

Draft No. 2
September 30, 2020

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

Vance Holloman
Finance Director

FIRST AMENDMENT TO INSTALLMENT FINANCING AGREEMENT

Dated as of October 15, 2020

between

TOWN OF APEX, NORTH CAROLINA

and

PINNACLE BANK

FIRST AMENDMENT TO INSTALLMENT FINANCING AGREEMENT

This FIRST AMENDMENT TO INSTALLMENT FINANCING AGREEMENT, dated as of October 15, 2020 (the "First Amendment"), between the TOWN OF APEX, NORTH CAROLINA, a municipal corporation organized and existing under the laws of the State of North Carolina (the "Town") and PINNACLE BANK, a Tennessee banking corporation, as successor to the Bank of North Carolina (the "Lender"), supplementing and amending an Installment Financing Agreement, dated as of July 9, 2014 (the "Agreement"), between the Town and the Lender;

WITNESSETH:

WHEREAS, the Town is a municipal corporation duly created and existing under and by virtue of the Constitution and laws of the State of North Carolina;

WHEREAS, the Town has the power, pursuant to Section 160A-20 of the General Statutes of North Carolina, to enter into installment contracts to finance and refinance the construction of improvements to real property;

WHEREAS, the Town and the Lender have previously entered into the Agreement, pursuant to which the Lender advanced funds to the Town in the amount of \$14,469,000 for the purpose of (a) refinancing a prior installment financing contract which financed the (i) expanding and renovating an existing police station and (ii) acquiring, constructing and equipping a new fire and emergency medical services facility for the Town (collectively, the "Prior Project"), (b) financing the costs of constructing and equipping various improvements to the Town's water treatment plant and (c) paying the financing costs related thereto;

WHEREAS, the outstanding principal balance under the Agreement is currently \$8,418,848.05;

WHEREAS, as security for the performance by the Town of its obligations under the Agreement, the Town has executed and delivered a Deed of Trust, dated as of July 9, 2014, recorded at Book 015714, Page 01779 of the Wake County Register of Deeds (the "Deed of Trust"), to the trustee named therein for the benefit of the Lender, granting a lien on a portion of the Prior Project as further described therein;

WHEREAS, the Town desires to refinance its payment obligations under the Agreement by entering into this First Amendment with the Lender to reduce the interest rate payable under the Agreement from 2.70% to 1.85%, effective October 15, 2020; and

WHEREAS, the Town and the Lender have each duly authorized the execution and delivery of this First Amendment;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

1. Capitalized Terms. All capitalized terms used herein and not otherwise defined have the meanings given such terms in the Agreement.

2. Interest Rate Modification. Effective October 15, 2020 (the “Effective Date”), the Agreement shall be amended to provide that the interest rate payable on the outstanding principal amount shall be 1.85% per annum. The Installment Payment Schedule attached as Exhibit A to the Agreement is hereby replaced with a new Installment Payment Schedule which is attached as Exhibit A hereto showing the Installment Payments to become due and payable under the Agreement from and after the effective date of this First Amendment and reflecting the outstanding principal amount and new interest rate.

3. Representations and Warranties of the Town. The Town hereby represents and warrants as follows:

(a) The representations and warranties contained in Section 2.1 of the Agreement are hereby made and reaffirmed by the Town on and as of the date hereof, and all references to Agreement therein shall include this First Amendment.

(b) There has been no material adverse change in the condition, financial or otherwise, of the Town since the date of the most recent financial reports of the Town received by the Lender, except for the impact on the Town’s financial condition relating to the COVID-19 pandemic [**which impact the Town has disclosed to the Lender**].

(c) No event has occurred and no condition exists which, either prior to or upon the consummation of the transactions contemplated hereby, constitutes an event of default under the Agreement, either immediately or with the lapse of time or the giving of notice, or both.

(d) The execution and delivery by the Town of this First Amendment and performance of its obligations hereunder will not cause any material violation or default under any indenture, loan agreement or other agreement of, or applicable to, the Town.

(e) The Town has the requisite power and authority to execute, deliver and perform its obligations under this First Amendment. This First Amendment has been duly authorized, executed and delivered by the Town and constitutes a valid, binding and enforceable obligation of the Town in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting enforcement of creditors' rights generally and by general equitable principles.

(f) The Deed of Trust remains in full force and effect and continues to secure the Agreement, as modified by the First Amendment, and that the Mortgaged Property (as described in the Deed of Trust), continues to be free and clear from any encumbrances and restrictions except for the Deed of Trust and Permitted Encumbrances (as defined in the Agreement).

4. Conditions to Effectiveness. The terms and conditions hereof shall not be effective until each of the following are delivered to the Lender, all of which shall be in form and substance satisfactory to the Lender:

(a) certified copies of the proceedings of the Town Council authorizing the Town to enter into this First Amendment and carry out its terms;

(b) a Tax Certificate and IRS Form 8038-G of the Town;

(c) an Incumbency and Authorization Certificate of the Town; and

(d) any other documents and instruments reasonably required by Lender in connection with this First Amendment.

In addition, on the Effective Date, the Town shall pay to the Lender \$84,609.43, which represents accrued interest from June 1, 2020 to the Effective Date.

5. Other Provisions Remain in Effect. This First Amendment shall be construed as and constitute part of the Agreement. Except as hereby specifically amended, modified or supplemented by this First Amendment, the Agreement and all other agreements, documents, and other instruments related thereto, including the Deed of Trust, are hereby confirmed and ratified in all respects and shall remain in full force and effect according to their respective terms.

6. Binding Effect. This First Amendment shall be binding upon and inure to the benefit of the Town and the Lender, and their respective successors and assigns.

7. Severability. In the event any provision of this First Amendment shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof or the Agreement.

8. Execution in Counterparts. This First Amendment may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

9. E-Verify. The Lender hereby certifies that the Lender understands that “E-Verify” is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. The Lender uses E-Verify to verify the work authorization of its employees in accordance with Section 64-26(a) of the General Statutes of North Carolina, as amended. The Lender will require that any subcontractor that it uses in connection with the transactions contemplated by this Agreement certify to such subcontractor’s compliance with E-Verify.

IN WITNESS WHEREOF, the Town and the Lender have caused this First Amendment to be executed in their respective names by their duly authorized officers as of the date first above written.

TOWN OF APEX, NORTH CAROLINA

[SEAL]

By: _____
[Finance Director]

Attest:

Town Clerk

PINNACLE BANK

By: _____
Senior Vice President

EXHIBIT A

REVISED INSTALLMENT PAYMENT SCHEDULE
(PINNACLE BANK LOAN NUMBER 100317898)

(Effective October 15, 2020)

<u>Installment Payment Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
12/01/2020		\$19,901.22	\$ 19,901.22
06/01/2021	\$1,027,000.00	77,874.35	1,104,874.35
12/01/2021		68,374.60	68,374.60
06/01/2022	1,034,000.00	68,374.60	1,102,374.60
12/01/2022		58,810.10	58,810.10
06/01/2023	1,041,000.00	58,810.10	1,099,810.10
12/01/2023		49,180.85	49,180.85
06/01/2024	1,047,000.00	49,180.85	1,096,180.85
12/01/2024		39,496.10	39,496.10
06/01/2025	1,056,000.00	39,496.10	1,095,496.10
12/01/2025		29,728.10	29,728.10
06/01/2026	1,064,000.00	29,728.10	1,093,728.10
12/01/2026		19,886.10	19,886.10
06/01/2027	1,071,000.00	19,886.10	1,090,886.10
12/01/2027		9,979.35	9,979.35
06/01/2028	1,078,848.05	9,979.35	1,088,827.40