

The Lincoln County Board of County Commissioners met for the purpose of an Emergency Meeting on Tuesday, December 30, 1997 at the Citizens Center, Commissioners Room, 115 West Main Street, Lincolnton, North Carolina, the regular place of meeting at 12:00 PM. The following were present:

Louis E. McConnell, Chairman
James A. Hallman, Vice Chairman
Terry L. Brotherton

Jeffrey Taylor, Assistant County Attorney
Richard French, County Manager
Stan Kiser, Assistant County Manager

Also present were Leon Harmon, Finance Director, and Amy S. Long, Clerk to the Board of Commissioners.

CALL TO ORDER

Chairman McConnell called the December 30, 1997 Emergency Meeting to order and stated that the purpose of this meeting was to consider the final financing of the jail project.

Leon Harmon, Finance Director, stated that in 1995 the Board got approval from the Local Government Commission to borrow up to 10 million dollars through lease purchase financing for the construction of the new jail. In December of 1995, the County borrowed \$5.8 million as part of the proposal from First Union Bank to fund the jail. In January of 1997 the County was supposed to complete funding up to \$4.2 million at the rate of 5.34% interest, but there was a delay because the bids originally came in high. He stated that the bank would like to complete financing in the current calendar year.

Mr. Harmon presented the following Resolution:

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF LINCOLN, NORTH CAROLINA, APPROVING AND AUTHORIZING THE EXECUTION OF SUPPLEMENT NO. 1 TO SCHEDULE A OF REAL PROPERTY AND FACILITIES TO THE INSTALLMENT FINANCING CONTRACT, DATED AS OF DECEMBER 28, 1995, AMONG THE COUNTY OF LINCOLN, NORTH CAROLINA, FIRST UNION NATIONAL BANK OF NORTH CAROLINA, AND FIRST UNION NATIONAL BANK OF NORTH CAROLINA, CORPORATE TRUST DEPARTMENT, AS ESCROW AGENT, CONCERNING THE FINANCING OF THE COMPLETION OF A COUNTY JAIL AND AUTHORIZING CERTAIN OTHER ACTIONS RELATED THERETO.

WHEREAS, the County of Lincoln, North Carolina (the "County") is a duly and regularly created, organized and validly existing political subdivision of the State of North Carolina, existing as such under and by virtue of the Constitution, statutes and laws of the State of North Carolina (the "State");

WHEREAS, the County has the power, pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended, to (i) purchase real and personal property, (ii) enter into installment financing contracts in order to finance the purchase of real and personal property used, or to be used, for public purposes, and (iii) finance the construction of fixtures or improvements on real property by contracts that create in the fixtures or improvements and in the real property on which such fixtures or improvements are located a security interest to secure repayment of moneys advanced or made available for such construction;

WHEREAS, the County previously determined to purchase land and construct, equip and furnish a new County Jail consisting of a 104-bed detention center with administrative and support space (the "Project") and financed a portion of the cost of the Project by executing an Installment Financing Contract dated as of December 28, 1995 (the "Contract") among the County, First Union National Bank of North Carolina, the successor to which is First Union National Bank, a national banking association (the "Bank") and First Union National Bank of North Carolina, Corporate Trust Department, the successor to which is First Union National Bank, a national banking association, as Escrow Agent (the "Escrow Agent"), and a Deed of Trust and Security Agreement dated as of December 28, 1995 (the "Deed of Trust"), to Lynn M. Beckham, as deed of trust trustee, for the benefit of the Bank, pursuant to which the Bank has heretofore advanced \$5,800,000 (the "Initial Advance") to the County;

WHEREAS, the Board of Commissioners of the County (the "Board") hereby determines that it is in the best interests of the County to receive an additional advance of funds in an aggregate principal amount not to exceed \$4,200,000 and pursuant to Section 2 of the Contract, the Bank will advance an additional principal amount of \$4,200,000 (the "Second Advance", together with the Initial Advance, the "Amount Advanced") to finance a portion of the costs to complete the Project, and the County will make installment payments in amounts sufficient to repay the Amount Advanced as provided in the Contract, which payments are secured by the Deed of Trust;

WHEREAS, pursuant to the provisions of Section 2 of the Contract, it is necessary for the County to execute a Supplement No. 1 to Schedule A of Real Property and Facilities, dated as of December 30, 1997 (the "Supplement"), among the County, the Bank and the Escrow Agent, to Schedule A of Real Property and Facilities to the Contract in order to evidence the additional advance of \$4,200,000 by the Bank to the County to finance a portion of the

costs to complete the Project and to establish the schedule of installment payments to be made by the County to repay such Second Advance and to approve the interest rate (5.34% per annum), interest and principal payment dates (June 19, 1998 and each June 19 and December 19 thereafter, to and including December 19, 2010) and date of such Second Advance (December 30, 1997), all as set forth in the Supplement;

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF LINCOLN, NORTH CAROLINA, AS FOLLOWS:

Section 1. Approval, Authorization and Execution of the Supplement.

The County hereby approves in all respects the form, terms and provisions of the Supplement in substantially the form presented at this meeting, which will be a valid, legal and binding obligation of the County in accordance with its terms. The form and content of the Supplement are in all respects authorized, approved and confirmed, and the Chairman of the Board, the County Manager, the Finance Director of the County and the Clerk to the Board or their respective designees are authorized, empowered and directed to execute and deliver the Supplement for and on behalf of the County, including necessary counterparts, in substantially the form attached hereto, but with such changes, modifications, additions or deletions therein as shall to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all such changes, modifications, additions or deletions, and that from and after the execution and delivery of the Supplement, the Chairman of the Board, the County Manager, the Finance Director of the County and the Clerk to the Board or their respective designees are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Supplement as executed.

Section 2. Further Actions. The Chairman of the Board, the County Manager, the Finance Director of the County and the Clerk to the Board are hereby designated as the County's representatives to act on behalf of the County in connection with the transactions contemplated by the Contract, the Deed of Trust and the Supplement, and the Chairman of the Board, the County Manager, the Finance Director of the County and the Clerk to the Board are authorized and directed to proceed with the completion of the Project in accordance with the terms of the Contract, the Deed of Trust and the Supplement, and to seek opinions on matters of law from the County Attorney, which the County Attorney is authorized to furnish on behalf of the County, and opinions of law from such other attorneys for all documents contemplated hereby as required by law. The Chairman of the Board, the County Manager, the Finance Director of the County and the Clerk to the Board are hereby authorized to designate one or more employees of the County to take all actions which the

Chairman of the Board, the County Manager, the Finance Director of the County and the Clerk to the Board are hereby authorized to designate one or more employees of the County to take all actions which the Chairman of the Board, the County Manager, the Finance Director of the County and the Clerk to the Board are authorized to perform under this Resolution, and the Chairman of the Board, the County Manager, the Finance Director of the County, the Clerk to the Board or their designees are in all respects authorized on behalf of the County to supply all information pertaining to the transactions contemplated by the Contract, the Deed of Trust and the Supplement. The Chairman of the Board, the County Manager, the Finance Director of the County and the Clerk to the Board are authorized to execute and deliver for and on behalf of the County any and all additional certificates, documents, opinions or other papers and perform all other acts as may be required by the Contract, the Deed of Trust or the Supplement as they may deem necessary or appropriate in order to implement and carry out the intent and purposes of this Resolution.

Section 3. Designation as Bank Qualified. The County hereby designates the Supplement and its obligation with respect to the \$4,200,000 to be advanced by the Bank to the County pursuant to the Contract and the Supplement as a "qualified tax-exempt obligation" eligible for the exception from the disallowance of the deduction of interest by financial institutions allocable to the cost of carrying tax-exempt obligations in accordance with the provisions of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended. The County represents that it reasonably expects that it, all subordinate entities thereof and all on behalf issuers thereof will not issue more than \$10,000,000 of qualified tax-exempt obligations (excluding private activity bonds except for qualified 501(C)(3) bonds as defined in the Internal Revenue Code of 1986, as amended) pursuant to such Section 265(b)(3) during calendar year 1997 and will not in any event designate more than \$10,000,000 of qualified tax-exempt obligations (excluding private activity bonds except for qualified 501(C)(3) bonds as defined in the Internal Revenue Code of 1986, as amended) pursuant to such Section 265(b)(3) during the calendar year 1997.

Section 4. Repealer. All motions, orders, resolutions, ordinances and parts thereof, in conflict herewith are hereby repealed.

Section 5. Severability. If any section, phrase or provision of this Resolution is for any reason declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

Section 6. Effective Date. This Resolution shall become effective on the date of its adoption.

PASSED, ADOPTED, AND APPROVED this 30th day of December, 1997.

A motion by Commissioner Terry Brotherton to approve the Resolution as presented stating that anytime you can save the taxpayers of Lincoln County in excess of \$4 million and increase capacity by 40%, as well as adding the administrative offices of the Sheriff's Department, it is really something to be proud of.

Seconded by Commissioner James Hallman.
Unanimously approved.

Commissioner James Hallman stated that he would like to give some credit to M. B. Kahn for their fine work, County Manager, Rick French, and Sheriff Barbara Pickens and her staff.

Chairman McConnell stated that he is pleased with the outcome of this. He stated that he is elated to be able to save the taxpayers this amount of money.

RECESS

Being no further business to come before the Board of Commissioners at this time, Chairman McConnell entertained a motion to recess until Monday, January 5, 1998 for the purpose of conducting Public Hearings on Zoning issues.

Commissioner James Hallman motioned that the Board recess until January 5, 1998.

Seconded by Commissioner Terry Brotherton.
Unanimously approved.