

INSTALLMENT FINANCING CONTRACT

Dated as of January [13], 2023

between

TOWN OF CAROLINA BEACH, NORTH CAROLINA

and

SOUTHSTATE BANK, NATIONAL ASSOCIATION

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INSTALLMENT FINANCING CONTRACT

This INSTALLMENT FINANCING CONTRACT, dated as of January [13], 2023 (the “Contract”), between the TOWN OF CAROLINA BEACH, NORTH CAROLINA, a municipal corporation duly organized and validly existing under the laws of the State of North Carolina (the “Town”), and SOUTHSTATE BANK, NATIONAL ASSOCIATION, and its successors and assigns (the “Lender”);

WITNESSETH:

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

WHEREAS, pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended, the Town may finance the acquisition of property and the construction of fixtures or improvements on real property by contracts that create in the fixtures or improvements, or in all or some portion of the property upon which the fixtures or improvements are located, or in both, a security interest to secure repayment of the moneys advanced or made available for construction;

WHEREAS, after a public hearing and due consideration, the Town Council of the Town has determined to finance all or a portion of the costs of acquiring real property located in the Town and to be used by the Town as the site of a future expansion of the Town’s Municipal Complex, facilities and infrastructure (the “Property”);

WHEREAS, in order for the Town to obtain the funds to pay all or a portion of the costs of financing the Property, the Town has determined to enter into this Contract whereby the Lender will advance funds to the Town to be applied, together with any other available funds, to (a) pay the costs of acquiring the Property and (b) pay certain financing costs relating thereto, and the Town will repay such advancement with interest in installments pursuant to the terms of this Contract;

WHEREAS, as security for the performance of its obligation under this Contract, including the payment of the installment payments hereunder, the Town will execute and deliver a Deed of Trust, dated as of the date hereof (the “Deed of Trust”), to the Deed of Trust trustee named therein, for the benefit of the Lender, pursuant to which the Town will grant a first priority lien on the Site (hereinafter defined), together with all buildings, improvements and fixtures located and to be located thereon, subject to certain Permitted Encumbrances (as defined herein);

WHEREAS, the Lender is willing to advance moneys to the Town for the purpose of financing all or a portion of the costs of acquiring the Property, and the Town is willing to repay the moneys so advanced by the Lender in installments as more fully provided herein; and

WHEREAS, the Town and the Lender have each duly authorized the execution and delivery of this Contract.

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:

ARTICLE I

DEFINITIONS AND EXHIBIT

SECTION 1.1. Definitions and Rules of Construction. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa. The words “hereby”, “herein”, “hereof”, “hereto”, “hereunder” and other words of similar import refer to this Contract as a whole and not to any particular Article, Section or subdivision hereof. All references herein to “Articles”, “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Contract unless some other reference is indicated.

“Act” means Section 160A-20 of the General Statutes of North Carolina, as amended.

“Advancement” means the advance being made by the Lender to the Town in the amount of \$[2,000,000] pursuant to Section 3.1 to pay the costs of acquiring the Property and the Closing Costs.

“Contract” means this Installment Financing Contract, including any amendment or supplement hereto as permitted hereby.

“Closing” means the date on which the Town executes and delivers this Contract and the Lender makes the Advancement to the Town (January [13], 2023).

“Closing Costs” means and further includes all items of expense directly or indirectly payable by or reimbursable to the Town relating to the financing of the Property, including, but not limited to, filing and recording costs, settlement costs, printing costs, word processing costs, reproduction and binding costs, title insurance premiums, legal fees and charges and financing and other professional consultant fees.

“Deed of Trust” means the Deed of Trust, of even date herewith, from the Town to the Deed of Trust Trustee, for the benefit of the Lender, securing the payment of the Installment Payments and the other obligations specified hereunder and thereunder, as supplemented and amended from time to time.

“Deed of Trust Trustee” means the person or other entity at the time serving as trustee under the Deed of Trust.

“Determination of Taxability” means and shall be deemed to have occurred on the date when (a) the Town shall receive notice from the Lender that the Internal Revenue Service has assessed as includable in gross income the interest component of the Installment Payments made by the Town under this Contract that is the result of the occurrence of an Event of Taxability or (b) the Town or the Lender shall receive notice from the Commissioner or any District Director of the Internal Revenue Service that the interest component of the Installment Payments made by the Town under this Contract is includable in the gross income of the Lender for federal income tax purposes that is the result of the occurrence of an Event of Taxability.

“Default Rate” means the interest rate in effect under this Contract immediately prior to an event of default hereunder, plus 4.0% per annum; provided, however that the Default Rate shall not at any time exceed the maximum rate of interest permitted by law.

“Enforcement Limitation” means the provisions of the Act that provide that no deficiency judgment may be rendered against the Town in any action for breach of a contractual obligation incurred under the Act and that the taxing power of the Town is not and may not be pledged directly or indirectly to secure any moneys due under this Contract.

“Event of Nonappropriation” means (a) the failure by the Town Council to budget and appropriate in its budget for the ensuing Fiscal Year adopted on or about June 30 of each year moneys sufficient to pay all Installment Payments and any reasonably estimated additional payments under this Contract coming due in the next ensuing Fiscal Year or (b) the Town Council’s deletion from its duly adopted budget of any appropriation for the purposes specified in clause (a). In the event that during any Fiscal Year, any additional payments shall become due that were not included in the Town’s current budget, and if there are no moneys available to pay such additional payments prior to the date upon which such additional payments are due, an Event of Nonappropriation shall be deemed to have occurred upon notice by the Lender to the Town to such effect.

“Event of Taxability” means the occurrence or existence of any fact, event or circumstance caused by either an action or inaction by the Town which has the effect of causing the interest component of the Installment Payments made by the Town under this Contract to be includable in the gross income of the Lender for federal income tax purposes.

“Fiscal Year” means the period beginning on July 1 of any year and ending on June 30 of the following year.

“Inclusion Date” means the effective date that the interest component of the Installment Payments made by the Town under this Contract is includable in the gross income of the Lender as a result of a Determination of Taxability.

“Installment Payment Date” means each of the dates set forth on the Installment Payment Schedule attached hereto as Exhibit A.

“Installment Payments” means the payments required to be paid by the Town pursuant to Section 4.1 in order to repay the Advancement, as specified in Exhibit A.

“Lender” means SouthState Bank, National Association and any of its successors or assigns.

“LGC” means the Local Government Commission of North Carolina, a division of the Department of the State Treasurer, and any successor thereto.

“Mortgaged Property” means the property subject to the lien of the Deed of Trust, consisting of the Site, together with all buildings, improvements and fixtures located or to be located thereon.

“Net Proceeds” means any proceeds of insurance or taking by eminent domain or condemnation paid with respect to the Mortgaged Property remaining after payment therefrom of any expenses (including attorneys’ fees) incurred in the collection thereof.

“Permitted Encumbrances” shall mean those Permitted Encumbrances set forth in Exhibit B to the Deed of Trust.

“Site” means the real property identified in Exhibit A to the Deed of Trust, such site being the site where the Property will be located.

“State” means the State of North Carolina.

“Town” mean the Town of Carolina Beach, North Carolina, a municipal corporation duly organized and validly existing under and by virtue of the Constitution and laws of the State, and any successor entity.

“Town Council” means the Town Council of the Town.

SECTION 1.2. Exhibits. The following exhibits are attached to, and by reference made a part of, this Contract:

Exhibit A: Payment Schedule

Exhibit B: Form of Requisition

ARTICLE II

REPRESENTATIONS OF THE TOWN AND THE LENDER

SECTION 2.1. Representations, Covenants and Warranties of the Town. The Town represents, covenants and warrants to the Lender as follows:

(a) The Town is a municipal corporation duly organized and validly existing under and by virtue of the Constitution and laws of the State.

(b) The Constitution and laws of the State authorize the Town to execute and deliver this Contract and the Deed of Trust and to enter into the transactions contemplated by and to carry out its obligations under this Contract and the Deed of Trust.

(c) The Town has duly authorized and executed this Contract and the Deed of Trust in accordance with the Constitution and laws of the State.

(d) Neither the execution and delivery of this Contract and the Deed of Trust, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any charter provision, restriction or any agreement or instrument to which the Town is now a party or by which the Town is bound, or constitutes a default under any of the foregoing.

(e) No approval or consent is required from any governmental authority with respect to the entering into or performance by the Town of this Contract, the Deed of Trust or any other documents related thereto and the transactions contemplated hereby and thereby, or if such approval is required, it has been duly obtained.

(f) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or threatened against or affecting the Town challenging the validity or enforceability of this Contract, the Deed of Trust or any other documents relating hereto or the performance of the Town's obligations hereunder and thereunder.

(g) The Town shall obtain or cause to be obtained all licenses, permits and other approvals of any other governmental entity having jurisdiction over the Town or the Property that are necessary for the acquisition of the Property.

(h) The Town shall not (i) request the assignment of a rating on this Contract by any municipal securities rating agency, (ii) register this Contract with The Depository Trust Company or any other securities depository, (iii) offer this Contract pursuant to any type of offering document or official statement or (iv) request the assignment of a CUSIP number by Standard & Poor's CUSIP Service.

SECTION 2.2. Representations, Covenants and Warranties of the Lender. The Lender represents, covenants and warrants to the Town as follows:

(a) The Lender has the power and authority to enter into this Contract.

(b) Neither the execution and delivery of this Contract nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of the organizational documents of the Lender or any restriction or any agreement or instrument to which the Lender is now a party or by which the Lender is bound.

(c) The Lender (i) is familiar with the Town; (ii) has been furnished certain financial information about the Town; (iii) acknowledges that the Town has made available to it the opportunity to obtain additional information to verify the accuracy of the information supplied and to evaluate the merits and risks of entering into this Contract; (iv) has had the opportunity to ask questions of and receive answers from the Town representatives, including officers, attorneys, advisors and accountants, concerning the terms of this Contract, the information supplied to it and the Town's condition, financial and otherwise; and (v) acknowledges that the Town has been responsive to all of its requests for information.

(d) The Lender is capable of evaluating the merits and risks of entering into this Contract and has agreed to enter into this Contract although no formal offering material has been provided to it.

(e) The Lender has undertaken to discuss and investigate the form and substance of this Contract and the transactions related thereto with such counsel and other persons as it has deemed appropriate.

(f) The Lender acknowledges that this Contract is not registered under the United States Securities Act of 1933, as amended, and that the Town is not presently required to register this Contract under the United States Securities Exchange Act of 1934, as amended. Therefore, if and when the Lender wishes to sell or assign part or all of the Contract, current financial and other information may not be available. The Lender further realizes that the Town may, but is not under any obligation to, provide current financial and other information upon the sale or assignment of

all or part of the Contract at some subsequent time, or to pay any costs associated with any such sale or assignment. Further, the Lender understands that it may need to bear the risks of this Contract for an indefinite period of time, because any sale or assignment of this Contract may not be possible or, if possible, may be at a price below that which the Lender is entering into this Contract.

(h) The Lender represents that it is entering into the Contract for its own account with the present intent to hold the loan to maturity with no present intention to resell or distribute the Contract or any interest therein; provided, however, that the Lender reserves the right at all times to control the disposition of its assets, including this Contract. The Lender or its assignees may assign or reassign all or any part of the Contract in accordance with the provisions of Section 8.1.

ARTICLE III

ADVANCEMENT; ACQUISITION OF THE PROPERTY

SECTION 3.1. Advancement; Creation of Acquisition Fund. In consideration of the covenants, warranties and representations contained herein, and in consideration of the Town's agreement to repay the moneys advanced hereunder and interest thereon, the Lender hereby agrees to advance \$[2,000,000] to the Town at Closing (the "Advancement"). On the date of Closing, the proceeds of the Advancement shall be deposited in an account established with the Lender designated "Town of Carolina Beach, North Carolina 2023 Acquisition Fund" (the "Acquisition Fund") and shall be applied to pay the costs of acquiring the Property and/or the Closing Costs in accordance with the provisions of this Article.

SECTION 3.2. Acquisition of the Property. The Town shall enter into, or cause to be entered into, one or more contracts or purchase orders providing for the acquisition of the Property. The Town shall cause the acquisition of the Property to be carried on expeditiously and in compliance with all applicable ordinances and statutes and requirements of all regularly constituted authorities having jurisdiction over the same.

SECTION 3.3. Investment. Amounts held in the Acquisition Fund may be invested and reinvested in accordance with Section 159-30 of the General Statutes of North Carolina, as may be amended from time to time, or any substitute or successor statute. Investment earnings on the Acquisition Fund shall be retained in the Acquisition Fund pending disbursement to pay the Closing Costs and costs of acquiring the Property in accordance with Section 3.4. The Town shall be solely responsible for ascertaining that all proposed investments and reinvestments of amounts held in the Acquisition Fund comply with federal, state and local laws, regulations and ordinances governing investment of such funds. Accordingly, the Lender shall not be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to investment or reinvestment of all or a portion of the moneys held in the Acquisition Fund, and the Town hereby agrees, to the extent permitted by law, to release and indemnify and hold harmless the Lender from any such liability, cost, expense, loss or claim.

SECTION 3.4. Disbursements. Unless the Acquisition Fund is earlier terminated in accordance with the provisions of Section 3.5, the moneys held in the Acquisition Fund shall be used to pay, or reimburse the Town for payment of, the Closing Costs and/or the costs of acquiring the Property. Prior to withdrawing funds from the Acquisition Fund, the Town shall submit to the

Lender a written requisition signed by an authorized officer of the Town. A form of the requisition letter for disbursement of funds held in the Acquisition Fund is attached hereto as Exhibit B. If the moneys held in the Acquisition Fund and any other moneys provided by the Town are insufficient to pay all of the Closing Costs and/or the costs of acquiring the Property, the Town shall provide any balance of the funds needed to complete the acquisition of the Property. Any moneys remaining in the Acquisition Fund upon completion of the acquisition of the Property and not theretofore applied to pay Closing Costs or costs of acquiring the Property shall, at the written direction of the Town, be applied to the next succeeding Installment Payments until such funds are fully expended. After completion of the acquisition of the Property, if requested by the Lender, the Town shall provide the Lender with an itemized list of the Closing Costs and costs of acquiring the Property paid or reimbursed from the proceeds of the Advancement and any investment earnings deposited in the Acquisition Fund.

SECTION 3.5. Termination. The Acquisition Fund shall be terminated at the earliest of (a) the final distribution of moneys from the Acquisition Fund, (b) written notice given by the Lender of an event of default by the Town under this Contract and (c) termination of this Contract.

SECTION 3.6. Reliance of the Lender on Documents. The Lender may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Lender shall not be liable in any manner for the sufficiency or correctness as to the form, manner of execution, or validity of any instrument or as to the identity, authority, or right of any person executing the same; and the Lender's duties hereunder shall be limited to the receipts of such moneys, instruments or other documents received by it as the Lender, and for the disposition of the same in accordance herewith.

SECTION 3.7. Disclaimer of Lender. The Town acknowledges and agrees that the Lender has not supplied any specifications with respect to the Property and that the Lender (a) is not a dealer in any part of the Property or similar Properties, (b) has not made any recommendation, given any advice nor taken any other action with respect to (i) the choice of the Property or any component part thereof or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Property or any component part thereof or any property or rights relating thereto, (c) has not at any time had physical possession of the Property or any component part thereof or made any inspection thereof or any property or rights relating thereto, and (d) has not made any warranty or other representation, express or implied, that the Property or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) will accomplish the results which the Town intends therefor, or (iii) is safe in any manner or respect.

THE LENDER MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE PROPERTY OR ANY COMPONENT PART THEREOF TO THE TOWN OR ANY OTHER CIRCUMSTANCE WHATSOEVER WITH RESPECT THERETO, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE; THE CONDITION THEREOF; THE QUALITY OR CAPACITY THEREOF; COMPLIANCE THEREOF WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO; ANY LATENT DEFECT; THE

TITLE TO OR INTEREST OF THE LENDER THEREIN BEYOND THAT TITLE OR INTEREST WHICH THE TOWN OBTAINS FROM THE LENDER PURSUANT HERETO; THE ABILITY THEREOF TO PERFORM ANY FUNCTION; THAT THE PROCEEDS DERIVED FROM THE ADVANCEMENT WILL BE SUFFICIENT, TOGETHER WITH ANY OTHER AVAILABLE FUNDS OF THE TOWN, TO PAY THE COST OF ACQUIRING THE PROPERTY; OR ANY OTHER CHARACTERISTICS OF THE PROPERTY, IT BEING AGREED THAT ALL RISKS RELATING TO THE PROPERTY, THE ACQUISITION THEREOF OR THE TRANSACTIONS CONTEMPLATED HEREBY ARE TO BE BORNE BY THE TOWN, AND THE BENEFITS OF ANY AND ALL IMPLIED WARRANTIES AND REPRESENTATIONS OF THE LENDER ARE HEREBY WAIVED BY THE TOWN.

ARTICLE IV

REPAYMENT OF THE ADVANCEMENT; SECURITY FOR REPAYMENT

SECTION 4.1. Repayment of the Advancement. (a) The Town shall repay the Advancement, with interest computed at the rate of 3.69% per annum (calculated based upon a 360-day year consisting of twelve 30-day months), in installments due at the times and in the amounts set forth in Exhibit A attached hereto and made a part hereof. Notwithstanding the foregoing, upon the occurrence and continuation of an event of default under Section 9.1, all amounts payable under this Contract shall bear interest at the Default Rate until paid.

(b) All payments required to be made to the Lender hereunder shall be made to the Lender at the address set forth in Section 11.1 in immediately available funds or as may be otherwise directed in writing by the Lender.

(c) In the event of a Determination of Taxability, the interest rate payable under this Contract, from and after the Inclusion Date, shall be adjusted to preserve the Lender's after-tax economic yield with respect to the interest components of the Installment Payments, taking into account any interest expense deductions that may be lost by the Lender as a direct or indirect result of the Determination of Taxability. In addition, the Town shall pay to the Lender (i) an amount necessary to reimburse the Lender for any interest, penalties, or other charges assessed by the Internal Revenue Service and the Department of Revenue by reason of the Lender's failure to include the interest portion of the Installment Payments in its gross income for income tax purposes, and (ii) upon request of the Lender, additional interest as a result of the increase in the interest rate on all previous payments made by the Town after the Inclusion Date. In the event of a Determination of Taxability, the Lender shall provide the Town with a new Installment Payment Schedule which reflects the new interest rate which will replace the Installment Payment Schedule set forth in Exhibit A.

(d) The Town agrees to give prompt written notice to the Lender upon the Town's determination or receipt of any notice or information from any source whatsoever to the effect that an Event of Taxability or a Determination of Taxability shall have occurred or that an Event of Default has occurred.

SECTION 4.2. Budget and Appropriation. (a) The officer of the Town at any time charged with the responsibility for formulating budget proposals shall include in the budget proposals for review and consideration by the Town Council in any Fiscal Year in which this

Contract shall be in effect, items for all Installment Payments and any additional payments required for such Fiscal Year under this Contract or the Deed of Trust. Any budget item referred to in this Section shall be deleted from the applicable budget by the Town Council only by the adoption of a resolution to such effect containing a statement of its reasons therefor, which resolution shall be adopted by roll-call vote and shall be spread upon the minutes of the Town Council. The Town shall furnish the Lender with copies of its annual budget within thirty (30) days after its adoption and copies of any amended budget affecting appropriations for Installment Payments or additional payments required under this Contract or the Deed of Trust. The Town shall promptly provide written notice to the Lender of any Event of Nonappropriation.

(b) NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE TOWN WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A DELEGATION OF GOVERNMENTAL POWERS NOR AS A DONATION BY OR A LENDING OF THE CREDIT OF THE TOWN WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE. THIS CONTRACT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE TOWN TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE SOLE DISCRETION OF THE TOWN FOR ANY FISCAL YEAR IN WHICH THIS CONTRACT IS IN EFFECT; PROVIDED, HOWEVER, THAT ANY FAILURE OR REFUSAL BY THE TOWN TO APPROPRIATE FUNDS WHICH RESULTS IN THE FAILURE BY THE TOWN TO MAKE ANY PAYMENT COMING DUE HEREUNDER WILL IN NO WAY OBVIATE THE OCCURRENCE OF THE EVENT OF DEFAULT RESULTING FROM SUCH NONPAYMENT. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE TOWN IN ANY ACTION FOR BREACH OF A CONTRACTUAL OBLIGATION UNDER THIS CONTRACT AND THE TAXING POWER OF THE TOWN IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY MONEYS DUE UNDER THIS CONTRACT.

No provision of this Contract shall be construed to pledge or to create a lien on any class or source of the Town's moneys, nor shall any provision of this Contract restrict the future issuance of any of the Town's bonds or moneys. To the extent of any conflict between this Section and any other provision of this Contract, this Section shall take priority.

SECTION 4.3. Deed of Trust. In order to secure its obligations under this Contract, including its obligation to make the Installment Payments hereunder, the Town shall execute and deliver the Deed of Trust simultaneously with the execution and delivery of this Contract.

SECTION 4.4. No Set-Off; Recoupment, Etc. Subject to Section 4.2 and the Enforcement Limitation, the obligation of the Town to make the Installment Payments hereunder and to perform and observe the other covenants of this Contract shall be absolute and unconditional, and the Town will pay without abatement, diminution or deduction all such amounts regardless of any cause or circumstance whatsoever, including, without limitation, any defense, set-off, recoupment or counterclaim that the Town may have against the Lender.

ARTICLE V

INSURANCE

SECTION 5.1. Comprehensive General Liability. The Town shall maintain or cause to be maintained throughout the term of this Contract, a comprehensive general liability policy or policies in protection of the Town, its officers, agents and employees. Said policy shall cover such losses and for such amounts and shall have such deductible amounts as shall be satisfactory to the Town Council and, in the judgment of the Town Council, shall protect the Town against losses not protected under the principles of sovereign immunity. The net proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.

SECTION 5.2. Workers' Compensation. The Town shall maintain workers' compensation insurance issued by a responsible carrier authorized under the laws of the State to insure its employees against liability for compensation under the laws now in force in the State, or any act hereafter enacted as an amendment or supplement thereto or in lieu thereof. The proceeds of such workers' compensation insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.

SECTION 5.3. Property and Flood Insurance. (a) The Town shall procure and maintain, or cause to be procured and maintained, throughout the term of this Contract, insurance against loss or damage to any portion of the Mortgaged Property by fire and lightning, with extended coverage, and vandalism, theft and malicious mischief insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. Such insurance policies shall name the Lender as a loss payee/mortgagee and shall provide for notice to the Lender in advance of any cancellation or reduction in the amount of such insurance. To the extent that any contractor shall provide an insurance policy or certificate of insurance (naming the Lender as mortgagee or loss payee) demonstrating that the same coverage as is required by this subsection is being carried by such contractor with respect to the Mortgaged Property or any part thereof and adequately protects the interest of the Town and the Lender, the insurance provided for by this subsection shall not be required with respect to the Mortgaged Property or such part thereof while the Mortgaged Property or such part thereof is so covered by such other insurance. The Town shall cause to be delivered to the Lender prior to acquisition of the Property a certificate of insurance evidencing that the insurance required by this subsection is in full force and effect.

(b) If any buildings, fixtures or other improvements are located on any portion of the Mortgaged Property that is located in a special flood hazard area according to the Federal Emergency Management Agency ("FEMA"), then the Town must maintain a flood insurance policy on the Mortgaged Property. If at any time during the term of the Contract, such portion of the Mortgaged Property is classified by FEMA as being located in a special flood hazard area, flood insurance will be mandatory. Should this occur, federal law requires the Lender to notify the Town of the reclassification. If, within forty-five (45) days of receipt of notification from the Lender that any portion of the Mortgaged Property has been reclassified by the FEMA as being located in a special flood hazard area, the Town has not provided sufficient evidence of flood insurance, the Lender is mandated under federal law to purchase flood insurance on behalf of the

Town, and any amounts so expended shall immediately become debts of the Town, shall bear interest at the rate specified in the Contract, and payment thereof shall be secured by the Deed of Trust.

(c) Such insurance required by this Section shall be in an amount equal to 100% of the replacement cost of the Mortgaged Property (except that such insurance may be subject to a reasonable and customary deductible clause for any one loss).

(d) The Net Proceeds of such insurance required by this Section shall be applied as provided in Section 6.1 or Section 6.2.

SECTION 5.4. General Insurance Provisions. (a) The Town shall pay or cause to be paid when due the premiums for all insurance policies required by this Contract.

(b) All insurance policies required by this Article shall be issued by a responsible carrier authorized to do business under the laws of the State.

(c) The Lender shall not be responsible for the sufficiency or adequacy of any insurance herein required and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the Lender.

(d) In lieu of obtaining the policies of insurance required by Section 5.1, Section 5.2 and Section 5.3, and with the prior written consent of the Lender for insurance required by Section 5.3, the Town may adopt alternative risk management programs which the Town determines to be reasonable, including, without limitation, to self-insure in whole or in part, individually or in connection with other units of local government or other institutions, to participate in programs of captive insurance companies, to participate with other units of local government or other institutions in mutual or other cooperative insurance or other risk management programs, to participate in State or federal insurance programs, to take advantage of State or federal laws now or hereafter in existence limiting liability, or to establish or participate in other alternative risk management programs, all as may be reasonable and appropriate risk management by the Town.

(e) The insurance coverage required under Section 5.3 may be maintained under a blanket policy covering other properties of the Town.

(f) The Town shall cause to be delivered to the Lender annually a certificate stating that the insurance policies or alternative risk management programs required or permitted by this Contract are in full force and effect.

(g) The Town shall cooperate fully with the Lender in filing any proof of loss with respect to any insurance policy maintained pursuant to this Article and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Mortgaged Property or any portion thereof.

SECTION 5.5. Title Insurance. The Town shall obtain, at its own cost and expense, a policy of title insurance or an endorsement to such policy, from a title insurance company and in a form satisfactory to the Lender, at the time of and dated as of the date of execution and delivery of this Contract, in an amount not less than the Advance, payable to the Lender, as its interest may appear, insuring fee title of the Town to the Mortgaged Property.

ARTICLE VI

DAMAGE AND DESTRUCTION; USE OF NET PROCEEDS

SECTION 6.1. Obligation of the Town to Repair and Replace the Mortgaged Property. Unless applied to the payment in full of the remaining Installment Payments pursuant to Section 6.2 and Section 10.1, the Town shall cause the Net Proceeds of any insurance policies or condemnation proceedings to be applied to the prompt repair, restoration or replacement of the Mortgaged Property. In the event that any such Net Proceeds exceeds \$100,000, the Town shall cause such Net Proceeds to be deposited in a separate fund maintained by the Town with the Lender or its designee unless applied to the payment in whole or in part of the remaining Installment Payments pursuant to Section 6.2. The Lender shall cooperate with the Town in the administration and application of such Net Proceeds. Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of such Net Proceeds shall be the property of the Town, subject to the Deed of Trust and Permitted Encumbrances, and shall be included as part of the Mortgaged Property under this Contract.

SECTION 6.2. Insufficiency of Net Proceeds; Discharge of the Obligation of the Town to Repair or Replace the Mortgaged Property. (a) If the Net Proceeds shall be insufficient to pay in full the cost of repair, restoration or replacement of the Mortgaged Property, the Town may elect to complete the work and pay any cost in excess of the amount of the Net Proceeds, and the Town agrees that, if by reason of any such insufficiency of the Net Proceeds, the Town shall make any payments pursuant to the provisions of this subsection (a), the Town shall not be entitled to any reimbursement therefor from the Lender, nor shall the Town be entitled to any diminution of the Installment Payments payable under Section 4.1.

(b) If the Town elects not to apply the Net Proceeds to the repair, restoration or replacement of the Mortgaged Property, the Town may apply the Net Proceeds, together with any other available funds of the Town, to the prepayment of the principal component of the Installment Payments in accordance with Section 10.1. In the event the amount of such Net Proceeds exceeds the amount necessary to prepay the principal component of all remaining Installment Payments, plus any prepayment premium and the interest component of the Installment Payments accrued to the date of prepayment, such excess shall be paid to or retained by the Town.

Within 90 days following the receipt of Net Proceeds, unless a further extension is approved by the Lender, the Town shall commence the repair, restoration or replacement of the Mortgaged Property, or shall elect, by written notice to the Lender, to apply the Net Proceeds, together with any other available funds of the Town, to the prepayment of the Installment Payments under the provisions of Section 10.1. For purposes of this subsection, “commence” shall include the retention of an engineer in anticipation of the repair, restoration, modification, improvement or replacement of the Mortgaged Property. In the event that the Town shall, after commencing the repair, restoration, modification, improvement or replacement of the Mortgaged Property, determine that the Net Proceeds (plus any amount withheld therefrom by reason of any deductible clause) shall be insufficient for the accomplishment thereof, the Town may elect to apply the Net Proceeds to the prepayment of the Installment Payments under the provisions of Section 10.1.

SECTION 6.3. Notice to and Cooperation of the Lender. The Town shall promptly provide notice to the Lender of any material damage or destruction of the Mortgaged Property or

any prospective or pending condemnation proceeding relating to the Mortgaged Property. The Lender shall cooperate fully with the Town in filing any proof of loss with respect to any insurance policy covering the events specified in Section 5.3. In no event shall the Lender or the Town voluntarily settle, or consent to the settlement of, any insurance proceeding arising out of any insurance claim with respect to the Mortgaged Property or with respect to any condemnation proceedings with respect to the Mortgage Property without the written consent of the other.

ARTICLE VII

COVENANTS OF THE TOWN

SECTION 7.1. Installation of Additional Improvements. The Town may at any time and from time to time, in the sole discretion of the Town, and at its own expense, construct real property improvements and install items of equipment or other personal property in or upon any portion of the Mortgaged Property that does not materially impair the effective use, nor materially decrease the value, of the Mortgaged Property; provided, however, that the Town shall repair and restore any and all damage resulting from the construction, installation, modification or removal of any such items. All such items provided by the Town shall be subject to the lien of the Deed of Trust.

SECTION 7.2. Access to the Mortgaged Property. The Town agrees that the Lender and its agents and employees, shall have the right, at all reasonable times during normal business hours of the Town upon the furnishing of reasonable notice to the Town under the circumstances, and subject to such safety restrictions or requirements that the Town may deem appropriate, to enter upon the Mortgaged Property or any portion thereof to examine and inspect the same. The Town further agrees that the Lender and the Lender's successors, assigns or designees shall have such rights of access to the Mortgaged Property as may be reasonably necessary to cause the proper maintenance of the Mortgaged Property in the event of failure by the Town to perform its obligations hereunder. No right of inspection shall be deemed to impose on the Lender any duty or obligation whatsoever to undertake any inspection, and no inspection made by the Lender shall be deemed to impose upon the Lender any duty or obligation to identify any defects in the Mortgaged Property or to notify any person with respect thereto.

SECTION 7.3. Maintenance, Utilities, Taxes and Assessments. (a) Subject to the Enforcement Limitation, the Town shall provide for the repair and replacement of any portion of the Mortgaged Property required on account of ordinary wear and tear or want of care.

(b) Subject to the Enforcement Limitation, the Town shall also pay, or provide for the payment of, all taxes and assessments, including, but not limited to, utility charges of any type or nature levied, assessed or charged against any portion of the Mortgaged Property; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Town shall be obligated to pay only such installments as are required to be paid as and when the same become due.

(c) The Town may, at the Town's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom; provided, however, that prior to such nonpayment, the Town shall

furnish to the Lender an opinion of counsel acceptable to the Lender to the effect that, by nonpayment of any such items, the interest of the Lender in the Mortgaged Property will not be materially endangered and that all or any portion of the Mortgaged Property will not be subject to loss or forfeiture. Otherwise, subject to the Enforcement Limitation, the Town shall promptly pay such taxes, assessments or charges or make provisions for the payment thereof.

SECTION 7.4. Modification of the Mortgaged Property. The Town shall, in its sole discretion and at its own expense, have the right to make additions, modifications and improvements to any portion of the Mortgaged Property if such additions, modifications or improvements are necessary or beneficial for the use of the Mortgaged Property. Such additions, modifications and improvements shall not in any way damage any of the Mortgaged Property (unless such damage is to be repaired as provided in Section 6.1) or cause the Mortgaged Property to be used for purposes other than those authorized under the provisions of law, and the Mortgaged Property, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is not less than the value of the Mortgaged Property immediately prior to the making of such additions, modifications and improvements. The Mortgaged Property, as so modified, shall be subject to the lien of the Deed of Trust.

Except for Permitted Encumbrances, the Town shall not permit any lien to be established or remain against the Mortgaged Property for labor or materials furnished in connection with any additions, modifications or improvements made by the Town pursuant to this Section; provided, however, that if any such lien is established, the Town may, at its own expense and in its name, in good faith contest any lien filed or established against the Mortgaged Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, provided that the Town shall furnish to the Lender full security against any loss or forfeiture which might arise from the nonpayment of any such item in form satisfactory to the Lender.

SECTION 7.5. Encumbrances. Except as provided in this Article (including, without limitation, Section 7.4 and this Section), the Town shall not, directly or indirectly, create, incur, assume or suffer to exist any pledge, lien, charge, encumbrance or claim, as applicable, on or with respect to the Mortgaged Property, other than Permitted Encumbrances. Except as expressly provided in this Article and subject to the Enforcement Limitation, the Town shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such pledge, lien, charge, encumbrance or claim for which it is responsible if the same shall arise at any time; provided, however, that the Town may contest any such lien, charge, encumbrance or claim if it desires to do so and if it provides the Lender with full security against any loss or forfeiture which might arise from the nonpayment of any such item in form satisfactory to the Lender.

SECTION 7.6. Indemnification of the Lender and the LGC. To the fullest extent permitted by law, the Town covenants to defend, indemnify and hold harmless the Lender and the LGC and their respective officers, directors, members, employees and agents (collectively, the “Indemnified Party”) against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such Indemnified Party may become subject under any statute or at law or in equity or otherwise in connection with the transactions contemplated by this Contract or the Deed of Trust and shall reimburse any such Indemnified Party for any legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities

or actions arise out of the transactions contemplated by this Contract or the Deed of Trust. In particular, without limitation, the Town shall and hereby agrees to indemnify and save the Indemnified Party harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of any breach or default on the part of the Town in the performance of any of its obligations under this Contract or the Deed of Trust.

SECTION 7.7. Financial Statements and Other Information. The Town shall furnish to the Lender, when the same become available, but in no event later than 210 days after the end of the Fiscal Year, its annual audited financial statements. The Town also agrees that it will furnish the Lender copies of its annual budget as approved within 30 days after such approval. The Town shall also furnish to the Lender, at such reasonable times as the Lender shall request, all other financial information as the Lender may reasonably request that confirms the Town is in compliance with the terms and conditions of this Contract (excluding any privileged or confidential information).

ARTICLE VIII

ASSIGNMENT AND LEASING

SECTION 8.1. Assignment by the Lender. The Lender may, at any time and from time to time, assign to any bank, insurance company or similar financial institution or to any other entity approved by the LGC all or any part of its interest in the Mortgaged Property or this Contract, including, without limitation, the Lender's rights to receive the Installment Payments and any additional payments due and to become due hereunder. Reassignment by any assignee may also only be to a bank, insurance company or similar financial institution or to any other entity approved by the LGC. In addition, the Lender or its assignees may assign or reassign all or any part of this Contract, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Contract, or making this Contract part of a pool of obligations without the consent of the LGC, so long as such assignment or reassignment is to (i) a bank, insurance company or similar institution or any other entity approved by the LGC; or (ii) a trustee for the purpose of issuing certificates of participation or other forms of certificates evidencing an undivided interest in the Contract, provided such certificates are sold only to a bank, insurance company or similar financial institution or other entity approved by the LGC. Notwithstanding the foregoing, no assignment or reassignment of the Lender's interest in the Mortgaged Property or this Contract shall be effective unless and until the Town shall receive a duplicate original counterpart of the document by which such assignment or reassignment is made disclosing the name and address of each assignee. The Town covenants and agrees with the Lender and each subsequent assignee of the Lender to maintain for the full term of this Contract a written record of each such assignment or reassignment. The Town agrees to execute any document reasonably required by the Lender in connection with any assignment. Notwithstanding any assignment by the Lender of its interest in this Contract, the Town shall not be obligated to provide any financial or other information to any assignee of the Lender except as set forth in Section 7.7.

After the giving of notice described above to the Town, the Town shall thereafter make all payments in accordance with the notice to the assignee named therein and shall, if so requested, acknowledge such assignment in writing, but such acknowledgement shall in no way be deemed to make the assignment effective.

The Lender covenants that any disclosure document circulated by it or an assignee in connection with the sale of the Lender's rights in this Contract will contain a statement to the effect that the Town has not reviewed and is not responsible for the disclosure document. The Lender covenants to defend, indemnify and hold harmless the Town and its officers, employees and agents against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such Indemnified Party may become subject on account of any statement included in a disclosure document, or failure to include a statement in a disclosure document, unless the Town shall have expressly approved the use of such disclosure document.

SECTION 8.2. Assignment and Leasing by the Town. (a) This Contract may not be assigned by the Town.

(b) The Town may lease all or any portion of the Mortgaged Property, subject to each of the following conditions:

(i) the obligation of the Town to make Installment Payments hereunder shall remain obligations of the Town;

(ii) the Town shall within thirty (30) days prior to the execution and delivery of any such lease, furnish or cause to be furnished to the Lender, a true and complete copy of the form of such lease;

(iii) the Lender shall have received evidence satisfactory to the Lender that such lease is subordinate in all respects to the lien of the Deed of Trust; and

(iv) the lease by the Town shall not cause the Mortgaged Property to be used for a purpose other than a governmental or proprietary function of the Town authorized under the provisions of the Constitution and laws of the State and shall not cause the interest component in the Installment Payments to be includable in gross income of the Lender for federal income tax purposes.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

SECTION 9.1. Events of Default Defined. The following shall be "events of default" under this Contract and the terms "events of default" and "default" shall mean, whenever they are used in this Contract, any one or more of the following events:

(a) The failure by the Town to pay any Installment Payment required to be paid hereunder when due.

(b) The occurrence of an Event of Nonappropriation.

(c) Failure by the Town to observe and perform any warranty, covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto other than as referred to in clause (a) or (b) of this Section, for a period of thirty (30) days after written

notice specifying such failure and requesting that it be remedied has been given to the Town by the Lender; provided, however, that if the failure stated in the notice cannot be corrected within the applicable period and if corrective action is instituted by the Town within the applicable period and diligently pursued, the Town shall have such additional period of time to correct the failure as shall be necessary to correct such failure so long as such correction is diligently pursued, but in no event for an additional period of time in excess of sixty (60) days after the end of such thirty (30) day period.

(d) The Town becomes insolvent or the subject of insolvency proceedings; or is unable, or admits in writing its inability, to pay its debts as they mature; or makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its property; or files a petition or other pleading seeking reorganization, composition, readjustment or liquidation of assets, or requesting similar relief; or applies to a court for the appointment of a receiver for it or for the whole or any part of its property; or has a receiver or liquidator appointed for it or for the whole or any part of its property (with or without the consent of the Town) and such receiver is not discharged within ninety (90) consecutive days after his appointment; or becomes the subject of an “order for relief” within the meaning of the United States Bankruptcy Code; or files an answer to a creditor’s petition admitting the material allegations thereof for liquidation, reorganization, readjustment or composition or to effect a plan or other arrangement with creditors or fail to have such petition dismissed within sixty (60) consecutive days after the same is filed against the Town.

(e) The occurrence of an “Event of Default” under the Deed of Trust as defined therein.

(f) Any warranty, representation or statement made by the Town herein or in the Deed of Trust or any other document executed and delivered by the Town in connection herewith is found to be incorrect or misleading in any material respect as of the date made.

SECTION 9.2. Remedies on Default. Upon the occurrence of any event of default under Section 9.1, the Lender may, without any further demand or notice, exercise any one or more of the following remedies:

(a) declare the entire amount of the principal component of the Installment Payments and the accrued and unpaid interest component to the date of declaration to be immediately due and payable;

(b) exercise all remedies available at law or in equity or under the Deed of Trust, including foreclosure and sale of the Mortgaged Property, and apply the proceeds of any such sale or other disposition, after deducting all costs and expenses, including court costs and reasonable attorneys’ fees incurred with the recovery, repair, storage and other sale or other disposition costs, toward the principal component and accrued and unpaid interest of the balance of Installment Payments due; and

(c) subject to the Enforcement Limitation, proceed by appropriate court action to enforce performance by the Town of the applicable covenants of this Contract or to recover for the breach thereof.

NOTWITHSTANDING ANY OTHER PROVISIONS HEREIN, IT IS THE INTENT OF THE PARTIES HERETO TO COMPLY WITH SECTION 160A-20 OF THE

GENERAL STATUTES OF NORTH CAROLINA, AS AMENDED. NO DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST THE TOWN IN FAVOR OF THE LENDER OR ANY OTHER PERSON IN VIOLATION OF SAID SECTION 160A-20, INCLUDING, WITHOUT LIMITATION, ANY DEFICIENCY JUDGMENT FOR AMOUNTS THAT MAY BE OWED HEREUNDER WHEN THE SALE OF ALL OR ANY PORTION OF THE MORTGAGED PROPERTY IS INSUFFICIENT TO PRODUCE ENOUGH MONEYS TO PAY IN FULL ALL REMAINING OBLIGATIONS HEREUNDER.

SECTION 9.3. No Remedy Exclusive. No remedy conferred herein upon or reserved to the Lender is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. To the extent permitted by law, any delay or omission to exercise any right or power accruing upon any default shall not impair any such right or power nor 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. In order to entitle the Lender to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required in this Article or by law.

SECTION 9.4. Agreement to Pay Attorneys' Fees and Expenses. In the event the Town should default under any of the provisions hereof and the Lender should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the Town contained herein, the Town agrees that it will pay on demand to the Lender, subject to the limitations and provisions of Section 6-21.2 of the General Statutes of North Carolina, as amended, the reasonable fees of such attorneys and such other expenses so incurred by the Lender. For purposes of this Section, the reasonable fees of attorneys shall mean attorneys' fees actually incurred at such attorneys' standard hourly rate for such services and shall not be based on any percentage of the outstanding amount due; provided, however that such attorneys' fees shall not exceed the maximum amount permitted by law.

SECTION 9.5. No Additional Waiver Implied by One Waiver. In the event any provision contained in this Contract 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 hereunder except as may be provided by law.

ARTICLE X

PREPAYMENT OF INSTALLMENT PAYMENTS

SECTION 10.1. Optional Prepayment of Installment Payments. (a) Upon at least 15 days' prior written notice to the Lender (unless otherwise waived by the Lender), which prepayment may be conditioned upon the availability of funds on the prepayment date, the Town may prepay, in whole or in part, the outstanding principal component of the Installment Payments on any date at a prepayment price of 100% of the principal component of the Installment Payments to be prepaid, plus accrued interest to the prepayment date.

(b) Any prepayment in part shall be applied in inverse order of maturity of the principal components of the Installment Payments unless otherwise agreed to by the Lender. In the event

of such a prepayment in part, the Lender shall provide the Town with a new Installment Payment Schedule which reflects such prepayment which will replace the Installment Payment Schedule set forth in Exhibit A.

ARTICLE XI

MISCELLANEOUS

SECTION 11.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received upon the earlier of actual receipt or three days after deposit in the United States first-class, registered or certified mail (unless otherwise provided herein), postage prepaid, at the following addresses:

If to the Town:

Town of Carolina Beach, North Carolina
1121 N. Lake Park Boulevard
Carolina Beach, North Carolina 28428
Attention: Finance Director

If to the Lender:

SouthState Bank, National Association
1117 Military Cutoff Road
Wilmington, North Carolina 28405
Attention: A. Mark Tyler

The Town and the Lender, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

SECTION 11.2. Binding Effect. This Contract shall be binding upon and inure to the benefit of the Town and the Lender and their respective successors and assigns. Whenever in this Contract either the Town or the Lender is named or referred to, such reference shall be deemed to include the successors or assigns thereof and all the covenants and agreements in this Contract contained by or on behalf of the Town or the Lender shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 11.3. Severability. In the event any provision of this Contract shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 11.4. Execution in Counterparts. This Contract 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.

SECTION 11.5. Commitment Letter. The terms of this Contract shall supersede the terms of any commitment letter, proposal or other term sheet provided by the Lender. To the

extent of any conflict between this Contract and such other documents, this Contract shall take priority.

SECTION 11.6. Applicable Law. This Contract shall be construed and governed in accordance with the laws of the State.

SECTION 11.7. No Advisory Services. The Town acknowledges and agrees that: (i) this Contract is an arm's length commercial transaction between the Town and the Lender in which the Lender is acting solely as a principal to make a loan to the Town, and not as a municipal advisor, financial advisor or fiduciary to the Town or any other person or entity regardless of whether the Lender or an affiliate has or is currently acting as such on a separate transaction; (ii) the Lender has not assumed any advisory or fiduciary responsibility to the Town with respect to the transaction contemplated by this Contract, and the discussions, undertakings and procedures leading to this Contract (irrespective of whether the Lender or its affiliates have provided other services or are currently providing other services to the Town on other matters); (iii) the only obligations the Lender has to the Town with respect to the transaction contemplated by this Contract are expressly set forth herein or the relating financing documents; and (iv) the Town has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

SECTION 11.8. 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 shall require that any subcontractor that it uses in connection with the transactions contemplated by this Contract certify to such subcontractor's compliance with E-Verify.

SECTION 11.9. Patriot Act Notice. The Lender is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56) (signed into law October 26, 2001) (the "Act") and hereby notifies the Town that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the Town, which information includes the name and address of the Town and other information that will allow the Lender to identify the Town in accordance with the Act.

SECTION 11.10. Iran Divestment Act Certification. As of the date of this Contract, the Lender is not on any list created and maintained by the North Carolina Department of State Treasurer pursuant to the Iran Divestment Act of 2015, Article 6E of Chapter 147 of the General Statutes of North Carolina.

SECTION 11.11. Companies that Boycott Israel Act Certification. As of the date hereof, the Lender is not listed on any list created and maintained by the North Carolina Department of State Treasurer pursuant to the Divestment from Companies that Boycott Israel Act, Article 6G, as amended, of Chapter 147 of the General Statutes of North Carolina.

(Signatures begin on the following page)

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

TOWN OF CAROLINA BEACH, NORTH
CAROLINA

[SEAL]

By: _____
Bruce Oakley
Town Manager

Attest:

Kimberlee Ward
Town Clerk

SOUTHSTATE BANK, NATIONAL
ASSOCIATION

By: _____
A. Mark Tyler
Senior Vice President

[Signature page to the Installment Financing Contract, dated as of January [13], 2023, between the Town of Carolina Beach, North Carolina and SouthState Bank, National Association]

CERTIFICATE OF LOCAL GOVERNMENT COMMISSION

The foregoing Installment Financing Contract has been approved under the provisions of Section 160A-20 and Article 8 of Chapter 159 of the General Statutes of North Carolina, as amended.

Secretary, Local Government Commission
of North Carolina

PAYMENT SCHEDULE

<u>PAYMENT DATE</u>	<u>BEGINNING PRINCIPAL BALANCE</u>	<u>INSTALLMENT PAYMENT - PRINCIPAL COMPONENT</u>	<u>INSTALLMENT PAYMENT - INTEREST COMPONENT*</u>	<u>TOTAL INSTALLMENT PAYMENT</u>	<u>ENDING PRINCIPAL BALANCE</u>
01/[13]/2024	\$[2,000,000]	\$	\$	\$	\$
01/[13]/2025					
01/[13]/2026					
01/[13]/2027					
01/[13]/2028					
01/[13]/2029					
01/[13]/2030					
01/[13]/2031					
01/[13]/2032					
01/[13]/2033					
Totals		\$[2,000,000]	\$[_____]	\$[_____]	

*Interest rate of 3.69%, calculated on a 30-day month/360-day basis, except as otherwise provided in accordance with Section 4.1(c).

NOTE: The amounts set forth under the heading “**TOTAL INSTALLMENT PAYMENT**” in the amortization schedule above correctly state the aggregate amount of each semi-annual installment payment. However, since this is a “simple” interest loan, the actual interest component of each semi-annual installment payment will depend upon when the installment payment is actually made. This in turn will affect both the actual principal component of each installment payment and the resulting ending balance after each installment payment. Accordingly, with the exception of the semi-annual payments set forth under the heading “**TOTAL INSTALLMENT PAYMENT**,” the remaining information set forth in the Payment Schedule above is **only** an estimate based upon the assumption that all semi-annual installment payments are made on their respective due date(s) and is included herein **solely** for purposes of illustration.

All payments required to be made to the Lender hereunder shall be made to the Lender (1) at SouthState Bank, National Association, PO Box 118068, Charleston, SC 29423-9910 in immediately available funds, (2) as wire transfers to the Lender on the payable date as directed by the Lender or (3) as may be otherwise directed in writing by the Lender.

FORM OF REQUISITION

ACQUISITION FUND REQUISITION

[To Be Prepared on Town's Letterhead for Submission]

[Date]

SouthState Bank, National Association, as Custodian
Attn: A. Mark Tyler
1117 Military Cutoff Road
Wilmington, North Carolina 28405

RE: Request for disbursement of funds from the Acquisition Fund related to the Installment Financing Contract, dated as of January [13], 2023, between the Town of Carolina Beach, North Carolina and SouthState Bank, National Association (the "Contract")

Ladies and Gentlemen:

The Town of Carolina Beach, North Carolina (the "Town"), requests the disbursement of funds from the Acquisition Fund established under the terms and provisions of the Contract for the following costs of acquisition of the Property and/or Closing Costs of the above-referenced Contract:

[insert description and Costs of acquisition of the Property and/or Closing Costs]

This is requisition number ____ from the Acquisition Fund.

Disbursements will be made to the [Town][Vendor] as follows:

Amount:

Applicable Vendor Invoices:

Description of Costs of acquiring the Property/Closing Costs:

To receive funds via wire transfer please include:

Receiving Bank:

ABA Routing Number:

Beneficiary Name:

Beneficiary Physical Address:

Account Number:

The Town makes this requisition pursuant to the following representations:

1. The purpose of this disbursement is for partial payment on the Costs of acquisition of the Property and/or Closing Costs under the Contract.

2. The requested disbursement has not been subject to any previous requisition.

3. No notice of any lien, right to lien or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable herein to any of the persons, firms or corporations named herein has been received, or if any notice of any such lien, attachment or claim has been received, such lien, attachment or claim has been released or discharged or will be released or discharged upon payment of this requisition.

4. This requisition contains no items representing payment on account of any percentage entitled to be retained on the date of this requisition.

5. Each amount requested for payment in this requisition either (a) represents reimbursement to the Town for a cost related to either the Costs of acquisition of the Property and/or related Closing Costs of the Contract which have been previously paid by the Town, or (b) as directed by the Town in this requisition, will be paid by the Custodian from the Acquisition Fund directly to the third party vendors described in this requisition to provide for payment of either the Costs of acquisition of the Property and/or related Closing Costs of the Contract.

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

TOWN OF CAROLINA BEACH, NORTH
CAROLINA

By: _____

Name: _____

Title: _____

APPROVED BY SOUTHSTATE BANK, NATIONAL ASSOCIATION:

By: _____

Name: _____

Title: _____