

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA PROVIDING FOR THE ISSUANCE OF A SPECIAL OBLIGATION BOND (TOWN PORTION), SERIES 2021A

WHEREAS, the Town of Southern Shores, North Carolina (the “*Town*”) is authorized by Article 7A of Chapter 159 of the General Statutes of North Carolina (the “*Applicable Statute*”) to issue its special obligation bonds for beach erosion control and flood and hurricane works provided in a municipal service district; and

WHEREAS, the Town Council of the Town (the “*Town Council*”) has created two Municipal Service Districts (the “*Districts*”), in accordance with Article 23 of Chapter 160A of the North Carolina General Statutes, in which the Town has determined to construct certain beach erosion control and flood and hurricane protection works (the “*Current Project*”); and

WHEREAS, a portion of the Current Project will be funded by the Town (the “*Town Portion*”) and a portion of the Current Project will be funded from other sources;

WHEREAS, the County of Dare (the “*County*”) will also fund a portion of the Town’s beach erosion and control needs pursuant to an Interlocal Agreement to be dated October 13, 2021 (the “*Interlocal*”) between the Town, the County and three other towns located in the County;

WHEREAS, the Town Council adopted a “Bond Order Authorizing the Issuance of Special Obligation Bonds of the Town of Southern Shores, North Carolina (Town Portion)” (the “*Town Portion Bond Order*”) on October 5, 2021 providing for the issuance of Special Obligations Bonds to be secured by the sources set forth in the Town Portion Bond Order; and

WHEREAS, the Town Council has determined that it is necessary and advisable at this time to issue the Town’s Special Obligation Bond (Town Portion), Series 2021A (the “*2021A Bond*”) in an aggregate principal amount not to exceed \$8,028,300 to (1) pay the costs of the Town Portion of the Current Project and (2) pay the costs of issuing the 2021A Bond; and

WHEREAS, PNC Bank, National Association (the “*Purchaser*”), has agreed to purchase the 2021A Bond as set forth in its Term Sheet, dated August 31, 2021 (the “*Term Sheet*”); and

WHEREAS, the Town has applied to the Local Government Commission of North Carolina (the “*Commission*”) for approval of its application relating to the 2021A Bond as required by Section 159-146(i) of the Applicable Statute and of the issuance and private sale of the 2021A Bond, which approvals are expected to be granted at the Commission’s meeting on October 5, 2021 (the “*Commission Approval*”); and

WHEREAS, the Town Council now desires to provide for the terms, form and issuance of the 2021A Bond in an amount not to exceed \$8,028,300; and

WHEREAS, the Town Council has determined that the Town will issue the 2021A Bond on or about October 13, 2021 pursuant to a Bond Purchase Agreement, to be dated its date of delivery on or about October 13, 2021 (the “*Purchase Agreement*”), between the Commission and the Purchaser and approved by the Town; and

WHEREAS, the Town Council desires to incorporate in this Resolution, to the extent applicable and unless manifestly inappropriate, the provisions of the Town Portion Bond Order, including definitions;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA, IN ACCORDANCE WITH THE FINAL COMMISSION APPROVAL AS SET FORTH ABOVE AND ANY CONDITIONS, TERMS AND OTHER CONTINGENCIES THAT MAY BE SET FORTH THEREIN, AS FOLLOWS:

Section 1. Acceptance of Term Sheet, Issuance of Bond. The Town hereby accepts and approves the Term Sheet offered by the Purchaser; provided, however, such Term Sheet shall not represent the final terms of the transaction, which shall be only in the Town Portion Bond Order, this Resolution, the 2021A Bond and any closing documents. The Term Sheet is not incorporated herein. The Town shall issue in accordance with and pursuant to the Applicable Statute, the Town Portion Bond Order, and this Resolution, its 2021A Bond in an aggregate principal amount not to exceed \$8,028,300 for the purpose of providing funds, together with other available funds, to (1) pay the costs of the Town Portion of the Current Project and (2) pay the costs of issuing the 2021A Bond. The period of usefulness of the capital projects to be financed by the issuance of the 2021A Bond is not less than five years, computed from the date of the issuance of the 2021A Bond. The Town will set forth the final aggregate principal amount of the 2021A Bond in a closing certificate delivered upon the execution and delivery of the 2021A Bond.

Section 2. Form of Bond. The 2021A Bond shall be issued in fully registered form. The 2021A Bond shall be issued as a single bond, shall be substantially in the form set forth in Exhibit A attached hereto and made a part hereof, with such appropriate variations, omissions and insertions as are permitted or required by this Resolution. The Finance Officer, or her designee, is hereby appointed to be the registrar of the 2021A Bond (the “*Registrar*”) and is hereby directed to maintain the appropriate registration records with respect thereto.

Section 3. Details of Bond. (a) The 2021A Bond shall be dated the date of its issuance, shall bear interest at a fixed rate of 1.78% per annum until its payment and shall be stated to mature (subject to the right of prior redemption) on December 15, 2026.

If a Determination of Taxability or Event of Taxability occurs with respect to the 2021A Bond, as such terms are hereinafter defined, the fixed rate of interest shall be increased to and be calculated at the rate which will provide to the Purchaser the effective yield which it would have received if there had not been a Determination of Taxability or an Event of Taxability, such rate to be determined by the Purchaser (the “*Alternative Rate of Interest*”), and shall be payable from the Date of Taxability to such time as the 2021A Bond is paid in full. In such event, the Town also shall be required to pay to the Purchaser all amounts, if any, which may be necessary to reimburse the Purchaser for any interest, penalties or other charges assessed by the Internal Revenue Service and the Department of Revenue of the State of North Carolina against the Purchaser by reason of the Purchaser’s failure to include the interest on the 2021A Bond in its gross income for income tax purposes. The Town shall pay to the Purchaser the above mentioned Alternative Rate of Interest notwithstanding any transfer by the Purchaser or payment or redemption by the Town prior to the date such Determination of Taxability was made.

“*Event of Taxability*” shall mean any event, occurrence or situation, resulting from an action, or failure to act, by the Town, the effect of which is to cause the interest on the 2021A Bond to be includible in the gross income of the Purchaser for federal income tax purposes. A “*Determination of Taxability*” shall mean a determination that the interest on the 2021A Bond is included in gross income of the Purchaser for federal income tax purposes, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following: (a) the date on which the Purchaser is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that, as a consequence of an Event of Taxability, the interest on the 2021A Bond is included in the gross income of the Purchaser for federal income tax purposes; (b) the date on which the Town receives notice from the Purchaser that the Purchaser has been advised in writing that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to the Purchaser which asserts, in effect, that interest on the 2021A Bond

received by the Purchaser is included in the gross income of the Purchaser for federal income tax purposes, as a result of an Event of Taxability; (c) the day on which the Town is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that there has been issued a public or private ruling of the Internal Revenue Service that the interest on the 2021A Bond is included in the gross income of the Purchaser for federal income tax purposes as a result of an Event of Taxability; or (d) the day on which the Town is advised in writing by counsel to the Purchaser that a final determination, from which no further right of appeal exists, has been made by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the Town has been given written notice and an opportunity to participate and defend that interest on the 2021A Bond is included in the gross income of the Purchaser for federal income tax purposes, as a result of an Event of Taxability.

“*Date of Taxability*” shall mean the first date upon which interest on the 2021A Bond is included in the gross income of the Purchaser for federal income tax purposes as a result of an Event of Taxability or a Determination of Taxability.

(b) The 2021A Bond is subject to mandatory redemption before maturity as set forth in a closing certificate delivered upon the execution and delivery of the 2021A Bond.

(c) The 2021A Bond shall be subject to optional redemption prior to its stated maturity at the option of the Town in whole (but not in part) on any date upon giving the Purchaser not less than 15 Business Days prior written notice thereof and as provided in this subsection (c). The redemption price of such 2021A Bond shall be equal to 100% of the principal amount of the 2021A Bond, plus interest accrued to the redemption date, plus, if so required by the Purchaser as compensation for the costs of the 2021A Bond being redeemed, an amount equal to the Cost of Redemption. “*Cost of Redemption*” means an amount equal to the present value, if positive, of the product of (a) the difference between (i) the yield, on the beginning date of the applicable interest period, of a U.S. Treasury obligation with a maturity similar to the applicable interest period, minus (ii) the yield on the redemption date, of a U.S. Treasury obligation with a maturity similar to the remaining maturity of the applicable interest period, and (b) the principal amount to be redeemed, and (c) the number of years, including fractional years, from the redemption date to the end of the applicable interest period. The yield on any U.S. Treasury obligation shall be determined by reference to Federal Reserve Statistical Release H.15 (519) “*Selected Interest Rates*.” For purposes of making present value calculations, the yield to maturity of a similar maturity U.S. Treasury obligation on the redemption date shall be deemed the discount rate. A “*Business Day*” shall mean any day other than a Saturday or Sunday or a legal holiday on which commercial lenders are authorized or required to be closed for business in Raleigh, North Carolina.

The Purchaser shall provide the Town with a written statement explaining the calculation of the Cost of Redemption due, if any, which statement shall, in absence of manifest error, be conclusive and binding on the Town.

(d) Interest on the outstanding principal amount of the 2021A Bond shall be payable on December 15, 2021 and on each June 15 and December 15 thereafter until maturity. Interest on the 2021A Bond shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. In the event of a late payment, interest shall continue to accrue on the principal balance outstanding at the interest rate applicable to the 2021A Bond. If any payment of interest on the 2021A Bond is more than five days late, or any payment of principal is not paid when due, or upon the occurrence of any other Event of Default by the Town hereunder, then interest shall accrue at the Default Rate described below until the default is cured. “*Event of Default*” means the occurrence of any of the following: (a) failure to make a payment of principal of the 2021A Bond when due; (b) failure to make a payment of interest on the 2021A Bond when due; or (c) the Town shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the 2021A Bond, the Bond Order or this Resolution on the part of

the Town to be performed, and such default shall continue for 30 days after written notice specifying such default and requiring same to be remedied shall have been given to the Town by the Purchaser.

(e) Principal of, premium, if any, and interest on the 2021A Bond shall be payable to the registered owner appearing on the registration records of the Registrar by wire transfer or by check, mailed to such registered owner at its address as it appears on such registration books and shall be received by the registered owner on the date such payment is due.

(f) If the Town defaults on its obligation to pay principal of and interest on the 2021A Bond, all amounts due on the 2021A Bond will bear interest at the Default Rate until the default is cured. The “*Default Rate*” shall be the greater of (A) the Prime Rate plus 300 basis points (3.00%), (B) the sum of the Overnight Bank Funding Rate plus 350 basis points (3.50%), and (C) 7.00%; provided that in no event shall the Default Rate exceed 20% per annum or the maximum allowable legal interest rate. The “*Overnight Bank Funding Rate*” shall mean, for any day, the rate comprised of both overnight federal funds and overnight Eurocurrency borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the Federal Reserve Bank of New York (“*NYFRB*”), as set forth on its public website from time to time, and as published on the next succeeding Business Day as the overnight bank funding rate by the NYFRB (or by such other recognized electronic source (such as Bloomberg) selected by the Purchaser for the purpose of displaying such rate); provided, that if such day is not a Business Day, the Overnight Bank Funding Rate for such day shall be such rate on the immediately preceding Business Day; provided, further, that if such rate shall at any time, for any reason, no longer exist, a comparable replacement rate determined by the Purchaser at such time (which determination shall be conclusive absent manifest error). If the Overnight Bank Funding Rate determined as above would be less than zero, then such rate shall be deemed to be zero. The rate of interest charged shall be adjusted as of each Business Day based on changes in the Overnight Bank Funding Rate without notice to the Town. “*Prime Rate*” shall mean the rate publicly announced by the Purchaser from time to time as its prime rate. The Prime Rate is determined from time to time by the Purchaser as a means of pricing some loans to its borrowers. The Prime Rate is not tied to any external rate of interest or index, and does not necessarily reflect the lowest rate of interest actually charged by the Purchaser to any particular class or category of customers. If and when the Prime Rate or the Overnight Bank Funding Rate changes, the Default Rate will change automatically without notice to the Town.

(g) The Town may modify the provisions of this Section 3 pursuant to a closing certificate in connection with the execution and delivery of the 2021A Bond with the consent of the Purchaser.

Section 4. Security for the Bond. The 2021A Bond shall be a special obligation of the Town and the principal of, redemption premium and interest on the 2021A Bond shall be payable solely from the sources identified in the Town Portion Bond Order and as set forth in the 2021A Bond. The uses of the sources set forth in the Town Portion Bond Order and the 2021A Bond do not constitute a pledge of the Town’s taxing power and the Town is not obligated to pay the principal of, interest, or any premium on, the 2021A Bond except from the sources identified in the Town Portion Bond Order and the 2021A Bond.

NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE TOWN ARE PLEDGED FOR THE PAYMENT OF THE PRINCIPAL OF, OR INTEREST OR ANY PREMIUM ON, THE 2021A BOND, AND NO OWNER OF THE 2021A BOND HAS THE RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER OF THE TOWN IN CONNECTION WITH ANY DEFAULT THEREON.

Section 5. Application of the Bond Proceeds. On the date of the initial issuance of the 2021A Bond, the Purchaser shall deliver the 2021A Bond proceeds to any account identified by the Town in a closing certificate delivered upon the execution and delivery of the 2021A Bond and the Town shall invest, or cause to be invested, such proceeds until used only in investments authorized by Section 159-30 of the General Statutes of North Carolina. Such 2021A Bond proceeds shall be applied solely as follows: (1) as

soon as practicable, for the costs of the Town Portion of the Current Project, and (2) within 60 days of the date of initial issuance, for payment of issuance costs related to the issuance of the 2021A Bond.

Section 6. Execution of the Bond. The 2021A Bond, issued as a single bond, shall be executed in the name of the Town by facsimile or manual signatures of the Town's Mayor or Town Manager and the Town Clerk and the Certificate of Approval of the Commission shall bear a facsimile or manual signature of the Secretary of the Commission or her designated assistant.

Section 7. Private Sale of Bond. The Town Council requests that the Commission sell the 2021A Bond at private sale without advertisement to the Purchaser in the form of a single registered bond bearing interest at 1.78% per annum and containing such provisions as set forth above and in the Purchase Agreement. The Town hereby approves the draft of the Purchase Agreement presented at this meeting and hereby authorizes and directs the Town's Mayor, the Town Manager, the Finance Officer, and the Town Clerk (collectively, the "*Authorized Officers*"), individually or collectively, as appropriate, to execute and deliver such Purchase Agreement in such final form that they, with the advice of counsel, deem appropriate.

Section 8. Authorization for Delivery of Bond. The Authorized Officers, individually or collectively, are hereby authorized and directed to cause the 2021A Bond to be prepared and, when it shall have been duly sold by the Commission, to execute the 2021A Bond and deliver the same to the Purchaser.

Section 9. Arbitrage and Tax Covenants. The Town covenants that it will not take or permit, or omit to take or cause to be taken, any action that would adversely affect the exclusion from gross income of the recipient thereof for federal income tax purposes of interest on the 2021A Bond and, if it should take or permit, or omit to take or cause to be taken, any such action, the Town will take or cause to be taken all lawful actions within its power necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof. The Town acknowledges that the continued exclusion of the 2021A Bond from the owner's gross income for federal income tax purposes depends, in part, on compliance with the arbitrage limitations imposed by Section 148 of the Code.

The Town covenants that it will comply with all the requirements of Section 148 of the Code, including the rebate requirements, and that it will not permit at any time any of the proceeds of the 2021A Bond or other funds under its control to be used, directly or indirectly, to acquire any asset or obligation, the acquisition of which would cause the 2021A Bond to be "*arbitrage bonds*" for purposes of Section 148 of the Code. The Town covenants that it will comply with the investment instructions in the Tax Certificate executed and delivered on the date hereof with respect to the 2021A Bond.

Section 10. Financial Covenant. The Town shall maintain on its books a "Beach Nourishment Fund." As of December 1 of each fiscal year, the Town will maintain an amount in the Beach Nourishment Fund at least equal to the greater of (A) the amount of taxes collected from the special tax assessed only in the Districts in the immediately preceding fiscal year and (B) \$1,000,000.

Section 11. Authorization for Other Acts. The Authorized Officers, individually or collectively, are further authorized and directed to take such action and to execute and deliver any such documents, deeds, certificates, undertakings, agreements or other instruments as they, with the advice of counsel, may deem necessary and appropriate to effect the transactions contemplated by the Town Portion Bond Order and this Resolution. The Town approves the form and content of the Purchase Agreement and the Interlocal, and the Purchase Agreement and the Interlocal are in all respects authorized, approved and confirmed. The Authorized Officers are hereby authorized, empowered and directed to execute and deliver the Purchase Agreement and the Interlocal, including necessary counterparts, in substantially the form and content of the Purchase Agreement and Interlocal made available to the Town Council, but with such changes, modifications, additions or deletions therein as they may deem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of the Town's approval of any and all changes,

modifications, additions or deletions therein from the form and content of the Purchase Agreement and the Interlocal made available to the Town Council. Such officers are hereby directed to take all actions necessary to effectuate the transaction set forth above, including taking any such actions or making any such changes as may be required by the Commission Approval, as may be necessary to carry out and comply with the provisions of the Purchase Agreement and the Interlocal as executed, and for the on-going administration of the Town Portion Bond Order, this Resolution and the 2021A Bond.

Section 12. Transfer Restrictions. Notwithstanding any other provisions of the Town Portion Bond Order or this Resolution to the contrary, the 2021A Bond shall not be transferred to any person other than a bank, insurance company or similar financial institution unless such transfer has been previously approved by the Commission.

The Purchaser or its assignees may assign or reassign all or any part of the 2021A Bond, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in the 2021A Bond, or making the 2021A Bond part of a pool of obligations without the consent of the Commission, so long as such assignment or reassignment is to (i) a bank, insurance company or similar institution or any other entity approved by the Commission; or (ii) a trustee for the purpose of issuing certificates of participation or other forms of certificates evidencing an undivided interest in the 2021A Bond, provided such certificates are sold only to a bank, insurance company or similar financial institution or other entity approved by the Commission.

Any reference to the Purchaser in this Resolution will include its successors or assigns made in accordance herewith.

The provisions of this paragraph may not be amended without the prior written consent of the Commission.

Section 13. Reporting Requirements for the Town. The Town hereby covenants to provide to the Purchaser at the same time the Town provides its annual audited financial statements to the Commission, but in no event later than 210 days after the end of the Town's fiscal year, (i) the Town's annual audited financial statements and (ii) a certification from the Town Manager or Finance Officer, or their respective designee, evidencing compliance with the covenant in Section 10 hereof. The Town shall also provide such other financial information and operating reports as may be reasonably requested by the Purchaser.

Section 14. Qualified Tax-Exempt Obligation. The Town designates the 2021A Bond 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 Code. The Town hereby represents that it reasonably expects that the Town, all entities issuing obligations on behalf of the Town and all subordinate entities of the Town will not issue in the aggregate more than \$10,000,000 of tax-exempt obligations (not counting private activity bonds except for qualified 501(c)(3) bonds as defined by the Code during calendar year 2021. The Town will not designate more than \$10,000,000 of qualified tax-exempt obligations pursuant to such Section 265(b)(3) during calendar year 2021.

Section 15. Supplemental Resolutions; Additional Parity Indebtedness. The Town may adopt resolutions supplemental hereto; provided, however, the Purchaser's prior written consent shall be required for any supplemental resolution that affects the terms or tax treatment of the 2021A Bond. The Town may not issue indebtedness that is on parity with the 2021A Bond without the Purchaser's prior written consent.

Section 16. Governing Law. This Resolution and the 2021A Bond are governed by and to be construed in accordance with the laws of the State of North Carolina.

Section 17. Dispute Resolution.

(a) *Arbitration of Disputes.* The Town and the Purchaser shall submit any and all disputes arising out of or relating to the 2021A Bond, a default thereunder or an Event of Default under this Resolution (a “Dispute”) to binding arbitration pursuant to and in accordance with the AAA Commercial Arbitration Rules and, where applicable, the Supplementary Rules for Large, Complex Commercial Disputes, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Such arbitration shall be conducted in a mutually acceptable location. Except as expressly set forth below, the procedures specified herein shall be the sole and exclusive procedures for the resolution of Disputes; provided, however, that the Town or the Purchaser may seek provisional or ancillary remedies, such as preliminary injunctive relief, from a court having jurisdiction, before, during or after the pendency of any arbitration proceeding. The institution and maintenance of any action for such judicial relief, or pursuit of provisional or ancillary remedies, shall not constitute a waiver of the right or obligation of any party to submit any claim or dispute to arbitration. Nothing herein shall in any way limit or modify any remedies available to the Purchaser under this Resolution or the 2021A Bond or otherwise at law or in equity.

(b) *Motion Practice.* In any arbitration hereunder, the arbitrator(s) shall decide any pre-hearing motions which are substantially similar to pre-hearing motions to dismiss for failure to state a claim or motions for summary adjudication.

(c) *Discovery.* Discovery shall be limited to the pre-hearing exchange of all documents which the Town and the Purchaser intend to introduce at the hearing and any expert reports prepared by any expert who will testify at the hearing.

(d) *Sequential Hearing Days.* At the administrative conference conducted by the American Arbitration Association (the “AAA”), the Town and the Purchaser and the AAA shall determine how to ensure that the hearing is started and completed on sequential hearing days. Potential arbitrators shall be informed of the anticipated length of the hearing and they shall not be subject to appointment unless they agree to abide by the parties’ intent that, absent exigent circumstances, the hearing shall be conducted on sequential days.

(e) *Award.* The award of the arbitrator(s) shall be accompanied by a statement of the reasons upon which such award is based.

(f) *Fees and Expenses.* The Town and the Purchaser shall each bear equally all fees and costs and expenses of the arbitration, and each shall bear its own legal fees and expenses and the costs of its experts and witnesses; provided, however, that if the arbitration panel shall award to a party substantially all relief sought by such party, then, notwithstanding any applicable governing law provisions, the other party shall pay all costs, fees and expenses incurred by the prevailing party and such costs, fees and expenses shall be included in such award.

(g) *Confidentiality of Disputes.* The entire procedure shall be confidential and none of the parties nor arbitrator(s) may disclose the existence, content, or results of any arbitration hereunder without the written consent of all parties to the Dispute, except (i) to the extent disclosure is required to enforce any applicable arbitration award or may otherwise be required by law and (ii) that either party may make such disclosures to its regulators, auditors, accountants, attorneys and insurance representatives. No conduct, statements, promises, offers, views, or opinions of any party involved in an arbitration hereunder shall be discoverable or admissible for any purposes in litigation or other proceedings involving the parties to the Dispute and shall not be disclosed to anyone not an agent, employee, expert, witness, or representative for

any of such parties.

(h) *CLASS ACTION WAIVER.* THE TOWN HEREBY WAIVES, WITH RESPECT TO ANY DISPUTE: (I) THE RIGHT TO PARTICIPATE IN A CLASS ACTION, PRIVATE ATTORNEY GENERAL ACTION OR OTHER REPRESENTATIVE ACTION IN COURT OR IN ARBITRATION, EITHER AS A CLASS REPRESENTATIVE OR CLASS MEMBER; AND (II) THE RIGHT TO JOIN OR CONSOLIDATE CLAIMS WITH CLAIMS OF ANY OTHER PERSON. The foregoing waiver is referred to herein as the “class action waiver”. The Purchaser and the Town agree that no arbitrator shall have authority to conduct any arbitration in violation of the class action waiver or to issue any relief that applies to any person or entity other than the Town and/or the Purchaser individually. The parties acknowledge that this class action waiver is material and essential to the arbitration of any claims and is non-severable from this Dispute Resolution section. If the class action waiver is voided, found unenforceable, or limited with respect to any claim for which the Town seeks class-wide relief, then this Dispute Resolution section (except for this sentence) shall be null and void with respect to such claim, subject to the right to appeal the limitation or invalidation of the class action waiver. However, this Dispute Resolution section shall remain valid with respect to all other claims and Disputes. The parties acknowledge and agree that under no circumstances will a class action be arbitrated.

(i) *Applicability of Federal Arbitration Act.* The 2021A Bond and related documents, including the Purchase Agreement, evidence transaction(s) in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this Dispute Resolution section.

Section 18. Repealer. All orders and resolutions and parts of orders and resolutions in conflict with this Resolution, if any, excluding the Town Portion Bond Order, shall be and the same are hereby repealed to the extent the conflict exists.

Section 19. Effectiveness of Resolution. This resolution shall be effective immediately upon its adoption by the Town Council.

STATE OF NORTH CAROLINA)
)
COUNTY OF DARE) SS:

I, *Sheila Kane*, Town Clerk of the Town of Southern Shores, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of a resolution entitled “**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA PROVIDING FOR THE ISSUANCE OF A SPECIAL OBLIGATION BOND (TOWN PORTION), SERIES 2021A**” adopted by the Town Council of the Town of Southern Shores, North Carolina, at a meeting held on the 5th day of October, 2021.

WITNESS my hand and the corporate seal of the Town of Southern Shores, North Carolina, this the ____ day of October, 2021.

[Seal]

Sheila Kane
Town Clerk
Town of Southern Shores, North Carolina

APPENDIX A

FORM OF 2021A BOND

THIS BOND IS SUBJECT TO CERTAIN TRANSFER RESTRICTIONS AS DESCRIBED HEREIN.

No. RA-1

\$ _____

**UNITED STATES OF AMERICA
STATE OF NORTH CAROLINA
TOWN OF SOUTHERN SHORES, NORTH CAROLINA**

SPECIAL OBLIGATION BOND (TOWN PORTION), SERIES 2021A

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>DATED DATE</u>
1.78%	December 15, 2026	October 13, 2021

REGISTERED OWNER: **PNC BANK, NATIONAL ASSOCIATION**

PRINCIPAL SUM: _____ **AND NO/100 DOLLARS**

THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA (the “*Town*”) acknowledges itself indebted and for value received hereby promises to pay to the Registered Owner named above, on the Maturity Date specified above, on surrender hereof, the Principal Sum shown above and to pay to the Registered Owner hereof interest thereon from the date of this Bond until it shall mature at the Interest Rate per annum specified above, payable on December 15, 2021 and on each June 15 and December 15 thereafter until the Maturity Date. Interest on this Bond shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. In the event of a late payment, interest shall continue to accrue on the principal balance outstanding at the applicable interest rate per annum set forth in the issuance resolution adopted by the Town Council on October 5, 2021 and effective on the date of its adoption related to this Bond (the “*Issuance Resolution*”). If any payment of interest on this Bond is more than five days late, or any payment of principal is not paid when due, or upon the occurrence of any other Event of Default by the Town under the Issuance Resolution, then interest shall accrue at the Default Rate described below until the default is cured. Principal of and interest on this Bond are payable in immediately available funds to the Registered Owner. All capitalized terms used in this Bond and not otherwise defined herein has the definition assigned to it in the Issuance Resolution.

The Default Rate shall be the greater of (A) the Prime Rate plus 300 basis points (3.00%), (B) the sum of the Overnight Bank Funding Rate plus 350 basis points (3.50%), and (C) 7.00%; provided that in no event shall the Default Rate exceed 20% per annum or the maximum allowable legal interest rate. The “*Overnight Bank Funding Rate*” shall mean, for any day, the rate comprised of both overnight federal funds and overnight Eurocurrency borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the Federal Reserve Bank of New York (“*NYFRB*”), as set forth on its public website from time to time, and as published on the next succeeding Business Day as the overnight bank funding rate by the NYFRB (or by such other recognized electronic source (such as Bloomberg) selected by the Purchaser for the purpose of displaying such rate); provided, that if such day is not a Business Day, the Overnight Bank Funding Rate for such day shall be such rate on the immediately

preceding Business Day; provided, further, that if such rate shall at any time, for any reason, no longer exist, a comparable replacement rate determined by the Purchaser at such time (which determination shall be conclusive absent manifest error). If the Overnight Bank Funding Rate determined as above would be less than zero, then such rate shall be deemed to be zero. The rate of interest charged shall be adjusted as of each Business Day based on changes in the Overnight Bank Funding Rate without notice to the Town. “*Prime Rate*” shall mean the rate publicly announced by the Purchaser from time to time as its prime rate. The Prime Rate is determined from time to time by the Purchaser as a means of pricing some loans to its borrowers. The Prime Rate is not tied to any external rate of interest or index, and does not necessarily reflect the lowest rate of interest actually charged by the Purchaser to any particular class or category of customers. If and when the Prime Rate or the Overnight Bank Funding Rate changes, the Default Rate will change automatically without notice to the Town.

This Bond is issued in accordance with the Registered Public Obligations Act, Chapter 159E of the General Statutes of North Carolina, and pursuant to the Article 7A of Chapter 159 of the General Statutes of North Carolina, a “Bond Order Authorizing the Issuance of Special Obligation Bonds of the Town of Southern Shores, North Carolina (Town Portion), Series 2021A” (the “*Town Portion Bond Order*”) adopted by the Town Council of the Town (the “*Town Council*”) on October 5, 2021 and effective on the date of its adoption and an issuance resolution (the “*Issuance Resolution*”) adopted by the Town Council on October 5, 2021 and effective on the date of its adoption. This Bond is being issued to provide funds to finance a portion of the construction of certain beach erosion control and flood and hurricane protection works in the Districts (as defined in the Issuance Resolution) and to pay issuance costs relating to this Bond.

If a Determination of Taxability or Event of Taxability occurs with respect to this Bond, as such terms are hereinafter defined, the fixed rate of interest shall be increased to and be calculated at the rate which will provide to the Purchaser the effective yield which it would have received if there had not been a Determination of Taxability or an Event of Taxability, such rate to be determined by the Purchaser (the “*Alternative Rate of Interest*”), and shall be payable from the Date of Taxability to such time as this Bond is paid in full. In such event, the Town also shall be required to pay to the Purchaser all amounts, if any, which may be necessary to reimburse the Purchaser for any interest, penalties or other charges assessed by the Internal Revenue Service and the Department of Revenue of the State of North Carolina against the Purchaser by reason of the Purchaser’s failure to include the interest on this Bond in its gross income for income tax purposes. The Town shall pay to the Purchaser the above mentioned Alternative Rate of Interest notwithstanding any transfer by the Purchaser or payment or redemption by the Town prior to the date such Determination of Taxability was made.

“*Event of Taxability*” shall mean any event, occurrence or situation, resulting from an action, or failure to act, by the Town, the effect of which is to cause the interest on this Bond to be includible in the gross income of the Purchaser for federal income tax purposes. A Determination of Taxability shall mean a determination that the interest on this Bond is included in gross income of the Purchaser for federal income tax purposes, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following: (a) the date on which the Purchaser is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that, as a consequence of an Event of Taxability, the interest on this Bond is included in the gross income of the Purchaser for federal income tax purposes; (b) the date on which the Town receives notice from the Purchaser that the Purchaser has been advised in writing that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to the Purchaser which asserts, in effect, that interest on this Bond received by the Purchaser is included in the gross income of the Purchaser for federal income tax purposes, as a result of an Event of Taxability; (c) the day on which the Town is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that there has been issued a public or private ruling of the Internal Revenue Service that the interest on this Bond is included in the gross income of the Purchaser for federal income tax purposes as a result of an Event of Taxability; or (d) the day on which the Town is advised in writing by counsel to

the Purchaser that a final determination, from which no further right of appeal exists, has been made by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the Town has been given written notice and an opportunity to participate and defend that interest on this Bond is included in the gross income of the Purchaser for federal income tax purposes, as a result of an Event of Taxability.

“*Date of Taxability*” shall mean the first date upon which interest on this Bond is included in the gross income of the Purchaser for federal income tax purposes as a result of an Event of Taxability or a Determination of Taxability.

This Bond is subject to mandatory redemption before maturity in part at the redemption price of 100% of the principal amount to be redeemed, without premium, on each December 15 in the years and in the amounts as follows:

YEAR	PRINCIPAL PAYMENT
2022	\$
2023	
2024	
2025	
2026*	

*Maturity

This Bond shall be subject to optional redemption prior to its stated maturity at the option of the Town in whole (but not in part) on any date upon giving the Purchaser not less than 15 Business Days prior written notice thereof and as provided in this paragraph. The redemption price of such Bond shall be equal to 100% of the principal amount of this Bond, plus interest accrued to the redemption date, plus, if so required by the Purchaser as compensation for the costs of this Bond being redeemed, an amount equal to the Cost of Redemption. “*Cost of Redemption*” means an amount equal to the present value, if positive, of the product of (a) the difference between (i) the yield, on the beginning date of the applicable interest period, of a U.S. Treasury obligation with a maturity similar to the applicable interest period, minus (ii) the yield on the redemption date, of a U.S. Treasury obligation with a maturity similar to the remaining maturity of the applicable interest period, and (b) the principal amount to be redeemed, and (c) the number of years, including fractional years, from the redemption date to the end of the applicable interest period. The yield on any U.S. Treasury obligation shall be determined by reference to Federal Reserve Statistical Release H.15 (519) “*Selected Interest Rates*.” For purposes of making present value calculations, the yield to maturity of a similar maturity U.S. Treasury obligation on the redemption date shall be deemed the discount rate. A “*Business Day*” shall mean any day other than a Saturday or Sunday or a legal holiday on which commercial lenders are authorized or required to be closed for business in Raleigh, North Carolina.

This Bond shall be a special obligation of the Town and the principal of, and interest and premium on, such Bond shall be secured solely by the sources set forth in the Town Portion Bond Order (such sources being defined herein as the “*Pledged Sources*”), which are as follows:

- (i) that portion of the 3% Room Occupancy Tax authorized by House Bill 882, 2001 Session, General Assembly of North Carolina, effective August 29, 2001, distributed by Dare County, North Carolina (the “*County*”) to the Town;

(ii) that portion of the 1% local option sales and use tax levied by the County pursuant to Article 39 of Chapter 105 of the General Statutes of North Carolina which are distributed to the Town;

(iii) that portion of the 1/2% local option sales and use tax levied by the County pursuant to Article 40 of Chapter 105 of the General Statutes of North Carolina which are distributed to the Town;

(iv) that portion of the two 1/2% local option sales and use tax levied by the County pursuant to Article 42 of Chapter 105 of the General Statutes of North Carolina which are distributed to the Town;

(v) the annual contributions distributed from the County to the Town to pay debt service under Section 4.3 of the Interlocal Agreement dated October 13, 2021 among the County, the Town, the Town of Kill Devil Hills, North Carolina, the Town of Kitty Hawk, North Carolina, and the Town of Duck, North Carolina; and

(vi) one or more additional sources of funds identified by the Town Council in future proceedings of the Town Council, so long as (i) the pledge of such sources does not constitute a pledge of the taxing power of the Town and (ii) the pledge of such sources is first approved by the Local Government Commission of North Carolina as set forth in Article 7A of Chapter 159 of the General Statutes of North Carolina.

The uses of the Pledged Sources do not constitute a pledge of the Town's taxing power and the Town is not obligated to pay the principal of, or interest or any premium on, this Bond except from the sources set forth in the Town Portion Bond Order and above.

NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE TOWN ARE PLEDGED FOR THE PAYMENT OF THE PRINCIPAL OF, OR INTEREST OR ANY PREMIUM ON, THIS BOND, AND NO OWNER OF THIS BOND HAS THE RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER OF THE TOWN IN CONNECTION WITH ANY DEFAULT THEREON.

It is hereby certified and recited that all conditions, acts and things required by the Constitution or statutes of the State of North Carolina to exist, be performed or happen precedent to or in the issuance of this Bond, exist, have been performed and have happened.

This Bond is not valid or obligatory for any purpose until the certification hereon has been signed by an authorized representative of the Local Government Commission.

This Bond shall not be transferred to any person other than a bank, insurance company or similar financial institution unless such transfer is permitted pursuant to the Issuance Resolution.

IN WITNESS WHEREOF, the Town has caused this Bond to bear the original or facsimile of the signatures of the Mayor and the Town Clerk of the Town, each acting on behalf of the Town and this Bond to be dated as of the Dated Date above.

Sheila Kane
Town Clerk

Tom Bennett
Mayor

Date of Execution: October 13, 2021

The issue hereof has been approved by of Local Government Commission
pursuant to Section 159-146(k) of the General Statutes of North Carolina, as amended.

Secretary of the Local Government Commission

FORM OF ASSIGNMENT

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

(Please print or typewrite Name and Address,
including Zip Code, and Federal Taxpayer Identification or
Social Security Number of Assignee)

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints

Attorney to register the transfer of the within Bond on the records kept for registration thereof,
with full power of substitution in the premises.

Dated: _____

Signature guaranteed by:

NOTICE: Signature must be guaranteed by
a Participant in the Securities Transfer
Agent Medallion Program ("*Stamp*") or
similar program.

NOTICE: The signature to this assignment must
correspond with the name as it appears on the
face of the within Bond in every particular,
without alteration, enlargement or any change
whatever.

TRANSFER FEE MAY BE REQUIRED