trustee shall convey title to the purchaser in fee simple. After retaining from the proceeds of such sale just compensation for the Trustee's services and all expenses incurred by the Trustee, including a the Trustee's commission not exceeding one percent (1%) of the bid and reasonable attorneys' fees for legal services actually performed, the Trustee shall apply the residue of the proceeds first to the payment of all sums expended by the Beneficiary under the terms of this Deed of Trust; second, to the payment of the Indebtedness and interest thereon secured hereby; and the balance, if any, shall be paid to the YMCA. The Grantor [YMCA] agrees that in the event of sale hereunder, the Beneficiary shall have the right to bid thereat. The Trustee may require the successful bidder at any sale to deposit immediately with the Trustee cash or certified check in an amount not to exceed twenty-five percent (25%) of the bid, provided notice of such requirement is contained in the advertisement of the sale. The bid may be rejected if the deposit is not immediately made and thereupon the next highest bidder may be declared to be the purchaser. Such deposit shall be refunded in case a resale is had; otherwise, it shall be applied to the purchase price.

Section 2.04. ***Performance by the Beneficiary on Defaults by the Grantor.*** If the Grantor shall Default in the payment, performance or observance of any term, covenant or condition of this Deed of Trust, the Beneficiary may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by the Beneficiary in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Grantor to the Beneficiary with interest thereon at the rate provided in the Installment Financing Contract. The Beneficiary shall be the sole judge of the necessity for any such actions and of the amounts to be paid. The Beneficiary is hereby empowered to enter and to authorize others to enter upon the Premises or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to the Grantor or any person in possession holding under the Grantor.

Section 2.05. ***Receiver.*** If an Event of Default shall have occurred and is continuing and such Event of Default as to Events of Default occurring under Subsections 2.01(b), (c) and (d) hereof continues uncured for a period of thirty (30) days or more after written notice of such Event of Default is given by the Beneficiary to the Grantor, the Beneficiary, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right without notice and without regard to the adequacy or value of any security for the Indebtedness secured hereby or the solvency of any party bound for its payment, to the appointment of a receiver or receivers to take possession of and to operate the Premises and to collect and apply the rents and issues thereof. The Grantor hereby irrevocably consents to such appointment, provided the Grantor receives notice of any application therefor. Any such receiver or receivers shall have all of the rights and powers permitted under the laws of the State of North Carolina and all the powers and duties of the Beneficiary in case of entry as provided in Section 2.02(a), and shall continue as such and exercise all such powers until the date of confirmation of sale of the Premises unless such receivership is sooner terminated. The Grantor will pay to the Beneficiary upon demand all reasonable expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions of this Section; and all such expenses shall be secured by this Deed of Trust.

Section 2.06. ***Waiver of Appraisalment, Valuation, Stay, Extension and Redemption Laws.*** The Grantor agrees to the full extent permitted by law, that in case of a Default hereunder, neither the Grantor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisalment, valuation, stay, extension, homestead, exemption or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, or the absolute sale of the Premises, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and the Grantor, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien hereof.

Section 2.07. ***Leases.*** The Beneficiary and the Trustee, or either of them, at their option and to the extent permitted by law, are authorized to foreclose this Deed of Trust subject to the rights of any tenants of the Premises, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by the Grantor, a defense to any proceedings instituted by the Beneficiary and the Trustee to collect the sums secured hereby.

Section 2.08. ***Discontinuance of Proceedings and Restoration of the Parties.*** In case the Beneficiary and the Trustee, or either of them, shall have proceeded to enforce any right, power or remedy under this Deed of Trust by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Beneficiary and the Trustee, or either of them, then and in every such case the Grantor and the Beneficiary and the Trustee, and each of them, shall be restored to their former positions and rights hereunder, and all rights,

powers and remedies of the Beneficiary and the Trustee, and each of them, shall continue as if no such proceeding had been taken.

Section 2.09. **Remedies Not Exclusive.** Subject to Article XV of the Installment Financing Contract, the Trustee and the Beneficiary, and each of them, shall be entitled to enforce payment and performance of any Indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or any other agreement securing or relating to the Indebtedness secured hereby or any laws now or hereafter in force, notwithstanding some of the Indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect the Trustee's or the Beneficiary's right to realize upon or enforce any other security now or hereafter held by the Trustee or the Beneficiary, it being agreed that the Trustee and the Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by the Beneficiary or the Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to the Trustee or the Beneficiary is intended to be exclusive of any other remedy herein or by law provided or preclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any instrument securing or relating to the Indebtedness secured hereby to the Trustee or the Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Trustee or the Beneficiary and either of them may pursue inconsistent remedies.

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

Section 2.11. **Suits to Protect the Premises.** The Beneficiary and the Trustee, and each of them, shall have the power (1) to institute and maintain such suits and proceedings as they may deem expedient to prevent any impairment of the Premises by any acts which may be unlawful or in violation of this Deed of Trust, with notice of commencement of such suits and proceedings to be given to the Grantor, (2) to preserve or protect their interest in the Premises and in the rents and issues arising therefrom, and (3) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Beneficiary.

Section 2.12. **The Beneficiary May File Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Grantor, its creditors or its property, the Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to

have the claims of the Beneficiary allowed in such proceedings for the entire amount due and payable by the Grantor under this Deed of Trust at the date of the institution of such proceedings and for any additional amount which may become due and payable by the Grantor hereunder after such date.

Section 2.13. **Waiver of Rights.** By execution of this Deed of Trust and to the extent permitted by law, the Grantor expressly: acknowledges the right to accelerate the indebtedness and the power of sale given herein to the Trustee to sell the Premises by nonjudicial foreclosure upon default by the Grantor and without any notice other than such notice (if any) as is specifically required to be given by law or under the provisions of this Deed of Trust; waives any and all rights of the Grantor to appraisal, dower, curtesy and homestead rights to the extent permitted by applicable law; acknowledges that the Grantor has read this Deed of Trust and any and all questions regarding the legal effect of this Deed of Trust and its provisions have been explained fully to the Grantor and the Grantor has consulted with counsel of its choice prior to executing this Deed of Trust; and acknowledges that all waivers of the aforesaid rights of the Grantor have been made knowingly, intentionally and willingly by the Grantor as part of a bargained for transaction.

ARTICLE III

Section 3.01. **Successors and Assigns.** This Deed of Trust shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, legal representatives, successors and assigns. Whenever a reference is made in this Deed of Trust to the Grantor, the Trustee or the Beneficiary such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of the Grantor, the Trustee or the Beneficiary, respectively.

Section 3.02. **Terminology.** All personal pronouns used in this Deed of Trust whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and Articles are for convenience only and neither limit nor amplify the provisions of this Deed of Trust itself, and all references herein to Articles, Sections or subsections thereof, shall refer to the corresponding Articles, Sections or subsections thereof, of this Deed of Trust unless specific reference is made to such Articles, Sections or subsections thereof of another document or instrument.

Section 3.03. **Severability.** If any provision of this Deed of Trust or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Deed of Trust and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Section 3.04. **Applicable Law.** This Deed of Trust shall be interpreted, construed and enforced according to the laws of the State of North Carolina.

Section 3.05. **Notices, Demands and Request.** All notices, demands or requests provided for or permitted to be given pursuant to this Deed of Trust must be in writing and shall be deemed to have been properly given or served by personal delivery or by depositing in the United States Mail, postpaid and registered or certified return receipt requested, and addressed to the addresses set forth in the Installment Financing Contract. All notices, demands and requests shall be effective upon personal delivery or upon being deposited in the United States Mail. However, the time period in which a response to any notice, demand or request must be given, if any, shall commence to run from the date of receipt of the notice, demand or request by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice,

demand or request sent. By giving at least thirty (30) days written notice thereof, the Grantor, the Trustee or the Beneficiary shall have the right from time to time and at any time during the term of this Deed of Trust to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

Section 3.06. ***Appointment of Successor to the Trustee.*** The Beneficiary shall at any time have the irrevocable right to remove the Trustee herein named without notice or cause and to appoint a successor thereto by an instrument in writing, duly acknowledged, in such form as to entitle such written instrument to be recorded in this state, and in the event of the death or resignation of the Trustee named herein, The Beneficiary shall have the right to appoint a successor thereto by such written instrument, and any the Trustee so appointed shall be vested with the title to the Premises and shall possess all the powers, duties and obligations herein conferred on the Trustee in the same manner and to the same extent as though such were named herein as the Trustee.

Section 3.07. ***The Trustee's Powers.*** At any time, or from time to time, without liability therefor and without notice, upon written request of the Beneficiary and presentation of this Deed of Trust, and without affecting the personal liability of any person for payment of the Indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of the Premises, the Trustee may (1) reconvey any part of the Premises, (2) consent in writing to the making of any map or plat thereof, (3) join in granting any easement therein, or (4) join in any extension agreement or any agreement subordinating the lien or charge hereof.

Section 3.08. ***The Beneficiary's Powers.*** Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Premises not then or theretofore released as security for the full amount of all unpaid obligations, the Beneficiary may, from time to time and without notice (1) release any person so liable, (2) extend the maturity or alter any of the terms of any such obligation, (3) grant other indulgences, (4) cause to be released or reconveyed at any time at the Beneficiary's option, any parcel, portion or all of the Premises, (5) take or release any other or additional security for any obligation herein mentioned, or (6) make compositions or other arrangements with debtor in relation thereto. The provisions of Section 45-45.1 of the General Statutes of North Carolina, as amended, or any similar statute hereafter enacted in replacement or in substitution thereof shall be inapplicable to this Deed of Trust.

Section 3.09. ***Acceptance by the Trustee.*** The Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made of public record as provided by law.

Section 3.10. ***Incorporation of Installment Financing Contract.*** All the terms and conditions of the Installment Financing Contract as amended from time to time, are incorporated herein by this reference and made a part hereof and should the Grantor default with respect to any term or provision thereof, such default shall constitute a default hereunder and under the Installment Financing Contract hereby secured.

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

[SIGNATURE PAGE CONTINUES ON THE FOLLOWING PAGE]

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

TOWN OF NAGS HEAD, NORTH CAROLINA

By: _____
Robert W. Muller
Mayor

[SEAL]

ATTEST:

Carolyn Morris
Town Clerk

STATE OF NORTH CAROLINA)
)
TOWN OF NAGS HEAD)

I, _____, a Notary Public, certify that Robert W. Muller personally came before me this day and acknowledged that he is the Mayor of the Town of Nags Head, North Carolina, and that, by authority duly given and as the act of the Town of Nags Head, North Carolina, the foregoing instrument was signed in its name by its Mayor, sealed with its seal, and attested by Carolyn Morris, the Clerk of the Town of Nags Head, North Carolina.

WITNESS my hand and notarial seal, this ____ day of January, 2002.

My commission expires:

Notary Public

STATE OF NORTH CAROLINA)
)
COUNTY OF DARE)

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

This ____ day of _____, 2001.

Register of Deeds
County of Dare, North Carolina

EXHIBIT A

REAL PROPERTY DESCRIPTION

EXHIBIT B

PERMITTED ENCUMBRANCES

The exceptions listed on Schedule B-II of the Title Insurance Policy No. _____ issued in favor of Bank of America, N.A. by [Title Insurance Company] of North Carolina which are specifically incorporated herein by reference.