

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

Amy Miller
Finance Officer

FIRST AMENDMENT TO INSTALLMENT FINANCING CONTRACT

Dated as of May 17, 2016

between

TOWN OF NAGS HEAD, NORTH CAROLINA

and

PNC BANK, NATIONAL ASSOCIATION

Loan Number 605405474

FIRST AMENDMENT TO INSTALLMENT FINANCING CONTRACT
(Water Storage Tank Project –Loan No. 605405474)

This FIRST AMENDMENT TO INSTALLMENT FINANCING CONTRACT, dated as of May 17, 2016 (the “First Amendment”), between the TOWN OF NAGS HEAD, NORTH CAROLINA, a municipal corporation organized and existing under the laws of the State of North Carolina (the “Town”) and PNC BANK, NATIONAL ASSOCIATION, a national banking association, as successor to RBC Centura Bank (the “Bank”), supplementing and amending an Installment Financing Contract (Water Storage Tank Project), dated as of May 17, 2005 (the “Contract”), between the Town and the Bank;

WITNESSETH:

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

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

WHEREAS, the Town and the Bank have previously entered into the Contract, pursuant to which the Bank advanced funds to the Town in the amount of \$1,200,000 for the purpose of financing the construction of a 500,000 gallon water storage tank (the “Project”); and

WHEREAS, there is currently outstanding under the Contract a principal balance of \$260,000.00, which principal amount is currently subject to prepayment as provided in the Contract; and

WHEREAS, as security for the performance by the Town of its obligations under the Contract, the Town has executed and delivered a Deed of Trust and Security Agreement (Water Storage Tank Project), dated as of May 17, 2005 (the “Deed of Trust”), to the trustee named therein for the benefit of the Bank, granting a lien on the site of the Project; and

WHEREAS, the Town desires to refinance its payment obligations under the Contract by entering into this First Amendment with the Bank to reduce the interest rate payable under the Contract from 3.85% to 2.25%, and to make certain other changes to the Contract, all effective May 17, 2016; and

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

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

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

2. Interest Rate Modification. Effective May 17, 2016, the Contract shall be amended to provide that the interest rate payable on the outstanding Loan Amount shall be 2.25% per annum. The Payment Schedule attached as Exhibit B to the Contract is hereby replaced with a new Payment Schedule which is attached as Exhibit A hereto showing the Installment Payments to come due under the Contract from and after the effective date of this First Amendment and reflecting the new Loan Amount and interest rate.

3. Prepayment of Installment Payments. Effective May 17, 2016, Section 3.5 of the Contract is hereby deleted in its entirety and replaced with the following:

“3.5 Prepayment of Installment Payments. Upon at least thirty (30) business days’ prior written notice to the Bank, the Town has the right to prepay all or part of the Loan Amount. Notwithstanding anything contained herein to the contrary, upon any prepayment by the Town (whether voluntary, on default or otherwise), the Bank may, if it so elects, require the Town to pay the Bank as compensation for the costs of being prepaid an amount equal to the Cost of Prepayment. “Cost of Prepayment” 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 prepayment date, of a U.S. Treasury obligation with a maturity similar to the remaining maturity of the applicable interest period, and (b) the Loan Amount to be prepaid, and (c) the number of years, including fractional years, from the prepayment 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 prepayment date shall be deemed the discount rate. Costs of Prepayment shall also apply to any payments made after acceleration of payment of all Installment Payments under the Contract following an Event of Default under Section 11 hereof.”

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

(a) The representations and warranties contained in Section 8 of the Contract are hereby made and reaffirmed by the Town on and as of the date hereof, and all references to Contract therein shall include this First Amendment.

(b) There has been no material adverse change in the condition, financial or otherwise, of the Town since the date of the most recent financial reports of the Town received by the Bank.

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

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

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

(f) The Town hereby represents that the Project has been completed and has been occupied by the Town for the purposes described herein.

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

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

(b) a completed IRS Form 8038-G to be filed with the Internal Revenue Service;

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

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

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

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

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

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

11. E-Verify. The Bank 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 Bank 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 Bank will require that any subcontractor that it uses in connection with the transactions contemplated by this First Amendment certify to such subcontractor's compliance with E-Verify.

12. Iran Divestment List. As of the date of this First Amendment, the Trustee is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to North Carolina General Statutes § 143C-6A-4.

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

TOWN OF NAGS HEAD, NORTH CAROLINA

[SEAL]

By: _____
Amy Miller, Finance Officer

Attest:

Carolyn F. Morris, Town Clerk

PNC BANK, NATIONAL ASSOCIATION

By: _____
Casey L. Turner, Vice President

CERTIFICATE OF LOCAL GOVERNMENT COMMISSION

The foregoing First Amendment to 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.

Greg C. Gaskins, Secretary
North Carolina Local Government Commission

PAYMENT SCHEDULE

Installment Financing Contract Date: May 17, 2005 (amended May 17, 2016)

Town: Town of Nags Head, North Carolina

Loan Amount: \$260,000 (as of May 17, 2016)

Loan Number: 605405474

Interest Rate/Payment Terms:

Fixed Rate

Effective May 17, 2016, the interest rate is 2.25% per annum fixed. Interest is calculated and imposed on the unpaid balance of the Loan Amount based on the payment schedule described herein. The Loan Amount plus interest shall be repaid by Town to Bank in three annual installments of principal and interest in the amounts and on the dates set forth below.

<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total Payment</u>
05/17/2017	\$86,666.67	\$5,850.00	\$92,516.67
05/17/2018	86,666.67	3,900.00	90,566.67
05/17/2019	86,666.66	1,950.00	88,616.66

TOWN OF NAGS HEAD, NORTH CAROLINA

By: _____
Amy Miller, Finance Officer

Date: May 17, 2016