

**CLAY COUNTY DEVELOPMENT AUTHORITY  
REGULAR SCHEDULED PUBLIC MEETING  
ORANGE PARK, FLORIDA  
November 2, 2017**

**AGENDA**

**CHAIR  
VICE-CHAIR  
TREASURER  
SECRETARY**

**RUSSELL BUCK  
MARGE HUTTON  
MIKE DAVIDSON  
GREG CLARY**

- |   |                      |
|---|----------------------|
| <b>1) Welcome/Call to Order 8:30am</b>    | <b>Russell Buck</b>  |
| <b>2) Roll Call</b>                       | <b>Josh Cockrell</b> |
| <b>3) Invocation</b>                      | <b>Greg Clary</b>    |
| <b>4) Comments from the Public</b>        | <b>Russell Buck</b>  |
| <b>5) Penney Retirement Community IRB</b> | <b>Russell Buck</b>  |
| <b>6) Old Business/New Business</b>       | <b>Russell Buck</b>  |
| <b>7) Adjournment</b>                     | <b>Russell Buck</b>  |

**Dates of Upcoming CCDA Meetings:**

**Wednesday, November 15, 2017  
Wednesday, January 17, 2018  
Wednesday, February 21, 2018  
Wednesday, March 21, 2018  
Wednesday, April 18, 2018  
Wednesday, May 16, 2018  
Wednesday, June 20, 2018  
Wednesday, July 18, 2018  
Wednesday, August 15, 2018  
Wednesday, September 19, 2018**

**NOTE: Items 5 through 6, above, are subject to discussion, consideration, and action by the Board of the Clay County Development Authority.**

**PUBLIC COMMENTS:** Pursuant to F.S. s. 286.0114 (2013) [, and Clay County Development Authority policy], speakers intending to offer public comment must complete a provided speaker's card, turn in the same to the recording secretary for the public meeting, and may address the Board when recognized by the Chair of the meeting with their public comments for a period of not more than three (3) minutes. The Chair of the meeting has the authority and discretion to make special provisions for a group or faction spokesperson. The Chair of the meeting has all requisite authority and discretion to maintain orderly conduct or proper decorum of the public meeting.

RESOLUTION NO. 2017/2018-2

A RESOLUTION PROVIDING FOR AND AUTHORIZING THE ISSUANCE BY THE CLAY COUNTY DEVELOPMENT AUTHORITY OF ITS CLAY COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY HEALTHCARE FACILITIES REFUNDING AND IMPROVEMENT REVENUE BOND (PENNEY RETIREMENT COMMUNITY, INC. PROJECT), SERIES 2017 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$14,500,000, AND FOR A LOAN BY THE AUTHORITY TO PENNEY RETIREMENT COMMUNITY, INC., A FLORIDA NOT FOR PROFIT CORPORATION, IN A PRINCIPAL AMOUNT EQUAL TO THE PRINCIPAL AMOUNT OF SAID REVENUE BOND, TO (A) REFUND (1) ON A CURRENT OR ADVANCE BASIS, THE AUTHORITY'S OUTSTANDING HEALTH CARE FACILITIES REVENUE BONDS (PENNEY RETIREMENT COMMUNITY PROJECT), SERIES 1996A AND (2) ON AN ADVANCE BASIS, THE AUTHORITY'S OUTSTANDING HEALTH CARE FACILITIES REVENUE BONDS (PENNEY RETIREMENT COMMUNITY PROJECT), SERIES 1996B AND (B) FINANCE (INCLUDING REIMBURSEMENT) THE COST OF ACQUISITION, CONSTRUCTION AND EQUIPPING OF A REPLACEMENT 50 BED SKILLED NURSING FACILITY TO BE OWNED AND OPERATED BY PENNEY RETIREMENT COMMUNITY, INC., AND MAKING DETERMINATIONS AS TO OTHER MATTERS RELATED THERETO; PROVIDING THAT SAID REVENUE BOND SHALL NOT CONSTITUTE A DEBT, LIABILITY OR OBLIGATION OF THE AUTHORITY, CLAY COUNTY, FLORIDA OR THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF, BUT SHALL BE PAYABLE SOLELY FROM THE REVENUES HEREIN PROVIDED; AUTHORIZING A NEGOTIATED SALE OF SAID REVENUE BOND; AUTHORIZING THE AWARD OF THE SALE OF SAID BOND TO BB&T COMMUNITY HOLDINGS CO. OR AN AFFILIATED HOLDING COMPANY; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS REQUIRED IN CONNECTION WITH THE FOREGOING INCLUDING, WITHOUT

LIMITATION, A FINANCING AGREEMENT AND AN ESCROW DEPOSIT AGREEMENT; PROVIDING CERTAIN OTHER DETAILS IN CONNECTION THEREWITH, ALL PURSUANT TO CHAPTER 2001-517, LAWS OF FLORIDA, SPECIAL ACTS (2001), CHAPTER 159, PARTS II AND III, FLORIDA STATUTES, AS AMENDED, AND OTHER APPLICABLE PROVISIONS OF LAW; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE MEMBERS OF THE CLAY COUNTY DEVELOPMENT AUTHORITY:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to Chapter 2001-317, Laws of Florida, Special Acts (2001), Chapter 159, Parts II and III, Florida Statutes, as amended, and other applicable provisions of law.

SECTION 2. DEFINITIONS. Unless the context otherwise requires, all terms under herein in capitalized forms shall have the meanings specified in this section or in the Financing Agreement (defined in this section). Words importing the singular shall include the plural, words importing the plural shall include the singular, and words importing persons shall include corporations and other entities or associations.

"Act" means Chapter 2001-517, Laws of Florida, Special Acts (2001), as amended and supplemented, and Chapter 159, Parts II and III, Florida Statutes, as amended, and other applicable provisions of law.

"Authority" means the Clay County Development Authority, its successors and assigns.

"Bond Counsel" means the law firm of Nabors, Giblin & Nickerson, P.A., Tampa, Florida.

"Borrower" means Penney Retirement Community, Inc., a Florida not-for-profit corporation, and an organization described in Section 501(c)(3) of the Code, and any successor, surviving, resulting or transferee entity.

"Chairman" means the Chairman or Vice Chairman of the Authority.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and the Regulations thereunder, whether proposed, temporary or final, promulgated by the Department of the Treasury, Internal Revenue Service.

"Commitment Letter" means the term sheet from Branch Banking and Trust Co., and affiliate of the Lender to the Borrower dated October 2, 2017, as may be amended and supplemental from time to time.

"County" means Clay County, Florida.

"Escrow Agent" means U.S. Bank National Association, as escrow agent under the Escrow Agreement.

"Escrow Agreement" means the Escrow Deposit Agreement, dated the date of issuance of the 2017 Bond, between the Authority and the Escrow Agent and approved by the Borrower, substantially in the form attached hereto as Exhibit B.

"Executive Director" means the Executive Director of the Authority or his designee.

"Financing Agreement" means the Financing Agreement to be executed by and among the Authority, the Borrower and the Lender, substantially in the form attached hereto as Exhibit A.

"Lender" means BB&T Community Holdings Co., and its successors and assigns as holder of the 2017 Bond.

"Prior Bonds" means the Authority's Health Care Facilities Revenue Bonds (Penney Retirement Community Project), Series 1996A and Health Care Facilities Revenue Bonds (Penney Retirement Community Project), Series 1996B.

"Secretary" means the Secretary or the Assistant Secretary of the Authority.

"State" means the State of Florida.

"1996 Project" means the project of the Borrower described in Section 3(B) of this Resolution.

"2017 Bond" means the revenue bond of the Authority to be designated "Clay County Development Authority Healthcare Facilities Refunding and Improvement Revenue Bond (Penney Retirement Community, Inc., Project), Series 2017, in the principal amount of not to exceed \$14,500,000, substantially in the form and with the rate of interest, maturity date and other details provided for herein and in the Financing Agreement, to be issued by the Authority and delivered pursuant to the Financing Agreement.

"2017 Project" means the project of the Borrower described in Section 3(B) of this Resolution.

**SECTION 3. FINDINGS.** The Authority hereby finds, determines and declares as follows:

A. The Authority is a local governmental body and a public instrumentality created and existing under and pursuant to Chapter 2001-57, Laws of Florida, Special Acts (2001), as amended and supplemented, and Chapter 159, Part III Florida Statutes, as amended, designated and authorized to operate as an industrial development authority under Chapter 159, Part III, Florida Statutes, as amended, throughout all of the territorial limits of the County, and is a local agency as defined in the Florida Industrial Development Financing Act, Chapter 159, Part II, Florida Statutes, as amended. As such, the Authority is duly authorized and empowered by the Act to provide for the issuance of and to issue and sell its industrial development revenue bonds for the purpose of financing or refinancing all or any part of the "cost" of any "project," including any "health care facility" (as such terms are defined or used in the Act), in order to promote and foster the economic growth and development of the County and the State, to enhance and expand industry and other economic activity in the County and the State, and to increase purchasing power and opportunities for gainful employment, to improve living conditions and to advance and improve the prosperity and the welfare of the State and its inhabitants, to foster the industrial and business development of the County and the State, and to otherwise provide for and contribute to the health, safety and welfare of the people of the County and the State.

B. The Borrower has requested that the Authority deliver the 2017 Bond for the purposes of (i) refunding the Prior Bonds, the proceeds of which were loaned to the Borrower to finance the cost of the acquisition, construction, renovation, expansion, improvement and equipping of certain health care facilities of the Borrower located at 3495 Hoffman Street, Penney Farms, Florida (collectively, the "1996 Project"), in the County, and (ii) financing the cost of acquisition, construction and equipping of a replacement 50 bed skilled nursing facility to be owned and operated by the Borrower and also to be located at 3495 Hoffman Street, Penney Farms, Florida (the "2017 Project") in the County.

C. The Authority has been advised that the interest on the 2017 Bond will be excluded from gross income for federal income tax purposes under Section 103(a) of the Code, based in part of a certificate to be obtained from the Borrower; and the 2017 Bond will not be issued unless the Authority has received a satisfactory opinion of Bond Counsel to the effect (among other things) that the interest on the 2017 Bond will be excluded from gross income for federal income tax purposes at the time of delivery of the 2017 Bond.

D. The Borrower has shown that the 1996 Project did, and the 2017 Project will, preserve existing and create new jobs in the County, foster the economic growth and development in the industrial and business development of the County and the State and will serve other predominantly public purposes as set forth in Act. It is desirable and will further the public purposes of the Act for the Authority to refinance the 1996 Project by refunding the Prior Bonds, finance the 2017 Project and to issue and sell the 2017 Bond

for the purpose of providing funds to refinance the 1996 Project by refunding the Prior Bonds and finance the 2017 Project, all as provided in the documents referred to herein, which contain such provisions as are necessary or convenient to effectuate the purposes of the Act.

E. The 1996 Project was, and the 2017 Project is, appropriate to the needs and circumstances of, and have and shall and continue to make a significant contribution to the economic growth of the County and other affected governmental units; have and shall provide or preserve gainful employment; and have or shall serve a public purpose by advancing the economic prosperity, public health or general welfare of the State and its people, as stated in Section 159.26, Florida Statutes, as amended.

F. The County, the other affected governmental units and other local agencies have been and will be able to cope satisfactorily with the impact of the 1996 Project and the 2017 Project and have and will be able to provide, or cause to be provided when needed, the public facilities, including utilities and public services, that will be necessary for the construction, operation, repair and maintenance (as applicable), of the 1996 Project and the 2017 Project and on account of any increases in population or other circumstances resulting therefrom.

G. The Borrower is financially responsible based on the criteria established by the Act and is capable and willing to fulfill its respective obligations under the Financing Agreement and any other agreements to be made in connection with the issuance of the 2017 Bond and the use of the 2017 Bond proceeds for refunding of the Prior Bonds and financing (including reimbursement) of the costs of the 2017 Project, including the obligation to pay loan payments or other payments in an amount sufficient in the aggregate to pay all of the principal of, premium, if any, and interest on the 2017 Bond, in the amounts and at the times required, the obligation to operate, repair and maintain the 1996 Project and the 2017 Project at the Borrower's own expense, and to serve the purposes of the Act and such other responsibilities as may be imposed under such agreements. The payments to be made by the Borrower to the Authority (or directly to the holder of the 2017 Bond) and the other security provided by the Financing Agreement and any other agreements to be made in connection with the issuance of the 2017 Bond are adequate within the meaning of the Act for the security of the 2017 Bond.

H. Adequate provision has been made in the documents referenced herein for the operation, repair and maintenance of the 1996 Project and the 2017 Project at the expense of the Borrower, for the payment of the principal of, and interest on, the 2017 Bond when and as the same become due and payable, and for the payment by the Borrower of all other costs incurred in connection with the 1996 Project and the 2017 Project which are not paid out of the proceeds from the sale of the 2017 Bond or otherwise.

I. The costs to be refinanced and financed from the proceeds of the 2017 Bond shall be "costs" of a "project" within the meaning of the Act.

J. The Authority is not obligated to pay the 2017 Bond except from the proceeds derived from the repayment of the loan to the Borrower, or from the other security pledged therefor, and neither the faith and credit nor the taxing power of the Authority, the State or any political subdivision thereof (including, without limitation, the County) is pledged to the payment of the principal of or, premium, if any, or the interest on the 2017 Bond.

K. The payments to be made by the Borrower under the Financing Agreement will be sufficient to pay principal of, and interest on, the 2017 Bond when and as the same shall become due, and all other costs incurred in connection with the 2017 Project, except as may be paid out of the proceeds of sale of the 2017 Bond or otherwise, and to make all other payments required by the Financing Agreement.

L. The 2017 Bond will be secured by (i) an obligation of the Borrower in the Financing Agreement to make payments sufficient to pay, among other things, the principal of and premium, if any, and interest on such 2017 Bond when and as the same shall become due, and (ii) a mortgage and security agreement securing the liens on certain property of the Borrower.

M. A negotiated sale of the 2017 Bond is required and necessary and is in the best interest of the Authority for the following reasons: the 2017 Bond will be a special and limited obligation of the Authority payable solely out of moneys derived by the Authority from payments from the Borrower; the Borrower will be required to pay all costs of the administration of the 1996 Project and the 2017 Project and to operate and maintain the 1996 Project and the 2017 Project at its own expense; the cost of issuance of the 2017 Bond, which must be borne directly by the Borrower, would be most likely be greater if the 2017 Bond is sold at public sale by competitive bids than if the 2017 Bond is sold at negotiated sale, and there is no basis for, considering prevailing marketing conditions, or any expectation that, the terms and conditions of a sale of the 2017 Bond at public sale by competitive bids would be any more favorable than at negotiated sale; because prevailing market conditions are uncertain, it is desirable to sell the 2017 Bond at a predetermined price; and revenue notes having the characteristics of the 2017 Bond are typically sold at negotiated sale; the Borrower has indicated that it may be unwilling to proceed with refinancing of the 1996 Project and the financing of the 2017 Project unless a negotiated sale of the 2017 Bond is authorized by the Authority; and authorization of a negotiated sale of the 2017 Bond is necessary in order to serve the purposes of the Act.

N. Branch Banking and Trust Company has submitted a proposal to make a loan through the Lender as evidenced by the 2017 Bond for the Lender's own account pursuant to the Commitment Letter.



O. It is in the best interest of the Authority to award the placement of the 2017 Bond to the Lender pursuant to the Commitment Letter.

P. Prior to the purchase of the 2017 Bond, the Lender shall provide the Authority with a disclosure statement, satisfactory to the Authority, containing the information required by Section 218.385, Florida Statutes, as amended.

Q. All requirements precedent to the adoption of this Resolution, of the Constitution and other laws of the State, including the Act, have been complied with.

**SECTION 4. REFUNDING OF PRIOR BONDS AND FINANCING OF 2017 PROJECT AUTHORIZED.** The refunding of the Prior Bonds and the financing of the costs of the 2017 Project, in the manner provided herein, in the Financing Agreement and in the Escrow Agreement, is hereby authorized.

**SECTION 5. AUTHORIZATION OF 2017 BOND.** For the purpose of providing funds to (i) refund the Prior Bonds, (ii) financing (including reimbursement of) the costs of the Project, (iii) funding interest on a portion of the 2017 Bond during the construction of the Project and for a reasonable period thereafter, (iv) fund any necessary reserves and (v) pay the costs of issuing the 2017 Bond, and subject and pursuant to the provisions hereof, the issuance of the 2017 Bond in an aggregate principal amount of not to exceed \$14,500,000 is hereby authorized. The 2017 Bond shall be designated as provided in Section 2 hereof and shall be subject to payment, and shall be issued and delivered as provided in the Financing Agreement.

The 2017 Bond shall be dated such date, shall bear interest at such rate, shall be payable or shall mature on such date and in such amount, shall be issued in such denomination, shall be subject to optional and mandatory redemption and tender at such time or times, and upon such terms and conditions, shall be payable at the place or places and in the manner, shall be executed, authenticated and delivered, shall otherwise be in such forms, and subject to such terms and conditions, all as provided in the Financing Agreement.

The 2017 Bond and the premium, if any, and the interest thereon shall not be deemed to constitute a general debt, liability or obligation of the Authority or of the State or of any political subdivision thereof (including, without limitation, the County), or a pledge of the faith and credit of the Authority or of the State or of any political subdivision thereof (including, without limitation, the County), but shall be payable solely from the revenues provided therefor, and the Authority is not obligated to pay the 2017 Bond or the interest thereon except from the revenues and proceeds pledged therefor and neither the faith and credit nor the taxing power of the Authority, the State or any political subdivision thereof (including, without limitation, the County) is pledged to the payment of the principal of, premium, if any, or interest on the 2017 Bond.

SECTION 6. VALIDATION. The 2017 Bond shall not be required to be validated pursuant to Chapter 75, Florida Statutes, as amended.

SECTION 7. AUTHORIZATION OF EXECUTION AND DELIVERY OF THE FINANCING AGREEMENT. The Financing Agreement, substantially in the form attached hereto as Exhibit A , with such corrections, insertions and deletions as may be approved by the Chairman and the Secretary, such approval to be evidenced conclusively by their execution thereof, is hereby approved and authorized; the Authority hereby authorizes and directs the Chairman to date and execute the Financing Agreement, and to deliver the Financing Agreement to the Borrower, and the Lender; and all of the provisions of the Financing Agreement, when executed and delivered by the Authority as authorized herein and approved by the Borrower, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

SECTION 8. AUTHORIZATION OF EXECUTION AND DELIVERY OF THE ESCROW AGREEMENT; APPOINTMENT OF ESCROW AGENT. The Escrow Agreement, substantially in the form attached hereto as Exhibit B , with such corrections, insertions and deletions as may be approved by the Chairman and the Secretary, such approval to be evidenced conclusively by their execution thereof, is hereby approved and authorized; the Authority hereby authorizes and directs the Chairman to date and execute the Escrow Agreement, and to deliver the Escrow Agreement to the Escrow Agent; and all of the provisions of the Escrow Agreement, when executed and delivered by the Authority as authorized herein and by the Escrow Agent and the Borrower, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein. U.S. Bank, National Association is hereby appointed as Escrow Agent under the Escrow Agreement.

SECTION 9. AUTHORIZATION OF EXECUTION OF OTHER CERTIFICATES AND OTHER INSTRUMENTS. The Chairman, the Executive Director and the Secretary are hereby authorized and directed, either alone or jointly, under the official seal of the Authority, to execute and deliver (i) certificates of the Authority certifying such facts as the Authority's counsel or Bond Counsel shall require in connection with the issuance, sale and delivery of the 2017 Bond, (ii) such certificates as may be required under Section 103 of the Code or under the provisions of Florida law, and (iii) such other instruments, including but not limited to, deeds, assignments, bills of sale and financing statements, as shall be necessary or desirable to perform the Authority's obligations under the Financing Agreement and the Escrow Agreement, and to consummate the transactions hereby authorized.

SECTION 10. NO PERSONAL LIABILITY. No representation, statement, covenant, warranty, stipulation, obligation or agreement herein contained, or contained in the Bonds or the documents referred to herein or any certificate or other instrument to be executed on behalf of the Authority in connection with the issuance of the 2017 Bond, shall be deemed to be a representation, statement, covenant, warranty, stipulation,

obligation or agreement of any member, officer, employee or agent of the Authority in his or her individual capacity, and none of the foregoing persons nor any officer of the Authority executing the 2017 Bond or any document referred to herein or any certificate or other instrument to be executed in connection with the issuance of the 2017 Bond shall be liable personally thereon or be subject, to any personal liability or accountability by reason of the execution or deliver thereof.

SECTION 11. NO THIRD PARTY BENEFICIARIES. Except as otherwise expressly provided herein, in the 2017 Bond or in the documents referred to herein, nothing in this Resolution, the 2017 Bond or in the documents referred to herein, express or implied, is intended or shall be construed to confer upon any person, firm, corporation or other organization, other than the Authority, the Borrower, the Lender (and subsequent holders from time to time of the 2017 Bond) and the Escrow Agent any right, remedy or claim, legal or equitable, under and by reason of this Resolution or any provision hereof, or of the 2017 Bond or the documents referred to herein, all provision hereof and thereof being intended to be and being for the sole and exclusive benefit of the Authority, the Borrower, the Lender (subsequent holders from time to time of the 2017 Bond) and the Escrow Agent.

SECTION 12. PREREQUISITES PERFORMED. All acts, conditions and things relating to the passage of this Resolution, to the issuance, sale and delivery of the 2017 Bond, to the execution and delivery of the Financing Agreement and the Escrow Agreement required by the Constitution or other laws of the State, to happen, exist and be performed precedent to the passage hereof, and precedent to the issuance, sale and delivery of the 2017 Bond, to the execution and delivery of the Financing Agreement and the Escrow Agreement, have either happened, exist and have been performed as so required or will have happened, will exist and will have been performed prior to such execution and delivery.

SECTION 13. COMPLIANCE WITH CHAPTER 218, PART III, FLA. STATS. The Authority hereby approves and authorizes the completion, execution and filing with the Division of Bond Finance of the State Board of Administration of the State of Florida, at the expense of the Borrower, of advance notice of the impending sale of the 2017 Bond, of Bond Information Form BF 2003/2004 and of a copy of Internal Revenue Service Form 8038, and any other acts as may be necessary to comply with Chapter 218, Part III, Florida Statutes, as amended.

SECTION 14. GENERAL AUTHORITY. The members of the Authority and its officers, attorneys, engineers or other agents or employees are hereby authorized to do all acts and things required of them by the Resolution, the 2017 Bond, the Financing Agreement and the Escrow Agreement, and to do all acts and things which are desirable and consistent with the requirements hereof or of the 2017 Bond, the Financing Agreement and the Escrow Agreement, for the full, punctual and complete performance

of all the terms, covenants and agreements contained herein or in the Financing Agreement and the Escrow Agreement.

SECTION 15. SEVERABILITY OF INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions, and shall in no way affect the validity of any of the other provisions hereof or of the 2017 Bond.

SECTION 15. REPEALING CLAUSE. All resolutions or parts thereof in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

SECTION 16. EFFECTIVE DATE. This Resolution shall become effective immediately.

PASSED, APPROVED AND ADOPTED this 2nd day of November, 2017.

**CLAY COUNTY DEVELOPMENT  
AUTHORITY**

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

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

I, the undersigned, Secretary of the Clay County Development Authority, do hereby certify that the foregoing is a true and correct copy of the Resolution of said Authority passed and adopted on November 2, 2017.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of November, 2017.

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Secretary of Clay County  
Development Authority

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**EXHIBIT A**

**FORM OF FINANCING AGREEMENT**

**EXHIBIT B**

**FORM OF ESCROW AGREEMENT**

**FINANCING AGREEMENT**

**among**

**CLAY COUNTY DEVELOPMENT AUTHORITY,  
as Issuer,**

**PENNEY RETIREMENT COMMUNITY, INC.,  
as Borrower**

**and**

**BB&T COMMUNITY HOLDINGS CO.,  
as Purchaser**

**Dated as of December 1, 2017**

**\$ \_\_\_\_\_  
Clay County Development Authority  
Healthcare Facilities Refunding and Improvement Revenue Bond, Series 2017  
(Penney Retirement Community Project)**



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Exhibit A	Form of Revenue Bond
Exhibit B	Form of Requisition

This **FINANCING AGREEMENT** dated as of December 1, 2017 (the "Agreement"), among the **CLAY COUNTY DEVELOPMENT AUTHORITY**, a public body corporate and politic duly created and existing under the laws of the State of Florida (the "Issuer"), **BB&T COMMUNITY HOLDINGS CO.**, a Nevada corporation, as purchaser of the Bond referred to below (the "Purchaser"), and **PENNEY RETIREMENT COMMUNITY, INC.**, a not-for-profit corporation duly organized and existing under the laws of the State of Florida (the "Borrower");

**WITNESSETH:**

**WHEREAS**, the Authority is organized under the provisions of the Constitution of the State of Florida (the "State") and Chapter 2001-317, Laws of Florida (Special Acts), 2001, and acts as a "local agency" and "industrial development authority" under the provisions of Parts II and III, Chapter 159, Florida Statutes, as amended (collectively, the "Act"), for the purpose of assisting borrowers in the acquisition, construction, financing and refinancing of "projects," including "health care facilities" (as such terms are defined in the Act) in any incorporated or unincorporated area within Clay County, Florida (the "County"); and

**WHEREAS**, the Borrower is a not-for-profit corporation organized under the laws of the State which owns and operates an integrated senior retirement community in Clay County, Florida; and

**WHEREAS**, the Borrower wishes to (A) refinance the costs of certain capital improvements to or for the Borrower's senior healthcare and housing facilities (collectively, the "Original Project") by refunding all of the Issuer's outstanding (i) Healthcare Facilities Revenue Bonds (Penney Retirement Community, Inc. Project), Series 1996A (the "Series 1996A Bonds"), and (ii) Healthcare Facilities Revenue Bonds, (Penney Retirement Community, Inc. Project), Series 1996B (the "Series 1996B Bonds", and together with the Series 1996A Bonds, the "Refunded Bonds") and (B) finance the cost of acquisition, construction and equipping of a new 50 bed skilled nursing replacement facility (the "New Project"); and

**WHEREAS**, the Issuer proposes to issue and sell to the Purchaser its tax-exempt Healthcare Facilities Refunding and Improvement Revenue Bond, Series 2017 (Penney Retirement Community, Inc. Project) (the "Bond"), in the form of a single fully registered bond, substantially in the form attached hereto as Exhibit A, and to use the proceeds of the Bond to (i) refinance a portion of the costs of the Original Project by applying the proceeds thereof, together with other funds available to the Borrower, to refund all of the Refunded Bonds and (ii) finance the costs of the New Project; and

**WHEREAS**, the Issuer hereby finds and determines that the refinancing of the costs of the Original Project through the refunding of the Refunded Bonds and the

financing of the costs of the New Project will further the purposes and policies of the Act; and

**WHEREAS**, the execution and delivery of this Agreement and the issuance of the Bond were authorized by an Authorizing Resolution adopted by the Issuer on November 2, 2017 (the "Bond Resolution"); and

**NOW, THEREFORE**, the parties hereto agree as follows:

**ARTICLE I  
DEFINITIONS AND RULES OF CONSTRUCTION**

**Section 1.1. Definitions.**

(a) When used in this Agreement (except as otherwise expressly provided or unless the context otherwise requires), the following terms shall have the meanings specified in the foregoing recitals:

Act  
Agreement  
Bond  
Bond Resolution  
Borrower  
County  
Issuer  
New Project  
Original Project  
Purchaser  
Refunded Bonds  
Series 1996A Bonds  
Series 1996B Bonds  
State

(b) In addition to other terms defined elsewhere in this Agreement, the following terms shall have the following meanings in this Agreement unless the context otherwise requires:

"Adjusted LIBOR Rate" shall mean a rate of interest per annum equal to (a) the sum obtained (rounded upwards, if necessary, to the next higher 1/100th of 1.0%), by adding (i) the product of (x) 68% and (y) One-Month LIBOR and (ii) [0.85]% per annum multiplied, prior to the occurrence of a Determination of Taxability, by (b) the Margin Rate Factor. The Adjusted LIBOR Rate shall be adjusted monthly on the first day of each LIBOR Interest Period. The Adjusted LIBOR Rate shall also be adjusted for any

change in the LIBOR Reserve Percentage so that the Holder shall receive the same yield as received prior to the change in the LIBOR Reserve Percentage.

"Advance" means a borrowing of money hereunder. The amount of each such Advance represents the purchase price of an increment of the principal amount of the Bond being issued by the Issuer and purchased by the Purchaser, the proceeds of which are being loaned by the Issuer and the Purchaser to the Borrower. The aggregate principal amount of all Advances that may be made hereunder shall not exceed \$ \_\_\_\_\_.

"Applicable Law" shall mean all laws, statutes, codes, ordinances, rules, rulings, orders, judgments, decrees, injunctions, arbitral decisions, regulations, authorizations, determinations, directives and any other requirements and/or provisions (including building codes and zoning regulations and ordinances) of all Governmental Authorities, whether now or hereafter in force, which may be or become applicable to the Borrower or Purchaser, as applicable, the relationship of lender and borrower, the Property, any of the Bond Documents, or any part of any of them (whether or not the same may be valid), and all requirements, obligations and conditions of all instruments of record applicable to the Property on the date hereof.

"Bank" shall mean Branch Banking and Trust Company, a North Carolina banking corporation, its successors and assigns.

"Bankruptcy Code" shall mean the United States Bankruptcy Code as in effect on the date hereof or as hereafter amended.

"Bond Counsel" shall mean Nabors, Giblin & Nickerson, P.A., or any other firm nationally recognized on the subject of municipal bonds acceptable to the Holder.

"Bond Documents" shall mean this Agreement, the Bond, the Bond Resolution, the Covenant Agreement and the Mortgage.

"Borrower Representative" shall mean the Chief Executive Officer, the Chief Financial Officer, any Senior Vice President or Vice President of the Borrower or any other person or persons at the time designated to act on behalf of the Borrower by written certificate furnished to the Holder containing the specimen signature of such person and signed on behalf of the Borrower by a Borrower Representative.

"Business Day" shall mean any day on which the Holder is open for the purpose of conducting a commercial banking business.

"Change in Law" means the occurrence, after the date of this Agreement, of: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any

request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided, that, notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Closing Date" shall mean the initial date of delivery of and payment for the Bond, which is December \_\_, 2017.

"Code" shall mean the Internal Revenue Code of 1986, as amended, including applicable regulations and revenue rulings thereunder.

"Covenant Agreement" shall mean the Continuing Covenants Agreement dated as of December 1, 2017 between the Borrower and the Purchaser and any amendments or supplements thereto.

"Date of Taxability" shall mean the earliest date as of which interest on the Bond shall have been determined to be includable in the gross income of any Holder or prior Holder as a result of a Determination of Taxability.

"Debtor Relief Laws" shall mean the United States Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

"Default Rate" shall mean the lesser of (i) the Prime Rate in effect from time to time plus 2.00% (but in no event less than 6.00%) and (ii) the maximum non-usurious rate permitted by applicable law.

"Determination of Taxability" shall mean and shall be deemed to have occurred on the first to occur of the following:

(a) on that date when the Borrower or Issuer files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability shall have in fact occurred;

(b) on the date when any Holder or prior Holder notifies the Issuer and the Borrower that it has received a written opinion by an attorney or firm of attorneys of recognized standing on the subject of tax-exempt municipal finance to the effect that an Event of Taxability shall have occurred unless, within 180 days after receipt by the Issuer

and the Borrower of such notification from such Holder, the Issuer or the Borrower shall deliver to the Holder or prior Holder (i) a ruling or determination letter issued to or on behalf of the Borrower by the Commissioner or any District Director of Internal Revenue (or any other governmental official exercising the same or a substantially similar function from time to time) or (ii) a written opinion by an attorney or firm of attorneys of recognized standing on the subject of tax-exempt municipal finance to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;

(c) on the date when the Issuer or the Borrower shall be advised in writing by the Commissioner or any District Director of Internal Revenue (or any other government official or agent exercising the same or a substantially similar function from time to time) that, based upon filings of the Issuer or the Borrower, or upon any review or audit of the Issuer or the Borrower or upon any other ground whatsoever, an Event of Taxability shall have occurred; and

(d) on that date when the Issuer or the Borrower shall receive notice from any Holder or prior Holder that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of such Holder or any prior Holder the interest on the Bond paid to such Holder or prior Holder due to the occurrence of an Event of Taxability;

provided, however, that no Determination of Taxability shall occur under clauses (c) or (d) above unless the Issuer and the Borrower have been afforded the opportunity, at their expense, to contest any such assessment; and provided further that no Determination of Taxability shall occur until such contest, if made, has been finally determined; and provided further that upon demand from the Holder or any prior Holder, the Borrower shall promptly reimburse such Holder or prior Holder for any payments such Holder (or any prior Holder) shall be obligated to make as a result of the Determination of Taxability during any such contest.

"Environmental Laws" shall mean all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by or with any Governmental Authority and all common laws, relating in any way to human health, the environment, health and safety, preservation of natural resources, the management, Release or threatened Release of any Hazardous Material or to health and safety matters.

"Environmental Liability" shall mean any liability, contingent or otherwise (including any liability for damages, costs of environmental investigation and remediation, costs of administrative oversight, fines, natural resource damages, penalties or indemnities), of the Borrower directly or indirectly resulting from or based upon (i) any actual or alleged non-compliance with any Environmental Law, (ii) the generation,

use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (iii) any actual or alleged exposure to any Hazardous Materials, (iv) the Release or threatened Release of any Hazardous Materials or (v) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Event of Default" shall mean any of the events set forth in Section 7.1.

"Event of Taxability" shall mean a change in law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the Issuer or the Borrower, or the failure to take any action by the Issuer or the Borrower, or the making by the Issuer or the Borrower of any misrepresentation herein or in any certificate required to be given in connection with the issuance, sale or delivery of the Bond) which has the effect of causing interest paid or payable on the Bond to become includable, in whole or in part, in the gross income of the Holder or any prior Holder for federal income tax purposes.

"Final Advance Date" means \_\_\_\_\_, \_\_\_\_\_.

"GAAP" shall mean generally accepted accounting principles, as in effect from time to time, consistently applied.

"Governmental Authority" shall mean the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Hazardous Materials" shall mean all hazardous or toxic substances, materials, mixtures, wastes or other pollutants or contaminants, including without limitation explosive or radioactive substances, petroleum or petroleum distillates, asbestos or asbestos containing materials, lead-based substances, polychlorinated biphenyls, radon gas, mold, mycotoxins and other fungi, infectious or medical wastes and all other substances or wastes of any nature, regulated pursuant to or covered by any Environmental Law.

"Holder" shall mean the Purchaser or any future registered owner of the Bond as permitted hereunder.

"Issuer Representative" shall mean any of the Chairman, Vice Chairman and Executive Director of the Issuer and any other person or persons at the time designated to act on behalf of the Issuer by written certificate furnished to the Borrower and the Holder containing the specimen signatures of such persons and signed on behalf of the Issuer by its Chairman or Vice Chairman.



"LIBOR Interest Period" shall mean the period commencing on the first calendar day of each month to but excluding the first calendar day of the immediately following month; provided, however, that the first LIBOR Interest Rate Period shall commence on the Closing Date and end on December 31, 2017.

"LIBOR Reserve Percentage" shall mean the maximum aggregate rate at which reserves (including, without limitation, any marginal supplemental or emergency reserves) are required to be maintained under Regulation D (17 CFR § 230.51 et. seq.) by member banks of the Federal Reserve System with respect to dollar funding in the London interbank market. Without limiting the effect of the foregoing, the LIBOR Reserve Percentage shall reflect any other reserves required to be maintained by such member banks by reason of any applicable regulatory change against (i) any category of liability which includes deposits by reference to which One-Month LIBOR is to be determined or (ii) any category of extension of credit or other assets related to One-Month LIBOR.

"Mandatory Tender Date" means June 1, 2029. At the prior written request of the Borrower at least one hundred eighty (180) days prior to the Mandatory Tender Date then in effect, the Mandatory Tender Date may be extended in the sole discretion of the Purchaser.

"Margin Rate Factor" shall mean the fraction the numerator of which is equal to one (1) minus the Maximum Federal Corporate Tax Rate on the date of calculation and the denominator of which is 0.65. The Margin Rate Factor shall be 0.65/0.65 or 1.0 so long as the Maximum Federal Corporate Tax Rate shall be 35%, and thereafter shall increase or decrease from time to time effective as of the effective date of any decrease or increase in the Maximum Federal Corporate Tax Rate; provided, however, that the Margin Rate Factor shall never be less than 1.0 notwithstanding anything to the contrary herein.

"Material Adverse Effect" shall mean, with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singularly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences whether or not related, a material adverse change in, or a material adverse effect on, (a) the business, results of operations, financial condition, assets, liabilities or prospects of the Borrower, taken as a whole, (b) the ability of the Borrower to perform any of its obligations under the Bond Documents or (c) the rights and remedies of the Purchaser or the Issuer under any of the Bond Documents.

"Maximum Federal Corporate Tax Rate" shall mean the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, determined without regard to tax rate or tax benefit make-up provisions such as the last two sentences of Section 11(b)(1) of the Code, as in effect from time to time (or, if as a result of a

change in the Code the rate of income taxation imposed on corporations shall not be applicable to the Holder, the maximum statutory rate of federal income taxation which could apply to the Holder). The Maximum Federal Corporate Tax Rate on the date of execution of this Agreement is 35%.

"Mortgage" means the Mortgage and Security Agreement, dated as of December 1, 2017, from the Borrower to the Purchaser.

"Mortgaged Property" has the meaning assigned such term in the Mortgage.

"One-Month LIBOR" means the average rate quoted by Bloomberg Finance L.P., or any quoting service or commonly available source utilized by the Holder, on the determination date for deposits in U.S. Dollars offered in the London interbank market for one month determined as of 11:00 am London time two (2) Business Days prior to the commencement of the applicable LIBOR Interest Period; provided that if the above method for determining One-Month LIBOR shall not be available, "One-Month LIBOR" shall be the rate quoted in *The Wall Street Journal*, or a rate determined by a substitute method of determination agreed on by the Borrower and the Holder and which is the subject of a Favorable Opinion of Bond Counsel; provided, if such agreement is not reached within a reasonable period of time (in the Holder's sole judgment), a rate reasonably determined by the Holder in its sole discretion as a rate being paid, as of the determination date, by first class banking organizations (as determined by the Holder) in the London interbank market for U. S. Dollar deposits, written notice of which shall be provided to the Borrower and shall be accompanied by a Favorable Opinion of Bond Counsel, and provided further that, for so long as One-Month LIBOR (determined as provided above) would be less than zero percent (0%), then One-Month LIBOR shall be deemed to be zero percent (0%) for such time.

"Payment of the Bond" shall mean payment in full of the Bond and the making in full of all other payments due and payable pursuant to this Agreement at the time of such payment.

"Person" shall mean an individual, partnership, corporation, trust, unincorporated organization, association, joint venture, joint-stock company, or a government or agency or political subdivision thereof.

"Prime Rate" shall mean the interest rate announced by the Bank or its successor from time to time as its prime rate. Any change in the Prime Rate shall be effective as of the date such change is announced by the Bank or its successor.

"Purchaser" shall mean BB&T Community Holdings Co., a Nevada corporation or any successors or assigns as the Holder of the Bond.

"Release" shall mean any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or within any building, structure, facility or fixture.

"Requisition" means a written request for an Advance signed by a Borrower Representative, substantially in the form attached hereto as EXHIBIT B.

"Standard Rate" shall mean that rate of interest per annum that shall apply in lieu of One-Month LIBOR in the event that One-Month LIBOR shall not be ascertainable or illegal or unlawful with respect to the Holder. The Standard Rate shall be computed, for any day, as a rate per annum (rounded upwards, if necessary to the next 1/100th of 1.0%) equal to the Prime Rate less 2.75% and each change in the Standard Rate shall be effective on the date any change in the Prime Rate is publicly announced as being effective.

"Tax Certificate" shall mean the Tax Agreement and Certificate dated the Closing Date and executed and delivered by the Issuer and the Borrower.

"Taxable Adjusted LIBOR Rate" shall mean a rate of interest per annum equal to the sum obtained (rounded upwards, if necessary, to the next higher 1/100th of 1.0%), by adding (i) One-Month LIBOR plus (ii) 1.30% per annum. The Taxable Adjusted LIBOR Rate shall be adjusted monthly on the first day of each LIBOR Interest Period. The Taxable Adjusted LIBOR Rate shall also be adjusted for any change in the LIBOR Reserve Percentage so that the Holder shall receive the same yield as received prior to the change in the LIBOR Reserve Percentage.

## **Section 1.2. Rules of Construction.**

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.

(b) The table of contents, captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Agreement.

(c) All references herein to particular Articles or Sections are references to Articles or Sections of this Agreement unless some other reference is established.

(d) All accounting terms not specifically defined herein shall be construed in accordance with GAAP.

(e) Any capitalized terms used herein and not otherwise defined shall have the meaning given such terms in the other Bond Documents.

(f) All references herein to the Code or any particular provision or section thereof shall be deemed to refer to any successor, or successor provision or section, thereof, as the case may be.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES**

**Section 2.1. Representations and Warranties of the Issuer.** The Issuer hereby represents and warrants to, and agrees with, the Borrower and the Purchaser as follows:

(a) The Issuer is duly organized under the Act, has the power to enter into this Agreement and the transactions contemplated hereby and to perform its obligations hereunder and thereunder and to issue the Bond for the purpose of refinancing the costs of the Original Project through the refunding of the Refunded Bonds and the financing of the costs of the New Project, and to loan the proceeds of the Bond to the Borrower for such purposes, the Original Project and the New Project constitute facilities authorized to be refinanced and financed under the Act, such loan being in furtherance of the purposes for which the Issuer was organized.

(b) By proper action the Issuer has duly authorized the execution and delivery of this Agreement and the Bond, the performance of its obligations hereunder and thereunder and the issuance of the Bond and has duly issued and sold the Bond.

(c) The Issuer is not (1) in violation of the Act or any current law, rule or regulation applicable to it or (2) in default under any indenture, contract, note, order, judgment, decree or other agreement, instrument or restriction which would adversely affect the transactions contemplated by the Bond Documents. The execution and delivery by the Issuer of this Agreement and the Bond and the compliance with the terms and conditions hereof and thereof will not conflict with or result in the breach of or constitute a default under any of the above described documents or other restrictions.

(d) To the best of the Issuer's knowledge, no further approval, consent or withholding of objection on the part of any regulatory body, federal, state or local, is required in connection with (1) the issuance and delivery of the Bond by the Issuer or (2) the execution or delivery of or compliance by the Issuer with the terms and conditions of this Agreement. To the best of its knowledge, the consummation by the Issuer of the transactions set forth in the manner and under the terms and conditions as provided herein will comply with all applicable state, local or federal laws and any rules and regulations promulgated thereunder by any regulatory authority or agency.

(e) There is no litigation at law or in equity, or any proceeding before any governmental agency, pending or, to the knowledge of the Issuer, threatened with respect to (1) the organization and existence of the Issuer, (2) its authority to adopt the Bond Resolution or to execute or deliver this Agreement or the Bond, (3) the validity or enforceability of any of such instruments or the transactions contemplated hereby or thereby, (4) the title of any officer of the Issuer who executed such instruments, or (5) any authority or proceedings related to the execution and delivery of such instruments on behalf of the Issuer. No such authority or proceedings have been repealed, revoked, rescinded or amended and all are in full force and effect.

(f) The Issuer hereby finds that the refinancing of the costs of the Original Project through the refunding of a portion of the Refunded Bonds and the financing of the costs of the New Project with the proceeds of the Bond is advisable and in furtherance of the purposes for which the Issuer was organized and will serve the purposes of the Act.

**Section 2.2. Representations and Warranties of Borrower.** The Borrower, on behalf of itself and as Borrower Representative, makes the following representations as the basis for its and the Borrower's undertakings hereunder and under the Bond Documents:

(a) The Borrower (i) is duly organized, validly existing and in good standing as a Florida not-for-profit corporation, (ii) has all requisite power and authority to carry on its businesses as now conducted, (iii) operates a "health care facility" within the meaning of the Act, and (iv) is duly qualified to do business and is in good standing in each jurisdiction where such qualification is required, except where a failure to be so qualified could not reasonably be expected to result in a Material Adverse Effect.

(b) (i) The Borrower is an organization described in Section 501(c)(3) of the Code, exempt from federal income taxes under Section 501(a) of the Code, is an organization described in Section 170(b)(1)(A) of the Code and is not a "private foundation" as described in Section 509(a) of the Code;

(ii) The Borrower has received a letter or other notification from the Internal Revenue Service to that effect;

(iii) Such letters or other notifications have not been modified, limited or revoked;

(iv) The Borrower is in compliance with all terms, conditions and limitations, if any, contained in such respective letter or other notifications;

(v) The facts and circumstances which form the basis of such letter or other notification as represented to the Internal Revenue Service continue to exist; and

(vi) The Borrower is an organization organized and operated: (i) exclusively for charitable purposes; and (ii) not for pecuniary profit; and no part of the net earnings of the Borrower inures to the benefit of any person, private stockholder or individual, all within the meaning, respectively, of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, and applicable State law.

(c) The execution, delivery and performance by the Borrower of the Bond Documents to which it is a party are within the Borrower's organizational powers and have been duly authorized by all necessary corporate action. The Bond Documents to which the Borrower is a party have been or will be duly executed and delivered by the Borrower, and constitute, or when executed and delivered by the Borrower will constitute, valid and binding obligations of the Borrower, enforceable against it in accordance with each such document's respective terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

(d) No litigation, investigation or proceeding of or before any arbitrators or Governmental Authorities is pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower (i) as to which there is a reasonable possibility of an adverse determination that could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect or (ii) which in any manner draws into question the validity or enforceability of any Bond Document. The Borrower is not contemplating either the filing of a petition by it under any Debtor Relief Law or the liquidation of all or a major portion of its assets or property, and the Borrower has no knowledge of any Person contemplating the filing of any such petition against it.

(e) The Borrower is not in default in the payment of the principal of or interest on any of its material indebtedness for borrowed money and is not in default under any instrument under and subject to which any material indebtedness has been incurred, and no event has occurred and is continuing under the provisions of any such agreement that with the lapse of time or the giving of notice, or both, would constitute an event of default thereunder.

(f) The execution, delivery and performance of the Bond Documents to which it is a party and the performance by the Borrower of its obligations thereunder do not and will not conflict with, or constitute a breach or result in a violation of, the articles of incorporation or bylaws of the Borrower, any agreement or other instrument to which the Borrower is a party or by which it is bound or any constitutional or statutory provision or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the Borrower or any of its property.

(g) The Borrower has obtained all consents, approvals, authorizations and orders of any governmental or regulatory authority that (1) are required to be obtained by

the Borrower as a condition precedent to the execution and delivery of the Bond Documents to which it is a party or (2) are required to be obtained as of the Closing Date for the performance by the Borrower of its obligations hereunder or thereunder or in connection with the Tax Certificate. To the best of its knowledge, the Borrower has received the written approval or permits from all federal, state and local governmental authorities mutually necessary to conduct its operations as presently conducted and to acquire and construct the New Project.

(h) The Borrower is in compliance with (a) all Applicable Laws, judgments, decrees and orders of any Governmental Authority, and (b) all indentures, agreements or other instruments binding upon it or its properties, except where non-compliance, either singly or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. All approvals under Applicable Laws have been obtained and are valid and in full force and effect. [None of the Mortgaged Property is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards].

(i) The consolidated balance sheets for the Borrower and subsidiaries as at June 30, 201[7], certified by the Borrower's certified public accountants, and the related consolidated statements of operations, changes in net assets and cash flows for the fiscal year then ended, copies of all of which have been furnished to the Purchaser, present fairly and accurately the financial condition of the Borrower and subsidiaries as at the date of said balance sheet and the results of its operations for said period. The unaudited management prepared balance sheets and income statements of the Borrower and subsidiaries most recently delivered to the Purchaser, present fairly and accurately, subject to normal recurring year-end adjustments, the financial condition of the Borrower as at such month end and the results of their operations for such period. To the best of its knowledge, the Borrower has no direct or contingent liabilities as of the date of this Agreement of a nature required by GAAP to be reflected or provided for in audited financial statements which are not provided for or reflected in such audited financial statements or referred to in notes thereto, except for liabilities incurred since the date of such financial statements in the ordinary course of business. All such audited financial statements have been prepared in accordance with GAAP applied on a consistent basis maintained throughout the period involved. Since June 30, 201[7], there has been no material adverse change in the business, properties or condition, financial or otherwise, of the Borrower or any subsidiaries and since said date neither the Borrower nor any subsidiary of the Borrower has been adversely affected in any substantial way as the result of any fire, explosion, earthquake, accident, strike, lockout, combination of workmen, flood, embargo, riot, activities of armed forces, war or acts of God or the enemy, or by cancellation or loss of any major contract.

(j) To the best of the Borrower's knowledge and belief, (1) the operations carried out by the Borrower on the Mortgaged Property have complied in all material

respects with applicable Environmental Laws; (2) with respect to any Hazardous Materials which the Borrower is legally authorized and empowered to maintain on, in or under the Property or use in connection therewith, the Borrower has obtained and will maintain all licenses, permits and approvals required with respect thereto, and is in material compliance with all of the terms, conditions and requirements of such licenses, permits and approvals; (3) the Mortgaged Property is now in compliance, in all material respects, with all Environmental Laws in effect on the date hereof; (4) except for Hazardous Materials maintained in accordance with applicable Environmental Laws or as has been disclosed to the Purchaser by the Borrower, the Borrower has not used any underground tanks for the storage of petroleum products or Hazardous Materials on the Mortgaged Property; and (5) the Borrower has never been refused or had canceled liability insurance coverage based upon the existence or alleged existence of Hazardous Materials on the Mortgaged Property.

(k) To the best of its knowledge, (1) the Borrower is in material compliance with all Environmental Laws, and there is not now pending, or, to the best knowledge of the Borrower, threatened, any action, suit, investigation or proceeding against it or any of the Mortgaged Property seeking to enforce any right or remedy under any of the Environmental Laws; and (2) neither the Borrower, nor any of the Mortgaged Property, has ever been subject to or regulated by any judicial or administrative order, judgment, decree or injunction as the result of material violations or asserted material violations of any of the Environmental Laws except as has been disclosed by the Borrower to the Purchaser and specifically identified as material violations or asserted material violations.

(l) The Borrower has timely filed or caused to be filed all federal, state and local tax returns and all other material tax returns that are required to be filed by it, and has paid all taxes shown to be due and payable on such returns or on any assessments made against it or its property and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority, except where the same are currently being contested in good faith by appropriate proceedings and for which the Borrower has set aside on its books adequate reserves in accordance with GAAP. As of the Closing Date, the charges, accruals and reserves on the books of the Borrower in respect of such taxes are adequate, and no tax liabilities that could be materially in excess of the amount so provided are anticipated.

(m) The Borrower has disclosed to the Purchaser and Issuer all agreements, instruments, and corporate or other restrictions to which the Borrower is subject, and all other matters known to it that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. Neither the Bond Documents, the Tax Certificate nor any other agreements, reports, schedules, certificates or instruments heretofore or simultaneously with the execution of this Agreement delivered to the Purchaser or the Issuer by or on behalf of the Borrower (as modified or supplemented by any other information so furnished) contains any material misstatement of fact or omits to



state any material fact necessary to make the statements therein, taken as a whole, in light of the circumstances under which they were made, not misleading; provided, that with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

(n) The Borrower owns, possesses, or has the right to use all licenses, franchises, trademarks, trademark rights, trade names, trade name rights and copyrights necessary to conduct its respective business as now conducted and to be conducted in the New Project, without known conflict with any license, franchise, trademark, trade name, or copyright of any other Person. The Borrower does not own any patents or licenses for use of any patents.

(o) The Borrower has not taken any action and will not take or omit to take any action that would impair the exemption of interest on the Bond from federal income taxation.

(p) All of the representations, warranties and covenants of the Borrower contained in the Tax Certificate are hereby reaffirmed and incorporated herein by this reference.

(q) To the best knowledge of the Borrower, it has good and, with respect to real property, marketable, title to its properties and assets, including the properties and assets reflected in the financial statements and notes thereto described in Section 2.2(h), except for such assets as have been disposed of in the ordinary course of business, and all such properties and assets are free and clear of all liens, mortgages, pledges, encumbrances or charges of any kind except as described in such financial statements and notes thereto or otherwise permitted by the terms hereof and of the Mortgage.

(r) To the best knowledge of the Borrower, it is not a party to or bound by any contract or agreement or subject to any provisions of its articles of incorporation, bylaws or other corporate restrictions which has, had or could be reasonably expected, either individually or in the aggregate, to result in a Material Adverse Effect.

(s) None of the proceeds of the Bond will be used directly or indirectly for "purchasing" or "carrying" any "margin stock" within the respective meanings of such terms under Regulation U or for any purpose that violates the provisions of Regulation T, Regulation U or Regulation X. The Borrower is not engaged principally, nor is one of its important activities, in the business of extending credit for the purpose of purchasing or carrying "margin stock."

All of the above representations and warranties shall survive the execution and delivery of this Agreement.

**ARTICLE III  
ISSUANCE OF THE BOND**

**Section 3.1. Sale and Purchase of Bond.** The Issuer shall issue the Bond substantially in the form attached as Exhibit A hereto. In reliance upon the representations, warranties and agreements herein contained, and subject to the conditions herein set forth, on the Closing Date (a) the Issuer agrees to issue and sell the Bond to the Purchaser for a purchase price equal to all Advances; (b) the Issuer and the Purchaser also agree to lend the Borrower the proceeds of all Advances and enter into this Agreement; (c) the Purchaser agrees to purchase the Bond from the Issuer, to make Advances to the Borrower in accordance with the terms hereof and to accept the Covenant Agreement and the Mortgage; and (d) the Borrower agrees to enter into this Agreement and the Covenant Agreement. The outstanding principal of the Bond shall, at the time of calculation of such principal amount, be equal to the sum of all Advances to such calculation date less any amounts of principal on the Bond paid or prepaid by the Borrower prior to such calculation date.

Payment for the Bond shall be made in the manner provided in Section 5.1 hereof, at or before 12:00 Noon, Jacksonville, Florida time, on the Closing Date.

**Section 3.2. Terms of the Bond.**

(a) The Bond shall be dated the Closing Date, and mature on June 1, 2042. All unpaid principal with respect to the Bond shall be due and payable on June 1, 2042.

(b) Interest shall accrue on the outstanding principal amount of the Bond, and shall initially be calculated at the Adjusted LIBOR Rate, on the basis of actual days elapsed over a 360-day year.

(c) Upon the occurrence of a Determination of Taxability, then, from and after the Date of Taxability, the interest rate used to calculate interest on the Bond shall be the Taxable Adjusted LIBOR Rate. After a Determination of Taxability and upon demand of the Holder or any prior Holder of the Bond, the Issuer shall pay to such Holder or prior Holder, but only from amounts provided by the Borrower pursuant to Section 4.5, such additional amount as shall be necessary to provide that interest on the Bond shall have been payable at the Taxable Adjusted LIBOR Rate from the Date of Taxability. The Borrower has agreed under Section 4.5 (a) to pay to the Holder the amounts payable by the Issuer under this clause (c) and the Issuer hereby directs Borrower to make such payments. To the extent such payments are made by Borrower to Holder, the Issuer shall receive a credit against such payment obligation.

(d) Upon a Determination of Taxability, the Issuer shall also pay, but only from amounts provided by the Borrower pursuant to Section 4.5, to such Holder or to any prior Holder upon demand of such Holder or prior Holder any taxes, interest, penalties or other

charges assessed against or payable by such Holder or prior Holder and attributable to such Determination of Taxability and all reasonable administrative, out-of-pocket and other expenses incurred by such Holder or prior Holder that are attributable to such event, including, without limitation, the costs incurred by such Holder or prior Holder to amend any of its tax returns, notwithstanding the repayment of the entire principal amount of the Bond or any transfer or assignment of the Bond, all such amounts to have been documented in a written request from the Holder and any applicable prior Holder to the Borrower. Such amounts set forth in the documentation from the Holder or any applicable prior Holder delivered to the Borrower shall be conclusive absent manifest error. The Borrower has agreed under Section 4.5 (b) to pay to the Holder the amounts payable by the Issuer under this clause (d) and the Issuer hereby directs Borrower to make such payments. To the extent such payments are made by the Borrower to Holder, the Issuer shall receive a credit against such payment obligation.

(e) The Issuer shall pay to the Holder, but only from amounts provided by the Borrower pursuant to Section 4.8, the amounts required to be paid by the Borrower under Section 4.8 hereof. The Borrower has agreed under Section 4.8 to pay to the Holder the amounts payable by the Issuer under this clause (e) and the Issuer hereby directs Borrower to make such payments. To the extent such payments are made by Borrower to Holder, the Issuer shall receive a credit against such payment obligation.

(f) In the event that One-Month LIBOR shall not be ascertainable, for any reason, or for any reason it shall be illegal or unlawful for the Holder of the Bond to collect interest based on One-Month LIBOR, then, from and after the date the Holder of the Bond determines such condition exists, until the date such Holder determines such condition no longer exists, each reference to One-Month LIBOR shall be deemed and interpreted to mean the Standard Rate.

(g) Notwithstanding the foregoing, from and after the occurrence of an Event of Default, until such time as such Event of Default has been remedied or otherwise waived by the Holder, the Bond shall bear interest at the Default Rate. To the extent permitted by law, interest shall accrue on any overdue payment of interest or principal at the Default Rate.

**Section 3.3. Bond to be Issued in Registered Form; Registration and Transfer.** The Bond shall be issuable in typewritten form as a fully registered Bond without coupons. The Bond shall be substantially in the form attached hereto as Exhibit A, with such appropriate variations, omissions and insertions as are permitted or required by this Agreement, and may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any usage or requirements of law with respect thereto.

The Holder or its designee (as provided in writing to the Borrower and the Issuer), is hereby appointed as the registrar for the Bond (the "Bond Registrar") and as such shall

keep books for the registration and for the registration of transfer of the Bond as provided in this Agreement (the "Bond Registration Books"). The transfer of the Bond may be registered upon the Bond Registration Books only upon surrender thereof to the Bond Registrar together with an assignment duly executed by the registered owner or his attorney or legal representative in such form as shall be satisfactory to the Bond Registrar. Upon such registration of transfer, the Issuer shall execute and deliver at the earliest practicable time in exchange for such Bond a new bond registered in the name of the transferee, in a principal amount equal to the principal amount of such Bond and maturing in the same principal installments and bearing interest at the same rate.

The Bond surrendered in any such exchange or registration of transfer shall forthwith be cancelled by the Bond Registrar. The Bond Registrar may make a charge which shall be paid by the Borrower for every registration of transfer sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such registration of transfer, and such charge shall be paid before any such new Bond shall be delivered. The Bond Registrar shall not be required to make any registration of transfer of the Bond during the fifteen (15) days immediately preceding an interest payment date on the Bond or, in the case of any proposed payment of principal of the Bond, after any such Bond or any portion thereof has been called for payment.

The person in whose name the Bond shall be registered upon the Bond Registration Books shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of and interest on such Bond shall be made only to the registered owner thereof or his registered assigns. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

Upon any registration of transfer of the Bond or of any interest therein, the transferee or any subsequent transferee, if the transfer to it in all respects complies with the requirements of this Section, and if it is duly registered as owner as herein provided, shall be deemed the Holder for purposes of this Agreement and shall succeed to the rights and be bound by the obligations of the Purchaser hereunder, including without limitation the provisions of this Section relating to transfer of the Bond. Immediately upon any registration of transfer of the Bond or of any interest therein, the new Holder shall give written notice of such transfer to the Borrower. NOTWITHSTANDING THE FOREGOING, NEITHER THE BOND NOR ANY INTEREST THEREIN SHALL BE TRANSFERABLE BY THE PURCHASER IN AN AMOUNT LESS THAN \$10,000,000 OR PRIOR TO AND INCLUDING THE FINAL ADVANCE DATE.

The Bond shall be initially issued as one Bond registered in the name of the Purchaser in the principal amount of \$ \_\_\_\_\_. [Thereafter, after the Final Advance Date, the Bond may be subdivided into and exchanged for two (2) or more Bonds of the same series, maturity and aggregate principal amount upon surrender thereof by the Holder at the principal office of the Bond Registrar. Upon such surrender, the Issuer

shall execute and deliver to or as directed by the Holder new Bonds meeting the requirements hereof. No Bond shall be subdivided by any such exchange, however, so as to produce any Bond having immediately after such exchange an outstanding principal amount of less than [\$10,000,000].]

ANY TRANSFEREE OF A BOND SHALL EXECUTE AN INVESTOR LETTER WHICH CONTAINS CERTIFICATIONS AND REPRESENTATIONS SUBSTANTIALLY SIMILAR TO THOSE CONTAINED IN SECTION 3.4 HEREOF.

Interest shall be payable to the Holder of record on the interest payment date for such interest.

The Bond Registrar may resign upon thirty (30) days' prior written notice to the Issuer and the Borrower. The Issuer also reserves the right, with the consent of the Holder and, so long as no Event of Default has occurred and is continuing, the Borrower, to remove the Bond Registrar and appoint a successor Bond Registrar. Upon the resignation or removal of any Bond Registrar, and with the consent of the Holder and, so long as no Event of Default has occurred and is continuing, the Borrower, the Issuer shall either act as or designate a successor to act as Bond Registrar.

#### **Section 3.4. Purchaser's Representations.**

(a) The Purchaser represents that it is (1) purchasing the Bond for its own account as a loan made in the ordinary course of its business and has no present intention of reselling or disposing of the Bond or engaging in any "distribution" thereof (as that term is used in the Securities Act of 1933, as amended, and the regulations of the Securities and Exchange Commission thereunder), (2) familiar with the operations and financial condition of the Borrower based upon information furnished to the Purchaser by the Borrower and has made such inquiries as it deems appropriate in connection with the purchase of the Bond, and (3) capable of evaluating the merits and risks of the purchase of the Bond. In determining whether to purchase the Bond, the Purchaser has not relied upon any information (including financial information) relating to the Borrower provided by the Issuer, nor has it relied upon the Issuer to provide any such information.

(b) The Purchaser represents that it has made its own independent evaluation of the creditworthiness of the Borrower and that it has been provided with or permitted access to all information it has deemed material to formulating its decision to purchase the Bond. The Borrower has made available to the Purchaser, during the course of the transaction and prior to the purchase of the Bond, the opportunity to ask questions and receive answers from the Borrower concerning the terms and conditions of the Bond offering and to obtain such additional information relative to the financial data and business of such parties and such property to be conveyed in trust or otherwise used as security, to the extent that the Borrower possesses such information or can acquire it

without unreasonable effort or expense, as the Purchaser has deemed necessary and appropriate in the circumstances.

(c) The Purchaser is aware that there may be no secondary market for the Bond and that it may be required to hold the Bond to maturity. The Purchaser represents that it is purchasing the Bond for its own account with no present intention to resell or distribute the Bond or any interest therein; provided, however, that the Purchaser reserves the right at all times to control the disposition of its assets, including the Bond, and reserves the right to sell, assign and transfer the Bond; provided, however, that no public offering of all or any portion of the Bond, or of any interest therein, shall be made and the Bond shall only be sold, assigned or transferred to a "qualified institutional buyer" within the meaning of Rule 144A promulgated under the Securities Act of 1933, as amended.

(d) The Purchaser acknowledges that no Official Statement or other disclosure document has been prepared in connection with the sale and delivery of the Bond and that the Bond is not rated by any rating agency.

(e) It is specifically understood and agreed that the Issuer makes no representation, covenant or agreement as to the financial position or business condition of the Borrower and does not represent or warrant as to any statements, materials, representations or certifications furnished by the Borrower in connection with the sale of the Bond, or as to the correctness, completeness or accuracy thereof.

(f) The Borrower represents that no Bond Document nor any information (financial or otherwise) furnished by or on behalf of the Borrower in connection with the negotiation of the sale of the Bond contains any untrue statement of a material fact or omits a material fact necessary to make the statements contained therein not misleading. There is no fact that the Borrower has not disclosed to the Purchaser can reasonably be expected to have a material adverse effect on the properties, business, prospects, profits or condition (financial or otherwise) of the Borrower, or the ability of the Borrower to perform its obligations under the Bond Documents.

**Section 3.5. Conditions Precedent to Delivery of Bond.** The Issuer shall issue and sell the Bond, and the Purchaser shall accept delivery of the Bond, only upon delivery to it in form and substance satisfactory to it of the following:

(a) Executed copies of each of the Bond Documents, all in form reasonably acceptable to the Purchaser;

(b) Evidence of the due authorization, execution and delivery of the Bond Documents by the parties thereto and certificates covering litigation, compliance with all applicable federal, state and local laws, restrictions and requirements, and prior agreements;

(c) An opinion or opinions of Bond Counsel reasonably satisfactory to the Purchaser substantially to the effect that (i) interest on the Bond will be excluded from gross income for Federal income tax purposes and (ii) interest on the Bond will not be an item of tax preference for purposes of the federal alternative income tax imposed on individuals and corporations (but such interest is taken into account in determining adjusted current earnings for purposes of computing such alternative minimum tax on corporations);

(d) Evidence of the completion and arrangements for filing of Internal Revenue Service Form 8038 with respect to the issuance of the Bond, together with the Tax Certificate;

(e) An opinion or opinions of counsel to the Borrower in a form reasonably acceptable to the Purchaser;

(f) A certificate of the Borrower having as attachments true and correct copies of its articles of incorporation, bylaws, Internal Revenue Service determination letters regarding its status under Section 501(c)(3) of the Code and Certificates of Good Standing issued by the Secretary of the State with respect to each of such entities;

(g) The Purchaser shall have received a copy, duly certified by the Secretary or an Assistant Secretary of the Issuer, of the Bond Resolution; and

(h) Certificate of the Secretary of the Borrower certifying the names and true signatures of the officers authorized to sign the Bond Documents to which it is a party and the other documents contemplated hereby and thereby.

(i) Payment by the Borrower to (i) the Purchaser a commitment fee equal to 0.10% of the Bond and (ii) counsel to the Purchaser, of their reasonable fees and disbursements incurred in connection with this transaction.

(j) Evidence satisfactory to the Purchaser that any documents required to be recorded or filed (including any financing statements) in order to create, in favor of the [Purchaser], a perfected lien on and security interest in the Mortgaged Property, have been properly recorded and/or filed in each office in each jurisdiction required in order to create, in favor of the [Holder], a perfected lien on and security interest in the respective collateral described therein. The Purchaser shall receive evidence of all such recordation and acknowledgement copies of all such filings (or, in lieu thereof, the Purchaser shall have received other evidence satisfactory to the Purchaser that all such filings have been made), and the Purchaser shall receive evidence that all necessary recordation and filing fees and any documentary taxes or other expenses related to such filings or recordations have been paid in full.

(k) Prior to the Closing Date, copies of certificates of insurance evidencing the insurance coverage required herein and in the Covenant Agreement, issued by insurance companies or associations licensed in the State and acceptable to the Purchaser.

(l) Such other documentation, certificates and opinions as may be reasonably required by the Purchaser or Bond Counsel.

### **Section 3.6. Optional Prepayment of Bond.**

The Bond is subject to optional prepayment, in whole or in part, at the option of the Borrower. The Borrower is hereby granted, and shall have the option to prepay, at any time the unpaid principal of the Bond in whole or in part without penalty or premium; provided, that all prepayments shall be made (i) in immediately available funds and with accrued interest to the date of prepayment and that any prepayment of the Bond in part shall be applied to unpaid installments of principal in inverse order of maturity or otherwise as consented to by the Holder and (ii) in accordance with the provisions of Section [5.15] of the Covenant Agreement. Any prepayment pursuant to this Section shall be made by the Borrower taking, or causing the Issuer to take, the actions required (i) for Payment of the Bond, in the case of prepayment in whole, or (ii) to effect prepayment of less than all of the Bond according to its terms in the case of a partial prepayment of the Bond.

To exercise the option granted in this Section, the Borrower shall give written notice to the Issuer and the Holder which notice shall specify therein (i) the date of the intended prepayment, which shall not be less than 10 nor more than 60 days from the date the notice is mailed and (ii) the principal amount to be prepaid when given such notice shall be irrevocable by the Borrower; provided, however, no such notice shall be required to the extent that optional prepayment of the Bond is pursuant to and in accordance with the schedule set forth in the Bond.

### **Section 3.7. Mandatory Tender for Purchase of Bond.**

The Bond shall be subject to mandatory tender for purchase on the Mandatory Tender Date, at a purchase price, payable in immediately available funds, equal to the principal amount of the Bond, plus accrued interest (if any) to the date of purchase (the "Purchase Price"). The Purchase Price of the Bond shall be payable on or prior to 2:00 p.m., New York City time, on the Mandatory Tender Date.



**ARTICLE IV**  
**LOAN OF PROCEEDS TO BORROWER; REPAYMENT OF LOAN**

**Section 4.1. Loan by the Issuer.** Upon the terms and conditions of this Agreement, the Issuer and the Purchaser shall lend to the Borrower the proceeds of the Bond which shall be equal to the proceeds of all Advances.

**Section 4.2. Amounts Payable.** The Borrower shall make or cause to be made all payments required under the Bond as and when the same become due and shall promptly pay to the Holder all other amounts necessary to pay principal of and interest on the Bond, including any other payments required by the Bond, as and when the same become due (whether at maturity, by acceleration or otherwise), on the dates and in the amounts set forth in the Bond. Payments shall be made in lawful money of the United States of America at the office of the Purchaser in Jacksonville, Florida in accordance with written instructions provided to the Borrower by the Purchaser, or at such other place as the Holder may direct the Borrower in writing. If such amount should be sufficient to pay at the times required the principal of and interest on the Bond then remaining unpaid accrued and to accrue through final Payment of the Bond, the Borrower shall not be obligated to make any further payments hereunder but only if the same constitutes Payment of the Bond.

**Section 4.3. No Set-Off.** The obligation of the Borrower to make the payments required hereunder shall be absolute and unconditional. The Borrower will pay without abatement, diminution or deduction (whether for taxes or otherwise) all such amounts regardless of any cause or circumstance whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim that the Borrower may have or assert against the Issuer, the Purchaser, any Holder or any other Person.

**Section 4.4. Prepayments.** The Borrower shall have the option to prepay the Bond, in whole or in part, as set forth in Section 3.6.

**Section 4.5. Additional Payments upon Determination of Taxability.**

(a) Upon a Determination of Taxability, and upon demand of the Holder or any prior Holder, the Borrower shall pay to such Holder or prior Holder such additional amount as shall be necessary to provide that interest on the Bond shall have been payable at the Taxable Adjusted LIBOR Rate from the Date of Taxability. To the extent such payments are made by the Borrower to Holder, the Issuer shall receive a credit against its payment obligation under Section 3.2(c).

(b) Upon a Determination of Taxability, the Borrower shall also pay to the Holder or to any prior Holder upon demand of such Holder or prior Holder any taxes (other than income taxes), interest, penalties or other charges assessed against or payable by such Holder or prior Holder and attributable to such Determination of Taxability and

all reasonable administrative, out-of-pocket and other expenses incurred by such Holder or prior Holder which are attributable to such event, including, without limitation, the costs incurred by such Holder or prior Holder to amend any of its tax returns, notwithstanding the repayment of the entire principal amount of the Bond or any transfer or assignment of the Bond, all such amounts to have been documented in a written request from the Holder and any applicable prior Holder to the Borrower. Such amounts set forth in the documentation from the Holder or any applicable prior Holder delivered to the Borrower shall be conclusive absent manifest error. To the extent such payments are made by Borrower to Holder, the Issuer shall receive a credit against its payment obligation under Section 3.2(d).

(c) The obligation of the Borrower contained in this Section with respect to the payment of amounts required to be paid in the event of a Determination of Taxability shall survive the termination of this Agreement and the payment in full of the Bond.

#### **Section 4.6. Assignment.**

(a) In order to provide security for the payment of principal of and interest on the Bond, the Issuer hereby pledges, assigns, transfers and sets over to Purchaser and its successors and assigns and any subsequent Holder of the Bond all of the Issuer's right, title and interest (including beneficial interest) in and to this Agreement, including, but not limited to, all payments of principal and interest due and to become due from the Borrower under this Agreement, whether made at their respective due dates or as prepayments permitted or required by this Agreement, together with full power and authority, in the name of the Issuer or otherwise, to demand, receive, enforce, collect or receipt for any or all of the foregoing, to endorse or execute any checks or other instruments or orders, to file any claims and to take any action which the Holder may deem necessary or advisable in connection therewith, and the Issuer hereby irrevocably appoints the Holder attorney-in-fact of the Issuer for such purposes, which appointment is coupled with an interest and is irrevocable; provided, however, that the Issuer shall continue to have all the rights, together with the Holder, contained in the following sections of this Agreement:

(i) Section 3.5 (pertaining to the Issuer's right to notice of prepayments);

(ii) Section 6.9 (pertaining to the Issuer's right to receive certain information);

(iii) Article VIII (pertaining to the Issuer's right to release and indemnification and limitations on the liability of the Issuer and its members, officers, employees, etc.);

(iv) Section 9.3 (pertaining to the Issuer's right to receive notices); and

(v) Section 9.7 (pertaining to the Issuer's right to reimbursement of certain fees and expenses).

(b) The Purchaser or any subsequent Holder may take or release other security, may release any party primarily or secondarily liable for any indebtedness secured hereby, may grant extensions, renewals or indulgences with respect to such indebtedness, and may apply any other security therefor held by it to the satisfaction of such indebtedness without prejudice to any of its rights hereunder. Nothing herein contained and no act done or omitted by the Holder pursuant to the powers and rights granted it herein shall be deemed to be a waiver by the Holder of its rights and remedies under the Bond or this Agreement. The right of the Holder to collect such indebtedness and to enforce any other security therefor held by it may be exercised by the Holder either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

(c) Neither the assignment of the Issuer's right hereunder nor any action or inaction on the part of the Purchaser or any subsequent Holder shall, without its written consent, constitute an assumption on its part of any obligation of any other person under this Agreement, nor shall the Purchaser or any subsequent Holder have any obligation to make any payment to be made by the Issuer hereunder or under the Bond, or to present or file any claim, or to take any other action to collect or enforce the payment of any amounts which have been assigned to the Purchaser or any subsequent Holder or to which it may be entitled under this assignment at any time or times. No action or inaction on the part of the Issuer shall adversely affect or limit in any way the rights of the Purchaser or any subsequent Holder under this assignment or under the Agreement.

Except as set forth above, the Issuer agrees that it will not during the term of this Agreement sell, assign, transfer or convey any of its interest in the Agreement.

**Section 4.7. Payments Assigned.** If no Event of Default shall have occurred, the Borrower and the Issuer agree that all funds assigned hereunder shall be paid and applied as follows:

(a) each payment to be made pursuant to this Agreement shall be paid by the Borrower directly to the Holder on or before the due date of such payment under this Agreement, and shall be applied in accordance with the terms hereof and of the Bond;

(b) all amounts prepaid by the Borrower pursuant to Section 3.6 hereof shall be paid to the Holder and applied to the prepayment of the Bond as provided in the Bond; and

(c) all other funds assigned hereunder shall be applied as provided in this Agreement and the Bond.

If any "Event of Default" under this Agreement shall have occurred, all funds covered by this Agreement shall be paid to the Holder who shall hold all funds received and shall apply the same in the manner specified in Section 7.3 of this Agreement and in the Bond.

## **ARTICLE V APPLICATION OF BOND PROCEEDS; ADVANCES**

**Section 5.1. Application of Bond Proceeds.** On the Closing Date, the Purchaser shall deliver the proceeds of the first Advance (which may be equal to the maximum principal amount of the Bond) directly to the Borrower and the bond trustees and/or escrow agent for the Refunded Bonds in accordance with written instructions provided to the Issuer and the Purchaser by the Borrower in the form of a Requisition, the proceeds of such Advance to be used, together with other funds of the Borrower, to (i) refund the Refunded Bonds on their first optional call (prepayment date(s), (ii) pay or reimburse the Borrower for any then current costs of the New Project (iii) fund capitalized interest on a portion of the Bonds through December 1, 2018, and (iv) pay costs associated with the issuance of the Bond and such Advance.

### **Section 5.2. Advances.**

(a) The outstanding principal amount of the Bond shall be increased by the amount of each Advance, if any, made by the Purchaser to the Borrower under the terms hereof and of the Covenant Agreement, but the total aggregate amount of Advances with respect to the Bond (and, therefore, the principal amount of the Bond) shall not exceed \$\_\_\_\_\_. The disbursement of each Advance by the Purchaser shall be deemed to be a purchase at par by the Purchaser of an equivalent principal amount of the Bond. The Purchaser's commitment to fund Advances shall commence on the date hereof and shall expire and terminate on the earlier of (i) the date that the aggregate amount of Advances with respect to the Bond equals \$\_\_\_\_\_, or (ii) the Final Advance Date. The commitment to make Advances shall be suspended after the occurrence and during the continuance of an Event of Default and shall be subject in all respects to the terms and provisions of the Covenant Agreement related to Advances including, without limitation, Section [5.14] thereof.

(b) The commitment to make Advances shall in all events terminate on the Final Advance Date, provided, however, that upon the Final Advance Date or upon a proposed change in federal income tax law that would cause the interest or future Advances not to be excludable from gross income for federal tax purposes, the Borrower may draw the remaining balance of Bond proceeds and deposit the same in a separate escrow account held by the Purchaser or an affiliate thereof or an account as otherwise approved by the Purchaser, and amounts may be requisitioned therefrom in the same manner as Advances are permitted hereunder, and the Borrower shall not be permitted to draw moneys from such fund unless approved by the Purchaser in the manner provided

for Advances hereunder. If such remaining Bond proceeds are deposited in such an account, then the term "Advances" used herein shall include any advance from such account. The form of Requisition attached hereto as EXHIBIT B may be modified in order to Requisition an Advance in accordance with this paragraph.

(c) The Purchaser shall make Advances upon the submission by the Borrower of Requisitions and approval thereof by the Purchaser in accordance with the terms hereof and of the Covenant Agreement, but the aggregate amount of all Advances hereunder, including the Initial Advance, shall not exceed \$ \_\_\_\_\_, and the approval of each Requisition shall be subject to the following conditions precedent: (i) there shall be no Default or Event of Default under any of the Bond Documents; and (ii) the representations and warranties contained in Section 2.2 of this Financing Agreement shall be true and correct in all material respects on and as of the date of such Requisition as though made on and as of such date, except those made as of a specific date and except where the failure to be correct would not, in the reasonable opinion of the Purchaser, impair the ability of the Borrower to repay or perform its obligations under this Agreement or any other Bond Documents.

## ARTICLE VI BORROWER'S COVENANTS

### **Section 6.1. Tax Exemption.**

(a) Tax Certificate. Throughout the period in which any portion of the Bond is Outstanding the Borrower will comply with the terms of the Tax Certificate.

(b) Rebate Covenant. The Issuer and the Borrower covenant that no use of the proceeds of the Bond or the earnings thereon will knowingly be made or directed, and no other action will be taken, that would cause the Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code. The Borrower further covenants that (i) all actions with respect to the Bond and the Refunded Bonds required by Section 148(f) of the Code shall be taken, and (ii) it shall make the determinations required by Section 148(f) of the Code at its own expense and promptly notify the Issuer of the same, together with supporting calculations; provided, however, that if the Borrower shall furnish an opinion of Bond Counsel to the Issuer to the effect that no further action by the Borrower is required for such compliance with respect to the Bond, the Borrower shall not thereafter be required to deliver any such statements or calculations.

(c) Maintenance of 501(c)(3) Status. The Borrower shall file, or cause to be filed, all required reports and documents with the Internal Revenue Service so as to maintain its status as an organization described in Section 501(c)(3) of the Code, shall not operate the Original Project or the New Project in any manner and shall not engage in any activities or take any action (or omit to take any action) that would result in the Borrower ceasing to be a "501(c)(3) organization" within the meaning of Section 145 of the Code.

The Borrower shall promptly notify the Holder and the Issuer of any loss of its status as a "501(c)(3) organization" or of any investigation, proceeding or ruling that might result in loss of such status.

(d) Further Action. The Borrower shall take all action necessary to ensure that interest on the Bond is not included in gross income of the Holder for Federal income tax purposes.

**Section 6.2. Maintenance of Mortgaged Property.** The Borrower shall, until Payment of the Bond shall be made, at its own expense, (a) keep the Mortgaged Property in as reasonably safe condition as its operations shall permit, (b) make or cause to be made from time to time all necessary repairs thereto and renewals and replacements thereof and otherwise keep the Mortgaged Property in good repair and in good operating condition and (c) not permit or suffer others to commit a nuisance on or about the Mortgaged Property. The Borrower shall pay or cause to be paid all costs and expenses of operation and maintenance of the Mortgaged Property. The Borrower shall observe all laws, regulations and other valid requirements of any regulatory authority with respect to its operation of the Mortgaged Property.

## **ARTICLE VII EVENTS OF DEFAULT**

**Section 7.1. Events of Default.** The term "Event of Default" shall mean any one or more of the following events:

(a) The failure by the Borrower to pay when due any payment of principal of or interest on or other amount payable under this Agreement;

(b) The failure of the Issuer to pay when due any payment of principal of or interest on or other amount payable under the Bond or this Agreement;

(c) The occurrence of an "Event of Default" or "event of default" under any Bond Document;

(d) Any representation or warranty of the Borrower contained in Section 2.2 hereof, in the Tax Certificate or in any other document, instrument or certificate delivered pursuant hereto or in connection with the issuance and sale of the Bond shall have been false, misleading or incomplete in any material respect on the date as of which made;

(e) Failure by the Borrower to observe and perform any covenant, condition or agreement on the part of the Borrower under this Agreement, other than as referred to in the preceding paragraphs of this Section and other than the occurrence of a Determination of Taxability (and a related breach of a covenant hereunder) due to a change in law or an act or event not due to an act or omission of the Borrower, for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to the

Borrower by the Holder, provided that such failure shall not constitute an Event of Default if the Borrower is diligently seeking to cure such failure in good faith, but in no event for a period of 90 days after the date of such written notice;

(f) The Borrower shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, assignee, sequestrator, trustee, liquidator or similar official of the Borrower, or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Bankruptcy Code, (v) file a petition seeking to take advantage of any other federal or state law relating to bankruptcy, insolvency, reorganization, arrangement, winding-up or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against the Borrower in an involuntary case under the Bankruptcy Code, or (vii) take any corporate action for the purpose of effecting any of the foregoing; and

(g) A proceeding or case shall be commenced, without the application or consent of the Borrower, in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, arrangement, dissolution, winding-up or composition or adjustment of debts of the Borrower, (ii) the appointment of a trustee, receiver, custodian, assignee, sequestrator, liquidator or similar official of the Borrower, or of all or any substantial part of its assets, or (iii) similar relief in respect of the Borrower, under any law relating to bankruptcy, insolvency, reorganization, arrangement, winding-up or composition or adjustment of debts and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of 90 days from the commencement of such proceeding or case or the date of such order, judgment or decree, or an order for relief against the Borrower shall be entered in an involuntary case under the Bankruptcy Code.

**Section 7.2. Remedies of Holder.** If Payment of the Bond shall not have been made, whenever any Event of Default referred to in Section 7.1 hereof shall have happened and shall not have been waived, the Holder may take any one or more of the following remedial steps:

(a) By written notice declare all installments of principal repayable pursuant to the Bond for the remainder of the term thereof to be immediately due and payable.

(b) Take whatever other action at law or in equity may appear necessary or desirable to collect the amounts payable pursuant to the Bond then due and thereafter to become due, or to enforce the performance and observance of any obligation, agreement or covenant of the Issuer or the Borrower under this Agreement or under any of the other Bond Documents.

In the enforcement of the remedies provided in this Section, the Holder may treat all reasonable expenses of enforcement, including, without limitation, reasonable legal, accounting and advertising fees and expenses, as additional amounts payable by the Borrower then due and owing and the Borrower agrees to pay such additional amounts upon demand, the amount of such legal fees to be without regard to any statutory presumption.

Notwithstanding the foregoing, if a default under Section 7.1(f) or (g) shall occur, then all obligations, all accrued interest in respect thereof, all accrued and unpaid fees and other indebtedness or obligations owing to the Purchaser hereunder and under the Bond shall immediately become due and payable without the giving of any notice or other action by the Purchaser.

**Section 7.3. Payments After Default; No Waiver.** Any amounts collected pursuant to action taken under Section 7.2 hereof shall be paid to the Holder and applied to the payment of, first, any costs, expenses and fees permitted hereby incurred by the Holder as a result of taking such action; second, any interest which shall have accrued on any overdue interest on any accrued interest or any overdue principal of the Bond at the rate set forth in the Bond; third, any overdue interest on the Bond; fourth, any overdue principal of the Bond; fifth, the outstanding principal balance of the Bond; and sixth, if Payment of the Bond shall have been made, all remaining moneys shall be paid as required by law.

**Section 7.4. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Holder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

## **ARTICLE VIII LIMITATION OF LIABILITY; INDEMNIFICATION**

**Section 8.1. Limitation of Issuer's and County's Liability.** No covenant, agreement or obligation contained in any Bond Document shall be deemed to be a covenant, agreement or obligation of any past, present or future member, officer, employee or agent of the Issuer in his individual capacity, and neither the members of the Issuer or the County nor any officer, employee or agent thereof executing any Bond Document shall be liable personally on such Bond Document or be subject to any personal liability or accountability by reason of the issuance thereof. No member, officer, employee or agent of the Issuer or the County shall incur any personal liability with respect to any other action taken by him pursuant to the Bond Documents or the Act



or any of the transactions contemplated thereby provided he acts in good faith.

THE OBLIGATIONS OF THE ISSUER UNDER THE BOND DOCUMENTS TO WHICH IT IS A PARTY ARE NOT GENERAL OBLIGATIONS OF THE ISSUER BUT ARE LIMITED OBLIGATIONS PAYABLE SOLELY FROM THE REVENUES AND RECEIPTS DERIVED BY THE ISSUER FROM THE LOAN OF THE PROCEEDS PURSUANT TO THIS AGREEMENT, WHICH REVENUES AND RECEIPTS HAVE BEEN PLEDGED AND ASSIGNED TO SUCH PURPOSES. THE OBLIGATIONS OF THE ISSUER HEREUNDER SHALL NOT BE DEEMED TO CONSTITUTE A DEBT OR A PLEDGE OF THE FAITH AND CREDIT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE COUNTY AND THE ISSUER. NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF (INCLUDING, WITHOUT LIMITATION, THE COUNTY), INCLUDING THE ISSUER, SHALL BE OBLIGATED TO PAY THE OBLIGATIONS HEREUNDER OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE REVENUES, RECEIPTS AND PAYMENTS PLEDGED THEREFOR, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF (INCLUDING, WITHOUT LIMITATION, THE COUNTY), IS PLEDGED TO THE PAYMENT OF THE OBLIGATIONS HEREUNDER. THE AUTHORITY HAS NO TAXING POWER.

**Section 8.2. Indemnification by Borrower.** The Borrower shall and hereby does indemnify and hold harmless the Issuer, the County, the Bond Registrar, the Purchaser, any subsequent Holder and all members, officers, directors, agents and employees thereof (each an "Indemnified Party" and, collectively, the "Indemnified Parties") of and from all losses, costs, damages, expenses and liabilities of whatever nature, including but not limited to reasonable attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments (collectively referred to hereinafter as "Losses"), directly or indirectly resulting from, arising out of or related to one or more Claims, as hereinafter defined, excluding any such Losses or Claims that arises out of an act of gross negligence or willful misconduct of any such Indemnified Parties. The word "Claims" as used herein shall mean all claims, lawsuits, causes of action and other legal actions and proceedings of whatsoever nature including but not limited to claims, lawsuits, causes of action and other legal actions and proceedings involving bodily or personal injury or death of any person or damage to any property (including but not limited to persons employed by any of the Indemnified Parties and any other person) brought against any of the Indemnified Parties or to which any of the Indemnified Parties is a party, that directly or indirectly result from, arise out of or relate to (1) the transfer, sale, operation, use, occupancy, maintenance or ownership of the Original Project or any part thereof or (2) the execution, delivery or performance of this Agreement, the Covenant Agreement, the Mortgage, or any other related instruments or documents. The obligations of the Borrower under this Section shall survive termination of this Agreement and apply to all Losses and Claims that result from, arise

out of, or are related to any event, occurrence, condition or relationship prior to termination of this Agreement, whether such Losses and Claims are asserted prior to termination of this Agreement or thereafter.

Each Indemnified Party shall reimburse the Borrower for payments made by the Borrower to or for the benefit of such Indemnified Party pursuant to this Section to the extent of any proceeds, net of all expenses of collection, actually received by such Indemnified Party from any insurance covering such Claims with respect to the Losses sustained. The Indemnified Parties shall have the duty to claim any such insurance proceeds and shall assign their respective rights to such proceeds, to the extent of such required reimbursement, to the Borrower.

In case any Claim shall be brought against any Indemnified Party in respect of which indemnity may be sought against the Borrower, then such Indemnified Party shall promptly notify the Borrower in writing of such Claim. Failure to notify the Borrower of such Claim shall not relieve the Borrower from any liability that the Borrower may have other than pursuant to this Section and shall relieve the Borrower from liability the Borrower may have under this Section only to the extent that such failure prejudices the Borrower. The Borrower shall have the right to assume the investigation and defense of such Claim, including the employment of counsel, which counsel shall be reasonably satisfactory to the Indemnified Parties, and shall pay all expenses of the investigation and defense of such Claim. If any Claim is brought against any Indemnified Party for any Losses for which the Borrower is required to provide indemnification under this Section, the Borrower shall have the sole right and duty to assume, and shall assume, the defense thereof, with full power to litigate, compromise or settle the same in its sole discretion. Notwithstanding the foregoing, in the event the Indemnified Party is the Purchaser or the Issuer, in the event the Purchaser or the Issuer reasonably believes there are defenses available to it that are not being pursued, the Purchaser or the Issuer (as the case may be) may, in its sole discretion, hire independent counsel to pursue its own defense, and the Borrower shall be liable for the reasonable cost of such counsel. The Borrower shall not be liable for Losses resulting from settlement of Claims against an Indemnified Party unless the Borrower consents to that settlement. The obligations of the Borrower under this Section shall survive any termination of this Agreement.

**Section 8.3. Issuer, Member, Attorneys, Officers, Employees and Agents of Issuer Not Liable.** To the extent permitted by law, no recourse shall be had for the enforcement of any obligation, promise or agreement of the Issuer contained herein or in the other Bond Documents to which the Issuer is a party or for any claim based hereon or thereon or otherwise in respect hereof or thereof against any member, officer, agent, attorney or employee, as such, in his/her individual capacity, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. No personal

liability whatsoever shall attach to, or be incurred by, any member, officer, agent, attorney or employee as such, past, present or future, of the Issuer or any successor entity, either directly or through the Issuer or any successor entity, under or by reason of any of the obligations, promises or agreements entered into between the Issuer and the Borrower, whether herein contained or to be implied herefrom as being supplemental hereto; and all personal liability of that character against every such member, officer, agent, attorney and employee is, by the execution of this Agreement and as a condition of, and as part of the consideration for, the execution of this Agreement, expressly waived and released.

Notwithstanding any other provision of this Agreement, the Issuer shall not be liable to the Borrower or the Purchaser or any other person for any failure of the Issuer to take action under this Agreement unless the Issuer (a) is requested in writing by an appropriate person to take such action, (b) is assured of payment of, or reimbursement for, any reasonable expenses in such action, and (c) is afforded, under the existing circumstances, a reasonable period to take such action. In acting under this Agreement, or in refraining from acting under this Agreement, the Issuer may conclusively rely on the advice of its counsel.

## **ARTICLE IX MISCELLANEOUS**

**Section 9.1. Assignment.** Except with the prior written consent of the Holder, the rights of the Borrower under this Agreement shall not be assigned.

**Section 9.2. Benefit of Agreement.** The Borrower intends that the representations, warranties and covenants made by the Borrower in this Agreement shall be for the equal benefit of the Issuer and the Purchaser hereunder.

**Section 9.3. Notices.** Except as may otherwise be provided in the applicable Bond Document, all demands, notices, approvals, consents, requests and other communications hereunder and under the other Bond Documents shall be in writing and shall be deemed to have been given when delivered in person or by overnight courier or mailed by first class registered or certified mail, postage prepaid, addressed:

(a) if to the **Issuer**, at

Clay County Development Authority  
1734 Kingsley Avenue  
Orange Park, Florida 32073  
Attn: Executive Director

(b) if to the **Borrower**, at

Penney Retirement Community, Inc.  
3495 Hoffman Street/P.O. Box 555  
Penney Farms, Florida 3207  
Attn: President/CEO

(c) if to the **Purchaser**, at

Branch Banking and Trust Company  
200 W. Forsyth Street I Suite 200  
Jacksonville, FL 32202  
Phone: (904) 361-5264  
Attn: Ryan G. Tiedeberg

A duplicate copy of each notice, approval, consent, request or other communication given under any Bond Document by either the Issuer or the Borrower to the other shall also be given to the Purchaser. The Issuer, the Borrower and the Purchaser may, by notice given hereunder, designate any further or different addresses to which subsequent notices, approvals, consents, requests, or other communications shall be sent or persons to whose attention the same shall be directed.

**Section 9.4. Amendments.** This Agreement and the Bond may not be terminated, modified or amended, and the Borrower will not take or omit to take any action, the taking or omission of which might result in any alteration or impairment of this Agreement or the Bond without the prior written consent of the Holder. Any consent provided for in this Agreement which may be given by the Issuer shall not be valid unless approved in writing by the Holder and no offer made by the Borrower under this Agreement, the Bond, the Mortgage or the Covenant Agreement shall be deemed accepted or rejected by the Issuer without such approval. In connection with any such amendment requested by the Borrower, the Holder may require the Borrower to deliver, at the Borrower's expense, an opinion of Bond Counsel to the effect that such amendment will not adversely affect the exclusion of interest on the Bond from gross income for Federal income tax purposes.

**Section 9.5. UCC Financing Statements.** The Holder may file any financing statements and any continuation statements and amendments to financing statements that are or may be necessary with respect to this Agreement and the assignment of the Issuer's rights hereunder under the Uniform Commercial Code as in effect in the State. The Borrower hereby (a) irrevocably appoints the Holder as its true and lawful attorney for such purpose, with full power of substitution, and (b) ratifies and confirms all that such attorney or any substitute shall lawfully do by virtue hereof. If so requested by the Holder, the Borrower shall ratify and confirm all proper continuation

statements and amendments to financing statements as may be designated in any such request.

**Section 9.6. No Third Party Beneficiary.** It is specifically agreed between the parties to this Agreement that it is not intended by any of the provisions of any part of this Agreement to make the public or any member thereof, other than as may be expressly provided herein, a third party beneficiary hereunder.

**Section 9.7. Miscellaneous.**

(a) The Borrower agrees to pay (1) the reasonable fees and expenses of the Issuer, counsel to the Issuer, the Purchaser, counsel to the Purchaser and Bond Counsel and all other reasonable costs, fees and expenses incidental to the financing hereunder, the issuance of the Bond and the costs of producing the documents referred to herein, (2) all taxes of any kind whatsoever lawfully assessed, levied or imposed with respect to the filings or recordings pursuant to the Bond Documents and the transactions contemplated by this Agreement, and (3) all costs of collection (including reasonable counsel fees) in the event of a default in the payment of the principal of, or interest on the Bond or other charges payable under the Bond Documents.

(b) The Purchaser shall furnish to the Issuer and the Borrower upon request (1) a statement of the amount of principal of the Bond outstanding and unpaid as of the date of such request and (2) such information as may be necessary to complete the annual audit of the Issuer or the Borrower as required by the Act or any other law, now or hereafter in effect.

(c) This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and the subsequent holders of the Bond and their respective successors and assigns. The representations, covenants and agreements contained herein shall continue notwithstanding the delivery of the Bond to the Purchaser.

(d) If any provision of this Agreement shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof.

(e) This Agreement shall be governed by the applicable laws of the State. To the extent permitted by applicable law, jurisdiction for the resolution of any conflict arising from this Agreement shall lie exclusively in Clay County, Florida.

(f) The Bond Documents express the entire understanding among the parties and none of such instruments may be modified except in writing signed by the parties. No Bond Document may be modified before Payment of the Bond without the consent of the Purchaser.

(g) This Agreement may be executed in several counterparts, each of which shall be an original, and all of which together shall constitute but one and the same instrument.

(h) In any litigation concerning the performance, interpretation or application of this Agreement or any of the other Bond Documents, the Issuer's attorneys' fees shall be recoverable by the Issuer from the Borrower whether or not the Issuer (or the Holder, on behalf of the Issuer) prevails; and whether or not the Borrower prevails in any such litigation, the Borrower's attorneys' fees shall not be recoverable by the Borrower from the Issuer.

**Section 9.8. References to the Bond Ineffective After Bond Paid.** Upon Payment of the Bond, all references in this Agreement to the Bond shall be ineffective and the Issuer and Holder of the Bond shall not thereafter have any rights hereunder, excepting those that shall have theretofore vested and the right to receive payments pursuant to Section 3.2 hereof as a result of a Determination of Taxability and the rights to the computation, reporting and payment of any rebate amounts and other payments under the Tax Certificate.

**Section 9.9. No Implied Waiver.** In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach thereunder or hereunder. Neither any failure nor any delay on the part of the Purchaser or any subsequent Holder to exercise any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

**Section 9.10. Issuer Representative.** Whenever under the provisions of this Agreement the approval of the Issuer is required or the Issuer is required to take some action at the request of the Borrower, such approval shall be made or such action shall be taken by the Issuer Representative; and the Borrower, the Purchaser and any subsequent Holder shall be authorized to rely on any such approval or action.

**Section 9.11. Borrower Representative.** Whenever under the provisions of this Agreement the approval of the Borrower is required or the Borrower is required to take some action at the request of the Issuer, such approval shall be made or such action shall be taken by the Borrower Representative; and the Issuer, the Purchaser and any subsequent Holder shall be authorized to act on any such approval or action.

**Section 9.12. No Debt of the State or County.** No indebtedness of any kind incurred or created by the Borrower shall constitute an indebtedness of the State or its political subdivisions (including, without limitation, the County), and no indebtedness

of the Borrower shall involve or be secured by the faith, credit, or taxing power of the State or its political subdivisions (including, without limitation, the County).

**Section 9.13. Conflicts.** To the extent any provision of this Agreement is directly inconsistent with any other Bond Document and such provision of this Agreement cannot reasonably be reconciled with such Bond Document, the terms of this Agreement shall be controlling for the purposes of this Agreement.

**Section 9.14. No Advisory or Fiduciary Relationship.** In connection with all aspects of each transaction contemplated hereunder (including in connection with any amendment, waiver or other modification hereof or of any other Bond Document), the Borrower and the Issuer each acknowledges and agrees, that: (a) (i) each of the Borrower and the Issuer has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, (ii) the Borrower and Issuer is each capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Bond Documents as to which it is a party, (iii) the Purchaser is not acting as a municipal advisor or financial advisor to the Borrower or the Issuer and (v) the Purchaser has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act to the Borrower or the Issuer with respect to the transactions contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Purchaser has provided other services or is currently providing other services to the Borrower or Issuer on other matters); (b) (i) the Purchaser is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Borrower or any Issuer, or any other Person and (ii) the Purchaser has no obligation to the Borrower or Issuer, with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Bond Documents; and (c) the Purchaser may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and Issuer, and the Purchaser has no obligation to disclose any of such interests to the Borrower or Issuer. To the fullest extent permitted by law, the Borrower and Issuer hereby each waives and releases any claims that it/either may have against the Purchaser with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby. If the Borrower or Issuer would like a municipal advisor in this transaction that has legal fiduciary duties to the Borrower or Issuer, the Borrower or Issuer is each free to engage a municipal advisor to serve in that capacity. The Purchaser has determined that the Bond Documents are entered into pursuant to and in reliance upon the bank exemption and/or the institutional buyer exemption provided under the municipal advisor rules of the Securities and Exchange Commission, Rule 15Ba1-1 et seq, to the extent that such rules apply to the transactions contemplated hereunder.

**Section 9.15. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original, and all of which together shall constitute but one and the same instrument.



[SIGNATURE PAGE TO FINANCING AGREEMENT]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed in their respective names, all as of the date first above written.

**CLAY COUNTY DEVELOPMENT  
AUTHORITY**, as Issuer

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

**PENNEY RETIREMENT COMMUNITY,  
INC.**, as Borrower

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

**BB&T COMMUNITY HOLDINGS CO.**, as  
Purchaser

By: \_\_\_\_\_  
Ryan G. Tiedeberg, Authorized Agent

**EXHIBIT A**

**FORM OF BOND**

THIS BOND IS EXEMPT FROM THE PAYMENT OF FLORIDA DOCUMENTARY STAMP TAXES AND INTANGIBLE TAXES PURSUANT TO FLORIDA STATUTES, SECTION 159.50.

No. AR-1

\$ \_\_\_\_\_ .00

Dated: December \_\_, 2017

Due: June 1, 2042

**UNITED STATES OF AMERICA**

**STATE OF FLORIDA**

**CLAY COUNTY DEVELOPMENT AUTHORITY**

**Healthcare Facilities Refunding and Improvement Revenue Bond, Series 2017  
(Penney Retirement Community Project)**

The **CLAY COUNTY DEVELOPMENT AUTHORITY**, a public body corporate and politic duly created and existing under the laws of the State of Florida (the "Issuer"), for value received, hereby promises to pay the principal amount of \$ \_\_\_\_\_ or such lesser amount as shall have been Advanced hereunder (as defined in the hereinafter defined Agreement), solely from the sources as hereinafter provided, in accordance with the principal amortization schedule attached to this bond as Schedule I (as the same may be adjusted from time to time to reflect Advances), to **BB&T COMMUNITY HOLDINGS CO.**, a Nevada corporation (the "Purchaser"), with the final principal payment due on June 1, 2042 or upon earlier acceleration, prepayment or mandatory tender for purchase. Payment of the final installment of principal shall be made only upon the presentation and surrender hereof to the Holder.

The principal amount of this bond may be Advanced from time to time pursuant to the terms of the Agreement, provided, however, that the aggregate principal amount of this Bond shall not exceed \$ \_\_\_\_\_ and no Advances shall be made after the Final Advance Date (as defined in the Agreement). The principal amortization schedule attached to this bond as Schedule I shall be adjusted by Purchaser after the Final Advance Date in the event less than \$ \_\_\_\_\_ has been advanced to reflect an aggregate principal amortization equal the outstanding principal amount of all Advances and pro-rata reductions will be made to each scheduled payment to reflect that less than \$ \_\_\_\_\_ has been advanced.

The Issuer also promises to pay, but solely from such sources, interest on the outstanding principal amount of all Advances on this bond from the date of this bond until the principal amount hereof is paid in full, in monthly installments payable on the first day of each month (or the next succeeding Business Day if such first day is not a Business Day), the first such payment becoming due on January 1, 2018, at the rate per annum equal to the Adjusted LIBOR Rate or the Taxable Adjusted LIBOR Rate (each as hereinafter defined), as applicable (calculated on the basis of the number of days elapsed over a 360-day year).

This bond is issued pursuant to Chapter 2001-317, Laws of Florida (Special Acts), 2001 and Parts II and III, Chapter 159, Florida Statutes, as amended, an Authorizing Resolution adopted by the Issuer on November 2, 2017, and a Financing Agreement dated as of December 1, 2017 (the "Agreement"), among the Issuer, the Purchaser and Penney Retirement Community, Inc., a not-for-profit corporation duly organized and existing under the laws of the State of Florida (the "Borrower"). Pursuant to the Agreement, the Issuer has loaned the proceeds of this bond to the Borrower. **Capitalized terms used herein and not otherwise defined herein shall have the meanings given such terms in the Agreement.**

### **Optional Prepayment**

This bond may be prepaid in whole or in part at any time at the option of the Borrower as provided in Section 3.5 of the Agreement. Any prepayment in part shall be applied to reduce the principal installments of this bond in inverse order of their maturities or in such other manner agreed upon by the Borrower and the Holder. Notice of any prepayment shall be given by the Issuer or by the Borrower on behalf of the Issuer to the Holder in writing at least ten (10) days and not more than sixty (60) days prior to the prepayment date.

**Mandatory Tender for Purchase** . This Bond shall be subject to mandatory tender for purchase on the Mandatory Tender Date, at a purchase price, payable in immediately available funds, equal to the principal amount of the Bond, plus accrued interest (if any) to the date of purchase (the "Purchase Price"). The Purchase Price of the Bond shall be payable on or prior to 2:00 p.m., New York City time, on the Mandatory Tender Date.

### **Interest Rate Provisions**

From the date hereof to the Date of Taxability (hereinafter defined), interest on this bond accrue on the outstanding principal amount of Advances and shall be calculated based on the Adjusted LIBOR Rate.

Upon the occurrence of a Determination of Taxability (hereinafter defined), then, from and after the Date of Taxability, the interest rate used to calculate interest on this

bond shall be the Taxable Adjusted LIBOR Rate (hereinafter defined). After a Determination of Taxability and upon demand of the Holder or any prior Holder of this bond, the Issuer shall pay to such Holder or prior Holder, but only from amounts provided by the Borrower pursuant to Section 4.6 of the Agreement, such additional amount as shall be necessary to provide that interest on this bond shall have been payable at the Taxable Adjusted LIBOR Rate from the Date of Taxability.

Upon a Determination of Taxability, the Issuer shall also pay, but only from amounts provided by the Borrower pursuant to Section 4.6 of the Agreement, to such Holder or to any prior Holder upon demand of such Holder or prior Holder any interest, penalties or other charges assessed against or payable by such Holder or prior Holder and attributable to such Determination of Taxability and all reasonable administrative, out of pocket and other expenses incurred by such Holder or prior Holder that are attributable to such event, including, without limitation, the reasonable costs incurred by such Holder or prior Holder to amend any of its tax returns, notwithstanding the repayment of the entire principal amount of this bond or any transfer or assignment of this bond, all such amounts to have been documented in a written request from the Holder and any applicable prior Holder to the Borrower. Such amounts set forth in the documentation from the Holder or any applicable prior Holder delivered to the Borrower shall be conclusive absent manifest error.

In the event that One-Month LIBOR (hereinafter defined) shall not be ascertainable, for any reason, or for any reason it shall be illegal or unlawful for the Holder of this bond to collect interest based on One-Month LIBOR, then, from and after the date the Holder of this bond determines such condition exists, until the date such Holder determines such condition no longer exists, each reference herein to One-Month LIBOR shall be deemed and interpreted to mean the Standard Rate (hereinafter defined).

Notwithstanding the foregoing, from and after the occurrence of an Event of Default, until such time as Event of Default has been remedied or otherwise waived by the Holder, this bond shall bear interest at the Default Rate. To the extent permitted by law, interest shall accrue on any overdue payment of interest or principal at the Default Rate. In addition, the Issuer agrees to pay the Holder, but only from amounts provided by the Borrower, a late fee on any payments past due for ten (10) or more days in an amount equal to five percent (5%) of the amount of payment past due. When any payment is past due for ten (10) or more days, subsequent payments shall first be applied to past due balances. This provision for late charges shall not be deemed to extend the time for payment or be a "grace period" or "cure period" that gives the Issuer or the Borrower a right to cure such default. Imposition of late charges is not contingent upon the giving of any notice or lapse of any cure period.

## **Defined Terms**

As used herein, the following terms shall have the following meanings and the following provisions shall apply:

"Adjusted LIBOR Rate" shall mean a rate of interest per annum equal to (a) the sum obtained (rounded upwards, if necessary, to the next higher 1/100th of 1.0%), by adding (i) the product of (x) 68% and (y) One-Month LIBOR and (ii) [0.85]% per annum multiplied, prior to a Determination of Taxability, by (b) the Margin Rate Factor. The Adjusted LIBOR Rate shall be adjusted monthly on the first day of each LIBOR Interest Period. The Adjusted LIBOR Rate shall also be adjusted for any change in the LIBOR Reserve Percentage so that the Holder shall receive the same yield as received prior to the change in the LIBOR Reserve Percentage.

"Bank" shall mean Branch Banking and Trust Company, a North Carolina banking corporation, its successors and assigns.

"Business Day" means a day upon which the Holder is open for the purpose of conducting a commercial banking business.

"Change in Law" means the occurrence, after the date of this bond, of: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided, that, notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Date of Taxability" means the earliest date as of which interest on this bond shall have been determined to be includable in the gross income of any Holder or prior Holder as a result of a Determination of Taxability.

"Default Rate" means the lesser of (i) the Prime Rate in effect from time to time plus 2.00% (but in no event less than 6.00%) and (ii) the maximum non-usurious rate permitted by applicable law.

"Determination of Taxability" means and shall be deemed to have occurred on the first to occur of the following:

(i) on that date when the Borrower or Issuer files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability shall have in fact occurred;

(ii) on the date when any Holder or prior Holder notifies the Issuer and the Borrower that it has received a written opinion by an attorney or firm of attorneys of recognized standing on the subject of tax-exempt municipal finance to the effect that an Event of Taxability shall have occurred unless, within 180 days after receipt by the Issuer and the Borrower of such notification from such Holder, the Issuer or the Borrower shall deliver to the Holder or prior Holder (i) a ruling or determination letter issued to or on behalf of the Borrower by the Commissioner or any District Director of Internal Revenue (or any other governmental official exercising the same or a substantially similar function from time to time) or (ii) a written opinion by an attorney or firm of attorneys of recognized standing on the subject of tax-exempt municipal finance to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;

(iii) on the date when the Issuer or the Borrower shall be advised in writing by the Commissioner or any District Director of Internal Revenue (or any other government official or agent exercising the same or a substantially similar function from time to time) that, based upon filings of the Issuer or the Borrower, or upon any review or audit of the Issuer or the Borrower or upon any other ground whatsoever, an Event of Taxability shall have occurred; and

(iv) on that date when the Issuer or the Borrower shall receive notice from any Holder or prior Holder that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of such Holder or any prior Holder the interest on this bond paid to such Holder or Prior Holder due to the occurrence of an Event of Taxability;

provided, however, that no Determination of Taxability shall occur under clauses (iii) or (iv) above unless the Issuer and the Borrower have been afforded the opportunity, at its expense, to contest any such assessment; and provided further that no Determination of Taxability shall occur until such contest, if made, has been finally determined; and provided further that upon demand from the Holder or any prior Holder, the Borrower shall promptly reimburse such Holder or prior Holder for any payments such Holder (or any prior Holder) shall be obligated to make as a result of the Determination of Taxability during any such contest.

"Event of Taxability" means a change in law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the Issuer or the Borrower, or the failure to take any action by the Issuer or the Borrower, or the making by the Issuer or the Borrower of

any misrepresentation herein or in any certificate required to be given in connection with the issuance, sale or delivery of this bond) which has the effect of causing interest paid or payable on this bond to become includable, in whole or in part, in the gross income of the Holder or any prior Holder for federal income tax purposes.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Holder" means the Purchaser or any future registered owner of this bond as permitted by the Agreement.

"LIBOR Interest Period" shall mean the period commencing on the first calendar day of each month to but excluding the first calendar day of the immediately following month; provided, however, that the first LIBOR Interest Rate Period shall commence on the date of this bond and end on December 31, 2017.

"LIBOR Reserve Percentage" means the maximum aggregate rate at which reserves (including, without limitation, any marginal supplemental or emergency reserves) are required to be maintained under Regulation D (17 CFR § 230.51 et. seq.) by member banks of the Federal Reserve System with respect to dollar funding in the London interbank market. Without limiting the effect of the foregoing, the LIBOR Reserve Percentage shall reflect any other reserves required to be maintained by such member banks by reason of any applicable regulatory change against (i) any category of liability which includes deposits by reference to which One-Month LIBOR is to be determined or (ii) any category of extension of credit or other assets related to One-Month LIBOR.

"Margin Rate Factor" shall mean the fraction the numerator of which is equal to one (1) minus the Maximum Federal Corporate Tax Rate on the date of calculation and the denominator of which is 0.65. The Margin Rate Factor shall be 0.65/0.65 or 1.0 so long as the Maximum Federal Corporate Tax Rate shall be 35%, and thereafter shall increase or decrease from time to time effective as of the effective date of any decrease or increase in the Maximum Federal Corporate Tax Rate; provided, however, that the Margin Rate Factor shall never be less than 1.0 notwithstanding anything to the contrary herein.

"One-Month LIBOR" means the average rate quoted by Bloomberg Finance L.P., or any quoting service or commonly available source utilized by the Holder, on the determination date for deposits in U.S. Dollars offered in the London interbank market for one month determined as of 11:00 am London time two (2) Business Days prior to the commencement of the applicable LIBOR Interest Period; provided that if the above

method for determining One-Month LIBOR shall not be available, "One-Month LIBOR" shall be the rate quoted in *The Wall Street Journal*, or a rate determined by a substitute method of determination agreed on by the Borrower and the Holder and which is the subject of a Favorable Opinion of Bond Counsel; provided, if such agreement is not reached within a reasonable period of time (in the Holder's sole judgment), a rate reasonably determined by the Holder in its sole discretion as a rate being paid, as of the determination date, by first class banking organizations (as determined by the Holder) in the London interbank market for U. S. Dollar deposits, written notice of which shall be provided to the Borrower and shall be accompanied by a Favorable Opinion of Bond Counsel, and provided further that, for so long as One-Month LIBOR (determined as provided above) would be less than zero percent (0%), then One-Month LIBOR shall be deemed to be zero percent (0%) for such time.

"Prime Rate" means the interest rate announced by the Bank or its successor from time to time as its prime rate. Any change in the Prime Rate shall be effective as of the date such change is announced by the Bank or its successor.

"Standard Rate" means that rate of interest per annum that shall apply in lieu of One-Month LIBOR in the event that One-Month LIBOR shall not be ascertainable or illegal or unlawful with respect to the Holder. The Standard Rate shall be computed, for any day, as a rate per annum (rounded upwards, if necessary to the next 1/100th of 1.0%) equal to the Prime Rate less 2.75% and each change in the Standard Rate shall be effective on the date any change in the Prime Rate is publicly announced as being effective.

"Taxable Adjusted LIBOR Rate" means a rate of interest per annum equal to the sum obtained (rounded upwards, if necessary, to the next higher 1/100th of 1.0%) by adding (i) One-Month LIBOR plus (ii) 1.30% per annum. The Taxable Adjusted LIBOR Rate shall be adjusted monthly on the first day of each LIBOR Interest Period. The Taxable Adjusted LIBOR Rate shall also be adjusted for any change in the LIBOR Reserve Percentage so that the Holder shall receive the same yield.

### **Acceleration**

Upon the occurrence of certain Events of Default, the principal of this bond may be declared, and thereupon shall become, due and payable as provided in the Agreement.

### **General Provisions**

All payments of principal of and interest on this bond shall be made to the Holder at its address as it appears on the bond registration book of the Bond Registrar in lawful money of the United States of America.



This bond is secured by an assignment to the Holder by the Issuer of substantially all of its rights in the Agreement. Reference is hereby made to the Agreement, the Mortgage and the Continuing Covenants Agreement dated as of December 1, 2017 between the Purchaser and the Borrower (the "Covenant Agreement"), and to all amendments thereto for a description of the provisions, among others, with respect to the nature and extent of such security and guarantee, and the rights, duties and obligations of the Issuer, the Borrower and the Holder of this bond.

Reference is hereby made to the Agreement and the Covenant Agreement for the provisions, among others, with respect to the custody and application of the proceeds of this bond, the collection and disposition of revenues, a description of the funds charged with and pledged to the payment of the principal of and interest on this bond, the nature and extent of the security, the terms and conditions under which this bond is or may be issued, the system of registration of this bond, the rights, duties and obligations of the Issuer and the rights of the Holder of this bond, and, by the acceptance of this bond, the Holder hereof assents to all of the provisions of such documents.

The transfer of this bond may be registered by the Holder hereof in person or by his attorney or legal representative at the principal office of the Bond Registrar, or its successors and assigns, but only in the manner and subject to the limitations and conditions provided in the Agreement. Upon any such registration of transfer, the Bond Registrar shall execute and deliver in exchange for this bond a new registered bond or bonds without coupons, registered in the name of the transferee or transferees, in denominations authorized by the Agreement and in the aggregate principal amount equal to the remaining outstanding principal amount of this bond, of the same maturity of principal installments and bearing interest at the same rate. NOTWITHSTANDING THE FOREGOING, NO TRANSFER OF THIS BOND NOR ANY INTEREST HEREIN SHALL BE MADE IN AMOUNT LESS THAN \$[10,000,000] OR PRIOR TO AND INCLUDING THE FINAL ADVANCE DATE.

[This bond shall be initially issued as one Bond registered in the name of the Purchaser in the principal amount of \$\_\_\_\_\_. Thereafter, after the Final Advance Date, this bond may be subdivided into and exchanged for two (2) or more Bonds of the same series, maturity and aggregate principal amount upon surrender thereof by the Holder at the principal office of the Bond Registrar. Upon such surrender, the Issuer shall execute and deliver to or as directed by the Holder new Bonds meeting the requirements hereof. No Bond shall be subdivided by any such exchange, however, so as to produce any Bond having immediately after such exchange an outstanding principal amount of less than \$[10,000,000].]

ANY TRANSFEREE OF A BOND SHALL EXECUTE AN INVESTOR LETTER WHICH CONTAINS CERTIFICATIONS AND REPRESENTATIONS SUBSTANTIALLY SIMILAR TO THOSE CONTAINED IN SECTION 3.4 OF THE AGREEMENT.

In certain events, on the conditions, in the manner and with the effect set forth in the Agreement, the unpaid principal of this bond may become or may be declared due and payable before the stated maturity thereof, together with interest accrued thereon.

All acts, conditions and things required to exist, happen and be performed precedent to the issuance of this bond do exist, have happened and have been performed in due time, form and manner as required by law, and the issuance of this bond, together with all other obligations of the Issuer, does not exceed or violate any constitutional or statutory limitations.

THIS BOND, THE INTEREST HEREON AND ALL OTHER AMOUNTS DUE HEREUNDER ARE LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE REVENUES AND RECEIPTS DERIVED BY THE ISSUER PURSUANT TO THE AGREEMENT, WHICH REVENUES AND RECEIPTS HAVE BEEN PLEDGED AND ASSIGNED TO SECURE PAYMENT HEREOF. THIS BOND AND THE PREMIUM, IF ANY, AND THE INTEREST HEREON SHALL NOT BE DEEMED TO CONSTITUTE A DEBT OR A PLEDGE OF THE FAITH AND CREDIT OF THE STATE OF FLORIDA (THE "STATE") OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING CLAY COUNTY, FLORIDA (THE "COUNTY") AND THE ISSUER. NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE COUNTY AND THE ISSUER, SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF OR PREMIUM, IF ANY, OR INTEREST ON THIS BOND OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE REVENUES AND RECEIPTS PLEDGED AND ASSIGNED THEREFOR, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE COUNTY, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM, IF ANY, OR INTEREST ON THIS BOND OR OTHER COSTS INCIDENT THERETO. THE ISSUER HAS NO TAXING POWER. NO COVENANT, CONDITION OR AGREEMENT CONTAINED HEREIN SHALL BE DEEMED TO BE A COVENANT, AGREEMENT OR OBLIGATION OF ANY PRESENT OR FUTURE MEMBER, OFFICER, EMPLOYEE OR AGENT OF THE ISSUER IN HIS OR HER INDIVIDUAL CAPACITY, AND NEITHER THE MEMBERS OF THE ISSUER NOR ANY OFFICER THEREOF EXECUTING THIS BOND SHALL BE LIABLE PERSONALLY ON THIS BOND OR BE SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THE ISSUANCE THEREOF.

**IN WITNESS WHEREOF**, the Clay County Development Authority has caused this Bond to be signed by the manual or facsimile signature of its Chairman, its seal to be affixed hereto or a facsimile of its seal to be printed hereon or affixed hereto and attested by its Secretary and dated the date set forth above.

**CLAY COUNTY DEVELOPMENT  
AUTHORITY**

(SEAL)

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

Attest:

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

**SCHEDULE 1 TO BOND**

**Principal Amortization Schedule**

Principal on this bond shall be payable on the first day of each month (or the next succeeding Business Day if such first day is not a Business Day), commencing January 1, 2018, in the amounts shown below:

<u>Payment Date</u>	<u>Amount</u>
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Total	\$ _____
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**EXHIBIT B**

**FORM OF REQUISITION**

BB&T COMMUNITY HOLDINGS CO.

REQUISITION NO. \_\_\_\_\_

Amount of Advance Requested: \$ \_\_\_\_\_

Total Advanced to Date: \$ \_\_\_\_\_

1. All terms used herein in capitalized form shall have the meanings ascribed thereto in the Financing Agreement dated as of December 1, 2017, among Penney Retirement Community, Inc. (the "Borrower"), BB&T Community Holdings Co. (the "Purchaser") and the Clay County Development Authority. Each obligation for which a disbursement is hereby requested is described in reasonable detail in Schedule 1 hereto together with the name and address of the person, firm or corporation to whom payment is due.

2. The Borrower hereby certifies that:

(a) the Borrower has complied with all of its obligations under the Bond Documents as of the date hereof;

(b) no Event of Default under the Financing Agreement has occurred and is continuing and there exists no event or condition which, with the giving of notice or the passage of time would constitute an Event of Default under any of the foregoing; and

(c) the proceeds of this Advance shall be payable as follows:

(i) \$ \_\_\_\_\_ to \_\_\_\_\_ for the purpose of refunding the Refunded Bonds;

(ii) \$ \_\_\_\_\_ to \_\_\_\_\_ for the purpose of paying costs (including capitalized interest) related to the New Project; and/or

(iii) \$ \_\_\_\_\_ to the Borrower to pay costs associated with the foregoing or otherwise with respect to this Advance.

3. Attached hereto as Schedule 1 are wiring instructions for the amounts listed in paragraph 2(c) above.

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**PENNEY RETIREMENT COMMUNITY,  
INC.**

By: \_\_\_\_\_  
Borrower Representative

Approved:

**BB&T COMMUNITY HOLDINGS CO.**

By: \_\_\_\_\_  
Ryan G. Tiedeberg  
Authorized Agent

By: \_\_\_\_\_  
Gina C. Cocklereece  
Senior Vice President

**SCHEDULE 1 TO REQUISITION**

**(Wiring Instructions)**

## ESCROW DEPOSIT AGREEMENT

**ESCROW DEPOSIT AGREEMENT**, dated December \_\_, 2017 (the "Escrow Agreement"), by and between **CLAY COUNTY DEVELOPMENT AUTHORITY**, a public body corporate and politic and a local agency duly created and validly existing under the laws of the State of Florida (the "Authority"), and **U.S. BANK NATIONAL ASSOCIATION** (the "Escrow Agent"), a national banking association organized and existing under the laws of United States of America, as escrow agent hereunder, and acknowledged by Penney Retirement Community, Inc., (the "Borrower")

**WHEREAS**, pursuant to a Bond Trust Indenture, dated as of April 1, 1996 (the "1996 Bond Indenture"), by and between the Authority and U.S. Bank National Association, successor to First Union National Bank of Florida (the "Bond Trustee"), the Authority has heretofore issued its (i) \$3,305,000 Healthcare Facilities Revenue Bonds, Series 1996A (Penney Retirement Community Project) of which \$280,000 aggregate principal amount are currently outstanding (the "Series 1996A Bonds") and (ii) \$2,945,000 Healthcare Facilities Revenue Bonds, Series 1996B (Penney Retirement Community Project), all of which are currently outstanding (the "Series 1996B Bonds" and collectively with the Series 1996A Bonds, the "Refunded Bonds"); and

**WHEREAS**, pursuant to a Financing Agreement, among the Authority, the Borrower and BB&T Community Holdings Co., dated as of December 1, 2017 (the "Financing Agreement"), the Authority has, at the request of the Borrower, determined to provide for the payment in full of the debt service on the outstanding Refunded Bonds; and

**WHEREAS**, Article IX of the 1996 Bond Indenture provides that the Refunded Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the 1996 Bond Indenture upon compliance with the provisions contained therein and relating thereto; and

**WHEREAS**, the Authority has determined to issue its \$\_\_\_\_\_ Healthcare Facilities Refunding and Improvement Revenue Bond, Series 2017 (Penney Retirement Community, Inc. Project) (the "Series 2017 Bond"), a portion of the proceeds of which Series 2017 Bond, together with certain other available funds, will be used to provide for payment in full of the Refunded Bonds and discharge and satisfy the 1996 Bond Indenture; and

**WHEREAS**, the issuance of the Series 2017 Bond, the purchase by the Escrow Agent of the hereinafter defined Escrow Securities, the deposit of the hereinafter defined Cash Deposit and Escrow Securities into an escrow deposit trust fund to be held by the Escrow Agent and the discharge and satisfaction of the pledges, liens and other obligations of the Authority under the 1996 Bond Indenture in regard to the Refunded Bonds shall occur as a simultaneous transaction at the request of the Borrower; and



**WHEREAS**, this Escrow Agreement is intended to effectuate such simultaneous transaction;

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

**SECTION 1. PREAMBLES.** The recitals stated above are true and correct and are incorporated by reference herein.

**SECTION 2. RECEIPT OF 1996 BOND INDENTURE AND VERIFICATION REPORT.** Receipt of true and correct copies of the above-mentioned 1996 Bond Indenture and this Escrow Agreement is hereby acknowledged by the Escrow Agent. The Escrow Agent also acknowledges receipt of the verification report of \_\_\_\_\_, a firm of independent certified public accountants, dated \_\_\_\_\_, 2017 (the "Verification Report") which is attached hereto as Exhibit A. Terms used herein shall have the meanings ascribed thereto by the 1996 Bond Indenture or the Financing Agreement, except to the extent such terms are defined herein or the context indicates another meaning.

**SECTION 3. DISCHARGE OF LIEN OF HOLDERS OF REFUNDED BONDS.** In accordance with Articles IV and IX of the 1996 Bond Indenture, the Authority by this writing, at the request and direction of the Borrower, exercises the option to have the pledges, liens and obligations that were granted to the holders of the Refunded Bonds under the terms and provisions of the 1996 Bond Indenture defeased, discharged and satisfied. The Escrow Agent hereby acknowledges that it is the paying agent and Trustee of the Refunded Bonds and accepts the instructions set forth herein at the request of the Borrower and the Authority. Each party hereto recognizes and confirms that all actions taken hereto are at the request of the Borrower.

**SECTION 4. ESTABLISHMENT OF ESCROW FUND.** There is hereby created and established with the Escrow Agent a special, segregated and irrevocable escrow fund designated the "Clay County Development Authority Healthcare Facilities Revenue Bonds (Penney Retirement Community Project), Series 1996A and Series 1996B Escrow Deposit Trust Fund" (the "Escrow Fund") to be held in the custody of the Escrow Agent as a trust fund for the benefit of the holders of the Refunded Bonds, separate and apart from other funds of the Authority, the Escrow Agent and the Borrower. The Escrow Agent hereby accepts the Escrow Fund and acknowledges the receipt of and deposit to the credit of the Escrow Fund the sum of \$ \_\_\_\_\_, consisting of (A) \$ \_\_\_\_\_ received from the Borrower from an advance under the Financing Agreement (the "Bond Proceeds"), and (B) other available funds of the Borrower heretofore deposited in the Bond Fund and Debt Service Reserve Fund established for the Refunded Bonds pursuant to the 1996 Bond Indenture in the amount of \$ \_\_\_\_\_ (the "Refunded Bonds Funds").

**SECTION 5. DEPOSIT OF MONEYS AND SECURITIES IN ESCROW FUND.** The Escrow Agent acknowledges receipt of all of the funds described in Section 4 above. The Authority, on behalf of the Borrower, hereby directs the Escrow Agent to apply all of the Bond Proceeds and all but \$\_\_\_\_\_ of the Refunded Bonds Funds (the "Cash Deposit") to purchase on behalf of and for the account of the Authority and the Borrower certain United States Treasury Obligations (collectively, together with any other securities which may be on deposit from time to time in the Escrow Fund, the "Escrow Securities"), which are described in Exhibit \_\_\_ to the Verification Report, and to deposit such Escrow Securities and the Cash Deposit in the Escrow Fund. All Escrow Securities described in Exhibit \_\_\_ to the Verification Report are noncallable, direct obligations of the United States of America to which the full faith and credit of the United States of America has been pledged and constitute "Defeasance Obligations" within the meaning of the 1996 Bond Indenture. The Cash Deposit shall be held uninvested in the Escrow Fund.

In the event any of the Escrow Securities described in Exhibit \_\_\_ to the Verification Report are not available for delivery on December \_\_, 2017, the Escrow Agent may, upon receipt from Bond Counsel of an opinion referenced in Section 9(b) hereof, substitute other United States Treasury obligations and shall credit such other obligations to the Escrow Fund and hold such obligations until the aforementioned Escrow Securities have been delivered. Bond Counsel may, as a condition precedent to giving its approval, require the Borrower to provide it, the Authority and the Escrow Agent with a revised Verification Report in regard to the adequacy of the Escrow Securities, taking into account the substituted obligations to pay the Refunded Bonds in accordance with the terms hereof. The Escrow Agent shall in no manner be responsible or liable for failure or delay of Bond Counsel or the Borrower to promptly approve the substitutions of other United States Treasury obligations for the Escrow Fund.

**SECTION 6. SUFFICIENCY OF ESCROW SECURITIES.** In reliance upon the Verification Report, the Authority represents and warrants that the interest on and the principal amounts successively maturing on the Escrow Securities in accordance with their terms (without consideration of any reinvestment of such maturing principal and interest), together with the Cash Deposit are sufficient such that moneys will be available to the Escrow Agent in amounts sufficient and at the times required to pay the amounts of principal of, and interest due and to become due on the Refunded Bonds as described in Exhibit \_\_ attached to the Verification Report. If the Escrow Securities and Cash Deposit shall be insufficient to make such prepayment payments, the Borrower shall timely deposit to the appropriate account of the Escrow Fund, such additional amounts as may be required to pay the Refunded Bonds as described in Exhibit \_\_\_ to the Verification Report. Notice of any insufficiency shall be given by the Escrow Agent to the Authority and the Borrower as promptly as possible, but the Escrow Agent shall in no manner be responsible for the Borrower's failure to make such deposits.

**SECTION 7 ESCROW SECURITIES IN TRUST FOR HOLDERS OF REFUNDED BONDS.** The deposit of the Cash Deposit and Escrow Securities in the Escrow Fund shall constitute an irrevocable deposit of obligations of the United States of America by the Authority in accordance with Articles IV and IX of the 1996 Bond Indenture in trust solely for the payment of the principal and interest due and to become due on the Refunded Bonds at such times and amounts as set forth in Exhibit \_\_\_\_ to the Verification Report, and, except as provided in Section 9 hereof, the principal of and interest earnings on such Escrow Securities shall be used solely for such purposes.

**SECTION 8 ESCROW AGENT TO PAY REFUNDED BONDS FROM ESCROW FUND.** The Authority hereby directs, and the Escrow Agent hereby agrees, that it will take all actions required to be taken by it under the provisions of the 1996 Bond Indenture, including the timely transfer of money to U.S. Bank National Association, the paying agent for the Refunded Bonds (the "Refunded Bonds Paying Agent") as provided in the 1996 Bond Indenture, in order to effectuate this Escrow Agreement and to pay the Refunded Bonds in the amounts and at the times provided in Exhibit \_\_\_\_ to the Verification Report. The Cash Deposit and Escrow Securities shall be used to pay the principal of, interest and redemption premium, if any, on the Refunded Bonds as the same may mature or be redeemed. If any payment date shall be a day on which either the Refunded Bonds Paying Agent or the Escrow Agent is not open for the acceptances or delivery of funds, then the Escrow Agent shall make payment on the next succeeding business day. The liability of the Escrow Agent for the payment of the principal of, redemption premium and interest due and to become due on the Refunded Bonds pursuant to this Escrow Agreement shall be limited to the application of the Cash Deposit and Escrow Securities and the interest earnings thereon available for such purposes in the Escrow Fund solely in accordance with this Escrow Agreement.

**SECTION 9. REINVESTMENT OF MONEYS AND SECURITIES IN ESCROW FUND.** Moneys deposited in the Escrow Fund shall be invested only in the Escrow Securities listed in Exhibit \_\_\_\_ to the Verification Report and, except as provided in Section 5 hereof and this Section 9, neither the Authority, the Borrower nor the Escrow Agent shall otherwise invest or reinvest any moneys in the Escrow Fund.

Except as provided in Section 5 hereof and in this Section 9, the Escrow Agent may not sell or otherwise dispose of any or all of the Escrow Securities in the Escrow Fund and reinvest the proceeds thereof in other securities nor may it substitute securities for any of the Escrow Securities, except upon written direction of the Board and where, prior to any such reinvestment or substitution, the Escrow Agent has received from the Borrower the following:

(a) a written verification report by an independent certified public accountant or firm of independent certified public accountants, of recognized standing, appointed by the Borrower, to the effect that after such reinvestment or substitution the principal amount of Escrow Securities, together with the interest therein, will be sufficient to pay

the Refunded Bonds as described in Exhibit \_\_\_ to the Verification Report (such verification shall not be necessary in the event the Borrower shall determine to reinvest cash in Escrow Securities which mature on or before the next principal and/or interest payment date for the Refunded Bonds); and

(b) a written opinion of Bond Counsel to the effect that (i) such investment will not cause the Refunded Bonds or the Series 2017 Bond to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code, as amended, and the regulations promulgated thereunder or otherwise cause the interest on the Refunded Bonds or the Series 2017 Bond to be included as gross income for purposes of federal income taxation, and (ii) such investment does not violate any provision of Florida law or of the 1996 Bond Indenture.

In the event the above-referenced verification concludes that there are surplus moneys in the Escrow Fund, such surplus moneys shall be released to the Borrower upon its written direction. The Escrow Fund shall continue in effect until the date upon which the Escrow Agent makes the final payment for the Refunded Bonds in an amount sufficient to pay the Refunded Bonds as described in Exhibit \_\_\_ to the Verification Report, whereupon the Escrow Agent shall as soon as practicable sell or redeem any Escrow Securities remaining in the Escrow Fund, shall remit to the Borrower the proceeds thereof, together with all other money, if any, then remaining in the Escrow Fund. Except as otherwise provided herein, the Escrow Agent shall have no liability to the Authority or the Borrower with respect to the sale or redemption of such Escrow Securities.

**SECTION 10. REDEMPTION OF REFUNDED BONDS.** The Authority hereby irrevocably instructs the Escrow Agent to request, on behalf of the Authority, that the Refunded Bonds Paying Agent give at the appropriate times the notice or notices required by Section 4.06 of the 1996 Bond Indenture in connection with the redemption of the Refunded Bonds in accordance with said Section 4.06 of the 1996 Bond Indenture. The Series 1996A Refunded Bonds shall be redeemed in full on January \_\_, 2018 and the Series 1996B Refunded Bonds shall be redeemed in full on June 1, 2019.

**SECTION 11. DEFEASANCE NOTICE TO HOLDERS OF REFUNDED BONDS.** Upon the deposit of the Cash Deposit set forth in Section 5 hereof, the Refunded Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the 1996 Bond Indenture. Pursuant to Section 9.02 of the 1996 Bond Indenture, the Escrow Agent, on behalf of the Authority and the Refunded Bonds Paying Agent, shall, within three business days of deposit of the Cash Deposit and Escrow Securities in the Escrow Fund, cause to be mailed to the Holders of the Refunded Bonds notices substantially in the form provided in Exhibit B attached hereto.

**SECTION 12. ESCROW FUND IRREVOCABLE.** The Escrow Fund hereby created shall be irrevocable and the holders of the Refunded Bonds shall have an

express lien on all cash and Escrow Securities deposited in the Escrow Fund pursuant to the terms hereof and the interest earnings thereon until paid out, used and applied in accordance with this Escrow Agreement and the 1996 Bond Indenture and neither the Authority nor the Escrow Agent shall cause nor permit any other lien or interest whatsoever to be imposed upon the Escrow Fund.

**SECTION 13. AMENDMENTS TO ESCROW AGREEMENT.** This Escrow Agreement is made for the benefit of the Authority and the holders from time to time of the Refunded Bonds and it shall not be repealed, revoked, altered or amended without the prior written consent of all such holders; provided, however, that the Authority and the Escrow Agent may, without the consent of, or notice to, such holders, enter into such agreements supplemental to this Escrow Agreement as shall not adversely affect the rights of such holders and as shall not be inconsistent with the terms and provisions of this Escrow Agreement, for any one or more of the following purposes:

(a) to cure any ambiguity or formal defect or omission in this Escrow Agreement;

(b) to grant, or confer upon, the Escrow Agent for the benefit of the holders of the Refunded Bonds, any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such holders or the Escrow Agent;

(c) to subject to this Escrow Agreement additional funds, securities or properties; and

(d) in order to reflect a transaction being entered into pursuant to Section 8 hereof.

The Escrow Agent shall be entitled to rely exclusively upon an unqualified opinion of Bond Counsel with respect to compliance with this Section 13, including the extent, if any, to which any change, modification or addition affects the rights of the holders of the Refunded Bonds, or that any instrument executed hereunder complies with the conditions and provisions of this Section 13.

**SECTION 14. FEES AND EXPENSES OF ESCROW AGENT; INDEMNIFICATION.** In consideration of the services rendered by the Escrow Agent under this Escrow Agreement, the Authority agrees to and shall pay to the Escrow Agent the fees and expenses as shown on the attached Exhibit C. The Escrow Agent shall have no lien or right of set-off whatsoever upon any of the cash or Escrow Securities in said Escrow Fund for the payment of such proper fees and expenses. The Borrower (by their acknowledgement hereof) further agrees to indemnify and save the Escrow Agent harmless, to the extent allowed by law, against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder and which are not due to its

negligence or willful misconduct. Indemnification provided under this Section 14 shall survive the termination of this Escrow Agreement and the resignation or removal of the Escrow Agent.

Whenever the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action under this Escrow Agreement, such matter may be deemed to be conclusively established by a certificate signed by an authorized officer of the Authority. The Escrow Agent may conclusively rely, as to the correctness of statements, conclusions and opinions therein, upon any certificate, report, opinion or other document furnished to the Escrow Agent pursuant to any provision of this Escrow Agreement; the Escrow Agent shall be protected and shall not be liable for acting or proceeding, in good faith, upon such reliance; and the Escrow Agent shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument. The Escrow Agent may consult with counsel, who may be counsel to the Authority or independent counsel, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith in accordance herewith. Prior to retaining such independent counsel, the Escrow Agent shall notify the Authority of its intention to retain counsel.

**SECTION 15. REPORTING REQUIREMENTS OF ESCROW AGENT.**

As soon as practicable after the 15th day of June, 2018 the Escrow Agent shall forward in writing to the Borrower a statement in detail of the withdrawals of money from the Escrow Fund. The Authority and the Borrower acknowledge that, to the extent the regulations of the Comptroller of the Currency of the United States or other applicable regulatory entity grant the Authority and the Borrower the right to receive individual confirmations of security transactions at no additional cost, as they occur, the Authority and the Borrower specifically waive receipt of such confirmations to the extent permitted by law. The Escrow Agent will furnish the Authority and the Borrower periodic cash transaction statements that include detail for all investment transaction made by the Escrow Agent hereunder.

**SECTION 16. RESIGNATION OR REMOVAL OF ESCROW AGENT.**

The Escrow Agent, at the time acting hereunder, may at any time resign and be discharged from the duties and obligations hereby created by giving not less than thirty (30) days' written notice to the Authority (with a copy to the Borrower) and mailing notice thereof, specifying the date when such resignation will take effect, to the Authority and the Refunded Bonds Paying Agent, but no such resignation shall take effect unless a successor Escrow Agent shall have been appointed by the Authority and such successor Escrow Agent shall have accepted such appointment, in which event such resignation shall take effect immediately upon the appointment and acceptance of a successor Escrow Agent.

The Escrow Agent may be removed at any time by an instrument or concurrent instruments in writing, delivered to the Escrow Agent, to the Authority (with a copy to the Borrower) and signed by the holders of a majority in aggregate principal amount of the Refunded Bonds then outstanding.

In the event the Escrow Agent hereunder shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case the Escrow Agent shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor shall be appointed by the Authority with the consent of the Borrower. The Authority shall mail notice of any such appointment made by it at the times and in the manner described in the first paragraph of this Section 16.

In the event that no appointment of a successor Escrow Agent or a temporary successor Escrow Agent shall have been made by the Authority pursuant to the foregoing provisions of this Section 16 within forty-five (45) days after written notice of resignation of the Escrow Agent has been given to the Authority, the holder of any of the Refunded Bonds or any retiring Escrow Agent may apply to any court of competent jurisdiction for the appointment of a successor Escrow Agent, and such court may thereupon, after such notice, if any, as it shall deem proper, appoint a successor Escrow Agent.

In the event of replacement or resignation of the Escrow Agent, the Escrow Agent shall remit to the Authority the prorated portion of prepaid fees not yet incurred or payable less any termination fees and expenses at the time of discharge and shall have no further liability hereunder and the Authority shall indemnify and hold harmless Escrow Agent from any such liability, including reasonable costs or expenses incurred by Escrow Agent or its counsel.

No successor Escrow Agent shall be appointed unless such successor Escrow Agent shall be a corporation with trust powers organized under the banking laws of the United States or any State, and shall have at the time of appointment capital and surplus of not less than \$75,000,000.

Every successor Escrow Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and to the Authority an instrument in writing accepting such appointment hereunder and thereupon such successor Escrow Agent, without any further act, deed or conveyance, shall become fully vested with all the rights, immunities, powers, trusts, duties and obligations of its predecessor; but such predecessor shall nevertheless, on the written request of such successor Escrow Agent or the Authority execute and deliver an instrument transferring to such successor Escrow Agent all the estates, properties, rights, powers and trust of such predecessor hereunder; and every predecessor Escrow Agent shall deliver all securities and moneys held by it to its successor; provided, however, that before any such delivery is required to be made, all fees, advances and expenses of the retiring or removed Escrow Agent shall be paid in

full. Should any transfer, assignment or instrument in writing from the Authority be required by any successor Escrow Agent for more fully and certainly vesting in such successor Escrow Agent the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor Escrow Agent, any such transfer, assignment and instruments in writing shall, on request, be executed, acknowledged and delivered by the Authority.

Any corporation into which the Escrow Agent, or any successor to it in the trusts created by this Escrow Agreement, may be merged or converted or with which it or any successor to it may be consolidated, or any corporation resulting from any merger, conversion, consolidation or tax-free reorganization to which the Escrow Agent or any successor to it shall be a party or any corporation to which the Escrow Agent or successor to it shall sell or transfer all or substantially all of its corporate trust business, shall be the successor Escrow Agent under this Escrow Agreement without the execution or filing of any paper or any other act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

**SECTION 17. TERMINATION OF ESCROW AGREEMENT; TRANSFER OF EXCESS MONEYS.** This Escrow Agreement shall terminate when all transfers and payments required to be made by the Escrow Agent under the provisions hereof shall have been made. Upon such termination, all moneys remaining in the Escrow Fund shall be released to the Borrower.

**SECTION 18. GOVERNING LAW.** This Escrow Agreement shall be governed by the applicable laws of the State of Florida.

**SECTION 19. SEVERABILITY.** If any one or more of the covenants or agreements provided in this Escrow Agreement on the part of the Authority or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

**SECTION 20. COUNTERPARTS.** This Escrow Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

**SECTION 21. NOTICES.** Any notice, authorization, request or demand required or to be given in accordance with the terms of this Escrow Agreement shall be in writing and sent by registered or certified mail addressed to:



If to the Escrow Agent: U.S. Bank National Association  
225 Water Street, Suite 700  
Jacksonville, Florida 32202  
Attention: Global Corporate Trust Services

If to the Authority: Clay County Development Authority  
1734 Kingsley Avenue  
Orange Park, Florida  
Attention: Executive Director

If to the Borrower: Penney Retirement Community, Inc.  
3495 Hoffman Street  
P.O. Box 555  
Penney Farms, Florida 32079  
Attention: President/CEO;

provided, however, communications to the Escrow Agent provided pursuant to Section 8 hereof may be sent by electronic mail to: [vicki.bellamy@usbank.com](mailto:vicki.bellamy@usbank.com).

[SIGNATURE PAGE TO FOLLOW]

[SIGNATURE PAGE TO ESCROW DEPOSIT AGREEMENT]

**IN WITNESS WHEREOF**, CLAY COUNTY DEVELOPMENT AUTHORITY has caused these presents to be signed in its name and on its behalf by its Chairman and its corporate seal to be hereunto affixed and attested by its Secretary and U.S. BANK NATIONAL ASSOCIATION, has caused these presents to be signed in its name by its Authorized Official, all as of the day and year first above written.

**CLAY COUNTY DEVELOPMENT  
AUTHORITY**

ATTEST:

\_\_\_\_\_  
Secretary

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

**U.S. BANK NATIONAL  
ASSOCIATION, as Escrow Agent**

By: \_\_\_\_\_  
Assistant Vice President

ACKNOWLEDGEMENT:

**PENNEY RETIREMENT COMMUNITY,  
INC.**

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

**EXHIBIT A**

**VERIFICATION REPORT**

**(FORM OF)  
NOTICE OF DEFEASANCE**

**\$280,000**

**CLAY COUNTY DEVELOPMENT AUTHORITY  
HEALTHCARE FACILITIES REVENUE BONDS, SERIES 1996A  
(PENNEY RETIREMENT COMMUNITY PROJECT)**

**AND**

**\$2,945,000**

**CLAY COUNTY DEVELOPMENT AUTHORITY HEALTHCARE FACILITIES  
REVENUE BONDS, SERIES 1996B  
(PENNEY RETIREMENT COMMUNITY PROJECT)  
EXTENDABLE RATE ADJUSTABLE SECURITIES (EXTRAS)**

**DATED \_\_\_\_\_, 1996**

**NOTICE IS HEREBY GIVEN** pursuant to Article IX of the Trust Indenture dated as of April 1, 1996, by and between the Clay County Development Authority and U.S. Bank National Association, (the "1996 Bond Indenture"), that the Clay County Development Authority Healthcare Facilities Revenue Bonds, Series 1996A (the "Series 1996A Bonds") and Clay County Development Authority Healthcare Facilities Revenue Bonds, Series 1996B (Penney Retirement Community Project) (the "Series 1996B Bonds" and collectively, the "Series 1996 Bonds") are deemed to be paid within the meaning of Article IX of said 1996 Bond Indenture, shall no longer be secured from the Trust Estate (as such term is defined in the 1996 Bond Indenture), and shall only be secured from the deposit in irrevocable escrow of cash and United States Treasury obligations made by the Clay County Industrial Development Authority pursuant to said Article IX of the 1996 Bond Indenture.

**NOTICE IS HEREBY FURTHER GIVEN**, on behalf of Clay County Development Authority that the Series 1996A Bonds will be redeemed on January \_\_, 2018 at the redemption price of the principal amount of each Series 1996A Bond to be redeemed, plus interest accrued thereon to January \_\_, 2018.

**AND NOTICE IS HEREBY FURTHER GIVEN**, on behalf of Clay County Development Authority that the Series 1996B Bonds will be redeemed on June 1, 2019 at the redemption price of the principal amount of each Series 1996B Bond to be redeemed, plus interest accrued thereon to June 1, 2019.

The defeased Series 1996A Bonds and Series 1996A Bonds to be redeemed on January 1, 2018 are:

<u>Interest Rate</u>	<u>Maturity June 1</u>	<u>Amount</u>	<u>CUSIP No.</u>
7.00%	2018	\$280,000	183239AN2

The defeased Series 1996B Bonds and Series 1996 Bonds to be redeemed on June 1, 2019 are:

<u>Interest Rate</u>	<u>Maturity June 1</u>	<u>Amount</u>	<u>CUSIP No.</u>
5.25%	2026	\$2,945,000	183239AP7

Payment of the redemption price, and interest, of such Refunded Bonds will be made on or after such redemption dates at the office of U.S. Bank National Association, the paying agent for the Refunded Bonds upon surrender thereof. Interest on such Refunded Bonds will cease to accrue from and after the applicable redemption date.

DATED this \_\_\_\_ day of December, 2017.

**EXHIBIT C**

**ESCROW AGENT FEES AND EXPENSES**

Administration Fee \$750.00 annually, plus out-of-pocket expenses.