



Town of Holden Beach
Board of Commissioners
Public Hearing/Regular Meeting

Tuesday, January 18, 2021
5:00 PM

Holden Beach Town Hall
Public Assembly



**TOWN OF HOLDEN BEACH
BOARD OF COMMISSIONERS' PUBLIC HEARING/REGULAR MEETING
HOLDEN BEACH TOWN HALL – PUBLIC ASSEMBLY
TUESDAY, JANUARY 18, 2022 - 5:00 P.M.**

PUBLIC HEARING: Concerning the Approval of the Execution and Delivery of an Installment Financing Contract in a Principal Amount Not to Exceed \$3,300,000 in Order to Pay the Costs of Purchasing Property Located at 441 Ocean Boulevard West, Including the Pier (Pages 1 – 53)

REGULAR MEETING:

1. Invocation
2. Call to Order/ Welcome
3. Pledge of Allegiance
4. Agenda Approval
5. Approval of Minutes
 - a. Minutes of the Regular Meeting of December 21, 2021 (Pages 54 – 64)
6. Public Comments on Agenda Items
7. Discussion on No Wake Zone – Mayor Holden (Page 65)
8. Police Report – Chief Dixon (Page 66)
9. Discussion and Possible Action on Ordinance 22-01, An Ordinance Amending the Holden Beach Code of Ordinances, Chapter 92: Nuisances (Outside Lights) – Inspections Director Evans (Pages 67 – 70)
10. Discussion and Possible Action on Items Necessary to Proceed with Paid Parking – Chief Dixon & Lieutenant Dilworth (Pages 71 – 115)
 - a. Ordinance 22-02, An Ordinance Amending the Holden Beach Code of Ordinances, Title VII: Traffic Code
 - b. Ordinance 22-03, An Ordinance Amending the Holden Beach Code of Ordinances, Chapter 95: Streets (Section 95.05 Public Rights of Way)
 - c. Resolution 22-01, Resolution Amending the Holden Beach Fee Schedule
 - d. Services Agreement between the Town and Otto Connect


11. Discussion and Possible Action for the Town Manager to Proceed with Appropriate Steps to Convert the Town Owned Properties in the 800 Block of Ocean Boulevard West to a Lot to be Designated for Paid Parking ASAP – Commissioner Kwiatkowski (Page 116)
12. Discussion and Possible Approval of Resolution 22-02, Personnel Policy Administration – Town Manager Hewett (Pages 117 – 118)
13. Discussion and Possible Approval of Resolution 22-03, Resolution Regarding the 15th Anniversary of the GFWC of Holden Beach – Town Manager Hewett (Page 119)
14. Discussion and Board Endorsement of a Revised Proposed Pier Plan Document and Associated Resolution (Resolution 22-04) – Commissioner Kwiatkowski (Pages 120 – 136)
15. Discussion and Election of a Board Member to the Audit Committee – Town Clerk Finnell (Page 137)
16. Discussion and Selection of Audit Committee Members – Town Clerk Finnell (Pages 137 – 147)
17. Discussion and Possible Action on Termination of Lease for 796 Ocean Boulevard West – Town Manager Hewett (Page 148)
18. Public Comments on General Items
19. Town Manager's Report
20. Mayor's Comments
21. Board of Commissioners' Comments
22. Executive Session Pursuant to North Carolina General Statute 143-318.11(A)(5), To Instruct the Staff or Agent Concerning the Negotiation of the Price and Terms of Contracts Concerning the Acquisition of Real Properties - Commissioner Murdock
23. Adjournment

* The remote meeting will be livestreamed on the Town's Facebook page. Visit <https://www.facebook.com/holdenbeachtownhall/> to watch the livestream. Public comments can be submitted to heather@hbtownhall.com prior to 1:00 p.m. on January 18, 2022.



Date: January 10, 2022

To: Mayor Holden and Board of Commissioners
Town Manager-IN TURN

From: ^{PH} Christy Ferguson, Assistant Town Manager 

Re: Public Hearing on the Installment Financing Contract for the Purchase of the Pier Property

At the December BOC meeting, the board approved Resolution #21-18, prepared by our bond attorney firm, Parker Poe Adams & Bernstein, LLP. The resolution was a necessary component for the application to the Local Government Commission (LGC) to negotiate an installment financing contract to pay the cost of purchasing property located at 441 Ocean Boulevard W., and to call the required public hearing. Tonight's public hearing is on the installment financing contract and the bond counsel and financial advisors are available for any questions.

Attachment 1: Contract Terms


Truist Financial Corporation

Governmental Finance

2320 Cascade Point Blvd. Suite 600
 Charlotte, North Carolina 28208
 Phone (704) 954-1700
 Fax (704) 954-1799

January 7, 2022

Mr. David W. Hewett
 Town of Holden Beach, NC
 110 Rothschild St.
 Supply, NC 28462

Dear Mr. Hewett:

Truist Bank ("Lender") is pleased to offer this proposal for the financing requested by the Town of Holden Beach, NC ("Borrower").

PROJECT:	2022 Installment Financing Contract
AMOUNT:	\$3,300,000.00
TERM:	10 years 12 years 15 years
INTEREST RATE:	2.47% (10 year term) 2.58% (12 year term) 2.75% (15 year term)
TAX STATUS:	Taxable
PAYMENTS:	<u>Interest:</u> Semi-Annual <u>Principal:</u> Annual
INTEREST RATE CALCULATION:	30/360
SECURITY:	First lien security interest on the real property purchased, financed, constructed, or renovated with financing proceeds
PREPAYMENT TERMS:	Prepayable in whole at any time with a one percent prepayment penalty. As an alternate redemption provision, the Borrower may elect for the transaction to be non-callable for the first half of the term and callable at par thereafter.
RATE EXPIRATION:	March 08, 2022

**DOCUMENTATION/
LEGAL REVIEW**

FEE: \$5,900

FUNDING: Proceeds will be deposited into an account held at Lender at closing pending disbursement for project costs.

DOCUMENTATION: It will be the responsibility of the Borrower to retain and compensate bond counsel to appropriately structure and document the transaction in accordance with state and federal statutes. Lender will not require a survey or title insurance. Evidence of LGC approval is required when applicable. At a minimum, Lender shall require flood insurance, if applicable.

REPORTING

REQUIREMENTS: Lender will require financial statements to be delivered within 270 days after the conclusion of each fiscal year-end throughout the term of the financing.

Should we become the successful proposer, we have attached the form of a resolution that your governing board can use to award the financing to Lender. If your board adopts this resolution, then Lender shall not require any further board action prior to closing the transaction.

Lender shall have the right to cancel this offer by notifying the Borrower of its election to do so (whether this offer has previously been accepted by the Borrower) if at any time prior to the closing there is a material adverse change in the Borrower's financial condition, if we discover adverse circumstances of which we are currently unaware, if we are unable to agree on acceptable documentation with the Borrower or if there is a change in law (or proposed change in law) that changes the economic effect of this financing to Lender.

Costs of counsel for the Borrower and any other costs will be the responsibility of the Borrower.

We appreciate the opportunity to offer this financing proposal. Please call me at (803) 413-4991 with your questions and comments. We look forward to hearing from you.

Sincerely,

Truist Bank



Andrew G. Smith
Senior Vice President

Resolution Approving Financing Terms

WHEREAS, the Town of Holden Beach, NC ("Borrower") has previously determined to finance the 2022 Installment Financing Contract (the "Project"), and the Finance Director has now presented a proposal for the financing of such Project.

BE IT THEREFORE RESOLVED, as follows:

1. The Borrower hereby determines to finance the Project through Truist Bank ("Lender") in accordance with the proposal dated January 7, 2022, or as such proposal may be supplemented or amended by Lender and the Borrower verbally or in writing. The amount financed shall not exceed \$3,300,000.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed _____%, and the financing term shall not exceed _____ years from the date of closing.

2. All financing contracts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. All officers and employees of the Borrower are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement and Deed of Trust and such other documents as Lender may request. Pursuant to the Financing Agreement and Deed of Trust, (a) Lender will advance moneys to the Borrower to pay the costs of the Project and the financing costs related thereto, and the Borrower will repay such advance in installments, and (b) the Borrower will grant a lien on the site of the Project, or portions thereof, together with all fixtures and improvements located thereon, to Lender as security for such advance.

3. The Finance Director is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to the Finance Director's satisfaction. The Finance Director is authorized to approve changes to any Financing Documents previously signed by Borrower officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Director shall approve, with the Finance Director's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.

4. The Borrower intends that the adoption of this resolution will be a declaration of the Borrower's official intent to reimburse expenditures for the Project that are to be financed from the proceeds of the Lender financing described above. The Borrower intends that funds that have been advanced, or that may be advanced, from the Borrower's general fund or any other Borrower fund related to the Project, for costs of the Project may be reimbursed from the financing proceeds.

5. All prior actions of Borrower officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

Approved this ____ day of _____, 2022

By: _____

By: _____

Title: _____

Title: _____

SEAL

PARKER POE DRAFT 01/11/2022

INSTALLMENT FINANCING CONTRACT

BETWEEN

TRUIST BANK

AND

TOWN OF HOLDEN BEACH, NORTH CAROLINA

**DATED AS OF
FEBRUARY 28, 2022**

INSTALLMENT FINANCING CONTRACT

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and is not part of the Installment Financing Contract.)

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INSTALLMENT FINANCING CONTRACT

THIS INSTALLMENT FINANCING CONTRACT, dated as of February 28, 2022 (this “Contract”), is between **TRUIST BANK**, a North Carolina banking corporation (the “Bank”), and its successors and assigns, and the **TOWN OF HOLDEN BEACH, NORTH CAROLINA** (the “Town”), a municipal corporation of the State of North Carolina (the “State”), validly existing under and by virtue of the Constitution, statutes and laws of the State.

PREAMBLES

WHEREAS, the Town has the power, pursuant to the General Statutes of North Carolina to (1) enter into installment contracts in order to purchase, or finance or refinance the purchase of, real or personal property and to finance or refinance the construction or repair of fixtures or improvements on real property and (2) create a security interest in some or all of the property financed or refinanced to secure repayment of the purchase price;

WHEREAS, the Board of Commissioners of the Town (the “Board”) has determined that it is in the Town’s best interests to receive an advance of funds in an aggregate principal amount of \$3,300,000 (the “Advance”) under this Contract in order to finance the costs of the Project (as defined below), in exchange for which the Town will make Installment Payments and Additional Payments (as each term is defined below) on the terms set forth below;

WHEREAS, the Board has authorized, approved and directed the Town’s execution, performance and delivery of this Contract by a resolution passed and adopted by the Board on February 15, 2022;

WHEREAS, the Bank’s execution, delivery and performance of this Contract have been authorized, approved and directed by all necessary and appropriate action of the Bank;

WHEREAS, the Town’s obligation to make the Installment Payments and Additional Payments constitutes a limited obligation of the Town, payable solely from currently budgeted appropriations of the Town; does not constitute a general obligation or other indebtedness of the Town within the meaning of the Constitution of the State; and does not constitute a direct or indirect pledge of the faith and credit or taxing power of the Town within the meaning of the Constitution of the State;

WHEREAS, in order to secure the Town’s obligations under this Contract, the Town has executed and delivered a Deed of Trust, Security Agreement and Fixture Filing dated as of February 28, 2022 (the “Deed of Trust”) to the deed of trust trustee named therein for the benefit of the Bank, creating a lien on all of the Town’s right, title and interest in the real property comprising the Project (as defined below) and all improvements thereon (the “Mortgaged Property”); and

WHEREAS, 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 in any way directly or indirectly or contingently to secure any money due under this Contract;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants in this Contract contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. The following terms have the meanings specified below unless the context clearly requires otherwise:

“Additional Payments” means the reasonable and customary expenses and fees of the Bank, any expenses of the Bank in defending an action or proceeding in connection with this Contract and any taxes or any other expenses, including, but not limited to, licenses, permits, state and local income, sales and use or ownership taxes or property taxes which the Bank is expressly required to pay as a result of this Contract (together with interest that may accrue thereon in the event that the Town shall fail to pay the same, as set forth in this Contract).

“Advance” means the original aggregate principal amount equal to \$3,300,000 advanced by the Bank for the purposes provided in this Contract, as such amount advanced may be adjusted by amendment to this Contract.

“Bank” means Truist Bank, a state banking corporation, and its successors and assigns.

“Bank Representative” means any person or persons at the time designated to act on behalf of the Bank for purposes of performing any act on behalf of the Bank under this Contract by a written certificate furnished to the Town containing the specimen signatures of such person or persons and signed on behalf of the Bank by any vice president.

“Board” means the duly elected governing Board of Commissioners of the Town, or any successor to its functions.

“Business Day” means a day other than a Saturday or Sunday on which the Bank, at its principal corporate offices, is not required or authorized by law to remain closed.

“Closing Date” means February 28, 2022.

“Code” means the Internal Revenue Code of 1986, as amended, including regulations promulgated thereunder.

“Costs of Acquisition” are deemed to include the payment of, or the reimbursement to the Town for the following items:

- (1) obligations incurred or assumed in connection with the Project;
- (2) the cost of the Project; including, without limitation, the Bank’s fees and expenses incurred in connection with the delivery of the Advance to the Town, fees and expenses of the LGC, if any, legal fees and expenses, taxes, inspection costs, the cost of permit fees, filing and recording costs and survey expenses in connection with the granting of any lien on, or security interest in, the Mortgaged Property;
- (3) all other costs which are considered to be a part of the costs of the Project in accordance with generally accepted accounting principles payable by the Town under

this Contract, including sums required to reimburse the Town for advances made by the Town that are properly chargeable to the Project; and

(4) payment or prepayment of the principal components of the Installment Payments from any funds remaining in the Project Fund after the acquisition of the Project.

“Deed of Trust” means the Deed of Trust, Security Agreement and Fixture Filing dated as of February 28, 2022 from the Town to the deed of trust trustee named therein, for the benefit of the Bank and its successor and assignees, creating a lien in and to the Mortgaged Property, and as the same may be amended and supplemented from time to time as provided in the Deed of Trust, all of the terms, definitions, conditions and covenants of which are incorporated herein by reference and are made a part of this Contract as if fully set forth herein.

“Deed of Trust Trustee” means BB&T Collateral Service Corporation, as the trustee named in the Deed of Trust, and any successor trustee thereto.

“Event of Default” means any of the events of default as defined in Section 13.1.

“Fiscal Year” means a twelve-month period commencing on July 1 of any year and ending on June 30 of the immediately succeeding year, or such other twelve-month period which may subsequently be adopted as the Fiscal Year of the Town.

“Installment Payment Date” means each date that an Installment Payment is due and payable to the Bank in accordance with the terms of this Contract.

“Installment Payments” means, collectively, the payments made by the Town to the Bank as described in Article III and in the Payment Schedule attached hereto.

“Interest Rate” means 2.75% per annum, calculated on the basis of a 360 day year consisting of twelve-30 day months.

“LGC” means the Local Government Commission of North Carolina or any successor to its functions.

“Mortgaged Property” means, the real property located within the Town comprising the Project, and all improvements thereon, as more particularly described in Exhibit A to the Deed of Trust, as the same may be amended and supplemented from time to time so as to add real property thereto or to release real property therefrom.

“Net Proceeds” when used with respect to any proceeds from policies of insurance or construction bonds required under this Contract, proceeds of any condemnation award arising out of the condemnation of all or any portion of the Mortgaged Property, or the proceeds from any sale or lease of the Mortgaged Property pursuant to this Contract, the Deed of Trust or otherwise, means the amount remaining after deducting from the gross proceeds thereof all expenses (including, without limitation, attorneys’ fees and costs) incurred in the collection of such proceeds.

“Payment Schedule” means the schedule setting forth the Town’s Installment Payments which is attached hereto and incorporated herein by reference.

“Project” means the acquisition of property in the Town located at 441 Ocean Boulevard W., including the pier.

“Project Fund” means the fund of that name created pursuant to the Project Fund Agreement into which the Bank shall deposit the Advance.

“Project Fund Agreement” means the Project Fund Agreement dated as of February 28, 2022 between the Town and the Bank.

“Revenues” means all revenues derived from this Contract, including all Installment Payments and all Net Proceeds not applied to the replacement of the Mortgaged Property.

“State” means the State of North Carolina.

“Town” means the Town of Holden Beach, a municipal corporation of the State, validly existing under and by virtue of the Constitution, statutes and laws of the State, and any successor to its functions.

“Town Representative” means (1) the Mayor, Town Manager, or such other person or persons at the time designated to act on behalf of the Town for the purpose of performing any act under this Contract by a written certificate furnished to the Bank containing the specimen signatures of such person or persons and signed on behalf of the Town by the Mayor or the Town Manager of the Town, or (2) if any or all of the Town’s rights and obligations are assigned under this Contract, the person or persons at the time designated to act on behalf of the Town and the assignee by a written certificate similarly furnished and of the same tenor.

[END OF ARTICLE I]

ARTICLE II

THE ADVANCE

Section 2.1 Advance. The Bank hereby makes an advance to the Town of the Advance, and the Town hereby accepts from the Bank the Advance to be applied in accordance with the terms and conditions of this Contract. The Town will use the proceeds of the Advance to (1) finance the costs of the Project and (2) pay the costs incurred in connection with the execution and delivery of this Contract.

[END OF ARTICLE II]

ARTICLE III

INSTALLMENT PAYMENTS; ADDITIONAL PAYMENTS

Section 3.1 Amounts and Times of Installment Payments and Additional Payments.

(a) Subject to the provisions of Article XV, the Town shall repay the Advance in Installment Payments consisting of an interest component and a principal component, as applicable, on each Installment Payment Date in the amounts set forth in this Contract and the Payment Schedule attached to this Contract. The Town hereby approves the Advance in the amount of \$3,300,000 by the Bank to the Town pursuant to this Contract to be repaid by the Town in Installment Payments at an interest rate per annum equal to the Interest Rate.

(b) The Town shall pay each Installment Payment in the amounts and at the times set forth in the attached Payment Schedule, except as otherwise provided in this Contract. If an Installment Payment is due on any day which is not a Business Day, such Installment Payment is due on the next succeeding Business Day and the Town shall make such Installment Payment on such Business Day with no additional interest due thereon. Installment Payments will be sufficient in the aggregate to repay the principal amount of the Advance, together with interest thereon, as the same become due and payable. The Town shall pay any Additional Payments on a timely basis directly to the person or entity to which such Additional Payments are owed. All payments must be made in lawful currency of the United States.

Section 3.2 Place of Payments. All payments required to be made to the Bank hereunder shall be made to the Bank (1) at the address set forth in Section 16.1 in immediately available funds, (2) as wire transfers to the Bank on the payable date as directed by the Bank or (3) as may be otherwise directed in writing by the Bank.

Section 3.3 Late Charges. An Installment Payment that is not paid within 30 days of the due date thereof is subject to a late payment charge of 4% of the amount of the past due Installment Payment. Interest with respect to the principal component of such unpaid Installment Payment shall continue to accrue at the Interest Rate until paid.

Section 3.4 No Abatement. There will be no abatement or reduction of the Installment Payments or Additional Payments by the Town for any reason, including but not limited to, any failure by the Town to appropriate sufficient funds for the payment of the Installment Payments or Additional Payments, any defense, recoupment, setoff, counterclaims or any claim (real or imaginary) arising out of or related to the Mortgaged Property or the acquisition of the Project. The Town assumes and shall bear the entire risk of loss and damage to the Project from any cause whatsoever, it being the intention of the parties that the Installment Payments shall be made in all events unless the obligation to make such Installment Payments is terminated as otherwise provided herein.

Section 3.5 Prepayment of the Advance. The Town may prepay the Advance in whole at its option at any time at a prepayment price equal to 101% of the outstanding principal amount of the Advance to be prepaid, together with accrued interest and any Additional Payments due to the date of prepayment.

[END OF ARTICLE III]

ARTICLE IV

PROJECT FUND

The Bank and the Town hereby agree to comply with the terms of the Project Fund Agreement. [to consider how requisition will work given the need for immediate funds for simultaneous real estate acquisition]

[END OF ARTICLE IV]

ARTICLE V**[RESERVED]****[END OF ARTICLE V]**

ARTICLE VI

COVENANTS OF THE TOWN

Section 6.1 Care and Use. The Town shall use, and shall cause the use of, the Mortgaged Property in a careful and proper manner, in compliance with all applicable laws and regulations, and, at its sole cost and expense, shall service, repair and maintain the Mortgaged Property so as to keep the Mortgaged Property in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear excepted, and shall replace any part of the Mortgaged Property as may from time to time become worn out, unfit for use, lost, stolen, destroyed or damaged. Any and all additions to or replacements of the Mortgaged Property and all parts thereof shall constitute accessions to the Mortgaged Property and shall be subject to all the terms and conditions of this Contract and included in the term “*Mortgaged Property*” as used in this Contract.

Section 6.2 Inspection. The Bank has the right on reasonable prior notice to the Town to enter into and on the Mortgaged Property to inspect the Mortgaged Property and observe the use of the Mortgaged Property during normal business hours.

Section 6.3 Utilities. The Town shall pay or cause to be paid all charges for gas, water, steam, electricity, light, heat or power, telephone or other utility services furnished to or used on or in connection with the Mortgaged Property. There shall be no abatement of the Installment Payments on account of interruption of any such services.

Section 6.4 Taxes. The Town agrees to pay or cause to be paid when due any and all taxes relating to the Mortgaged Property and the Town’s obligations under this Contract including, but not limited to, all license or registration fees, gross receipts tax, sales and use tax, if applicable, license fees, documentary stamp taxes, rental taxes, assessments, charges, ad valorem taxes, excise taxes, and all other taxes, licensees and charges imposed on the ownership, possession or use of the Mortgaged Property by any governmental body or agency, together with any interest and penalties.

Section 6.5 Insurance. The Town shall maintain, or cause to be maintained, at its own expense, except as hereinafter provided, insurance with respect to its property and business against such casualties and contingencies in amounts not less than is customary in similar activities and similarly situated. Without limiting the foregoing, the Town shall maintain, or cause to be maintained, except as hereinafter provided, the following insurance:

(a) Insurance against loss and/or damage to the Mortgaged Property under a policy or policies covering such risks as are ordinarily insured against by similar facilities, in an amount not less than the lesser of (1) the full replacement cost of the Mortgaged Property, or (2) the prepayment price of all outstanding Installment Payments.

(b) Comprehensive general liability insurance protecting the Town and the Bank as their respective interests may appear, against liability for injuries to persons and/or property, occurring on, in or about the Mortgaged Property, in the minimum amount of \$1,000,000 liability to any one person for property damage, \$1,000,000 liability for personal injury for any one occurrence and an aggregate annual liability limit of not less than \$2,000,000, with a deductible amount of not more than \$100,000, to the extent commercially available at a reasonable price and as required by State law.

(c) Workers’ compensation insurance respecting all employees of the Town, if any, working at the Mortgaged Property in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; *provided, however*, that the

Town may be self-insured with respect to all or any part of its liability for workers' compensation, to the extent commercially available at a reasonable price and as required by State law.

(d) During the course of any construction or repair of improvements on the Mortgaged Property, builder's risk insurance, covering the total value of work performed and equipment, supplies and materials furnished in connection with such construction or repair of the improvements, to the extent commercially available at a reasonable price and as required by State law.

(e) National flood insurance, if applicable, in an amount acceptable to the Bank.

Each insurance policy obtained pursuant to this Section shall (1) be issued by a generally recognized and responsible insurance company qualified under the laws of the State to assume the risks covered by such policy, (2) with respect to the policies contained in paragraphs (a) and (d) above, contain standard mortgagee clauses naming the Bank as mortgagee, and (3) unless unavailable from the insurer, provide that such policy shall not be cancelled or modified in any way adverse to any insured party without at least 30 days' prior written notice to each insured party named therein. The Town shall have the right to receive the proceeds from any insurance maintained pursuant to this Section, subject, however, to the limitations of this Article VI.

In lieu of separate insurance policies, the Town may maintain blanket or umbrella insurance policies if such policies provide the same coverage required by this Section with protection against each risk not reducible by claims for other risks to amounts less than that specified in this Section.

In lieu of policies of insurance written by commercial insurance companies meeting the requirements of this Section, the Town may maintain a program of self-insurance or participate in group risk financing programs, risk pools, risk retention groups, purchasing groups and captive insurance companies, and in state or federal insurance programs.

Section 6.6 Risk of Loss. The Town shall bear all risk of loss or damage to and condemnation of the Mortgaged Property.

Section 6.7 Performance by the Bank of the Town's Responsibilities. Any performance required of the Town or any payments required to be made by the Town may, if not timely performed or paid, be performed or paid by the Bank, and, in such event, the Bank shall be immediately reimbursed by the Town for such payments or other performance by the Bank, with interest thereon at a rate equal to the Interest Rate applicable to the Advance.

Section 6.8 Financial Statements. The Town agrees that it will furnish the Bank current audited financial statements within 270 days of the end of each Fiscal Year, carrying an unqualified opinion of a certified public accountant and prepared in accordance with generally accepted accounting principles and presented on a consistent basis. The Town represents and warrants to the Bank that all financial statements which have been delivered to the Bank in connection with this Contract fairly and accurately reflect the Town's financial condition and there has been no material adverse change in the Town's financial condition as reflected in the financial statements since the date thereof.

[END OF ARTICLE VI]

ARTICLE VII

TITLE; LIENS

Section 7.1 Title. Title to the Mortgaged Property and any and all additions, repairs, replacements or modifications thereto shall be in the Town from and after the Closing Date. On the Closing Date, the Deed of Trust will be in full force and effect and no events of default shall have occurred thereunder. On payment or provision for payment in full of all of the Town's obligations hereunder, including the principal components of the Installment Payments then outstanding and all other payments due hereunder, the Bank or its assignee, at the Town's expense and request, shall cancel the Deed of Trust and this Contract will terminate.

Section 7.2 Liens. The Town shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, security interest, encumbrance or claim on or with respect to the Mortgaged Property or any interest therein, except for: (1) the lien and security interest of the Bank in the Mortgaged Property; (2) utility, access and other easements and rights of way, restrictions and exceptions which do not interfere with or impair the intended use of the Mortgaged Property; (3) any permitted encumbrances as described in Exhibit B to the Deed of Trust; and (4) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property of the general character of the Mortgaged Property and as do not materially impair title thereto or the ability of the Town to complete and operate the Project thereon. The Town shall promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, security interest, charge, encumbrance or claim if the same shall arise at any time. The Town shall reimburse the Bank for any expense incurred by the Bank in order to discharge or remove any such mortgage, pledge, lien, security interest, charge, encumbrance or claim.

[END OF ARTICLE VII]

ARTICLE VIII

DAMAGE, DESTRUCTION, AND CONDEMNATION; USE OF NET PROCEEDS

Section 8.1 *Damage, Destruction or Condemnation.* If, during the term of this Contract, (1) the Mortgaged Property or any portion of the Mortgaged Property is destroyed, or is damaged by fire or other casualty; (2) title to or the temporary or permanent use of the Mortgaged Property or any portion thereof or the estate of the Town or the Bank or its assignee in the Mortgaged Property or any portion thereof is taken under the power of eminent domain by any governmental authority; (3) a material defect in construction of the Mortgaged Property becomes apparent; or (4) title to or the use of all or any portion of the Mortgaged Property is lost by reason of a defect in title thereto, the Town shall continue to be obligated, subject to the provisions of Section 8.2, to pay the amounts specified in Section 3.1 at the respective times required.

Section 8.2 *Obligation of the Town to Repair and Replace the Mortgaged Property.* Subject to the provisions of Section 8.3, the Net Proceeds of any insurance policies, performance bonds, condemnation awards or Net Proceeds made available by reason of any occurrence described in Sections 6.5(a) or 8.1, shall be applied to the prompt repair, restoration, modification, improvement or replacement of the damaged or destroyed Mortgaged Property. 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, if located on the Mortgaged Property, to the Deed of Trust, and shall be included as part of the Mortgaged Property under this Contract.

Section 8.3 *Insufficiency of Net Proceeds; Discharge of the Obligation of the Town To Repair the Mortgaged Property.* If the Net Proceeds (plus any amount withheld therefrom by reason of any deductible clause) are insufficient to pay in full the cost of any repair, restoration, modification, improvement or replacement of the Mortgaged Property as required under Section 8.2, the Town may elect to proceed under either of the following options:

(a) The Town may 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 this Section, the Town is not entitled to any reimbursement therefor from the Bank nor is the Town entitled to any diminution of the amounts payable under Section 3.1; or

(b) The obligation of the Town to repair or replace the Mortgaged Property under Section 8.2 may be discharged by causing the Net Proceeds of such insurance policies, performance bonds or condemnation awards to be applied to the prepayment of all or any part of the then outstanding principal component of the Installment Payments as agreed to by the Bank or pursuant to Section 3.5 hereof. If the Net Proceeds exceed the amount necessary to prepay the then outstanding principal component of the Installment Payments, such excess shall be paid to or retained by the Town.

Within 120 days of the occurrence of an event specified in Section 8.1, the Town shall commence the repair, restoration, modification, improvement or replacement of the Mortgaged Property, or shall elect, by written notice to the Bank, to proceed under the provisions of paragraph (b) above. For purposes of this Section, “commence” shall include the retention of an architect or engineer in anticipation of repair, restoration, modification, improvement or replacement of the Mortgaged Property.

Section 8.4 *Cooperation of Bank.* The Bank shall cooperate fully with the Town in filing any proof of loss with respect to any insurance policy covering the events described in Section 8.1. In no event

shall the Bank or the Town voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim with respect to the Mortgaged Property without the written consent of the other.

[END OF ARTICLE VIII]

ARTICLE IX

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE TOWN

Section 9.1 *Representations, Warranties and Covenants of the Town.* The Town represents, warrants and covenants to and with the Bank (all such representations, warranties and covenants to be continuing) that:

(a) The Town is a municipal corporation of the State, validly organized and existing under the laws of the State and has all powers necessary to enter into the transactions contemplated by this Contract and the Deed of Trust and to carry out its obligations hereunder;

(b) The Town agrees that during the term of this Contract, it will take no action that would adversely affect its existence as a municipal corporation in good standing in the State, cause the Town to be consolidated with or merge into another political subdivision of the State or permit one or more other political subdivisions of the State to consolidate with or merge into it, unless the Town is the surviving entity or the entity created thereby expressly assumes in writing the Town's obligations hereunder;

(c) This Contract, the Deed of Trust and all other documents relating hereto and thereto, and the performance of the Town's obligations hereunder and thereunder, have been duly and validly authorized, executed and delivered by the Town and approved under all laws, regulations and procedures applicable to the Town including, but not limited to, compliance with public meeting and bidding requirements, and, assuming the due authorization, execution and delivery hereof and thereof by the other parties hereto and thereto, constitute valid, legal and binding obligations of the Town, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency and other laws affecting the enforcement of creditors' rights generally and such principles of equity as a court having proper jurisdiction may impose;

(d) Neither the execution and delivery of this Contract or the Deed of Trust or the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the terms and conditions hereof or thereof conflicts with or results in a breach of the terms, conditions, or provisions of any 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, nor conflicts with or results in a violation of any provision of applicable law or regulation governing the Town and no representation, covenant and warranty in this Contract is false, misleading or erroneous in any material respect;

(e) Except as disclosed to the Bank, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best of the Town's knowledge, threatened, against or affecting the Town challenging the validity or enforceability of this Contract, the Deed of Trust or any other documents relating hereto and the performance of the Town's obligations hereunder and thereunder, and compliance with the provisions hereof or thereof, under the circumstances contemplated hereby or thereby, does not and will not in any material respect conflict with, constitute on the part of the Town a breach of or default under, or result in the creation of a lien or other encumbrance on any property of the Town (except as contemplated herein or therein) pursuant to any agreement or other instrument to which the Town is a party, or any existing law, regulation, court order or consent decree to which the Town is subject;

(f) The estimated Costs of Acquisition are not less than \$3,300,000 and, other than building permits or other procedural requirements which are a prerequisite to the Project and the

approval of the LGC, which approval has been obtained, 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 and all other documents related hereto and thereto and the transactions contemplated hereby and thereby or if such approval is required, such approval has been duly obtained;

(g) The funds in the Project Fund and any investment earnings thereon will be used only for the purposes permitted in Article II;

(h) There are no liens or encumbrances on the Mortgaged Property other than the lien created by this Contract, the Deed of Trust and the other liens permitted thereby;

(i) The resolutions relating to the performance by the Town of this Contract, the Deed of Trust and the transactions contemplated hereby and thereby, have been duly adopted, are in full force and effect, and have not been in any respect modified, revoked or rescinded;

(j) The Project permits the Town to carry out its public functions that it is authorized and required by law to perform;

(k) The Town reasonably believes sufficient funds will be available to satisfy all of its obligations hereunder;

(l) The Town shall (1) cause its Town Manager to include the Installment Payments coming due in any Fiscal Year in the corresponding annual budget request and shall require the Town Manager to use his or her best efforts to obtain an appropriation therefor and (2) require that the deletion of such funds from the Town's final budget be made only pursuant to an express resolution of the Board which explains the reason for such action. This covenant on the part of the Town contained in this Section 9.1(l) shall be deemed to be and shall be construed to impose by law ministerial duties and it shall be the duty of each and every public official of the Town to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the Town to carry out and perform the covenant in this subparagraph and the agreements in this Contract to be carried out and performed by the Town; *provided, however*, that nothing contained in this Section 9.1(l) shall obligate the Town to so appropriate the funds included in such proposed budget;

(m) Funds appropriated by the Town to make Installment Payments due in any Fiscal Year shall be used for no other purpose;

(n) The Town agrees that during the term of this Contract, it will maintain the appropriate insurance required pursuant to this Contract and the Deed of Trust;

(o) The Town has or will have good and marketable title to the Mortgaged Property, not subject to any possibility of reverter, right of re-entry or other reversionary interest [to confirm]; and

(p) The Mortgaged Property is bordered on and has access to Ocean Boulevard West.

[END OF ARTICLE IX]

ARTICLE X**[RESERVED]****[END OF ARTICLE X]**

ARTICLE XI

INDEMNIFICATION

Section 11.1 Indemnification. To the fullest extent permitted by applicable law, the Town hereby agrees to indemnify, protect and save the LGC, the Bank and their respective officers, employees, directors, members and agents harmless from all liabilities, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys' fees that (1) arise in tort, in contract, under 42 U.S. Code §1983 or under the public bidding laws of the State or (2) arise out of, are connected with, or result, directly or indirectly, from the Project or any portion thereof, including, without limitation, the manufacture, selection, acquisition, delivery, possession, condition, construction, improvement, environmental or other condition, lease, use operation or return of the Project or any portion thereof. The indemnification arising under this Article XI shall continue in full force and effect notwithstanding the payment in full of all of the obligations under this Contract.

[END OF ARTICLE XI]

ARTICLE XII

DISCLAIMER OF WARRANTIES

Section 12.1 *No Representations by the Bank.* The Town acknowledges and agrees that the designs for the Project have not been made by the Bank, and the Bank has not supplied any plans or specifications with respect thereto and that the Bank (a) is not a manufacturer of, nor a dealer in, any of the component parts of the Project or similar projects; (b) has not made any recommendation, given any advice nor taken any other action with respect to (i) the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Project 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 Project or any component part thereof or any property or rights relating thereto at any stage of the construction thereof; (c) has not at any time had physical possession of the Project 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 Project 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) has been or will be properly designed, or will accomplish the result which the Town intends therefor, or (iii) is safe in any manner or respect.

Section 12.2 *Disclaimer by the Bank.* THE BANK MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE PROJECT OR ANY COMPONENT PART THEREOF TO THE TOWN OR IN REGARD TO ANY OTHER CIRCUMSTANCE WHATSOEVER WITH RESPECT THERETO, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATIONS WITH RESPECT TO: THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE; THE DESIGN OR CONDITION THEREOF; THE SAFETY, WORKMANSHIP OR QUALITY 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 BANK THEREIN; THE ABILITY THEREOF TO PERFORM ANY FUNCTION; THAT THE ADVANCE WILL BE SUFFICIENT (TOGETHER WITH ANY OTHER AVAILABLE FUNDS OF THE TOWN) TO PAY THE COST OF ACQUIRING THE PROJECT; OR ANY OTHER CHARACTERISTICS OF THE PROJECT, IT BEING AGREED THAT ALL RISKS RELATING TO THE PROJECT, THE COMPLETION 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 BANK ARE HEREBY WAIVED BY THE TOWN.

[END OF ARTICLE XII]

ARTICLE XIII

DEFAULT AND REMEDIES

Section 13.1 Definition of Event of Default. The Town shall be deemed to be in default hereunder on the happening of any of the following events of default (each, an “*Event of Default*”):

- (a) The Town fails to pay any Installment Payment or Additional Payment when due;
- (b) The Town fails to budget and appropriate money sufficient to pay all Installment Payments and the reasonably estimated Additional Payments coming due in the following Fiscal Year of the Town;
- (c) The Town deletes from its duly adopted budget any appropriation for the purposes specified in clause (b) above;
- (d) The Town fails to perform or observe any term, condition or covenant of this Contract on its part to be observed or performed, other than as referred to in clauses (a), (b) or (c) above, or of the Deed of Trust on its part to be observed or performed, or breaches any warranty by the Town herein or therein contained, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the Town by the Bank, unless the Bank shall agree in writing to an extension of such time prior to its expiration;
- (e) Any bankruptcy, insolvency or reorganization proceedings, or similar litigation is instituted by the Town, or a receiver, custodian or similar officer is appointed for the Town or any of its property, and such proceedings or appointments are not vacated or fully stayed within 90 days after the institution or occurrence thereof;
- (f) Any representation, warranty or statement made by the Town herein, in the Deed of Trust or in any other document executed or delivered in connection herewith or therewith is found to be incorrect or misleading in any material respect on the date made; or
- (g) An attachment, levy or execution is levied on or against any portion of the Mortgaged Property.

Section 13.2 Remedies on Default. On the occurrence of any Event of Default, the Bank may exercise any one or more of the following remedies as the Bank, in its sole discretion, shall elect:

- (a) Declare the unpaid portion of the then outstanding principal components of the Installment Payments immediately due and payable, without notice or demand to the Town;
- (b) Proceed by appropriate court action to enforce the performance by the Town of the applicable covenants of this Contract or to recover for any breach thereof;
- (c) Exercise or direct the Deed of Trust Trustee to exercise all the rights and remedies of a secured party or creditor under the Uniform Commercial Code of the State and the general laws of the State with respect to the enforcement of the security interest granted or reserved hereunder and under the Deed of Trust including, without limitation, to the extent permitted by law, re-enter and take possession of the Mortgaged Property without any court order or other process of law and without liability for entering the premises and to sell, lease, sublease or make other disposition of the same in a commercially reasonable manner for the account of the Town, and apply the proceeds of any such sale, lease, sublease or other disposition, after deducting all costs

and expenses, including court costs and attorneys' fees, incurred with the recovery, repair, storage and other sale, lease, sublease or other disposition, toward the balance due under this Contract and, thereafter, to pay any remaining proceeds to the Town;

(d) Enforce its security interest in the Mortgaged Property or direct the Deed of Trust Trustee to institute foreclosure proceedings under the Deed of Trust and sell the Mortgaged Property; or

(e) Pursue any other remedy available at law or equity to the Bank.

NOTWITHSTANDING ANY OTHER PROVISIONS HEREIN AND IN THE DEED OF TRUST, 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 BANK IN VIOLATION OF SECTION 160A-20 OF THE GENERAL STATUTES OF NORTH CAROLINA, AS AMENDED, 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 MONEY TO PAY IN FULL ALL REMAINING OBLIGATIONS UNDER THIS CONTRACT AND THE DEED OF TRUST.

Section 13.3 Further Remedies. This Contract shall remain in full force and effect and the Town shall be and remain liable for the full performance of all its obligations under this Contract. All remedies of the Bank are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy.

[END OF ARTICLE XIII]

ARTICLE XIV

ASSIGNMENT

Section 14.1 Assignment. Except pursuant to this Contract and the Deed of Trust, as applicable, the Town will not sell, assign, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance on or against any interest in this Contract or the Mortgaged Property (except for any other permitted encumbrances under Section 7.2) without the prior written consent of the Bank. The Town's interest in this Contract may not be assigned or transferred by operation of law.

The Bank may, at any time and from time to time, assign all or any part of its interest in the Mortgaged Property, the Project or this Contract, including, without limitation, the Bank's rights to receive Installment Payments payable to the Bank hereunder. Any assignment made by the Bank or any subsequent assignee shall not purport to convey any greater interest or rights than those held by the Bank pursuant to this Contract.

The Town agrees that this Contract may become part of a pool of obligations at the Bank's or its assignee's option. The Bank 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 without the consent of the LGC, although the Bank or any assignee shall give written notice to the LGC of any such assignment. Any assignment by the Bank may be only to a bank, insurance company, or similar financial institution or any other entity approved by the LGC. Notwithstanding the foregoing, no assignment or reassignment of the Bank's interest in the Deed of Trust 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 such assignee.

The Town further agrees that the Bank's interest in this Contract may be assigned in whole or in part on terms which provide in effect that the assignor or assignee will act as a collection and paying agent for any holders of certificates of participation in this Contract, provided the Town receives a copy of such agency contract and such collection and paying agent covenants and agrees to maintain for the full remaining term of this Contract a written record of each assignment and reassignment of such certificates of participation.

The Town agrees to execute any document reasonably required in connection with any assignment. Any assignor must provide notice of any assignment to the Town and the LGC, and the Town shall keep a complete and accurate record of all assignments as required by the Code. After the giving of any such notice, 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 acknowledgment shall in no way be deemed necessary to make the assignment effective.

[END OF ARTICLE XIV]

ARTICLE XV

LIMITED OBLIGATION OF THE TOWN

Section 15.1 Limited Obligation of the Town. 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 STATE 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 ANY PAYMENTS 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 ITS FAILURE TO MAKE ANY PAYMENT COMING DUE HEREUNDER WILL IN NO WAY OBTAIN 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 HEREUNDER, AND THE TAXING POWER OF THE TOWN IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY AMOUNTS DUE HEREUNDER. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED TO PLEDGE OR TO CREATE A LIEN ON ANY CLASS OR SOURCE OF THE TOWN'S FUNDS, NOR SHALL ANY PROVISION OF THIS CONTRACT RESTRICT THE FUTURE ISSUANCE OF ANY OF THE TOWN'S BONDS OR OBLIGATIONS PAYABLE FROM ANY CLASS OR SOURCE OF THE TOWN'S FUNDS. TO THE EXTENT OF ANY CONFLICT BETWEEN THIS ARTICLE XV AND ANY OTHER PROVISION OF THIS CONTRACT, THIS ARTICLE XV SHALL TAKE PRIORITY.

[END OF ARTICLE XV]

ARTICLE XVI

MISCELLANEOUS

Section 16.1 Notices. Any and all notices, requests, demands, and other communications given under or in connection with this Contract are only effective if made in writing and delivered either personally or mailed by certified or registered mail, postage prepaid, or return receipt requested, and addressed as follows:

IF TO THE TOWN: Town of Holden Beach, North Carolina
110 Rothschild Street
Holden Beach, North Carolina 28462
Attention: Town Manager

IF TO THE BANK: Truist Bank
5130 Parkway Plaza Boulevard
Charlotte, North Carolina 28217
Attention: Governmental Finance

The Town and the Bank may, by written notice to each other, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 16.2 Time. Time is of the essence of this Contract and each and all of its provisions.

Section 16.3 If Payment or Performance Date not a Business Day. If the date for making any payment, or the last date for performance of any act or the exercising of any right, as provided in this Contract, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Contract, and no interest shall accrue for the period after such nominal date.

Section 16.4 Waiver. No covenant or condition of this Contract can be waived except by the written consent of the Bank. Any failure of the Bank to require strict performance by the Town or any waiver by the Bank of any terms, covenants or contracts in this Contract shall not be construed as a waiver of any other breach of the same or any other term, covenant or contract in this Contract.

Section 16.5 Section Headings. All section headings contained in this Contract are for convenience of reference only and are not intended to define or limit the scope of any provision of this Contract.

Section 16.6 Entire Contract. This Contract, together with any schedules and exhibits attached to this Contract and Deed of Trust, constitutes the entire agreement between the parties, and this Contract shall not be modified, amended, altered or changed except as the Town and the Bank may subsequently agree in writing.

Section 16.7 Binding Effect. Subject to the specific provisions of this Contract, this Contract is binding on and inures to the benefit of the parties and their respective successors and assigns (including expressly any successor of the Bank).

Section 16.8 Covenants of Town not Covenants of Officials Individually. No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, agent or employee of the Town in such person's individual capacity, and neither the members of the Board nor any other officer of the Board or the Town

shall be subject to any personal liability or accountability by reason of the execution and delivery of this Contract. No member of the Board or any agent or employee of the Town shall incur any personal liability in acting or proceeding or if not acting or not proceeding, in good faith, reasonably and in accordance with the terms of this Contract.

Section 16.9 Severability. If any portion of this Contract is determined to be invalid under any applicable law, such provision is void and the remainder of this Contract continues in full force and effect.

Section 16.10 Governing Law. This Contract is to be construed, interpreted and enforced in accordance with, the laws of the State.

Section 16.11 Execution in Counterparts; Electronic Signatures. This Contract may be executed in any number of counterparts, by manual, facsimile, digital, electronic, or .pdf signatures, each of which will be deemed an original, but all of which taken together will constitute but one and the same instrument. An executed copy of this Contract delivered by facsimile, email, or other electronic means will be deemed to have the same legal effect as delivery of a manual signed copy of this Contract. This Contract and related documents may be sent and stored by electronic means.

Section 16.12 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 Contract certify to such subcontractor's compliance with E-Verify.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Town and the Bank have caused this Installment Financing Contract to be executed by their duly authorized officers as of the day and year first above written.

TOWN OF HOLDEN BEACH, NORTH CAROLINA

By: _____
David W. Hewett
Town Manager

ATTEST:

Heather Finnell
Town Clerk

[COUNTERPART SIGNATURE PAGE TO THE INSTALLMENT FINANCING CONTRACT,
DATED AS OF FEBRUARY 28, 2022, BETWEEN TRUIST BANK
AND THE TOWN OF HOLDEN BEACH, NORTH CAROLINA]

TRUIST BANK,
as Bank

By: _____
Andrew G. Smith
Senior Vice President

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

[COUNTERPART SIGNATURE PAGE TO THE INSTALLMENT FINANCING CONTRACT,
DATED AS OF FEBRUARY 28, 2022, BETWEEN TRUIST BANK
AND THE TOWN OF HOLDEN BEACH, NORTH CAROLINA]

This Contract has been approved under the provisions of
Section 159-152 of the General Statutes of North
Carolina, as amended.

By: _____
Sharon Edmundson
Secretary
Local Government Commission of North Carolina

PAYMENT SCHEDULE**[to come]**

PARKER POE DRAFT 01/11/2022

Prepared by: Scott E. Leo, Esq.
620 South Tryon Street, Suite 800
Charlotte, North Carolina 28202

Return to: Richard F. Green, Esq.
The Law Office of Richard F. Green, PLLC
2998 Holden Beach Rd SW
Holden Beach, North Carolina 28462

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

**DEED OF TRUST,
SECURITY AGREEMENT
AND FIXTURE FILING**

This **DEED OF TRUST AND SECURITY AGREEMENT** is made and entered into as of February 28, 2022 (this "*Deed of Trust*"), from the **TOWN OF HOLDEN BEACH, NORTH CAROLINA** (the "*Grantor*"), 110 Rothschild Street, Holden Beach, North Carolina 28462, to **BB&T COLLATERAL SERVICE CORPORATION**, as trustee (the "*Trustee*"), 5130 Parkway Plaza Boulevard, Charlotte, North Carolina 28217, for the benefit of **TRUIST BANK** (the "*Bank*"), 5130 Parkway Plaza Boulevard, Charlotte, North Carolina 28217 (the Bank and its successors and assigns hereinafter called the "*Beneficiary*").

PREAMBLES

WHEREAS, the Grantor and the Bank have entered into an Installment Financing Contract dated as of February 28, 2022 (the "*Contract*"), pursuant to which (1) the Bank has agreed to advance funds to enable the Grantor to finance the Project (as defined in the Contract), and (2) the Grantor has agreed to make the Installment Payments (as defined in the Contract) to the Bank;

WHEREAS, this Deed of Trust has been executed and delivered to secure (1) the obligations of the Grantor to make the Installment Payments, and (2) the payment and performance of all of the other liabilities and obligations, whether now existing or hereafter arising, of the Grantor to the Bank under the Contract, all such obligations and liabilities described in (1) or (2) above hereinafter collectively called the "*Indebtedness*";

WHEREAS, it is intended that this Deed of Trust comply with the provisions of Sections 45-67, *et. seq.* of the General Statutes of North Carolina, as amended; and for purposes of complying with such provisions, the Grantor hereby represents as follows:

(a) This Deed of Trust has been executed and delivered by the Grantor to secure present and future Indebtedness which may be incurred from time to time under the Contract;

(b) The maximum principal amount, including present and future Indebtedness, which may be secured by this Deed of Trust at any one time is \$5,000,000 (exclusive of advances that may be made under the terms of the Contract or this Deed of Trust for the protection of collateral, payment of taxes, impositions and assessments, attorneys' fees and costs and other sums which the Grantor is required by the terms of said instruments to repay), subject to the limitation that any increase must be authorized by the Grantor's governing board and at no time shall the total principal amount of Indebtedness secured hereby exceed said maximum principal sum of \$5,000,000 plus interest, attorneys' fees and costs and other sums for the protection of collateral, payment of taxes, impositions and assessments and similar sums advanced by the Beneficiary which the Grantor is obligated to repay hereunder, under the Contract, or otherwise;

(c) The period within which such future Indebtedness may be incurred shall expire not later than 30 years from the date of this Deed of Trust, and shall be effective without the recordation of an amendment, modification or supplement to this Deed of Trust; and

(d) It shall not be a requirement for any such future Indebtedness to be secured hereby that the Grantor sign an instrument or other notation stipulating that such Indebtedness is secured by this Deed of Trust, as no such future Indebtedness is required, under the Contract or otherwise, to be evidenced by a written instrument or notation; and

WHEREAS, the Grantor desires to secure (1) the payment of the Indebtedness and any renewals, modifications or extensions thereof, in whole or in part, and (2) the additional payments hereinafter agreed to be made by or on behalf of the Grantor, by a conveyance of the lands and security interests hereinafter described;

NOW, THEREFORE, in consideration of the above preambles and for the purposes aforesaid, and in further consideration of the sum of \$10.00 paid to the Grantor by the Trustee and other valuable consideration, receipt of which is hereby acknowledged, the Grantor has given, granted, bargained and sold, and by these presents does give, grant, bargain, sell and convey unto the Trustee, its heirs, successors and assigns, the following property (hereinafter collectively referred to as the "*Mortgaged Property*"):

(a) The real property lying and being in the Town of Holden Beach, North Carolina, and described below and in the legal description attached as Exhibit A hereto (hereinafter referred to as the "*Real Property*"):

SEE EXHIBIT A ATTACHED HERETO FOR THE REAL
PROPERTY DESCRIPTION, WHICH EXHIBIT A IS
SPECIFICALLY INCORPORATED HEREIN BY REFERENCE.

(b) All buildings, structures, additions and improvements of every nature whatsoever now or hereafter situated on or about the Real Property (the "*Improvements*").

(c) All gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, fire extinguishers and any other safety equipment required by governmental regulation or law, washers, dryers, water heaters, mirrors, mantels, air conditioning apparatus, refrigerating plants, refrigerators, cooking apparatus and appurtenances, window screens, awnings and storm sashes and other machinery, equipment or other tangible personal property, which are or shall be so attached to the Improvements, including all extensions, additions, improvements, betterments, renewals, replacements and substitutions, or proceeds from a permitted sale of any of the foregoing, as to be deemed to be fixtures under North Carolina law (collectively, the "*Fixtures*") and accessions to the Real Property and a part of the Mortgaged Property as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the Indebtedness. The location of the collateral described in this paragraph is also the location of the Real Property, and the record owner of the Real Property is the Grantor.

(d) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Real Property or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversion and reversions, remainder and remainders, whatsoever, in any way belonging, relating or appertaining to the Mortgaged Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Grantor.

(e) All leases affecting the Mortgaged Property or any part thereof and all income, rents and issues of the Mortgaged Property and the Improvements now or hereafter located thereon from time to time accruing (including without limitation all payments under leases or tenancies, proceeds of insurance, condemnation payments, tenant security deposits whether held by the Grantor or in a trust account, and escrow funds), and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Grantor of, in and to the same; reserving only the right to the Grantor to collect and apply the same (other than insurance proceeds and condemnation payments) so long as the Grantor is not in Default hereunder.

TO HAVE AND TO HOLD, the Mortgaged Property unto the Trustee, its heirs, successors and assigns, in fee simple forever, upon the trusts, terms and conditions and for the uses and purposes hereinafter set out;

And the Grantor covenants with the Trustee that the Grantor is lawfully seized of the Mortgaged Property in fee simple and has the right to convey the same in fee simple; that, except for Permitted Encumbrances (as defined in Exhibit B attached hereto and specifically incorporated herein by reference), the same are free and clear of all encumbrances, and that the Grantor will warrant and defend the title to the same against the claims of all persons whomsoever arising by, under or through the Grantor.

THIS CONVEYANCE IS MADE UPON THIS SPECIAL TRUST, that if the Grantor shall pay the Indebtedness in accordance with the terms of the Contract, together with interest thereon, and any renewals or extensions thereof in whole or in part, and shall comply with all the covenants, terms and conditions of this Deed of Trust, then this conveyance shall be null and void and may be cancelled of record at the request and at the cost of the Grantor.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, the Grantor hereby further covenants and agrees as follows:

ARTICLE I

Section 1.1. ***Payment of Indebtedness.*** The Grantor will pay the Indebtedness and all other sums now or hereafter secured hereby promptly as the same shall become due.

Section 1.2. ***Taxes, Liens and Other Charges.***

(a) The Grantor will pay, or cause to be paid, before the same become delinquent, all taxes, liens, assessments and charges of every character including all utility charges, whether public or private, already levied or assessed or that may hereafter be levied or assessed upon or against the Mortgaged Property; and will furnish the Beneficiary, on or before the final date whereon the same can be paid without penalty, evidence of the due and punctual payment of all such taxes, assessments and other fees and charges. Nothing contained herein shall require the payment or discharge of any such tax, lien, assessment or charge by the Grantor for so long as the Grantor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings provided that such proceedings shall prevent (1) the collection thereof or other realization thereof and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy the same or (2) the enforcement thereof, against the Grantor, the Trustee, the Beneficiary and the Mortgaged Property and so long as the Grantor first deposits with the Beneficiary in escrow such sums or other security as the Beneficiary may reasonably require to assure Beneficiary of the availability of sufficient monies to pay such tax, lien, assessment or charge if and when the same is finally determined to be due.

(b) The Grantor will not suffer any mechanic's, materialman's, laborer's, statutory or other lien to be created and to remain outstanding upon all or any part of the Mortgaged Property. The Grantor shall be entitled to discharge such liens by bonds or to contest any such liens pursuant to the same procedure as the Grantor is entitled to contest taxes in the preceding Subsection 1.2(a).

Section 1.3. ***Insurance.***

(a) The Grantor shall procure for, deliver to and maintain for the benefit of the Beneficiary, and shall deliver to the Beneficiary at the Beneficiary's request, during the term of this Deed of Trust, the insurance coverage required by the Contract.

(b) The Beneficiary is hereby authorized and empowered and, at its option, with participation of the Grantor, to adjust or compromise any loss under any insurance policies maintained pursuant to this Section 1.3, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to the Grantor and the Beneficiary jointly. The net proceeds from any such policy or policies shall be applied as provided in the Contract. The Beneficiary shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(c) For the portion of such insurance which is not self-insurance, at least 30 days prior to the expiration date of each policy maintained pursuant to this Section 1.3, a renewal or replacement thereof satisfactory to the Beneficiary shall be delivered by the Grantor to the

Beneficiary, if requested. In the event of the foreclosure of this Deed of Trust or any other transfer of title to the Mortgaged Property in extinguishment of the Indebtedness secured hereby, all right, title and interest of the Grantor in and to all insurance policies then in force shall pass to the purchaser or Beneficiary, as appropriate.

Section 1.4. **Condemnation.** In the event there hereafter occurs a condemnation (which term when used in this Deed of Trust shall include any damage or taking by any governmental authority or other entity having the power of eminent domain, and any transfer by private sale in lieu thereof), resulting in any damage or taking, either temporarily or permanently, of (1) the entire Mortgaged Property, (2) so much of the Mortgaged Property as causes the remainder of the Mortgaged Property to be in violation of any zoning laws, restrictive covenants or similar laws, regulations or restrictions affecting the Mortgaged Property, and the Grantor fails to cure such violation within 30 days of the condemnation or such violation does not prevent the Grantor's continued use of the Mortgaged Property in the ordinary course of its business or (3) so much of the Mortgaged Property that, in the sole reasonable opinion of the Beneficiary, the value of the Mortgaged Property is materially and adversely affected, then, and in any one of said events, the Grantor shall repay the Indebtedness in accordance with Article VIII of the Contract. To the extent permitted by law, the Beneficiary shall be entitled to receive all compensation, awards and other payments or relief thereof. The Beneficiary is hereby authorized, at its option, to commence, appear in and prosecute, in its own or in the Grantor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Grantor to the Beneficiary. After deducting from said condemnation proceeds all of its expenses incurred in the collection and administration of such sums, including reasonable attorneys' fees, the Beneficiary shall apply the net proceeds as provided in the Contract, subject to the terms of Article VIII of the Contract. Any balance of such monies then remaining shall be paid to the Grantor. The Grantor hereby agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds as the Beneficiary may require.

Section 1.5. **Care of Mortgaged Property.**

(a) The Grantor will keep the buildings, parking areas, roads and walkways, recreational facilities, landscaping and all other improvements of any kind now or hereafter erected on the Real Property or any part thereof in good condition and repair, will not commit or suffer any waste, and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) Except for structures existing on the date of this Deed of Trust, the Grantor will not remove or demolish nor alter the structural character of any improvement located on the Real Property without the prior written consent of the Beneficiary.

(c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, the Grantor will give immediate written notice thereof to the Beneficiary and the Trustee.

(d) Upon reasonable notice to the Grantor, the Beneficiary or its representative is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours. The Beneficiary agrees that any confidential information about the Grantor obtained in the exercise of its rights under this subparagraph (d) shall, except as otherwise required by law or regulation applicable to the Beneficiary, be maintained in a confidential manner and shall be used by the Beneficiary only for the protection of its rights and interests hereunder.

(e) The Grantor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority (including, but not limited to, all environmental and ecological laws and regulations) affecting the Mortgaged Property or any part thereof.

(f) If all or any part of the Mortgaged Property shall be damaged or destroyed as described in Section 8.1 of the Contract, the Grantor will promptly repair, restore, modify, improve or replace the Mortgaged Property or any remaining portions in accordance with Section 8.2 of the Contract or, under certain circumstances described in Section 8.3 of the Contract, apply any Net Proceeds (as defined in the Contract) as provided for in Section 8.3 of the Contract.

Section 1.6. ***Leases and Other Agreements Affecting Property.*** The Grantor will duly and punctually perform all terms, covenants, conditions and agreements binding upon the Grantor under any lease or any other agreement of any nature whatsoever which involves or affects the Mortgaged Property or any part thereof. The Grantor will furnish the Beneficiary with executed copies of all leases now or hereafter created upon the Mortgaged Property or any part thereof, and all leases now or hereafter entered into will be in form and substance subject to the prior written approval of the Beneficiary. The Grantor will not, without the express written approval of the Beneficiary (which approval will not be unreasonably withheld or delayed), modify, surrender or terminate, either orally or in writing, any lease now existing or hereafter created upon the Mortgaged Property or any part thereof, nor will the Grantor permit an assignment or a subletting by any tenant without the prior express written approval of the Beneficiary.

Section 1.7. ***Security Agreement and Fixture Filing.*** With respect to the Fixtures, this Deed of Trust is hereby made and declared to be a security agreement in favor of the Beneficiary encumbering each and every item of such property included herein as a part of the Mortgaged Property, in compliance with the provisions of the Uniform Commercial Code as enacted in the State of North Carolina (the "State"), and the Grantor hereby grants a security interest to the Beneficiary in and to all of such Fixtures. This Deed of Trust shall constitute a financing statement filed as a fixture filing in accordance with N.C. Gen. Stat. §25-9-502 (or any amendment thereto). For purposes of complying with the requirements of N.C. Gen. Stat. §25-9-502, the name of Grantor, as Debtor, and Beneficiary, as Secured Party, and the respective addresses of Grantor, as Debtor, and Beneficiary, as Secured Party, are set forth on the first page of this Deed of Trust. Grantor authorizes Beneficiary to effect any filing or recording of any additional financing statements relating to the Fixtures or amendments thereto where appropriate to perfect and continue the security interest in, and to protect and preserve, the Fixtures. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Deed of Trust shall be (1) as prescribed herein, or (2) as prescribed by general law, or (3) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at the Beneficiary's sole election. The mention in any such financing statement or statements of the rights in and to (a) the proceeds of any fire and/or hazard insurance policy, (b) any award in eminent domain proceedings for a taking or for loss of value, or (c) the Grantor's interest as lessor in any present or future lease or rights to rents, issues or awards growing out of the use and/or occupancy of the Mortgaged Property, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of the Beneficiary as determined by this Deed of Trust or affect the priority of the Beneficiary's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement or statements is solely for the protection of the Beneficiary in the event any court shall at any time hold with respect to the foregoing clauses (a), (b) or (c) of this sentence, that notice of the Beneficiary's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records.

Section 1.8. **Further Assurances; After Acquired Property.** At any time, and from time to time, upon request by the Beneficiary, the Grantor will make, execute and deliver or cause to be made, executed and delivered, to the Beneficiary and/or the Trustee and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Beneficiary, any and all such other and further deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the opinion of the Beneficiary, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve (1) the obligations of the Grantor under the Contract or this Deed of Trust and (2) the security interest created under this Deed of Trust as a first and prior lien upon and security title in and to all of the Mortgaged Property, subject to Permitted Encumbrances, whether now owned or hereafter acquired by the Grantor.

Section 1.9. **Expenses.** The Grantor will pay or reimburse the Beneficiary and the Trustee, upon demand therefor, for all reasonable attorneys' fees, costs and expenses actually incurred by the Beneficiary and the Trustee in any suit, action, legal proceeding or dispute of any kind in which the Beneficiary and/or the Trustee is made a party or appears as party plaintiff or defendant, affecting the Indebtedness secured hereby, this Deed of Trust or the interest created herein, or the Mortgaged Property, including, but not limited to, the exercise of the power of sale contained in this Deed of Trust, any condemnation action involving the Mortgaged Property or any action to protect the security hereof, but excepting therefrom any negligence or willful misconduct by the Beneficiary or any breach of this Deed of Trust by the Beneficiary; and all such amounts paid by the Beneficiary shall be added to the Indebtedness.

Section 1.10. **Estoppel Affidavits.** The Grantor, upon 10 days' prior written notice, shall furnish the Beneficiary a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Indebtedness and whether or not any offsets or defenses exist against such principal and interest.

Section 1.11. **Subrogation.** The Beneficiary shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the Indebtedness.

Section 1.12. **Books, Records, Accounts and Annual Reports.** The Grantor will keep and maintain or will cause to be kept and maintained proper and accurate books, records and accounts relating to the Mortgaged Property. The Beneficiary shall have the right from time to time at all times during normal business hours to examine such books, records and accounts at the office of the Grantor or such other person or entity maintaining such books, records and accounts and to make copies or extracts thereof as the Beneficiary shall desire.

Section 1.13. **Limit of Validity.** If from any circumstances whatsoever fulfillment of any provision of this Deed of Trust or the Contract at the time performance of such provision shall be due shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then *ipso facto* the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Deed of Trust or the Contract that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity.

Section 1.14. **Changes in Ownership.** The Grantor hereby acknowledges to the Beneficiary that (1) the identity and expertise of the Grantor were and continue to be material circumstances upon which the Beneficiary has relied in connection with, and which constitute valuable consideration to the Beneficiary for, the extending to the Grantor of the Indebtedness and (2) any change in such identity or expertise could materially impair or jeopardize the security for the payment of the Indebtedness granted to the Beneficiary

by this Deed of Trust. The Grantor therefore covenants and agrees with the Beneficiary, as part of the consideration for the extending to the Grantor of the Indebtedness, that the entire Indebtedness shall, at the option of the Beneficiary, become immediately due and payable, should the Grantor further encumber, pledge, convey, transfer or assign any or all of its interest in the Mortgaged Property or any portion thereof without the prior written consent of the Beneficiary or except as otherwise permitted herein.

Section 1.15. ***Use and Management of the Mortgaged Property.*** The Grantor shall not abandon the Mortgaged Property without the prior written consent of the Beneficiary.

Section 1.16. ***Acquisition of Collateral.*** The Grantor shall not acquire any portion of the personal property, if any, covered by this Deed of Trust, subject to any security interest, conditional sales contract, title retention arrangement or other charge or lien taking precedence over the security title and lien of this Deed of Trust without the prior written consent of the Beneficiary.

Section 1.17. ***Hazardous Material.***

(a) The Grantor represents, warrants and agrees that, except as previously disclosed to the Bank in writing: (1) the Grantor has not used or installed any Hazardous Material (as hereinafter defined) in violation of applicable Environmental Laws on, from or in the Mortgaged Property and to the Grantor's actual knowledge no other person has used or installed any Hazardous Material on, from or in the Mortgaged Property; (2) to the Grantor's knowledge, no other person has violated any applicable Environmental Laws (as hereinafter defined) relating to or affecting the Mortgaged Property or any other property owned by the Grantor except as previously disclosed to the Beneficiary; (3) to the best of the Grantor's knowledge the Mortgaged Property is presently in compliance with all applicable Environmental Laws, and there are no facts or circumstances presently existing upon or under the Mortgaged Property, or relating to the Mortgaged Property, which may violate any applicable Environmental Laws, and there is not now pending or, to the best knowledge of the Grantor, threatened any action, suit, investigation or proceeding against the Grantor or the Mortgaged Property (or against any other party relating to the Mortgaged Property) seeking to enforce any right or remedy against the Grantor or the Mortgaged Property under any of the Environmental Laws; (4) the Mortgaged Property shall be kept free of Hazardous Materials to the extent required by applicable Environmental Laws, and shall not be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, or process Hazardous Materials other than the processing of materials in the ordinary course of the Grantor's business as of the date hereof; (5) the Grantor shall not cause or permit the installation of Hazardous Materials in, on, over or under the Mortgaged Property or a Release (as hereinafter defined) of Hazardous Materials unto or from the Mortgaged Property or suffer the presence of Hazardous Materials in, on, over or under the Mortgaged Property in violation of applicable Environmental Laws; (6) the Grantor shall comply with Environmental Laws applicable to the Mortgaged Property, all at no cost or expense to the Beneficiary or the Trustee; (7) the Grantor has obtained and will at all times continue to obtain and/or maintain all licenses, permits and/or other governmental or regulatory actions necessary for the Mortgaged Property to comply with applicable Environmental Laws (the "Permits") and the Grantor will be and at all times remain in full compliance with the terms and provisions of the Permits; (8) to the best of the Grantor's knowledge there has been no Release of any Hazardous Materials on or from the Mortgaged Property in violation of applicable Environmental Laws, whether or not such Release emanated from the Mortgaged Property or any contiguous real estate which has not been abated and any resulting violation of applicable Environmental Laws abates; (9) the Grantor shall immediately give the Beneficiary oral and written notice in the event that the Grantor receives any notice from any governmental agency, entity, or

any other party with regard to Hazardous Materials on, from or affecting the Mortgaged Property and the Grantor shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Mortgaged Property in accordance with all applicable Environmental Laws.

(b) To the fullest extent permitted by applicable law, the Grantor hereby agrees to indemnify the Beneficiary and the Trustee and hold the Beneficiary and the Trustee harmless from and against any and all liens, demands, defenses, suits, proceedings, disbursements, liabilities, losses, litigation, damages, judgments, obligations, penalties, injuries, costs, expenses (including, without limitation, attorneys' and experts' fees) and claims of any and every kind whatsoever paid, incurred, suffered by, or asserted against the Beneficiary, the Trustee and/or the Mortgaged Property for, with respect to, or as a direct or indirect result of: (1) the presence of Hazardous Materials in, on or under the Mortgaged Property, or the escape, seepage, leakage, spillage, discharge, emission or Release on or from the Mortgaged Property of any Hazardous Materials regardless of whether or not caused by or within the control of the Grantor; (2) the violation of any Environmental Laws applicable to the Mortgaged Property or the Grantor, whether or not caused by or within the control of the Grantor; (3) the failure by the Grantor to comply fully with the terms and provisions of this Section 1.17; (4) the violation of any of the Environmental Laws in connection with any other property owned by the Grantor, which violation gives or may give rise to any rights whatsoever in any party with respect to the Mortgaged Property by virtue of any of the Environmental Laws, whether or not such violation is caused by or within the control of the Grantor; or (5) any warranty or representation made by the Grantor in subparagraph (a) of Section 1.17 being false or untrue in any material respect.

(c) In the event the Beneficiary has a reasonable basis to suspect that the Grantor has violated any of the covenants, warranties, or representations contained in this Section 1.17, or that the Mortgaged Property is not in compliance with the applicable Environmental Laws for any reason, the Grantor shall take such steps as the Beneficiary reasonably requires by written notice to the Grantor in order to confirm or deny such occurrences, including, without limitation, the preparation of environmental studies, surveys or reports. In the event that the Grantor fails to take such action, the Beneficiary may take such action as the Beneficiary reasonably believes necessary to protect its interest, and the cost and expenses of all such actions taken by the Beneficiary, including, without limitation, the Beneficiary's reasonable attorneys' fees, shall be added to the Indebtedness.

(d) For purposes of this Deed of Trust: (1) "*Hazardous Material*" or "*Hazardous Materials*" means and includes, without limitation, (A) solid or hazardous waste, as defined in the Resource Conservation and Recovery Act of 1980, as amended, or in any applicable state or local law or regulation, (B) hazardous substances, as defined in CERCLA, or in any applicable state or local law or regulation, (C) gasoline, or any other petroleum product or by-product, (D) toxic substances, as defined in the Toxic Substances Control Act of 1976, as amended, or in any applicable state or local law or regulation or (E) insecticides, fungicides, or rodenticides, as defined in the Federal Insecticide, Fungicide, and Rodenticide Act of 1975, as amended, or in any applicable state or local law or regulation, as each such Act, statute or regulation may be amended from time to time; (2) "*Release*" shall have the meaning given such term, in the Environmental Laws, including, without limitation, Section 101(22) of CERCLA; and (3) "*Environmental Law*" or "*Environmental Laws*" shall mean any "*Super Fund*" or "*Super Lien*" law, or any other federal, state or local statute, law, ordinance or code, regulating, relating to or imposing liability or

standards of conduct concerning any Hazardous Materials as may now or at any time hereafter be legally in effect, including, without limitation, the following, as same may be amended or replaced from time to time, and all regulations promulgated and officially adopted thereunder or in connection therewith: the Super Fund Amendments and Reauthorization Act of 1986, as amended (“SARA”); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”); The Clean Air Act, as amended (“CAA”); the Clean Water Act, as amended (“CWA”); The Toxic Substance Control Act, as amended (“TSCA”); the Solid Waste Disposal Act, as amended (“SWDA”), as amended by the Resource Conservation and Recovery Act, as amended (“RCRA”); the Hazardous Waste Management System; and the Occupational Safety and Health Act of 1970, as amended (“OSHA”). The obligations and liabilities of the Grantor under this Section 1.17 which arise out of events or actions occurring prior to the satisfaction of this Deed of Trust shall survive the exercise of the power of sale under or foreclosure of this Deed of Trust, the delivery of a deed in lieu of foreclosure of this Deed of Trust, the cancellation or release of record of this Deed of Trust, and/or the payment in full of the Indebtedness.

(e) The parties expressly agree that an event under the provisions of Section 1.17 which may be deemed to be a default under this Deed of Trust shall not be a default until the Grantor has received notice of such event. Further, in terms of compliance with future governmental laws, regulations or rulings applicable to environmental conditions, the Grantor shall be permitted to afford itself of any defense or other protection against the application or enforcement of any such law, regulation or ruling.

ARTICLE II

Section 2.1. **Events of Default.** The terms “Default”, “Event of Default” or “Events of Default,” wherever used in this Deed of Trust, shall mean any one or more of the following events:

- (a) Failure by the Grantor to pay any principal component or interest component of the Installment Payments when due as required by the Contract or by this Deed of Trust; or
- (b) Failure by the Grantor to duly observe or perform after notice and lapse of any applicable grace period any other term, covenant, condition or agreement of this Deed of Trust; or
- (c) Any warranty of the Grantor contained in this Deed of Trust, proves to be untrue or misleading in any material respect; or
- (d) The occurrence of any “Event of Default” under the Contract.

Section 2.2. **Acceleration upon Default, Additional Remedies.** In the event an Event of Default shall have occurred and is continuing, the Beneficiary may declare all Indebtedness to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter, the Beneficiary may:

- (a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Property, or any part thereof, in its own name or in the name of the Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Property, or part thereof or interest therein, increase

the income therefrom or protect the security hereof, and, with or without taking possession of the Mortgaged Property, sue for or otherwise collect the rents and issues thereof, including those rents and issues past due and unpaid, and apply the same, less costs and expenses of operation and collection including attorney's fees, upon any Indebtedness, all in such order as the Beneficiary may determine. The entering upon and taking possession of the Mortgaged Property, the collection of such rents and issues and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of Event of Default hereunder or invalidate any act done in response to such Default or pursuant to such notice of Default and notwithstanding the continuance in possession of the Mortgaged Property or the collection, receipt and application of rents and issues, the Trustee or the Beneficiary shall be entitled to exercise every right provided for in any instrument securing or relating to the Indebtedness or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, specially enforce any of the covenants hereof, or cause the Trustee to foreclose this Deed of Trust by power of sale; and

(c) Exercise any or all of the remedies available to a secured party under the Uniform Commercial Code of North Carolina or under any other applicable laws.

Notwithstanding any provision to the contrary in this Deed of Trust, no deficiency judgment may be rendered against the Grantor in any action to collect any of the Indebtedness secured by this Deed of Trust and the taxing power of the Grantor is not and may not be pledged directly or indirectly or contingently to secure any monies due or secured under this Deed of Trust.

Section 2.3. *Foreclosure by Power of Sale.* Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall notify the Trustee and shall deposit with the Trustee this Deed of Trust and such receipts and evidence of expenditures made and secured hereby as the Trustee may require.

Upon application of the Beneficiary, it shall be lawful for and the duty of the Trustee, and the Trustee is hereby authorized and empowered to expose to sale and to sell the Mortgaged Property at public auction for cash, after having first complied with all applicable requirements of North Carolina law with respect to the exercise of powers of sale contained in deeds of trust and upon such sale, the Trustee shall convey title to the purchaser in fee simple. After retaining from the proceeds of such sale just compensation for the Trustee's services and all expenses incurred by the Trustee, including the Trustee's commission not exceeding 1% of the bid and reasonable attorneys' fees for legal services actually performed, the Trustee shall apply the residue of the proceeds first to the payment of all sums expended by the Beneficiary under the terms of this Deed of Trust; second, to the payment of the Indebtedness and interest thereon secured hereby; and the balance, if any, shall be paid to the Grantor. The Grantor agrees that in the event of sale hereunder, the Beneficiary shall have the right to bid thereat. The Trustee may require the successful bidder at any sale to deposit immediately with the Trustee cash or certified check in an amount not to exceed 25% of the bid, provided notice of such requirement is contained in the advertisement of the sale. The bid may be rejected if the deposit is not immediately made and thereupon the next highest bidder may be declared to be the purchaser. Such deposit shall be refunded in case a resale is had; otherwise, it shall be applied to the purchase price.

Section 2.4. *Performance by the Beneficiary on Defaults by the Grantor.* If the Grantor shall Default in the payment, performance or observance of any term, covenant or condition of this Deed of

Trust, the Beneficiary may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by the Beneficiary in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Grantor to the Beneficiary with interest thereon at the rate provided in the Contract. The Beneficiary shall be the sole judge of the necessity for any such actions and of the amounts to be paid. The Beneficiary is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to the Grantor or any person in possession holding under the Grantor.

Section 2.5. ***Receiver.*** If an Event of Default shall have occurred and is continuing and as to Events of Default occurring under Subsections 2.1(b), (c) and (d) hereof continues uncured for a period of 30 days or more after written notice of such Event of Default is given by the Beneficiary to the Grantor, the Beneficiary, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right without notice and without regard to the adequacy or value of any security for the Indebtedness secured hereby or the solvency of any party bound for its payment, to the appointment of a receiver or receivers to take possession of and to operate the Mortgaged Property and to collect and apply the rents and issues thereof. The Grantor hereby irrevocably consents to such appointment, provided the Grantor receives notice of any application therefor. Any such receiver or receivers shall have all of the rights and powers permitted under the laws of the State and all the powers and duties of the Beneficiary in case of entry as provided in Section 2.2(a), and shall continue as such and exercise all such powers until the date of confirmation of sale of the Mortgaged Property unless such receivership is sooner terminated. The Grantor will pay to the Beneficiary upon demand all reasonable expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions of this Section; and all such expenses shall be secured by this Deed of Trust.

Section 2.6. ***Waiver of Appraisalment, Valuation, Stay, Extension and Redemption Laws.*** The Grantor agrees to the full extent permitted by law, that in case of a Default hereunder, neither the Grantor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisalment, valuation, stay, extension, homestead, exemption or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, or the absolute sale of the Mortgaged Property, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and the Grantor, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien hereof.

Section 2.7. ***Leases.*** The Beneficiary and the Trustee, or either of them, at their option and to the extent permitted by law, are authorized to foreclose this Deed of Trust and such right supersedes any rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by the Grantor, a defense to any proceedings instituted by the Beneficiary and the Trustee to collect the sums secured hereby.

Section 2.8. ***Discontinuance of Proceedings and Restoration of the Parties.*** In case the Beneficiary and the Trustee, or either of them, shall have proceeded to enforce any right, power or remedy under this Deed of Trust by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Beneficiary and the Trustee, or either of them, then and in every such case the Grantor and the Beneficiary and the Trustee, and each of them, shall be restored to their former positions and rights hereunder, and all rights, powers and

remedies of the Beneficiary and the Trustee, and each of them, shall continue as if no such proceeding had been taken.

Section 2.9. ***Remedies Not Exclusive.*** Subject to Article XIII of the Contract, the Trustee and the Beneficiary, and each of them, shall be entitled to enforce payment and performance of any Indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or any other agreement securing or relating to the Indebtedness secured hereby or any laws now or hereafter in force, notwithstanding some of the Indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect the Trustee's or the Beneficiary's right to realize upon or enforce any other security now or hereafter held by the Trustee or the Beneficiary, it being agreed that the Trustee and the Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by the Beneficiary or the Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to the Trustee or the Beneficiary is intended to be exclusive of any other remedy herein or by law provided or preclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any instrument securing or relating to the Indebtedness secured hereby to the Trustee or the Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Trustee or the Beneficiary and either of them may pursue inconsistent remedies.

Section 2.10. ***Waiver.*** No delay or omission of the Beneficiary or the Trustee to exercise any right, power or remedy accruing upon any Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such Default, or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary and the Trustee, and each of them, may be exercised from time to time and as often as may be deemed expedient by the Beneficiary and the Trustee, and each of them. No consent or waiver, expressed or implied, by the Beneficiary to or of any breach or Default by the Grantor in the performance of the obligations thereof hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or Default in the performance of the same or any other obligations of the Grantor hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary of its rights hereunder or impair any rights, powers or remedies consequent on any breach or Default by the Grantor.

Section 2.11. ***Suits to Protect the Mortgaged Property.*** The Beneficiary and the Trustee, and each of them, shall have the power (a) to institute and maintain such suits and proceedings as they may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or in violation of this Deed of Trust, with notice of commencement of such suits and proceedings to be given to the Grantor, (b) to preserve or protect their interest in the Mortgaged Property and in the rents and issues arising therefrom, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Beneficiary.

Section 2.12. ***Beneficiary May File Proofs of Claim.*** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the

Grantor, its creditors or its property, the Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Beneficiary allowed in such proceedings for the entire amount due and payable by the Grantor under this Deed of Trust at the date of the institution of such proceedings and for any additional amount which may become due and payable by the Grantor hereunder after such date.

ARTICLE III

Section 3.1. ***Successors and Assigns.*** This Deed of Trust shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, legal representatives, successors and assigns. Whenever a reference is made in this Deed of Trust to the Grantor, the Trustee or the Beneficiary such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of the Grantor, the Trustee or the Beneficiary, respectively.

Section 3.2. ***Terminology.*** All personal pronouns used in this Deed of Trust whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and Articles are for convenience only and neither limit nor amplify the provisions of this Deed of Trust itself, and all references herein to Articles, Sections or subsections thereof, shall refer to the corresponding Articles, Sections or subsections thereof, of this Deed of Trust unless specific reference is made to such Articles, Sections or subsections thereof of another document or instrument.

Section 3.3. ***Severability.*** If any provision of this Deed of Trust or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Deed of Trust and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Section 3.4. ***Applicable Law and Jurisdiction.*** This Deed of Trust shall be interpreted, construed and enforced according to the laws of the State. The exclusive forum and venue for all actions arising out of this Deed of Trust are with the North Carolina General Court of Justice in Brunswick County, North Carolina or the U.S. District Court for the Eastern District of North Carolina.

Section 3.5. ***Notices, Demands and Request.*** All notices, demands or requests provided for or permitted to be given pursuant to this Deed of Trust must be in writing and shall be deemed to have been properly given or served by personal delivery or by depositing in the United States Mail, postpaid and registered or certified return receipt requested, and addressed to the addresses set forth in the first paragraph of this Deed of Trust. All notices, demands and requests shall be effective upon personal delivery or upon being deposited in the United States Mail. However, the time period in which a response to any notice, demand or request must be given, if any, shall commence to run from the date of receipt of the notice, demand or request by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent. By giving at least 30 days written notice thereof, the Grantor, the Trustee or the Beneficiary shall have the right from time to time and at any time during the term of this Deed of Trust to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

Section 3.6. ***Appointment of Successor to the Trustee.*** The Beneficiary shall at any time have the irrevocable right to remove the Trustee herein named without notice or cause and to appoint a successor thereto by an instrument in writing, duly acknowledged, in such form as to entitle such written instrument to be recorded in this State, and in the event of the death or resignation of the Trustee named herein, the

Beneficiary shall have the right to appoint a successor thereto by such written instrument, and any Trustee so appointed shall be vested with the title to the Mortgaged Property and shall possess all the powers, duties and obligations herein conferred on the Trustee in the same manner and to the same extent as though such were named herein as the Trustee.

Section 3.7. **Trustee's Powers.** At any time, or from time to time, without liability therefor and without notice, upon written request of the Beneficiary and presentation of this Deed of Trust, and without affecting the personal liability of any person for payment of the Indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of the Mortgaged Property, the Trustee may (1) reconvey any part of the Mortgaged Property, (2) consent in writing to the making of any map or plat thereof, (3) join in granting any easement therein, or (4) join in any extension agreement or any agreement subordinating the lien or charge hereof.

Section 3.8. **Beneficiary's Powers.** Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Mortgaged Property not then or theretofore released as security for the full amount of all unpaid obligations, the Beneficiary may, from time to time and without notice (1) release any person so liable, (2) extend the maturity or alter any of the terms of any such obligation, (3) grant other indulgences, (4) cause to be released or reconveyed at any time at the Beneficiary's option, any parcel, portion or all of the Mortgaged Property, (5) take or release any other or additional security for any obligation herein mentioned, or (6) make compositions or other arrangements with debtor in relation thereto. The provisions of Section 45-45.1 of the General Statutes of North Carolina, as amended, or any similar statute hereafter enacted in replacement or in substitution thereof shall be inapplicable to this Deed of Trust.

Section 3.9. **Acceptance by Trustee.** The Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made of public record as provided by law.

Section 3.10. **Miscellaneous.** The covenants, terms and conditions herein contained shall bind, and the benefits and powers shall inure to the respective heirs, executors, administrators, successors and assigns of the parties hereto. Whenever used herein, the singular number shall include the plural, the plural the singular, and the term "**Beneficiary**" shall include any payee of the indebtedness hereby secured and any transferee or assignee thereof, whether by operation of law or otherwise.

Section 3.11. **Waiver of Rights.** By execution of this Deed of Trust and to the extent permitted by law, the Grantor expressly: (1) acknowledges the right to accelerate the Indebtedness and the power of sale given herein to the Trustee to sell the Mortgaged Property by non-judicial foreclosure upon default by the Grantor and without any notice other than such notice (if any) as is specifically required to be given by law or under the provisions of this Deed of Trust; (2) waives any and all rights of the Grantor to appraisal, dower, curtesy and homestead rights to the extent permitted by applicable law; (3) acknowledges that the Grantor has read this Deed of Trust and any and all questions regarding the legal effect of this Deed of Trust and its provisions have been explained fully to the Grantor and the Grantor has consulted with counsel of its choice prior to executing this Deed of Trust; and (4) acknowledges that all waivers of the aforesaid rights of the Grantor have been made knowingly, intentionally and willingly by the Grantor as part of a bargained for transaction.

[SIGNATURE PAGE BEGINS ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Grantor has caused this Deed of Trust to be executed under seal the day and year first above written.

TOWN OF HOLDEN BEACH, NORTH CAROLINA

[SEAL]

By: _____
David W. Hewett
Town Manager

ATTEST:

Heather Finnell
Town Clerk
Town of Holden Beach, North Carolina

STATE OF NORTH CAROLINA)
)
COUNTY OF)

I, a Notary Public of the County of _____ and State of North Carolina, certify that Heather Finnell (the "*Signatory*") personally came before me this day and acknowledged that she is the Town Clerk of the Town of Holden Beach, North Carolina (the "*Town*") and that by authority duly given and as the act of the Town, the foregoing instrument was signed in its name by the Town Manager of the Town.

I certify that the Signatory personally appeared before me this day, and
(check one of the following)

____ (I have personal knowledge of the identity of the Signatory); or
 ____ (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal
 identification with the Signatory's photograph in the form of:
 (check one of the following)
 ____ a driver's license or
 ____ in the form of _____); or
 ____ (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal, this the _____ day of February, 2022.

Notary Public

Print: Name: _____
[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: _____
 [NOTARY SEAL] (MUST BE FULLY LEGIBLE)

EXHIBIT A
REAL PROPERTY DESCRIPTION

Pier Property

[to come]

EXHIBIT B**PERMITTED ENCUMBRANCES**

Permitted Encumbrances shall include (a) all matters shown on record at the Brunswick County Register of Deeds affecting the Mortgaged Property as of the date hereof, (b) liens for taxes and assessments not then delinquent, (c) the Contract and as permitted by the Contract and (d) easements, rights-of-way and other such minor defects or restrictions as normally exist with respect to property of the same general character as the Mortgaged Property which will not impair the Grantor's intended use of the Mortgaged Property.



**TOWN OF HOLDEN BEACH
BOARD OF COMMISSIONERS
REGULAR MEETING
TUESDAY, DECEMBER 21, 2021 - 5:00 P.M.**

The Board of Commissioners of the Town of Holden Beach, North Carolina met for a Regular Meeting on Tuesday, December 21, 2021 at 5:00 p.m. in the Town Hall Public Assembly. Present were Mayor J. Alan Holden; Mayor Pro Tem Gerald Brown; Commissioners Brian Murdock, Mike Sullivan, Pat Kwiatkowski and Rick Smith; Commissioner-Elect Page Dyer; Town Manager David W. Hewett; Town Clerk Heather Finnell; Assistant Town Manager Christy Ferguson; Police Chief Jeremy Dixon; and Town Attorney Rick Green.

Mayor Holden asked for a moment of silence and called the meeting to order.

PLEDGE OF ALLEGIANCE

AGENDA APPROVAL

Motion by Mayor Pro Tem Brown to approve the agenda; second by Commissioner Smith; approved by unanimous vote.

APPROVAL OF MINUTES

Motion by Commissioner Murdock to approve the minutes of the Special Meeting of November 12, 2021 and the Regular Meeting of November 16, 2021; second by Mayor Pro Tem Brown; approved by unanimous vote.

PUBLIC COMMENTS ON AGENDA ITEMS

No comments were made.

PRESENTATION OF PLAQUE TO THE OUTGOING BOARD OF COMMISSIONERS BY TOWN MANAGER HEWETT

PRESENTATION OF PLAQUE TO COMMISSIONER SULLIVAN OF THE OUTGOING BOARD OF COMMISSIONERS BY MAYOR HOLDEN

BOARD OF COMMISSIONERS' COMMENTS

Commissioner Smith

- Commissioner Sullivan is a true professional. Enjoyed working with him. He was always available for support, whether they were on the same side or not they could at least agree sometimes to not agree. Will continue to reach out and talk to him. Thanked him for his for service.

Commissioner Murdock

- Thanked Commissioner Sullivan for his service to the Town. This is sometimes a really tough job to do. He is one of most tenacious people he has ever met. Always agreed to disagree, most of the time. Appreciates the service. It takes different kinds to run this place; most of the time they teamed up for the good of the Town. It was nice to serve with him.

Commissioner Kwiatkowski

- Feels like she is losing her kindred spirit. Still will bike down to see Commissioner Sullivan. Will miss the legal mind. Will miss someone who argues back with her to steer her when she is starting to get flustered. Knows she can still rely on him for his opinion.

Mayor Pro Tem Brown

- Thanked Commissioner Sullivan. He did a great job for the Town. Will miss him. Knows a lot of times they didn't see eye to eye, but that's politics. Thanked him for the job done because in his eyes he did what was in the best interest of the Town. That's what they all strive to do and should continue to do.

Commissioner Sullivan

- It's been a pleasure and privilege to serve four years on the Board. In the four years, he learned a lot about the Town. It's harder to run a town and have it run efficiently than it may seem on the surface. It has been a pleasure to work with the people who work for the Town. Thanked the voters for having the confidence in him that he could make the decisions that could affect their lives and the way they live. Hopes he did it in a manner that was acceptable. Thanked the Board. This Board and the Board prior had a lot of discussions and differences. Believes in his heart that the people who sit up here, sit up here hoping to do the best they can for the Town and the people who are here. For that reason, despite the fact they didn't always agree, he always respected them.
- On tonight's agenda we have an issue about parking. The decision on how we go forward will affect the Town well into the future. Had a vote on the pier last month. Prior to that vote we had a tremendous amount of meetings and discussions. People on the Board asked for the input from the community. We had more than 200 people respond to a survey. A vast majority didn't want to purchase the pier, but the vote was for the purchase of the pier. In the last few days we received the results of a survey from the HBPOA. Provided statistics from the survey. If you look at the packet, the commissioners are going to vote on parking. The current plan is to do away with post and rope and have parking in the adjacent property in the rights-of-way (ROW) next to people's property. He said clearly 90 – 93% are not in favor of either of those things. The Board asked for input and received it. Asked the Board to give deep thought before they vote on it and to consider the input from everyone who responded to the survey.
- Been a pleasure, honor and privilege. Enjoyed every minute of it.

JUDGE ARNOLD WILL PRESENT THE OATH OF OFFICE TO THE INCOMING BOARD OF COMMISSIONERS

Judge Arnold presented the oath of office to Mayor Holden and Commissioners Page Dyer, Rick Smith and Pat Kwiatkowski.

ELECTION OF MAYOR PRO TEMPORE

Mayor Pro Tem Brown said he enjoyed serving as the mayor pro tem. It has been an honor.

Mayor Pro Tem Brown nominated Rick Smith to be our next mayor pro tem; second by Commissioner Murdock; approved by unanimous vote.

DISCUSSION AND POSSIBLE APPROVAL OF 2022 BOARD OF COMMISSIONERS' MEETING SCHEDULE

Town Clerk Finnell explained all of the dates, except for the March date, reflect the third Tuesday of the month. The March date is for the second Tuesday of the month due to scheduling conflicts.

Motion by Mayor Pro Tem Smith to approve the 2022 Board of Commissioners' Meeting Schedule; second by Commissioner Brown; approved by unanimous vote.

DISCUSSION AND POSSIBLE DIRECTION ON RULES OF PROCEDURE FOR THE BOARD OF COMMISSIONERS

Motion by Mayor Pro Tem Smith that we adopt the Suggested Rules of Procedure for the Town of Holden Beach; second by Commissioner Brown.

Commissioner Kwiatkowski proposed that for Part VI for the agenda that the Board make a statement that failure to include adequate background information such that all Board members and the public can reasonably understand the reason behind the proposal shall be grounds for proposing the removal of the item from the agenda. She also requested that the packet is given to the commissioners at least four business days before the meeting and it is published on the same day. After discussion, Commissioner Kwiatkowski removed her requests.

The motion passed by unanimous vote.

DISCUSSION AND POSSIBLE BOARD ENDORSEMENT OF THE PIER PROPERTY PLAN DOCUMENT AND ACTION ON THE ASSOCIATED PROPOSED RESOLUTION (RESOLUTION 21-17)

Commissioner Kwiatkowski went over her proposed plan in the packet (hereby incorporated into the minutes). She said currently with the assumptions in the report, the Town should be able to manage this without raising taxes and without a special assessment. This is a summarization of what has been happening over several months with Board discussions. In addition, there are cost estimates from the contractors that we are lucky to have on our Board. She would like the Board to endorse the report as being accurate and a solid description of the intent of the Board for the pier property. Mayor Pro Tem Smith thanked Commissioner Kwiatkowski for her hard work on the report. It has always been the intention to do this without raising taxes.

Motion by Mayor Pro Tem Smith to endorse the pier property plan; second by Commissioner Brown; approved by unanimous vote.

Motion by Commissioner Kwiatkowski that the Board vote to adopt Resolution 21-17; second by Commissioner Murdock; approved by unanimous vote.

DISCUSSION AND POSSIBLE APPROVAL OF RESOLUTION 21-18, RESOLUTION OF THE TOWN, AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO

Carlos Manzano from Parker Poe and Andrew Carter from DEC Associates were not able to attend the meeting, but were on the phone to answer any questions. Assistant Town Manager Ferguson explained the resolution is a necessary component for the application to the Local Government Commission and to negotiate an installment financing contract to pay the cost of purchasing the pier property. The resolution also schedules the public hearing for January 18th.

Motion by Mayor Pro Tem Smith to approve Resolution 21-18 and setting of the public hearing for January 18, 2022 at 5:00 p.m.; second by Commissioner Brown; approved by unanimous vote.

POLICE REPORT – CHIEF DIXON

- Explained the Attempt to Locate category on the Police Report.
- In the budget they were approved for the transition to CAD (computer automated dispatch). They are deep into the project. Expecting to go live somewhere around mid-January. Will have more direct communications with the 911 center. Looking forward to it.
- It is Christmastime, do not drink and drive. Travel safely.
- There will be lane closures/traffic control on December 28th, 29th and 30th pertaining to the beach project.

PARKING TASKER

Mayor Pro Tem Smith said paid parking won't be perfect at first. As we move forward, we can make adjustments. He said he thinks everyone had the opportunity to look over the document from the Parking Committee. If things go correctly, we could get it started for 2022 season.

Motion by Commissioner Kwiatkowski to go through and vote on each section individually; second by Commissioner Murdock; approved by unanimous vote.

Commissioner Murdock talked about current parking issues. His goal is to create a reasonable number of parking spaces and dedicated areas close to public accesses. He said we will not get this right when we roll it out. Everything can be changed. We hired a vendor/consultant. We need to go along with experience.

Commissioner Kwiatkowski stated she understands wanting to control rights-of-way (ROW) parking during the paid parking season. She doesn't think the intent should be to do away with ROW parking, it should be to do away with non-designated ROW parking from the start of the parking season until the end from

9:00 a.m. – 5:00 p.m. and the current hours of 1:00 a.m. – 5:00 a.m. That way people can have friends over. She would like to keep post and rope.

Motion by Commissioner Kwiatkowski that the description of ROW parking that is given that there is no ROW parking, except in designated areas be changed to there is no ROW parking except in designated areas from whenever we start the season until the end of paid parking season and from 9:00 a.m. – 5:00 p.m.

Commissioner Kwiatkowski said if people do not do post and rope right, that is an enforcement issue. Commissioner Murdock said the discussion for post and rope was for it not to be placed in the ROW. People can place it on their property line if they want. That was the recommendation. Jim Varner from Otto Connect is in attendance and available to comment. Mr. Varner said Commissioner Kwiatkowski's point is well taken. He said the issue they see in other towns is that when you allow parking in the ROW anytime, it gets abused. He said when you have parties, there are paid parking lots during the day, that are free after 5:00 p.m. The intent is to have those locally available to use for people after hours. Commissioner Kwiatkowski said she disagrees that there are sufficient areas that would take care of some of the stretches of the island. She is trying to avoid the offseason problems. Mr. Varner said they do have towns that issue special parking permits for events. Town Manager Hewett asked how the delineation of designated ROW parking spaces is made. Mr. Varner explained the committee talked about identification of specific ROW areas that allowed for parking. He provided an example. The Board would make the decision on where the parking will be accepted as a dedicated area. He would make suggestions on what is possible. He has not sat down with staff yet to go through each street. Commissioner Kwiatkowski said she has reservations on allowing parking on side streets that only have private accesses. There are a number of streets proposed where that is the case. Mayor Pro Tem Smith said he believes that the only vehicles allowed to park by the private accesses are low speed vehicles. Those are usually owned by people who own the access. Commissioner Kwiatkowski said she disagreed with making those designated areas. Parking by private accesses was discussed.

Mayor Holden referred to the Rules of the Procedure. He said the Board is in violation of the rules on discussion and asked if the Board wants him to enforce them.

Commissioner Kwiatkowski said if you go back to her first motion it would be that ROW be from 9:00 a.m. – 5:00 p.m. during the period of time that we have paid parking in place.

Commissioner Murdock said he had seconded the motion.

The motion failed by a 1 – 4 vote. Commissioner Kwiatkowski voted for the motion and Mayor Pro Tem Smith and Commissioners Brown, Murdock and Dyer voted in the negative.

Motion by Commissioner Kwiatkowski that we actually establish the designated parking in lots, on-street and ROW in a separate meeting. No second was made.

Commissioner Murdock said he thinks on the advice of Mr. Varner, he will meet with staff to go over the streets. Town Manager Hewett stated he thinks the consideration of what is park/no-park is a Board decision. Staff can come up with a list and bring it back to the Board. Mr. Varner said all of the locations were identified on the map, even though they were not included in the document. He recommended that

the ordinances need to go to legal for final language and moving forward with each parking area. He and staff can look at each area. Then the ordinances and the parking area recommendations detailed on a map could be brought back to the Board for final approval. If there is intent to move forward with paid parking, he and Town Manager Hewett need to work on the contract and logistics. If the Board would like to get started next season they need to get started.

Motion by Mayor Pro Tem Smith to ask the Town staff to work with the vendor to get that information and get it back to the Board; second by Commissioner Brown; approved by unanimous vote.

Commissioner Kwiatkowski explained she does not agree with including March in the paid parking dates.

Motion by Commissioner Kwiatkowski that we not include March in the paid parking period, that April - October should be sufficient.

Commissioner Kwiatkowski restated her motion to we start paid parking April 1st and end it October 31st, second by Commissioner Murdock.

Commissioner Murdock said we could try that; it could be changed if needed. Mayor Pro Tem Smith agreed. This is our first stab, it can be adjusted. Mr. Varner commented that several towns are now moving to full year paid parking. It wasn't a statement of revenue; it was a statement of parking management.

The motion passed by unanimous vote.

Commissioner Kwiatkowski stated this is supposed to be about parking for the beach. She has no issue with the season pass for two vehicles, but she disagrees with a trailer being part of that. She believes vehicle plus trailer should be a per day fee and there shouldn't be the ability to have a \$250 season long pass. The parking is supposed to be slated for beach access.

Motion by Commissioner Kwiatkowski that that is struck (that a trailer can count for one of two to get a season pass for \$250). No second was made.

Commissioner Kwiatkowski would like to hear from the chief in January that he is in agreement with the enforcement policies. Mr. Varner said he usually includes police and his staff in the process to make sure their policies are consistent with what the chief and town manager are happy with.

Motion by Mayor Pro Tem Smith to move forward with implementation of paid parking. Commissioner Murdock added with the Parking Committee's recommendations with the changes we just made. Mayor Pro Tem Smith agreed.

Town Manager Hewett stated his understanding is that what staff will bring back to the Board for their determination in January is the specific delineation of the parking areas that it will be rolled out for and the chief will bring his perspective back on how enforcement will work. Mayor Pro Tem Smith agreed.

The motion passed by a 4 – 1 vote with Mayor Pro Tem Smith and Commissioners Brown, Murdock and Dyer voting for the motion and Commissioner Kwiatkowski voting in the negative.

DISCUSSION AND POSSIBLE APPROVAL OF ORDINANCE 21-35, ORDINANCE AMENDING ORDINANCE 21-14, THE REVENUES AND APPROPRIATIONS ORDINANCE FOR FISCAL YEAR 2021 – 2022 (AMENDMENT NO. 9)

Town Manager Hewett explained we have already achieved our forecasted budget for occupancy taxes for the year. It is necessary to forecast what it will be at the end of the fiscal year. The proposed budget amendment forecasts an \$830,000 increase in collection of occupancy tax due to the steady number of rentals. The amendment recognizes the required transfer of the one penny of the increase to the county, in addition to identifying expenses associated to the Lockwood Folly Dredging Project in the amount of \$230,000 and the re-upping of the Ward and Smith contract in the amount of \$70,000 through the end of the fiscal year. Also proposed is a bulkhead repair on Sailfish and the increase of cans for the Waste Industries second pickup in the amount of \$20,000. Out of the \$830,000, \$476,000 is direct expenses with \$353,000 being in affect returned to fund balance.

Motion by Mayor Pro Tem Smith to approve Ordinance 21-35 Amending Ordinance 21-13; second by Commissioner Brown; approved by unanimous vote.

DISCUSSION AND POSSIBLE ACTION ON WARD AND SMITH ENGAGEMENT LETTER

Assistant Town Manager Ferguson said Ward & Smith, in conjunction with the Ferguson Group represent the Town in advocacy matters. Currently it is for beach nourishment, Lockwood Folly Inlet maintenance and dredge material disposal sites. This contract includes three additional areas to be determined based on needs. One of them they have been working with us on over the last few months is stormwater issues on the boulevard. The 2022 contract includes a monthly retainer of \$9,225, plus out-of-pocket expenses. The contract is for a year and the budget is through June 30th.

Motion by Mayor Pro Tem Smith to approve the Ward and Smith contract for 2022 and direct our town manager to executive the contract; second by Commissioner Brown; approved by unanimous vote.

DISCUSSION AND POSSIBLE ACTION ON THIRD AMENDMENT TO SOLID WASTE AND RECYCLABLES COLLECTION, TRANSPORTATION AND DISPOSAL AGREEMENT BETWEEN THE TOWN AND GFL ENVIRONMENTAL

Town Clerk Finnell explained the amendment would extend the initial term by two years, with the end date being December 13, 2023. The charge for residential curbside trash (second pickup) would be \$10.50 per month per cart. We are currently being charged \$7.78 per cart per month. This charge is for the Saturday pickups that occur June – September and the Saturdays before Memorial Day and after Easter.

Motion by Commissioner Kwiatkowski to approve the Third Amendment to Solid Waste and Recyclables Collection, Transportation and Disposal Agreement with the county (Waste Industries); second by Mayor Pro Tem Smith.

Mayor Pro Tem Smith asked if there is a negotiation process. Town Clerk Finnell replied the increase isn't just us, it is all the towns. They tell us the rate and if we want to continue the service it would have to be approved.

The motion was approved by unanimous vote.

DISCUSSION AND POSSIBLE ACTION ON RESOLUTION 21-19, RESOLUTION AMENDING THE HOLDEN BEACH FEE SCHEDULE (RECYCLING)

Town Clerk Finnell said the cost for the voluntary curbside recycling program has gone down. It is currently \$93.29 and it will go to \$86.37.

Motion by Commissioner Brown to approve (Resolution 21-19, Resolution Amending the Holden Beach Fee Schedule); second by Commissioner Murdock; approved by unanimous vote.

DISCUSSION AND POSSIBLE ACTION ON AUDIT COMMITTEE RECOMMENDATION FOR THE AUDIT FIRM TO CONDUCT THE REQUIRED EXTERNAL AUDIT FOR THE YEAR ENDING JUNE 30, 2022

Commissioner Kwiatkowski explained the Audit Committee met yesterday to make a decision on how to move forward with selecting an audit firm for the fiscal year ending June 30, 2022. The committee recommends retaining Martin Starnes.

Motion by Commissioner Kwiatkowski to authorize the town manager to initiate the contract process with Martin Starnes at the appropriate time; second by Mayor Pro Tem Smith; approved by unanimous vote.

Commissioner Kwiatkowski thanked the members who served and reminded the public that the Board will be selecting members in January. If you are interested look for the solicitation from the town clerk.

PUBLIC COMMENTS ON GENERAL ITEMS

Wendy Beaver asked about parking in her area. Mayor Holden said he would be happy to talk to her about it.

TOWN MANAGER'S REPORT

- The Murden, the Corps' dredge is working in the inlet and the ocean bar currently. There is a Corps' contract dredger, Southwind Company, that has been awarded the contract to remove 100,000 cubic yards of beach compatible sand from the inlet crossing. There is also an additional contract option that would expand that excavation east into the bend winder that will bring the total sand harvested from that navigation maintenance project to 165,000 cubic yards. That is close to the largest beach project from that area that we have seen. The production of the dig will begin the first of February. The placement of the beach compatible sand will be from the east end, starting around Amazing Grace, approximately 2,000 feet west. Last time it stretched almost to Blockade Runner.
- Our FEMA project has just seen the initial kickoff of it. The mobilization has begun at the old Captain Jack's. We put some heavy equipment on the beach with the initial two submerged lines from offshore coming back onto the beach. The bulk of the shore pipe will arrive beginning December 28th. Expect intermittent traffic interruptions in that block. Expecting sand to be pumped onto the beach the first week in January. Will be working east to west. This is about a four-mile-long project that will start around Blockade Runner and go down (permit wise) to 781 Ocean Boulevard West. How far it

will go will depend on the yield and type of sand. Hopefully we will be able to get everything put on the beach in the environmental window.

- Coastal Storm Risk Management Study - public scoping for the project is underway. Anticipated date for the chief's report is August 2024.
- Ocean Boulevard Bike Path – last week the Grand Strand Area Transportation Advisory Committee approved \$900,000+ in federal funding for the installation of the Ocean Boulevard Bike Project. That will coincide with DOT's resurfacing contract that is scheduled to begin in September 2022.

MAYOR'S COMMENTS

- The No Wake Zone which was made legal a number of years ago, which goes from the west end of the Yacht Watch subdivision down to just past LouLou's Restaurant, is not being enforced and is not marked. Hopes that sometime in January, no later than February, we can have an invitation sent to enforcement agencies. We need to get everyone on board and find out all legalities that the Town and enforcement people need to satisfy to see if we can get control of the safety problems we are having in and around the bridge. Asked the Board if there is anything that needs to be brought to their attention on why they shouldn't move forward with getting the group together before something bad happens. The Board agreed to address it at a regular meeting.
- Was in a meeting last week, one of the county officials was talking about how the growth in the county was unbelievable. 140,000 people live in the county. It is growing by the minute.
- Concerning the congestion with the equipment being unloaded, you can go under the bridge and circumvent the congestion.
- Hopes everyone is signed up for our email blast. One went out about the good news about our flood insurance on the island. Most people will be getting a 15% discount in insurance over the next five years. Appreciative to the staff, commissioners and all involved in working so hard to get the qualification met.

BOARD OF COMMISSIONERS' COMMENTS

Mayor Pro Tem Smith

- Thanked Mike Sullivan. Can't say enough about the service he gave to the Board. Appreciates what he has done for the Town and the rest of the Board.
- Thanked the Parking Committee. Spent the better part of a day working on the proposals to get paid parking done. Thinks we put together a reasonable starting plan and with the right information hopefully we can move forward.
- Thanked the citizens who voted and allowed him to remain as a commissioner and be one for the next four years. Thanked the Board for allowing him to take the position of mayor pro tem.
- Thanked Commissioners Kwiatkowski and Murdock and Town Manager Hewett for their part in putting together the Pier Property Use Plan. It is very comprehensive. Took a lot of effort and time.
- Thanked the Audit Committee.
- There was a big turnout at the tree lighting. Really enjoyed that. Shows how the community hangs together.
- Have a safe and merry Christmas. Looking forward to a happy and prosperous new year.

Commissioner Brown

- Alton Milliken passed away a few days ago. He was 94 years old. A lot of these homes have his tubs, showers, plumbing pipes (Mayor Holden added he was the owner of Shallotte Electric). Think of the family and his wife over the holiday season.
- Asked Attorney Green how the hearing situation is. Attorney Green said it could not possibly be better.
- Wished everyone a merry Christmas and happy new year. Have a wonderful holiday. Spend all the time you can with family because they are precious. Stay safe in your travels and have a great time.

Commissioner Dyer

- Thanked Mike Sullivan for his service. Appreciates all of the work he has done. Has big shoes to fill.
- Appreciates the community's support.
- Looks forward to working with staff and the Board.
- Thanked Mr. Varner with Otto for all of the work he has done. Thinks they really know what they are doing. Look forward to working with him.
- Merry Christmas. Hope it's safe.

Commissioner Murdock

- Thanked Mike Sullivan for his service. He did a great job. Very privileged to serve with him.
- We looked to Otto and Mr. Varner for guidance on parking. This is his company's input. We are not reinventing the wheel; other communities have done it. Is sure that they worked through the same problems we will have to work through. Doesn't think it will be perfect. This is not set in stone. We can correct problems as they arise and make changes as needed.
- Wants everyone to appreciate how precious this time of year is. Take a break from issues. Go see your families, friends and loved ones. Tell them you love them. That's all this is about. Is sitting up here to attempt to do the right thing for the Town. Will not please everyone, but promises they are not out to do the wrong thing. Will work it out. Don't let the issues at hand get bigger than life itself. Have a good holiday season. Will pick this up again next year. Merry Christmas.

Commissioner Kwiatkowski

- Ward and Smith was in communication with the Town on an advocacy issue that has to do with a sudden possible opportunity linked to the Infrastructure Investment and Jobs Act. That process got started because Vicki Myers sent a message that she received a heads up about the Corps having money and stormwater was mentioned. The town manager looked into it and called Ward and Smith. The Town has made an application for funding. It is an unknown if we will get it. It is a sign of how teamwork can help move things forward. Sometimes a piece of information can result in something good. Thanked Vicki Myers for her heads up. It resulted in something that might bring us some money for much needed stormwater work.
- Glad the pier is behind us. We will get parking resolved in the first couple of months of next year.
- Hopes for a calm and smooth 2022. If she has to, can still fight back.
- Wished everyone merry Christmas.
- Thanked Mike Sullivan.

EXECUTIVE SESSION PURSUANT TO NORTH CAROLINA GENERAL STATUTE 143-318.11(A)(5), TO INSTRUCT THE STAFF OR AGENT CONCERNING THE NEGOTIATION OF THE PRICE AND TERMS OF CONTRACTS CONCERNING THE ACQUISITION OF REAL PROPERTIES

Town Clerk Finnell read the reason for Executive Session.

Motion by Commissioner Murdock to go into Executive Session at 7:17 p.m.; second by Commissioner Brown; approved by unanimous vote.

OPEN SESSION

The Board went back into Open Session at 8:21 p.m.

ADJOURNMENT

Motion to adjourn at 8:21 p.m. by Commissioner Brown; second by Mayor Pro Tem Smith; approved by unanimous vote.

J. Alan Holden, Mayor

ATTEST:

Heather Finnell, Town Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 1999-92
HOUSE BILL 649

AN ACT TO ESTABLISH A NO-WAKE SPEED ZONE IN HOLDEN BEACH.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to operate a vessel at greater than a no-wake speed in the Intracoastal Waterway within the Town of Holden Beach between the island area designated as Rogers Street and the eastern line of the L.S. Holden subdivision. No-wake speed is idle speed or a slow speed creating no appreciable wake.

Section 2. With regard to marking the no-wake speed zone established in Section 1 of this act, the Town of Holden Beach, Brunswick County, or their designees may place and maintain the markers in accordance with the Uniform Waterway Marking System and any supplementary standards for such system adopted by the Wildlife Resources Commission. All markers of the no-wake speed zone shall be buoys or floating signs placed in the water and must be sufficient in number and size as to give adequate warning of the no-wake speed zone to the vessels approaching from various directions.

Section 3. This act is enforceable under G.S. 75A-17 as if it were a provision of Chapter 75A of the General Statutes.

Section 4. Violation of Section 1 of this act is a Class 3 misdemeanor.

Section 5. This act applies only to the Town of Holden Beach.

Section 6. This act is effective when it becomes law and is enforceable after markers complying with Section 2 of this act are placed in the water.

In the General Assembly read three times and ratified this the 25th day of May, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

Activity Log Event Summary (Totals)

HOLDEN BEACH POLICE DEPT.

(12/01/2021 - 12/31/2021)

911 Hang Up/Open Line	1	Alarm Activation	10
Animal Control	8	Attempt to Locate-ATL	7
B&E in Progress	1	Business Check	339
Disturbance/Fight	5	Domestic Disturbance	3
EMS/Medical Call	5	Fire Call	1
Fireworks	1	Incident Report	10
Keep Check	14	Lockout Request	1
Lost/Found Property	3	Meet Complainant	17
Message Delivery	2	Motor Vehicle Crash	1
Open Door	6	Parking	1
Phone Call Request	13	Public Works/Water Leak	2
Special Assignment	3	Suspicious Activity	1
Traffic Stop	11	Trespassers	4
Welfare Check	3		

Total Number Of Events: 473



Date: January 10, 2022
To: Commissioners and Mayor Holden
From: Heather Finnell, Town Clerk HF
Re: Ordinance 22-01

The Board requested that Inspections Director Evans and Attorney Green look into possible changes to the Town's lighting ordinance that would restrict oceanfront light.

Ordinance 22-01 has been prepared based on this request. Attorney Green has reviewed the proposed ordinance and is fine with the wording.

Ordinance 22-01 is before the Board for consideration.

ORDINANCE 22-01
AN ORDINANCE AMENDING THE HOLDEN BEACH CODE OF ORDINANCES, CHAPTER 92: NUISANCES
(OUTSIDE LIGHTS)

BE IT ORDAINED BY the Mayor and Board of Commissioners of the Town of Holden Beach, North Carolina, that Chapter 92: Nuisances (Outside Lights) be amended as follows.

Section One: Amend Sections 92.30 – 92.35 to read as follows.

92.30 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DECORATIVE LIGHTS. Lights used to enhance the appearance of an area rather than to provide illumination. These include Christmas lights and low voltage **with maximum 300 lumens** driveway and landscaping lights.

DOORWAY LIGHTS. Lights attached to structures or walkways used to illuminate doors and immediate areas leading to entrances; to include those installed beneath houses.

FLOOD/SPOTLIGHTS. Bare lights attached to buildings and used to illuminate a specific area (yards, driveways, walkways, and the like) normally for a limited time period. These may also be used as security lights.

SAFETY LIGHT. A light used to warn boats or vehicles of possible obstacles.

SECURITY LIGHT. A light (either automatic or manual) which remains on overnight for the protection of people or property.

YARD LIGHT. A light whose fixture is not attached to a building, ramp, or deck and is over four feet above ground level.

('85 Code, § 3-11a.) (Ord. 92-10, passed 7-22-92)

§ 92.31 PURPOSE.

It is the intent of this subchapter to permit sufficient outside lighting to provide for the safety and security of citizens while preventing undue distraction to residents or guests, **and to provide a safe and welcoming environment for aquatic endangered species.**

('85 Code, § 3-11) (Ord. 92-10, passed 7-22-92)

§ 92.32 UNLAWFUL LIGHTS.

It shall be unlawful for any outside light to be installed or directed:

- (A)** To interfere with the vision of the operator of any motor vehicle on any street or waterway; **or cast any amount of light more than 15 feet from the footprint of the residence.**

(B) Lights, seaward of any structure located South of Ocean Boulevard

- (c) That is not in compliance with the provisions of this subchapter.

('85 Code, § 3-11b.) (Ord. 92-10, passed 7-22-92; Am. Ord. 94-24, passed 10-3-94) Penalty, see § 92.99

§ 92.33 LIGHTS PERMITTED IN R-1 AND R-2 DISTRICTS.

- (A) Decorative lights.
- (B) Flood or spotlights provided they are directed onto the owner's property.
- (C) Doorway lights of 100 watts or less per light.
- (D) Safety lights.
- (E) Security lights, attached to a building, and so shielded that no direct lighting is outside the owner's property.
- (F) ~~Security lights, presently on poles, which do not meet the restrictions of division (G) of this section are permitted for a period of one year following enactment of this subchapter provided they are so shielded that there is no direct lighting outside the owner's property.~~
- (G) One yard light per living unit provided:
 - (1) It does not exceed ten feet in height (measured from mean lot level) and does **exceed 900 lumens.**
 - (2) ~~It is of the same design and wattage as the approved town street lights and does not exceed 20 feet in height.~~

('85 Code, § 3-11c.) (Ord. 92-10, passed 7-22-92; Am. Ord. 94-24, passed 10-3-94; Am. Ord. 94-28, passed 12-5-94)

§ 92.34 LIGHTS PERMITTED IN C-1 COMMERCIAL DISTRICTS.

- (A) Any lights permitted in R-1 or R-2 Districts are permitted.
- (B) Security lights not attached in buildings and lights used to illuminate entertainment facilities provided:
 - (1) The light is so shielded that no direct lighting is outside the owner's property.
 - (2) Any pole is a minimum of ten feet from the road right-of-way.

('85 Code, § 3-11e.) (Ord. 92-10, passed 7-22-92) Penalty, see § 92.99

§ 92.35 COMPLAINTS.

Permitted lights which may be in violation of § 92.32 of this chapter will be reported in writing to the Town Manager **or designee** who will make the final determination if a violation exists. The Town Manager **or designee** will notify the complainant and the alleged violator of his/her findings in writing.

('85 Code, § 3-11f.) (Ord. 92-10, passed 7-22-92)

Section Two: The Town Clerk is directed to forward this ordinance to American Legal Publishing for inclusion in the next published supplement to the Holden Beach Code of Ordinances.

Section Three: This ordinance shall be effective the 19th day of January, 2022.

This the 18th day of January, 2022.

J. Alan Holden, Mayor

ATTEST:

Heather Finnell, Town Clerk

To: David Hewett
Town Manager – Holden Beach
110 Rothschild St.
Holden Beach, NC. 20217

Date: January 11th, 2022

Subject: Parking Lot Designation

Mr. Hewett,

Per the BoC Tasker from 12/21/21 and our meeting with the Town Staff on 1/7/22, please find attached a detailed report of all proposed parking areas as approved by the Parking Committee and vetted by the Town Staff to assure no other encumbrances for the proposed Right-of-Way parking areas – including the change from Low-Speed-Vehicle parking to Compact Only parking. This overview is consistent with the Town Ordinance Update proposal developed with the Town Staff.


The key messages and goals achieved with this proposal are:

- There will be “No Parking Except in Designated Parking Areas” throughout the Town.
- The effort provided a consistent approach throughout the Town to provide beach access parking for both residents/owners and visitors.
 - For residents/owners – access to parking near both public and private beach accesses
- Right-of-Way parking leveraged the 125’ setback from OBE/OBW with the change in ordinance where no other obstruction was present while providing close proximity to beach accesses.

Disclaimers:

- The number of parking spaces is a good estimate but may change slightly as we move forward to develop each of the parking lots/zones.
- The final zone names may also change as we develop the zones based on proximity and type.
- All tables and locations are the best estimates of Otto and Town personnel – and may change as we move forward with specific implementation.

Best regards,



James R. Varner
President and CEO
The Otto Project, LLC
Otto Connect, Inc.

Attachment: January 11, 2022 table and map of paid parking areas.

Table 1 of 2: Parking Lots – starting with the west end of the island.

Note: The number of spaces and parking zone name are subject to change as each parking zone is implemented.

Holden Beach - Parking Lots		Approved by the Parking Committee & Town Personnel (RoW assessment)					
<u>Street</u> <u>West to East</u>	<u>Type:</u> <u>F = Full Size &</u> <u>Smaller Vehicles</u> <u>C = Compact Vehicle</u>	<u>Estimated</u> <u>Number of</u> <u>Spaces</u>	<u>Lot</u>	<u>RoW</u>	<u>Authorized RoW</u> <u>and Parking Lot</u> <u>Areas</u>	<u>Parking Type</u>	<u>Parking</u> <u>Zone Name</u>
Shell	C	5		5	Westside	RoW	H01
Schooner	C	10		10	Both Sides	RoW	H02
Windhammer	C	10		10	Both Sides	RoW	H03
Seaview	NA						
Sunshine	C	10		10	Both Sides	RoW	H04
Clippership	C	4		4	Westside	RoW	H05
Marshwalk	C	5		5	Westside	RoW	H06
ByTheSea	C	5		5	Westside	RoW	H07
Frigate	C	5		5	Eastside	RoW	H08
Seagull	C	5		5	Westside	RoW	H09
Deal	C	8		8	Both Sides	RoW	H10
Seaside	C	5		5	Eastside	RoW	H11
Point West Drive	F	10		10	Both Sides	RoW	H12
Sailfish	F	10		10	Westside - along Marsh	RoW	H13
- Sailfish Park	Free Parking	- For use of the Park Only					
Tarpon	C	8		8	Both Sides	RoW	H14
Marlin	C	10		10	Both Sides	RoW	H15
Tuna	C	10		10	Both Sides	RoW	H16
Dolphin	C	5		5	Eastside	RoW	H17
Swordfish	F	10		10	Eastside	RoW	H18
OBW - 800 Block	F	16	16		Lot	Lot	H19
Pump Station 3 Lot	F	12	12		Lot	Lot	H20
Sanddollar	F	10		10	Westside	RoW	H21
- Sanddollar Park	Free Parking	- For use of the Park Only				RoW	
Starfish	C	5		5	Eastside	RoW	H22
Lions Paw	C	4		4	Eastside	RoW	H23
Scotch Bonnet	F	10		10	Eastside	RoW	H24
Greensboro	F	10		10	Westside	RoW	H25
Charlotte	C	10		10	Both Sides	RoW	H26
Durham	C	5		5	Eastside	RoW	H27
Holden Beach Pier	F	80	80		Lot	Lot	H28
Burlington	C	10		10	Both Sides	RoW	H29
Salisbury	C	10		10	Both Sides	RoW	H30
Sanford	C	10		10	Both Sides	RoW	H31
Raleigh	NA						
Fayetteville	C	5		5	Westside	RoW	H32
Lumberton	C	10		10	Both Sides	RoW	H33
High Point	C	10		10	Both Sides	RoW	H34
Neptune	C	5		5	Eastside	RoW	H35
Boyd	C	10		10	Both Sides	RoW	H36
Roger	C	10		10	Both Sides	RoW	H37
Delanne	C	5		5	Westside	RoW	H38
Davis (OBW to Brunswick Ave W)	F	10		10	Eastside	RoW	H39
Davis St. Lot	F	16	16		Lot	Lot	H40
- Bridgeview Park	Free Parking	- For use of the Park Only				RoW	

Table 2 of 2: Parking Lots

Holden Beach - Parking Lots		Approved by the Parking Committee & Town Personnel (RoW assessment)					
Street West to East	Type: F = Full Size & Smaller Vehicles C = Compact Vehicle	Estimated Number of Spaces	Lot	RoW	Authorized RoW and Parking Lot Areas	Parking Type	Parking Zone Name
Brunswick Ave West - Davis to Jordan	F	16		16	Both Sides	RoW	H41
Jordan - OBW to Brunswick E	F	24		24	Both Sides	RoW	H42
Jordan - Brunswick E to Pavilion	F	24	24		Lot under Bridge	Lot	H43
Under Bridge Lot - at Restrooms	F	12	12		Lot	Lot	H44
Pump Station 1 RoW (between Brunswick Ave W and Jordan)	F	24	24		Both Sides	Lot	H45
Boat Ramp Area	F	9	9		Lot	Lot	H46
Southshore - West of Jordan	F	16		16	Both Sides	RoW	H47
Southshore - Carolina to Quinton	F	10		10	Both Sides	RoW	H48
Carolina - Southshore to Quinton	F	10		10	Both Sides	RoW	H49
Brunswick Ave East	F	18		18	Both Sides	RoW	H50
Quintin - RoW	C	10		10	Westside	RoW	H51
Quintin - Handicap Lot	F - Handicap (Free)	10	10		Lot	Lot	H52
Halstead	C	7		7	Westside	RoW	H53
Ferry - North of OBE	C	10		10	Westside	RoW	H54
Ferry - Beachside Lot	F	15	15		Lot	Lot	H55
Holden St	F	15	15		Westside	Lot	H56
Ranger	C	10		10	Lot	Lot	H57
Elizabeth	C	8		8	Lot	Lot	H58
Shrimp	NA						
Crab	NA						
Conch	NA						
Mullett	C	10		10	Both Sides	RoW	H59
Mullet St Lot	F	12	12		Lot	Lot	H60
Bendigo St Lot	F	8	8		Lot	Lot	H61
Blockade Runner	C	5		5	Westside	RoW	H62
McCray - Ave A to Dunescape	F	70		70	Both Sides	RoW	H63
OBE - McCray to Ave A	F	40	40		Lot	Lot	H64
OBE - Ave A to Dunescape	F	20		20	Southside	RoW	H65
Ave A	F	10		10	Westside	RoW	H66
Ave B	F	10		10	Both Sides	RoW	H67
Dunescape - South of McCray	C	8		8	Both Sides	RoW	H68
McCray - Dunescape to Ave D	F	12		12	Northside	RoW	H69
McCray - East of Ave D	F	62	62		Northside	Lot	H70
Ave D Lot	F	12	12		Lot	Lot	H71
		935	367	568			

Mapping Page 1 of 6 – highlighted the approx. location of each parking lot/zone by number starting at the west end.

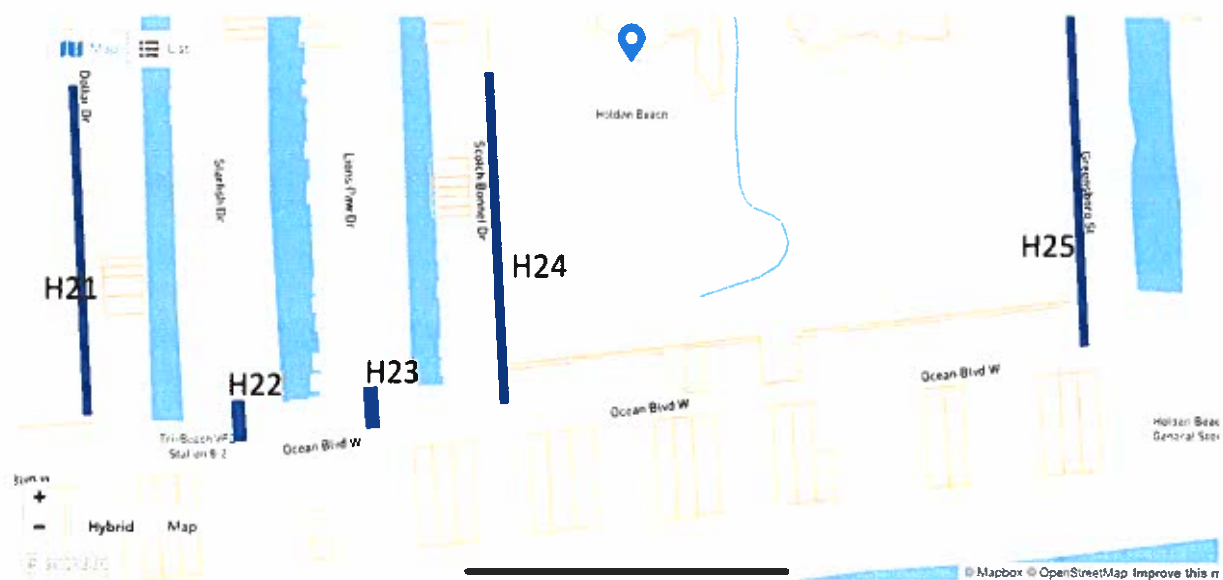
- All RoW zones abutting OBW/OBE have a 25-foot setback and are limited to a maximum 100-foot length. These areas will be designated for Compact vehicle parking only. There is No Parking in all other areas.
- All maps are approximate and are intended to provide the general location of each parking zone identified in the previous table.



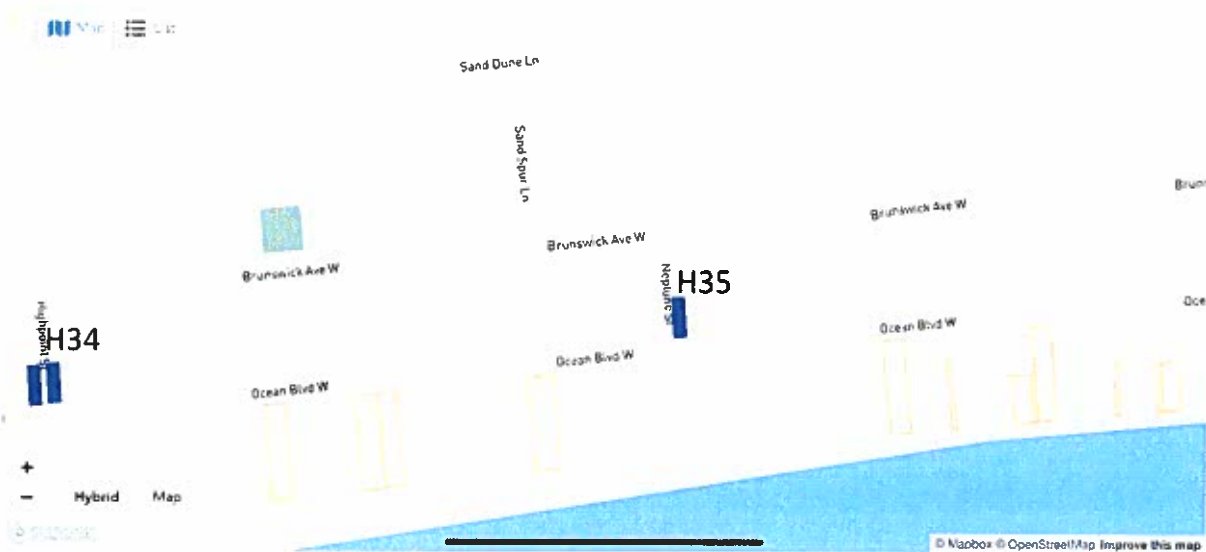
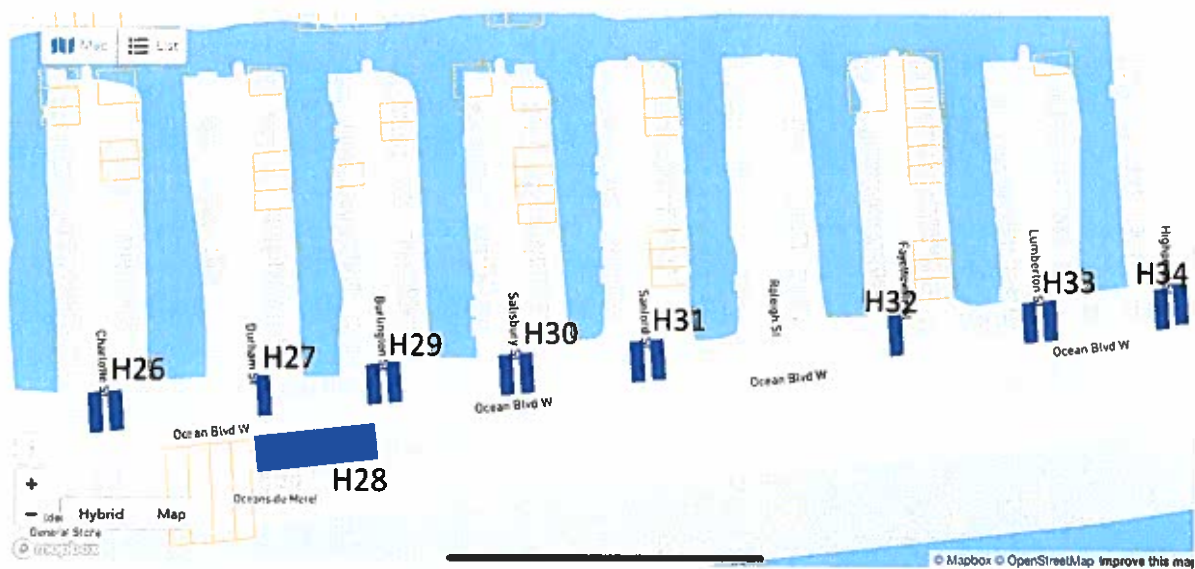
Mapping Page 2 of 6



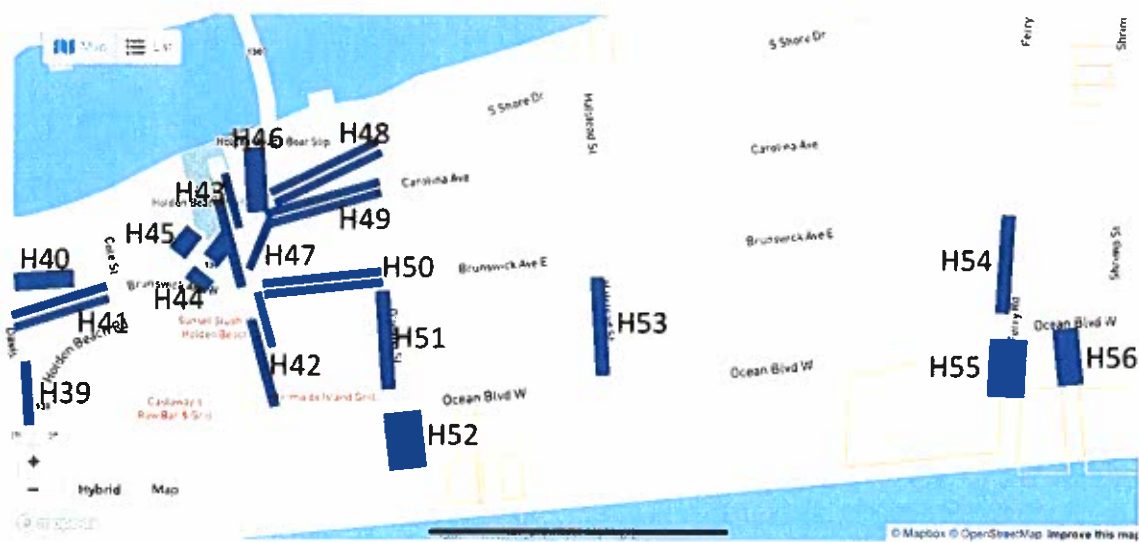
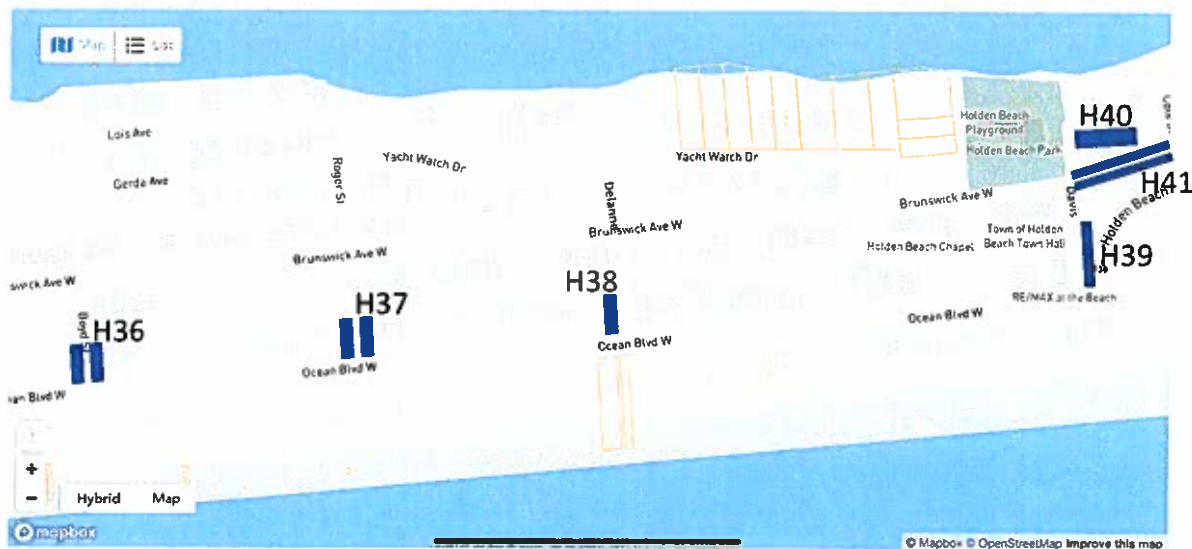
Mapping Page 3 of 6



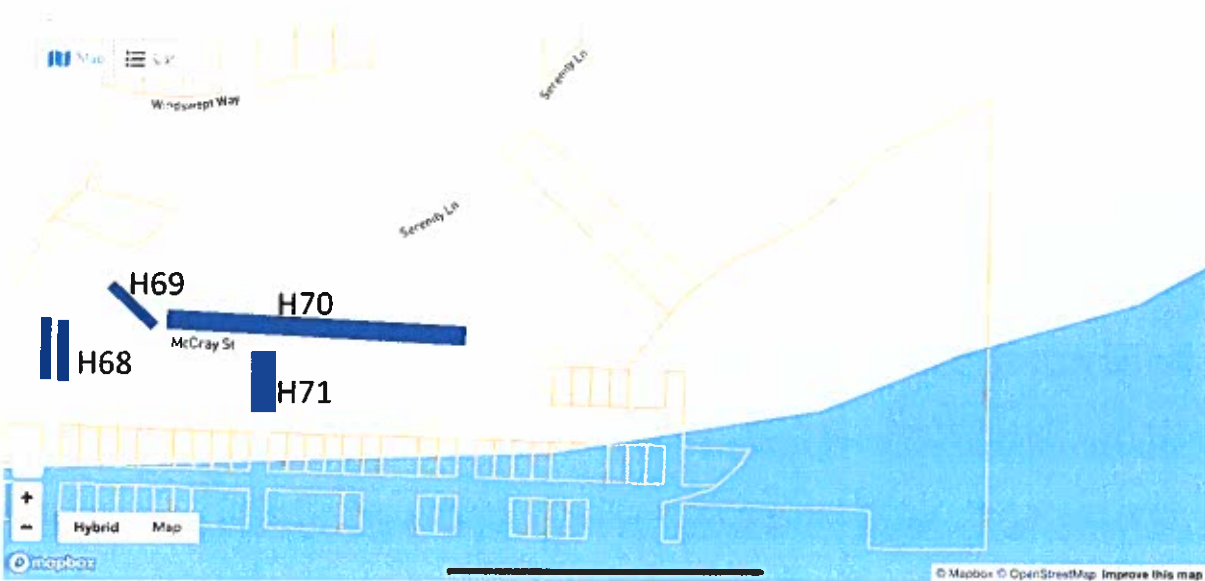
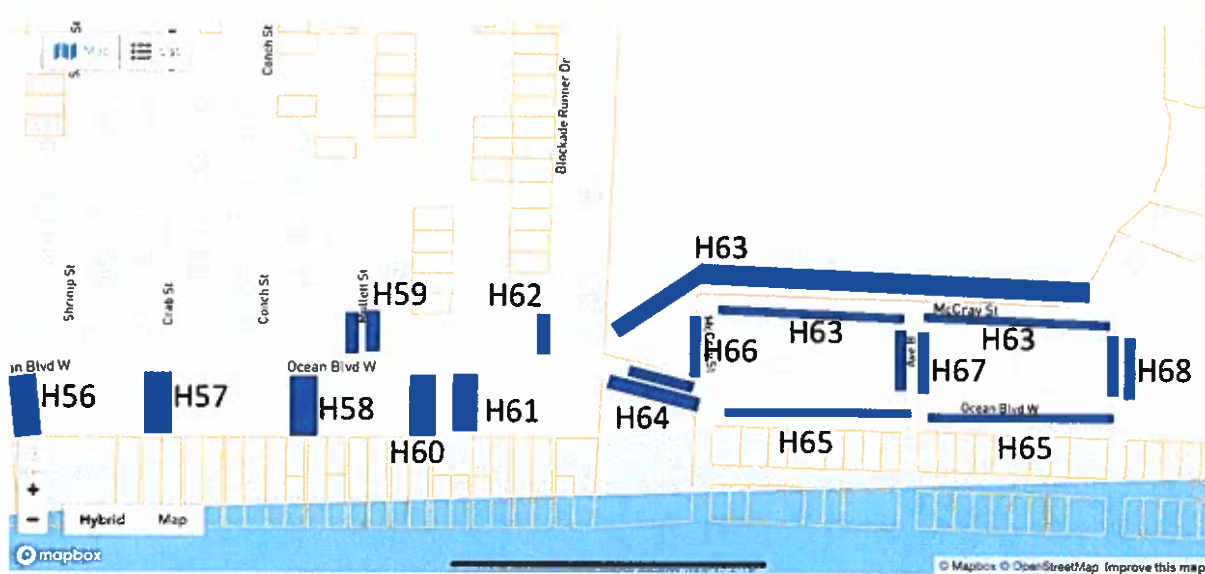
Mapping Page 4 of 6



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Heather Finnell

From: Jim Varner <jim@ottoconnect.us>
Sent: Wednesday, January 12, 2022 10:33 AM
To: David Hewett
Cc: Heather Finnell
Subject: Parking Signs - Cost + Installation

David,

Per our discussion - here is the parking sign cost estimate overview. The number of signs would be our recommendation based on the current proposed parking areas - subject to change based on the Board's decision for parking areas - I can provide an update as needed. Please let me know if you have any questions.

Number of Signs: 300

	Cost	Cost
	Per Sign	Total for all Signs
Post	\$15	\$4,495
Sign	\$50	\$14,983
Install	\$25	\$7,492
Totals	\$90	\$26,970

- Signs assume a 12x18" all weather, metal backed, reflective vinyl

Regards,
Jim

Jim Varner
 Otto Connect, Inc.
 SurfCAST Solutions

Board of Commissioners,

The following recommended Ordinance changes are a compilation of all the information and discussions from the parking committee, Board of Commissioners, Otto Connect, the public and Town Staff. Staff believes this is the best and most efficient approach to start the paid parking program on Holden Beach. The included recommended changes provide a uniform application of fee-based parking across the entire Island, while maintaining public safety and access to both public and private property.

The included changes stretch across several sections of the Ordinances. Each section is required to properly implement fee-based parking system. It is recommended that these changes be made as a package to ensure proper implementation. It is further suggested that the effective date for all included changes be the date of final approval of the Board with one caveat. Section 95.05 Should provide a 180-day time frame from the date of approval, for property owners to become compliant, unless removed for necessity by the Town.

ORDINANCE 22-02
AN ORDINANCE AMENDING THE HOLDEN BEACH CODE OF ORDINANCES,
TITLE VII: TRAFFIC CODE

BE IT ORDAINED BY the Mayor and Board of Commissioners of the Town of Holden Beach, North Carolina, that Title VII: Traffic Code be amended as follows.

Section One: Replace Chapter 72 with the following:

Section

[72.01](#) Definitions

[72.02](#) Parking prohibited on public streets and rights-of-way

[72.03](#) Parking authorized by permit only

[72.04](#) Tow-away zones

[72.99](#) Penalty

§ 72.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COMPACT VEHICLE. Any registered vehicle as defined in this Chapter with a maximum width of 70 inches and a maximum length of 120 inches.

CONSTRUCTION OR MAINTENANCE VEHICLE. Any vehicle, as defined herein, that is being used for any legitimate service to a private or public facility or residence. Private contractors' vehicles, delivery vehicles, animal assistance organization vehicles (excluding spectators) and any other vehicle with pre-authorization from the town or police, on a case-by-case basis, shall be considered construction or maintenance vehicles.

DAWN. A time one-half hour before sunrise.

DRIVEWAY. An area of the public right-of-way intended for ingress and egress to private residences and the parking thereof, or an area of the public right-of-way allowing ingress and egress to businesses and commercial properties open to public vehicular traffic.

DUSK. A time one-half hour after sunset.

FIRE LANE and/or EMERGENCY VEHICLE ACCESS. Any area marked with signage and/or other markings indicating the area is restricted to emergency vehicle parking and/or access only.

FULL-SIZE VEHICLE. Any registered vehicle as defined in this Chapter with a width or length exceeding that of a Compact Vehicle as defined herein.

HANDICAPPED AND/OR DISABLED VETERAN. Individuals with disabilities as determined by a medical practitioner in accordance with the Americans with Disability Act and all current federal guidelines and State laws.

HANDICAPPED PARKING SPACE. A parking space designated by signage for the exclusive use of individuals with disabilities as defined above. N.C.G.S. 20-36(e)(1) authorized vehicles displaying disabled veteran registration plates to utilize these spaces without a handicap placard.

PARK or PARKING. The act of leaving any vehicle standing, whether attended or unattended, in a stationary position for any period of time, except when in obedience to traffic control devices when in the normal flow of vehicular traffic.

PEDESTRIAN CROSSWALK. Any area marked with signage and/or other markings designed to safety allow pedestrian foot traffic to cross the roadway.

PARKING PERMIT. An instrument, either physical or digital, authorizing the holder to park and/or occupy a designated parking area.

PUBLIC RIGHT-OF-WAY. An area or piece of land located on Town or State property reserved for unhindered public use or access. This area extends from the edge of the pavement or roadbed or travel lane to the edge of the property line.

STREET or HIGHWAY. G.S. § 20-4.01(13) and (46) define a street and/or highway as the entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic. The terms *highway* and *street*, and their cognates, are synonymous.

STREET INTERSECTION. The physical location in which two streets connect. A measurement from this location shall be from the right-of-way connection point of the streets closet to the adjacent private property line.

TRAILER. Any trailer required to be registered in accordance with North Carolina General Statutes shall be consider a vehicle as defined herein. Whether attached or not to a towing vehicle, for the purposes of parking, trailers shall be considered a separate vehicle.

VEHICLE. Any registered motor conveyance as defined in G.S. § 20-4.01, including but not limited to: passenger motor vehicles, commercial motor vehicles, recreational vehicles, electric vehicles, low speed vehicles, motorcycles, utility vehicles and mopeds.

§ 72.02 PARKING PROHIBITED ON PUBLIC STREETS AND RIGHTS-OF-WAY.

- (A) Parking shall be prohibited at all times within the corporate limits of the Town on all public streets, rights-of-way, and on Town owned property unless specifically authorized in this Chapter.
- (B) Parking shall not be authorized in any of the following locations or the adjacent rights-of-way,
 - (1) Street intersections, within 25 feet.
 - (2) Streets.
 - (3) Pedestrian crosswalks, sidewalks, or pedestrian access ways.
 - (4) Blocking access to driveways or mailboxes.
 - (5) Facing opposing traffic.
 - (6) Blocking or adjacent to fire hydrants and emergency beach accessways, within 15 feet, and blocking or within fire lanes.
 - (7) Designated handicapped or disabled veteran space without placard or registration plate.
- (C) When an authorized or permitted parking area's access is conspicuously and obviously restricted or blocked by signs, barricades, barrier tape or any other traffic control device(s), parking shall be prohibited for the duration of the time that area remains blocked.
- (D) Exceptions.
 - (1) The prohibitions in subsection 72.02(A) (B) or (C) shall not apply to the temporary parking of any of the following:
 - (a) Emergency or government vehicles.
 - (b) Public and private utility vehicles.
 - (c) Private vehicles, when being used during the provision of an emergency.
 - (d) Private vehicles, when being used for any other bona fide governmental purpose.
 - (2) The prohibitions in subsection 72.02(A) shall not apply to the temporary parking of any of the following:

Private contractor or maintenance service vehicles while performing legitimate services on a specific permitted location, except:

 - (a) No vehicle may be left parked overnight (from dusk to dawn); and

- (b) All vehicles must be as far off the public street rights-of-way as possible; and
 - (c) No vehicle may be left parked on any portion of any roadway; and
 - (d) No vehicle may be parked on any portion of the sidewalk.
- (3) The prohibitions in subsection 72.02(A) shall not apply to the temporary parking of any of the following, but shall still require a valid Parking Permit as defined in this Chapter:

Parking shall be permitted in the rights of way for customers of businesses immediately adjacent to such location, except:

- (a) Shall not be within 25 feet of any intersection in any direction; and
 - (b) Shall not be on any portion of the sidewalk; and
 - (c) Shall not impede the flow of traffic.
- (4) Parking is authorized without a permit in Bridgeview Park for direct use of the park and its facilities only. This applies to the parking area(s) immediately adjacent to and on the same side of the street as the park on Davis St, Rothschild St, and Brunswick Avenue West.
- (5) Parking is authorized without a permit at the Holden Beach Town Hall when conducting official business in the Town Hall. This applies to the parking area(s) immediately adjacent to and on the same side of the street as the Town Hall on Davis St, Rothschild St, and Brunswick Avenue West.
- (6) Parking is authorized without a permit at Sailfish Dr. Park for direct use of the park and its facilities only. This applies to the parking area(s) immediately adjacent to the park on Sailfish Dr. only.
- (7) Parking is authorized without a permit at Sand Dollar Dr. Park for direct use of the park and its facilities only. This applies to the parking area(s) immediately adjacent to the park on Sand Dollar Dr. only.

§ 72.03 PARKING AUTHORIZED BY PERMIT ONLY.

- (A) No person shall park a vehicle in any designated parking area or location without first obtaining a valid parking permit in accordance with the following, unless a specific exemption exists in 72.02:

- (1) Parking permits will be required from April 1st through October 31st between the hours of 9 a.m. and 5 p.m. each day.
- (2) Separate rates will be available for hourly, daily, weekly, and annual permits.

- (a) Hourly Permits Per hour rate, up to four (4) hours.

- (b) Daily Permits Per day rate, valid for the date of purchase only.
 - (c) Weekly Permits Per week rate, valid for seven consecutive days including the date of purchase.
 - (d) Annual Permits Annual rate, covers two vehicles. Valid for the calendar year of purchase only.
- (3) All rates associated with parking permits are listed in the Fee Schedule adopted by the Board of Commissioners, which shall be available at the office of the Town Clerk.
- (4) Permits are valid only for the specific vehicle assigned during initial purchase and are non-refundable.
- (5) Hourly, Daily and Weekly permits are non-transferable.
- (6) Transferring of an annual permit is authorized only under the following circumstances:
- (a) When the assigned vehicle is sold; and
 - (b) Only once per calendar year; and
 - (c) Only to the original purchaser; and
 - (d) Proof of sale documentation shall be required.
- (B) Signage.
- (1) In accordance with the table in 72.03(E), proper signage shall be installed and maintained by the Town or its authorized agent to:
 - a. Designate authorized parking areas.
 - b. Designate parking for specific vehicle types (i.e., Compact, Handicap).
 - c. Provide the manner of obtaining a Parking Permit:
 - i. at each designated parking area; and
 - ii. Including the required hours.
 - (2) Signage will only be placed in accordance with the provisions of this Chapter.
- (C) No person may park or cause to be parked, any vehicle in any space not specifically designed for the size of the vehicle being parked.
- (D) Parking is authorized without a Permit outside the specified hours in 72.03(A)(1), but only in designated authorized parking areas pursuant to this Chapter.
- (E) The following table includes the specific locations in which parking is authorized. Parking in these areas shall be in accordance with all the provisions of this Chapter.

Street/Location (West to East)	Type of Space C-Compact F-Full size	Authorized Right-of- Way Parking	Parking Zone
Shell Dr	C	Westside only	H01
Schooner Dr	C	Both sides of street	H02
Windjammer Dr	C	Both sides of street	H03
Sunshine Ln	C	Both sides of street	H04
Clippership Dr	C	Westside only	H05
Marshwalk Dr	C	Westside only	H06
By The Sea Dr	C	Westside only	H07
Frigate Dr	C	Eastside only	H08
Seagull Dr	C	Westside only	H09
Deal Dr	C	Both sides of street	H10
Seaside Dr	C	Eastside only	H11
Point West Dr	F	Both sides of street	H12
Sailfish Dr	F	Westside Only	H13
Tarpon Dr	C	Both sides of street	H14
Marlin Dr	C	Both sides of street	H15
Tuna Dr	C	Both sides of street	H16
Dolphin Dr	C	Eastside only	H17
Swordfish Dr	F	Eastside only	H18
Ocean Blvd West 800 Blk Lot (add parcels)	F	In lot	H19
Pump Station 3 Lot	F	In lot	H20
Sand Dollar Dr	F	Westside only	H21
Starfish Dr	C	Eastside only	H22
Lionspaw Dr	C	Eastside only	H23
Scotch Bonnet Dr	F	Eastside only	H24
Greensboro	F	Westside only	H25
Charlotte St	C	Both sides of street	H26
Durham St	C	Eastside only	H27
Fishing Pier Lot	F	In lot	H28
Burlington St	C	Both sides of street	H29
Salisbury St	C	Both sides of street	H30
Sanford St	C	Both sides of street	H31
Fayetteville St	C	Westside only	H32
Lumberton St	C	Both sides of street	H33
Highpoint St	C	Both sides of street	H34
Neptune St	C	Eastside only	H35
Boyd St	C	Both sides of street	H36
Roger St	C	Both sides of street	H37
Delanne Dr	C	Westside only	H38
Davis St,	F	Eastside only	H39

Ocean Blvd W to Brunswick Ave W			
Davis St Lot	F	In lot	H40
Brunswick Ave West, Davis St. to Jordan Blvd	F	Both sides of street	H41
Jordan Blvd (OBW to Brunswick Ave)	F	Both sides of street	H42
Jordan Blvd (Brunswick to Pavilion)	F	In lot	H43
Under bridge Lot (at restrooms)	F	In lot	H44
Pump Station 1 ROW (North of bridge, between BAW and Jordan Blvd	F	Both sides of street	H45
Boat Ramp Area	F	Lot	H46
Southshore Dr, West of Jordan Blvd	F	Both sides of street	H47
Southshore Dr, Carolina Ave to Quinton St	F	Both sides of street	H48
Carolina Ave, Southshore Dr to Quinton St	F	Both sides of street	H49
Brunswick Ave East	F	Both sides of street	H50
Quinton St	F	Westside Only	H51
Quinton St Handicap Lot	F	In lot	H52
Halstead St	C	Westside only	H53
Ferry St, North of Ocean Blvd E	C	Westside Only	H54
Ferry St Lot	F	In lot	H55
Holden St	F	Westside only	H56
Ranger St Lot	C	In lot	H57
Elizabeth St Lot	C	In lot	H58
Mullet St	C	Both sides of street	H59
Mullet St Lot	F	In Lot	H60
Bendigo St Lot	F	In Lot	H61
Blockade Runner Dr	C	Westside only	H62
McCray St, Ave A to Dunescape Dr.	F	Both sides of street	H63

Ocean Blvd East, McCray to Ave A	F	In lot	H64
Ocean Blvd East, Ave A to Dunescape Dr.	F	Southside only	H65
Ave A	F	Westside only	H66
Ave B	F	Both sides of street	H67
Dunescape Dr, South of McCray St.	C	Both sides of street	H68
McCray St, Dunescape Dr, East to Ave D Lot	F	Northside only, parallel only	H69
McCray Street, East of Ave D	F	Northside of street only	H70
Ave D Lot	F	In lot	H71

§ 72.04 TOW-AWAY ZONES.

Vehicles may be towed at the discretion of any law enforcement officer in accordance with all current North Carolina State Laws covered under Chapter 14, Chapter 20 or other applicable statute of the North Carolina General Statues.

§ 72.99 PENALTY.

(A) Criminal. In accordance with NCGS 14-4(b), SL 2021-138 (effective December 1, 2021), violation of a parking ordinance is an infraction and may carry a maximum fine of fifty (\$50.00) dollars.

(B) Civil. In accordance with § 10.99(B), Any person who violates any provision of this traffic code shall be subject to a civil fine of \$50 per offense, unless a different amount is specifically stated herein.

(C) When a civil fine is assessed in accordance with 72.99(B) above, and the violation is for parking in a lawful parking area, and the fine is paid by mid-night of the same date it was assessed, it shall be \$25 per offense, for the first 3 offenses per vehicle, per calendar year. All subsequent violations shall be \$50 per offense unless a higher amount is required in this Chapter. This subsection, 72.99(C), shall not apply to violations of 72.02(A)(6) or (7).

(D) Civil. In accordance with § 10.99(B), Any person who violates § 72.02(A)(6) or (7) of this traffic code shall be subject to a civil fine of \$250 per offense.

(E) A late fee in the amount of \$25 shall be assessed when all fines levied by 72.99(B) or (C) of this section are not paid in full within 30 days of the issuance of a citation for a violation.

Section 2: Modify Chapter 70, Section 70.99 (NOTE: if Chapter 72 is accepted above, this must be changed to prevent a mutual exclusion).

Replace 70.99(D) with the following.

(D)The Penalties for Chapter 72 shall be assessed in accordance with Section 72.99.

Section Three: The Town Clerk is directed to forward this ordinance to American Legal Publishing for inclusion in the next published supplement to the Holden Beach Code of Ordinances.

Section Four: This ordinance shall be effective the 19th day of January, 2022.

This the 18th day of January, 2022.

J. Alan Holden, Mayor

ATTEST:

Heather Finnell, Town Clerk

ORDINANCE 22-03
AN ORDINANCE AMENDING THE HOLDEN BEACH CODE OF ORDINANCES,
CHAPTER 95: STREETS (SECTION 95.05 PUBLIC RIGHTS-OF-WAY)

BE IT ORDAINED BY the Mayor and Board of Commissioners of the Town of Holden Beach, North Carolina, that Chapter 95: Streets (Section 95.05 Public Rights-of-Way) be amended as follows.

Section One: Amend Section 95.05 to read as follows:

§ 95.05 PUBLIC RIGHTS-OF-WAY.

(A) The purpose of this regulation is to establish the uniform authorized usage of the public rights-of-way as defined in Chapter 72. The public rights-of-way nearest the pavement or roadbed extending to the owner's property line shall remain clear of all items with the following exceptions:

- (1) Mailboxes and newspaper boxes.
- (2) Grass and vegetation not to exceed six(6) inches in height.
- (3) Regulatory signage installed and maintained by the Town or State.
- (4) Sidewalk or other pedestrian accessway(s) installed by the Town or State.

(B) The town has no responsibility to protect any items, authorized or unauthorized, which are placed in public street rights-of-way. Improvements are made at the owner's risk and may be destroyed, damaged, or removed without prior notice to the owner.

(C) Any existing concrete driveway within the public right-of-way that is removed for any reason may not be replaced.

Section Two: The Town Clerk is directed to forward this ordinance to American Legal Publishing for inclusion in the next published supplement to the Holden Beach Code of Ordinances.

Section Three: All current items that become non-compliant by the amendment must be brought into compliance by the 18th day of July, 2022.

This the 18th day of January, 2022.

ATTEST:

J. Alan Holden, Mayor

Heather Finnell, Town Clerk

RESOLUTION 22-01
RESOLUTION AMENDING THE HOLDEN BEACH FEE SCHEDULE

WHEREAS, the Holden Beach Parking Committee and Otto Connect have developed a recommended paid parking plan, to include a fee schedule for the Town of Holden Beach; and

WHEREAS, at the December 12, 2021 Regular Meeting of the Board of Commissioners, the Board of Commissioners discussed the proposed plan and voted to amend the Parking Committee's proposed paid parking plan to reflect that the paid parking period in Holden Beach will be established as April 1st – October 31st; and

WHEREAS, the Board of Commissioners voted to move forward with the implementation of the proposed paid parking plan with the change made to the paid parking period.

WHEREAS, the Holden Beach Fee Schedule needs to be updated to reflect the newly established paid parking fees.

NOW THEREFORE BE IT RESOLVED, that the Board of Commissioners of the Town of Holden Beach, North Carolina does hereby amend the fee schedule to reflect the attached paid parking fees.

This the 18th day of January, 2022.

J. Alan Holden, Mayor

ATTEST:

Heather Finnell, Town Clerk

Fee Schedule Amendment

Add the following new section to the Fee Schedule

<i>Parking Permit Rates Per Vehicle</i>	
Per Hour Rate	\$4.00
Per Day Rate	\$20.00
Per Week Rate	\$80.00
Annual Rate	\$250.00

SERVICES ORDER FORM

Customer: Town of Holden Beach	Contact: David Hewett, Town Manager
Address: 110 Rothschild Street	Phone: 910-842-6488
Holden Beach, NC 28462	e-mail: david.hewett@hbtownhall.com
Services: <i>Delivery of the "SurfCAST by Otto Connect" mobile application as offered by Otto Connect, Inc. (the "SaaS Service(s)"), with the parking management administration and enforcement services provided in connection with SurfCAST (the "Additional Parking Services," and collectively with the SaaS Services, the "Services"), all as further described in the Statement of Work attached as Exhibit A hereto.</i>	
Services Fees: SurfCAST = 30% of consumer parking fees collected, 30% of Violation fees collected. The above all subject to the terms of Section 4 herein and a minimum of 500 parking spaces.	Initial Service Term: Two (2) Years Automatically renewed for subsequent one (1) year periods unless cancelled 90 days prior to the end of the current year period.
Implementation Services: Company will use commercially reasonable efforts to provide Customer the services described in the Statement of Work attached as Exhibit A hereto ("Implementation Services"), and Customer shall pay Company the Implementation Fee in accordance with the terms herein.	
Implementation Fee (one-time): \$0.00	
Pilot Use: None	

SERVICES AGREEMENT

This Services Agreement ("Agreement") is entered into on this _____ day of _____, 2022 (the "Effective Date") between Otto Connect, Inc. with a place of business at 9107 Maria Luisa Pl, Raleigh, NC 27617 and 816A N. Topsail Dr, Surf City, NC 28445 ("Company" or "Otto"), and the Customer listed above ("Customer" or "Town"). This Agreement includes and incorporates the above Order Form, as well as the attached Terms and Conditions and contains, among other things, warranty disclaimers, liability limitations and use limitations.

Otto Connect, Inc.:

Town of Holden Beach:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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

Town Finance Officer

TERMS AND CONDITIONS

1. SAAS SERVICES AND SUPPORT

1.1 Subject to the terms of this Agreement, Company will use reasonably diligent efforts to provide Customer the SaaS Services in accordance with the Service Level Terms attached hereto as Exhibit B. As part of the registration process, Customer will identify an administrative username and password for Customer's Company account. Company reserves the right to refuse registration of or cancel passwords it deems inappropriate.

1.2 Subject to the terms hereof, Company will provide Customer with reasonably diligent technical support services in accordance with the Company's standard practice.

2. ADDITIONAL PARKING SERVICES

2.1 Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Additional Parking Services (as defined in the Services Order Form).

2.2 In connection with the provision of the Additional Parking Services, Customer authorizes Company to: (a) collect parking and related fees in accordance with Customer's policies therefor; (b) enforce any parking requirements or conditions on behalf of Customer, including issuing citations and towing or immobilization of automobiles; and (c) enforce Customer's collection policy for delinquent citation fees, including providing notices, instituting collection proceedings, and the engagement of collection services for the same. Customer expressly agrees that Company may subcontract or delegate to any entity or individual all or any portion of the Additional Parking Services.

2.3 Upon the written request of Customer, Company agrees to remove and replace any personnel providing the Additional Parking Services that commits any act involving moral turpitude, dishonesty, harassing or indecent conduct, or illegal or unethical conduct that is detrimental to the interest and well-being of the Customer or which impairs or injures the reputation of the Customer.

3. RESTRICTIONS AND RESPONSIBILITIES

3.1 Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the SaaS Services or any software, documentation or data related to the SaaS Services ("Software"); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the SaaS Services); use the SaaS Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.

3.2 Further, Customer may not remove or export from the United States or allow the export or re-export of the SaaS Services,

Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

3.3 Customer represents, covenants, and warrants that Customer will use the Services only in compliance with Company's policies as agreed by the Parties and in compliance with stated Customer policies attached hereto as Exhibit E (the "Policy") and all applicable laws and regulations. The Policy may be modified by mutual agreement from time to time; provided, that in no event shall such modification materially and adversely affect Customer's use of the Services or otherwise conflict with any of the terms and conditions set forth in this Agreement. Customer hereby agrees to indemnify and hold harmless Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer's use of Services.

3.4 Although Company has no obligation to monitor Customer's use of the SaaS Services, Company may do so and may prohibit any use of the SaaS Services it believes may be (or alleged to be) in violation of the foregoing.

3.5 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the SaaS Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Any unique or special requirements for Customer's technical environment will be set forth in the Statement of Work. Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

3.6 Customer shall cooperate with Company in its performance of the Additional Parking Services and provide reasonable access to Customer's parking areas or equipment as reasonably required to enable Company to provide the Additional Parking Services. Customer alone is responsible for the

maintenance and upkeep of Customer's parking areas. Company is not an insurer or guarantor of security or personal safety in such parking areas and in no event shall be liable for damage thereto. Company assumes no liability for any failure of any individual to pay any parking fees or other charges due in connection therewith.

4. CONFIDENTIALITY; PROPRIETARY RIGHTS

4.1 Subject to the provisions of Chapter 132 of the North Carolina General Statutes, each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Service. Proprietary Information of Customer includes non-public data provided by Customer to Company to enable the provision of the Services ("Customer Data"). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

4.2 Company shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, (c) any data that is based on or derived from the Customer Data and provided to Customer as part of the Services; and (d) all intellectual property rights related to any of the foregoing.

4.3 Notwithstanding anything to the contrary, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

5. PAYMENT OF FEES

5.1 In consideration of the Services, Company will be entitled to the then applicable fees described in the Order Form for the Services and Implementation Services in accordance with the terms therein (the "Fees"). If Customer's use of the Services exceeds the Service Capacity set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email).

5.2 Subject to Section 5.3, the Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Company thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company's net income.

5.3 For SurfCAST, Company will collect all fees and retain the agreed percentage of collected fees for each category of service on a monthly basis. All remaining fees collected will be distributed to Customer on the same monthly schedule. In connection therewith, Company agrees to maintain accurate records relating to the Services provided to the Customer under this Agreement. During the Term and for a period of two (2) years thereafter, upon Customer's written request, the Company will allow Customer or Customer's representative to inspect and make copies of such records, provided that any such inspection shall take place during regular business hours with at least ten (10) business days' advance written notice.

6. TERM AND TERMINATION

6.1 Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the Order Form and shall be automatically renewed for additional periods noted on the order form (collectively, the "Term"), unless either party requests termination at least ninety (90) days prior to the end of the then-current term.

6.2 In addition to any other remedies it may have, either party may also terminate this Agreement, if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

7. WARRANTY AND DISCLAIMER

Company shall use reasonably diligent efforts consistent with prevailing industry standards to maintain the SaaS Services in a manner which minimizes errors and interruptions in the SaaS Services and shall perform the Additional Parking Services and Implementation Services in a professional and workmanlike manner. SaaS Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

8. INDEMNITY

Company shall hold Customer harmless from liability to third parties resulting from infringement by the SaaS Service of any United States patent or any copyright or misappropriation of any trade secret, provided Company is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume lead counsel over the defense and settlement of said claims; Company will not be responsible for any settlement it does not approve in writing. The foregoing obligations do not apply with respect to portions or components of the SaaS Service (i) not supplied by Company, (ii) made in whole or in part in accordance with Customer specifications, (iii) that are modified after delivery by Company, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer's use of the SaaS Service is not strictly in accordance with this Agreement. If, due to a claim of infringement, the SaaS Services are held by a court of competent jurisdiction to be or are believed by Company to be infringing, Company may, at its option and expense (a) replace or modify the SaaS Service to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Customer a license to continue using the SaaS Service, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer a refund of any prepaid, unused fees for the Service.

9. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AND AFFILIATES, SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE GREATER OF: (I) FEES PAID BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY AND (II) PROCEEDS OF THE COMPANY'S AVAILABLE INSURANCE COVERAGE, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The provisions of this Section 9 are for the sole and exclusive benefit of the Company and the other parties named herein and shall not be construed to limit any recourse that may be available to the Customer against any other party, including Company's employees and contractors.

10. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement with Customer's consent, said consent shall not unreasonably withheld. Notwithstanding the foregoing, the Company may assign its rights and obligations hereunder, without the consent of the Customer, to any other corporation, person, or entity acquiring all or substantially all of the assets or ownership interest of the Company or to any other corporation, person, or entity into which the Company may be merged or consolidated. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any

respect whatsoever. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of North Carolina without regard to its conflict of law provisions. The parties shall work together in good faith to issue at least one mutually agreed upon press release within 90 days of the Effective Date, and Customer otherwise agrees to reasonably cooperate with Company to serve as a reference account upon request.

EXHIBIT A

Statement of Work

Company will deliver SurfCAST, encompassing the mobile app and web-based solution for the Town, specifically:

- The parking management SaaS capability for collection of parking fees, issuing and managing citations, and violation fee collection.
- The company will provide personnel who will perform all enforcement checking, citations, and customer service via phone, email, or via the feedback capability on the app. It should be noted that the app-based feedback capability is currently limited to email communication back to the parking customer.

SurfCAST, as used by Holden Beach provides all the features and support requirements needed for quick and low-cost implementation of parking management. Key components include:

1. Various parking pass options – specially for hour and day periods of parking or vehicle type
2. Parking enforcement enabled for the Town via periodic license plate scan and verification of an active parking permit – or violation notice and appropriate parking citation/ticket if there is no active paid permit or parking in a No Parking zone as defined by Town Ordinances
3. Collection of all parking fees with monthly payment to the Town based on the fees identified in the Order Form approximately one (1) week following the close of the calendar month. Collection of delinquent fees will be via 3rd party collection service as contracted by Company.
4. Monthly auditable reports and web-based dashboard

SurfCAST provides a mobile parking solution with little up-front-cost to the Town (limited to mapping of parking areas, signage, and links to appropriate Town resources). SurfCAST will provide:

1. Free App download for all participants with full function capability – covering Zone and Parking Fee with selectable period (hour, day, week, or annual) for Apple and Android devices (with limitations for supported versions of the Operating System)
2. QRcode/picture to a secure web-link for on-line payments
3. Website access: <https://surfcast.ottoconnect.us/pay>
4. Simple, all-inclusive fees as a percentage of parking rates
5. Optional enforcement enabled for Town personnel: Ticketing and payment processing
6. Customized Dashboard – standard and unique requirements based on needs of the Town
7. Auditable reports of all fees, tickets, and payments
8. Customer inquiries via email, phone or the Feedback section of the app (grievances, issues, ticket or charge concerns)
9. Dedicated phone number for Customer Service: 910-200-1497
10. Town will also leverage the “Same Day Ticket Payment Discount” feature for violations for a maximum of three (3) times per vehicle.

The Town of Holden Beach will be responsible for identification of valid parking areas, parking spaces, and appropriate signage identifying “SurfCAST by Otto Connect” as the tool to use to pay for parking privileges. Company will provide templates of the signs for Town approval. Company may provide procurement of signs and/or installation of signs as agreed via separate agreement.

Holden Beach – SurfCAST parking permit and enforcement details

Dates/Times/Enforcement:

April 1st, through October 31st

9:00AM to 5:00PM

Enforcement will be via random scan of license plates, 2 times per day, with 3-4 times on Saturdays between Memorial and Labor Day.

App Access:

“SurfCAST by Otto” via: Apple App Store and Google Play

QRcode – link to secure website

Web Direct: <https://surfcast.ottoconnect.us/pay>

Phone: 910-200-1497 – available on the Dates/Times noted above.

Parking Rates for a single vehicle in all designated parking areas will be:

Note: single license plate – must be verified each time a permit is purchased – can be changed each time

- \$4 per hour for up to 4 hours
- \$20 per day and for any duration greater than 4 hours
- \$80 per week for 7 consecutive days

Annual Permit – for two vehicles (allowed to change License Plate Number only once per vehicle every 90 days)

- \$250 per calendar year

Note: Can be for any 2 licensed vehicles including Car, Truck, LSV, Trailer, etc.

Dual Vehicle Permit (i.e., Truck and Trailer in designated parking space)

- \$40 per day

Parking Zone Types (General Name or specific zone number):

General Zone Name:

- | | |
|---|---------|
| • LSV – On-Street (Low-Speed-Vehicle – i.e., golf carts, etc.): | HBV(xx) |
| • Standard – On-Street | HBS(xx) |
| • Standard – Parking Lot | HBL(xx) |
| • Vehicle plus Trailer | HBT(xx) |

Parking Rules, Regulations, and Violations:

Listed are the common violations that will result in a parking citation:

- Parking without a valid paid permit (Section 72.02)
- Parking within 25 feet of a Stop Sign (Section 72.02)
- Parking within 15 feet of a Fire Hydrant, Fire Lane, or Emergency Access (Section 72.02)
- Parking in a Crosswalk, Sidewalk, or Access ways (Section 72.02)
- Parking blocking a driveway or mailbox (Section 72.02)
- Parking opposing traffic (Section 72.02)
- Parking in a designated Handicap space without proper license plate or hangtag (Section 72.02)
- Parking in a No Parking Zone, on Street, or within Right-of Way (Section 72.02 and 72.03)
- No Parking allowed from 2:00AM to 5:00AM (Section 72.02)

Citation Fees:

- \$25 – Same Day Violation Payment - if paid by midnight of the day of the violation via the app or website (single vehicle only)
- \$50 – standard citation fee if paid within 30 days.
- \$50 – applies to “vehicles plus trailer” citations
- \$250 – Handicap space violation
- +\$25 if citation is not paid within 30 days (total \$75)
- If not paid within 60 days, citations will be forwarded to a collection agency for payment which will include additional fees as required by the collection agency.

Citation Payments:

- Can be made directly on the SurfCAST mobile app
- Can be made directly on the website noted above
- Can be made via phone to Otto Connect customer service @ 910-200-1497
- Can be mailed in with check, payable to:
 - Otto Connect, Inc. – parking services
 - PO Box 2448
 - Surf City, NC 28445



Citation Appeals will be provided by Otto Connect, Inc. via:

- Email: customerservice@ottoconnect.us
- Phone: 910-200-1497

EXHIBIT B

Availability of Services

The SaaS Services shall be available 99%, measured monthly, including holidays and weekends and excluding scheduled maintenance (to be scheduled overnight). If Customer requests maintenance during any specific hours, any uptime or downtime calculation will exclude periods affected by such maintenance. Further, any downtime resulting from outages of third-party connections or utilities or other reasons beyond Company's control will also be excluded from any such calculation. Customer's sole and exclusive remedy, and Company's entire liability, in connection with SaaS Service availability shall be that for each period of downtime lasting longer than one hour, Company will credit Customer 50% of the average parking fees expected during the period of downtime. Average parking fees will be calculated based on the hour of the day and day of the week for a four (4) week running average and will be net of any service fees that would have been due to Company. (For clarity, downtime from 2:00 to 3:00 PM on a Wednesday will use the average parking fees paid to Customer for the previous four weeks on Wednesdays from 2:00 – 3:00 PM.) Downtime shall begin to accrue as soon as it is discovered that downtime is taking place and continues until the availability of the SaaS Services is restored. Company agrees to provide Customer with a record of such downtime for each month. In order to receive downtime credit, Customer must send a written request to Company via email, or via text within 72 hours from the end of the downtime, and failure to provide such notice will forfeit the right to receive downtime credit. Downtime credit may not be redeemed for cash. Credit shall accrue for no more than 8 hours for each day, and for no more than 7 such days in any single month. Company will apply credit within the ninety (90) days immediately following the restoration of the SaaS Services. If the Customer accrues the maximum amount of downtime credit permitted hereunder for two (2) consecutive months, then Customer may terminate this Agreement with immediate effect upon delivery of written notice thereof.



EXHIBIT C
Support Terms

Company will provide Technical Support to Town via electronic communication using the mobile app, email, or direct contact via phone any day during the Enforcement Period (All Year) during the hours of 9:00 am through 5:00 pm Eastern time, with the exclusion of Federal Holidays ("**Support Hours**").

Company will use commercially reasonably diligent efforts to respond to all notices within one (1) business day.

Phone support from 9:00AM to 5:00 PM daily during the Enforcement Period via 910-200-1497.

Email support via customerservice@ottoconnect.us.

EXHIBIT D
Additional Terms

1. Emergency Services

As noted in Exhibit C: Support Terms

2. Permanent Additions, Deletions and Changes to Services

The Town will have the right to request additions, deletions, or changes for any of the Services, in its sole discretion, in response to its changing needs. The Town will submit all notices for revisions in Services in writing with reasonable advance notice to the Company. In the event of an emergency situation, the Town and Company will work with each other in good faith to implement required Service changes as quickly as possible. Town agrees that Company will manage any additions to the Services as described herein (for example if Town should add new parking lots) and Company agrees to assess and respond to such additional Services in a timely manner but not more than two (2) weeks from the date received to include feasibility, and if accepted, an implementation plan and additional Service rates consistent with existing rates with the Town. For any Services not originally contemplated by this Agreement, the Company will provide such Services at rates that do not exceed those being charged to similar clients for similar services upon the written agreement of Town.

3. Subcontracting

Company acknowledges and agrees that it shall be the prime contractor and shall remain fully responsible for the performance of all obligations required to be performed by the Company or any subcontractors under this Agreement. Upon the Town's written request, the Company shall submit to the Town organizational charts and qualifications of subcontractor personnel for any portions of the Services proposed to be performed by subcontractors.

4. Indemnification

To the fullest extent permitted by law, the Company shall indemnify, defend and hold harmless the Town and the Town's officers, agents and employees from and against any and all claims, losses, damages, obligations, liabilities and expenses (including reasonable attorneys' fees) that arise directly or indirectly from any negligent or intentional act(s), error(s) or omission(s) or willful misconduct by the Company or any of its agents, employees or subcontractors (or any allegations of any of the foregoing), including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal.

The indemnification obligation under this Section 4 shall apply to all matters involving injured employees of the Company or any supplier or subcontractor of any tier and shall not be limited by any provisions of applicable workers' compensation laws, and in particular shall apply regardless of the exclusive remedy and/or immunity provisions of those laws.

5. Insurance

The Company shall purchase and maintain during the life of this Agreement with an insurance company companies licensed to do business in North Carolina with a general policyholder's ratings of at least A- and a financial rating of at least VI in the most current Best's Insurance Reports available on the Commencement Date, or if the Best's ratings are changed or discontinued, the parties shall agree to a comparable method of rating insurance companies:

a) Commercial General Liability

Bodily injury and property damage liability as shall protect the Company and any subcontractor performing work under this Agreement from claims of bodily injury or property damage which arise from operation of this Agreement whether such operations are performed by Company, any subcontractor or any person directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1 Million combined single limit per occurrence and \$2 Million in general aggregate for bodily injury & property damage & \$2 Million general aggregate for products/completed operations. Comprehensive General Liability insurance shall include endorsements for property damage; personal injury; contractual liability; completed operations, products liability, & independent contractors' coverage. This coverage shall be on an occurrence basis.

- b) **Workers' Compensation Insurance**
Meeting the statutory requirements of the State of North Carolina and Employers Liability- \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit, providing coverage for employees and owners.
- c) **Theft, Disappearance and Destruction Coverage – as may be covered by Crime or Cyber Crime policies.**
Protecting against loss of money and securities, inside the premises and outside the premises in the care and custody of a messenger in an amount not less than \$500,000.
- d) **Crime Insurance**
Covering the Company, its agents or employees, in an amount not less than \$100,000.

All insurance policies provided hereunder shall include a deductible amount of not less than \$2500, and the deductible amount of any claims shall be paid as a reasonable expense of the operation.

The Town of Holden Beach shall be included and endorsed as an additional insured under the commercial general liability insurance for operations and services rendered under this Agreement. Certificates of all required insurance shall be furnished to the Town at the time of execution of this Agreement and shall contain the provision that the Town will be given 30 day written notice of any intent to amend or terminate by either the insured or the insuring company.

- e) **Automobile Liability**
The Town shall purchase and maintain during the life of this Agreement on all vehicles owned by the Town and used by Company with an insurance company acceptable to Company and authorized to do business in the State of North Carolina the following insurance:

Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit each occurrence/aggregate.

6. General Compliance with Laws and Regulations

The Company shall comply with all Federal, State, and local laws, ordinances, and regulations applicable to the Services provided herein. If, due to conflicts between two or more such ordinances, statutes, laws, rules, and regulations (the "Regulations") or due to conflicts in the interpretation or enforcement of such Regulations by courts or governing bodies having jurisdiction over the Services, the Company is unable to comply with such Regulations, the Company shall exercise usual and customary professional care in the exercise of his professional judgment in complying with such conflicting Regulations. The Company further agrees that it will at all times during the term of this Agreement be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to workers' compensation, the Fair Labor Standards Act, the Americans with Disabilities Act (ADA), the Family and Medical Leave Act, and all Occupational Safety and Health Administration (OSHA) regulations applicable to the work.

- a) **Non-Discrimination**
The Company agrees that it has adopted and will maintain and enforce a policy of non-discrimination on the basis of race, color, religion, sex, age, national origin, or disability. The Company agrees that it will inform the Town of any alleged violation(s) of employment practices involving any employees who provide Services which are asserted in any claims filed with the Equal Employment Opportunity Commission, Labor Department or any other federal or state compliance agency. Also, the Company will inform the Town of the final disposition of such cases.
- b) **Equal Opportunity**
The Town is committed to promoting equal opportunities for all and to eliminating prohibited discrimination in all forms. Prohibited discrimination means discrimination against any person, business or other entity in contracting or purchasing practices on the basis of race, color, sex or national origin. Without limiting the

foregoing, prohibited discrimination also includes retaliating against any person, business or other entity for reporting any incident of prohibited discrimination. It is understood and agreed that not only is prohibited discrimination improper for legal and moral reasons, prohibited discrimination is also an anti-competitive practice that tends to increase the cost of goods and services to the Town and others.

As a condition of entering into this Agreement, the Company further agrees to: (a) promptly provide to the Town all information and documentation that may be requested by the Town from time to time regarding the solicitation and selection of subcontractors. Failure to maintain or failure to provide such information constitutes grounds for the Town to terminate or withhold payment under this Agreement.

c) Harassment

The Company agrees to make itself aware of and comply with the Town's Harassment Policy. The Town will not tolerate or condone acts of harassment based upon race, sex, religion, national origin, color, age, or disability.

d) Safety

The Company will have sole responsibility for ensuring its employees have been trained in appropriate safety procedures in connection with providing Services to the Town. Company's employees will not create safety hazards in the course of providing the Services.

7. Drug Free Workplace Requirement

The Company shall provide a drug-free workplace during the performance of this Agreement. This obligation includes:

1. Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Company's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
2. Establishing a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the Company's policy of maintaining a drug-free workplace, (iii) any available drug counseling, rehabilitation, and employee assistance programs and (iv) the penalties that may be imposed upon employees for drug abuse violations;
3. Notifying each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlined in this Article and (ii) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace not later than five (5) days after such conviction;
4. Notifying the Town within ten (10) days after receiving from an employee a notice of a criminal drug statute conviction or after otherwise receiving actual notice of such conviction, unless otherwise forbidden to communicate such information to third parties under the Company's drug-free awareness program or other restrictions;
5. Imposing a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by an employee convicted of drug crime;
6. Making a good faith effort to continue to maintain a drug-free workplace for employees; and
7. Requiring any party to which it subcontracts any portion of the work under the Agreement to comply with the provisions above.

Failure to comply with the above drug-free workplace requirements during the performance of the Agreement shall be grounds for suspension, termination or debarment.

8. Miscellaneous

Relationship of The Parties

The relationship of the parties established by this Agreement is solely that of independent contractors, and nothing contained in this Agreement shall be construed to (i) give any party the power to direct or control the day-to-day

activities of the other; or (ii) constitute such parties as partners, joint venturers, fiduciaries, co-owners or otherwise as participants in a joint or common undertaking; or (iii) make either party an agent of the other for any purpose whatsoever. Neither party nor its agents or employees is the representative of the other for any purpose, and neither has power or authority to act as agent or employee to represent, act for, bind, or otherwise create or assume any obligation on behalf of the other. Town agrees that neither it shall employ, in any capacity, any person that Company has employed as a Supervisor, Manager or Assistant Manager during the term of this Agreement. This provision shall survive the expiration or other termination of this Agreement for a period of one (1) year.

Amendment

No amendment or change to this Agreement shall be valid unless in writing and signed by both parties to this Agreement.

Governing Law and Jurisdiction

The parties acknowledge that this Agreement is made and entered into in Holden Beach, North Carolina. This Agreement has been fully negotiated between two sophisticated parties and shall be construed without regard to any presumption or rule of law or equity regarding construction of this Agreement against the party causing this Agreement to be drafted or prepared. The parties further acknowledge and agree that North Carolina law shall govern all rights, obligations, duties, and liabilities of the parties to this Agreement, and that North Carolina law shall govern interpretation of this Agreement and any other matters relating to this Agreement (all without regard to North Carolina conflicts of laws principles).

The parties further agree that any and all legal actions or proceedings relating to this Agreement shall be brought in a state or federal court sitting in Wake County, North Carolina. By execution of this Agreement, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections that they may have with respect to venue in any of the above courts.

Binding Nature and Assignment

This Agreement shall bind the parties and their successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other. Any assignment attempted without the written consent of the other party will be void.

Force Majeure

The Company shall not be liable for any failure or delay in the performance of its obligations pursuant to this Agreement and such failure or delay shall not be deemed a default of this Agreement or grounds for termination hereunder, except as set forth below, if all of the following conditions are satisfied:

- If and to the extent such failure or delay is caused by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, pandemic, riots, civil disorders, rebellions or revolutions, strikes, lockouts or court order (each, a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the Company shall be excused from any further performance of those of its obligations pursuant to this Agreement affected by the Force Majeure Event for as long as: i) such Force Majeure Event continues and ii) Company continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- The Company shall promptly notify the Town by telephone or other means available (to be confirmed by written notice within five (5) business days of the beginning of the failure or delay) of the occurrence of a Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than thirty (30) days, the Town may terminate this Agreement.

Severability

The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of the Agreement can be determined and effectuated. If any provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

Approvals

All approvals or consents required under this Agreement must be in writing and signed by an appropriate representative of the respective party.

Waiver

No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Agreement shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party waiving the rights.

Conflict of Interest

The Company covenants that its officers, employees, shareholders and subcontractors have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

No Bribery

The Company certifies that to the best of its knowledge, information, and belief, neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed, or attempted to bribe, an officer or employee of the Town in connection with this Agreement.

Change in Control

The Company shall notify the Town within thirty (30) days of the occurrence of a change in control. As used in this Agreement, the term "control" means the possession, direct or indirect, of either:

- The ownership of or ability to direct the voting of, as the case may be, fifty- one percent (51%) or more of the equity interests, value or voting power in the Company; or
- The power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by contract or otherwise.
- In the event of a Change in Control of Company as defined in this Section 14.11, the Town may, in its sole discretion, terminate this Agreement upon thirty (30) days written notice to Company.

Company Access to Town Facilities

Arrangements for access to Town facilities will be made between the Town Manager and the Company. The Company will be required to sign for all keys when issued and return all keys upon termination of the Agreement. The Company shall report any loss or misuse of keys immediately will promptly reimburse the Town for any re-keying as a result of such loss or misuse.

Revenue

All revenue collected and penalty payments received by the Company, resulting from the enforcement of off-street and on-street parking regulations, as well as payments received for any other citation, shall be the property of the Town.

Town's Right to Dismiss Fees and Fines

The Town has the unilateral right to dismiss any individual parking ticket or other citation and/or direct the Company to reimburse any fines or fees.

9. Public Information and the Media

Advertising, sales promotion or other materials of the Company or its agents or representatives shall limit the identification or reference to this Agreement to the general description of the Services. As a condition of entering into this Agreement, the Company further agrees to refrain from the following, absent the Town's prior written approval: (1) making

Otto Connect, Inc.

www.ottoconnect.us

Company Initials _____ Town Initials _____



any statement to the media or public regarding the subject matter of this Agreement or the Town's position on any issue relating to this Agreement; or (2) making any statement to the media or public on any issue which is in the Town's judgment likely to cast doubt on the competence or integrity of the Town or Company. Failure to comply with this Article by the Company shall constitute a material breach and, without limiting any other remedies the Town may have, shall entitle the Town to terminate this Agreement for default.

All of the information, reports, cost estimates, plans, specifications and documents prepared or assembled by the Company under this Agreement are the property of the Town. The Company agrees that any such documents may not be made available to any individual or organization other than appropriate Town officials without prior written approval of the Town. Nothing contained in this paragraph shall be construed to prevent the Company from making information, reports and documents available to those individuals or firms directly concerned with the services described herein with prior written agreement of the Town.

10. Immunity not Waived

This Agreement is governmental in nature for the benefit of the public and is not intended to be for private profit or gain and the Town is not waiving any immunities it enjoys by entering into this Agreement.

11. Pre-Audit

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

Exhibit E

Policies for Enforcement Personnel

This policy set is effective as of the date of signing the Services Order Form – and may be updated periodically by mutual agreement.

1. If Parked without an Active Permit or in a No Parking area:
 - a. Immediate Citation with reason noted on the ticket
 - b. 2nd unpaid Violation will receive a citation. No other action at this time for multiple violations.
 - c. Citations remaining unpaid after 60 days will be referred to a collection agency on behalf of the Town
2. Active Permit – incorrect Zone/Lot or other infraction
 - a. If parked in an equivalent lot - No Action – allowed to park. The app will allow movement from any valid Town zone to any other zone within the Permit Period.
 - b. If parked in a lot specified for a different vehicle type (i.e., car or truck parked in an LSV lot), or parked incorrectly per town ordinances (i.e., not parked in the direction of travel) – then a citation will be issued for the identified infraction.
3. Violations to be supported by SurfCAST:
 - a. As noted in Exhibit A – Statement of Work, or as updated in this Exhibit E.
 - i. No updates at this time
4. Violation
 - a. 1st Offense – immediate citation
 - i. Allow for 15-minute grace period after the paid period has ended before issuing a citation
 - ii. Notification on the app at 15 min prior to the end of the paid period
 - iii. Notification on the app at the termination of the paid period
5. Parked on the Street or Right of Way (any non-designated parking space):
 - a. Immediate Citation
 - b. If impeding traffic or causing a safety issue, call the police non-emergency line for support and potential tow
6. Handicap allowances
 - a. Handicap parking is free with license plate or hangtag depicting current handicap status when the vehicle is parking in a Handicap space.
 - b. If a Handicap vehicle is in a regular space, they must have a valid permit or receive a citation.
7. Vehicles
 - a. 1 vehicle allowance per app account for hour, day, week permits
 - b. 2 vehicles allowed for HBT zone – to include vehicle plus trailer
 - c. 2 vehicles allowed per app account for annual permits
 - d. Each vehicle must have a parking permit
 - e. License Plate Changes are permitted at the start of a parking session, except for annual permits which can only be changed once every 90 days
 - f. A License Plate may be registered on more than one account – but only one can have an active permit at any given point in time.
8. Temporary License Plate
 - a. Will be treated as a regular plate and scanned for an active permit

Town Manager – David Hewett

Otto Connect, Inc. – Jim Varner

Signature: _____

Signature: _____

Date: _____

Date: _____

29 December 2021

FROM: THB Commissioner Kwiatkowski
TO: THB Town Manager David Hewett
THB Chief of Police Jeremy Dixon
CC: THB Town Clerk Heather Finnell

RE: Dec 21 BOCM Paid Parking Proposal-Directional Changes

While I appreciate the efforts of November and December by Otto Connect (hereafter Otto) and the parking committee (hereafter committee) to get a proposal to the BOC after a number of months of little progress, my position is there are 3 major proposals that did not receive enough consideration/"what ifting" in the final push to get something voted on that would enable a Spring 2022 paid parking roll-out, the 3 items being:

1. Proposed no ROW parking except in designated places 24/7, year-round;
2. Proposed elimination of post and rope (which was not one of the committee's remits);
3. Proposed LSV paid parking on streets that are not served by a town maintained public access.

Because the committee was 2 months behind on delivering their proposal, the Board lost 2 BOCMs that were intended for discussions and fine tuning. Since it appears there is no opportunity for a special BOC meeting before staff's meeting with Otto, I am sending my reservations and suggestions to Staff for discussion and consideration during your meeting with Otto.

ROW Parking

It is absolutely necessary to control ROW parking from 9AM to 5PM during the period of the year that paid parking will be in place (1 April-30 October). However, to make it "unlawful for any person to park or leave unattended any portion of any vehicle, whether attended or unattended, in any street right of way except in designated parking places", and mandate "There is no parking permitted at any time on public streets or public rights-of-way except in designated parking spaces" puts unworkable restrictions on property owners on the side and secondary streets who entertain/have friends and family visit to an extent they sometimes need to park vehicles in the ROW adjacent to their property, and it will add considerable burden to the police force who are expected to enforce parking ordinances 24/7 year round (I was walking and riding my bike over Christmas-there were many houses on the west side streets past Pointe West and fish canal streets with cars in the rights-of- way as families got together for a beach

Christmas. I can imagine the same for New Year's and Easter and during summer holidays, not to mention Super Bowl and other private parties).

The consultant's response to my concern about owners' family/friends at the December BOC was that parking is allowed and free after 5PM in town lots and designated ROW spaces. That is all well and good if you live near one of the few public lots (at least until 2AM when parking in town lots is prohibited until 5AM), but many properties are not within easy walking distance of a public lot (particularly true west of the bridge). As for using designated ROW spaces, most of the side streets (with the exception of the 4 marsh side streets) are for LSV parking; off island family and friends are not coming here in LSVs nor do I believe the majority of property owners own LSVs they could move out of their driveway to free up space for standard vehicles. The other suggestion from Otto was the Town could issue some sort of temporary "passes" for owners having get-togethers on an as needed basis; our limited staff does not need this type of work load.

The ROW parking issue was thoroughly discussed 4 years ago at the same time post and rope was debated. Many owners who had been urging no ROW parking changed their mind when it was pointed out that no ROW parking would include forbidding parking their own or visiting family and/or friends' vehicles in the ROW adjacent to their property. There were discussions about allowing owners to park in ROW adjacent to their property, using the hurricane stickers as a means identifying property owners' vehicles, but it was considered untenable due to the broad availability of stickers and anticipated officers' difficulty seeing them without exiting their vehicles for a closer look.

Moving ahead 4 years, the same type of technology being used for paid parking would also make it possible for owners to register 2 owner vehicles by license plate number with the Town police department to enable parking in the ROW adjacent to their property. The police would then be able to check whether vehicles observed in non-designated ROW are registered for the space. While it is unlikely there is time to work through the logistics of such a program in time for the 2022 season, it seems possible to get something workable in place for 2023 if our Town Attorney agrees the solution is acceptable from a legal perspective.

In my opinion, a workable solution must be found before going to no ROW parking at any time except in designated spaces, and if one cannot be agreed almost immediately, the 2022 season ROW rules should be limited to no parking in ROW except in designated places from April 1-October 31 between the hours of 9AM and 5PM, covering the parking revenue collecting window and hours.

Post and Rope

Post and rope within the ten feet of rights-of-way was put in place 4 years ago after much discussion. In Ordinance 95.05 it is stated

(B)The ten feet of rights-of-way nearest the pavement or road bed shall remain clear of all items with the following exceptions:

(1) Mailboxes, newspaper boxes, post and rope not to exceed 24 inches from grade.

(2) Grass, an approved pervious product or vegetation not to exceed one foot in height.

(3) The properties located at 1189, 1190, 1191 and 1192 Ocean Boulevard West may install or place a fence within the right-of-way.
(‘85 Code, § 14-2.1)

(C) The area of the rights-of-way beyond ten feet of the pavement or road bed:

(1) May be landscaped by the abutting property owner provided § [157.081](#) of the zoning code is complied with.

(2) Shall be kept clear of all other manmade structures not used in landscaping with the exception of fences.

(‘85 Code, § 14-2.2)

(D) The town has no responsibility to protect any items, authorized or unauthorized, which are placed in street rights-of-way. Improvements are made at the owner's risk and may be destroyed or damaged during walkway, street, and utility installation or maintenance. Items deemed to be a safety hazard or to impede traffic will be removed by the town.

(E) All existing concrete within the right-of-way that is removed for any reason cannot be replaced.

The Town may “legally” own ROW, but the fact is, many people want their property to look good all the way to the street, which means they are landscaping and maintaining ROW adjacent to their property (indeed, landscaping is encouraged in Ordinance 95.05A, point 4). It is understandable that owners who invest in turf and plants want to protect them, and owners understand they may be “destroyed or damaged during walkway, street and utility installation or maintenance”. However, owners do not want casual parkers or vehicles associated with construction or maintenance projects at nearby properties to destroy their landscape, and nowhere in 95.05 does it say owners must accept risk for the ROW to be damaged by parking, nor in Ordinance 72.02 related to regulated parking is damage to ROW by construction or maintenance vehicles allowed (see 72.02E below)

The prohibitions of § [72.03](#) (NOTE: section on parking prohibited at all times) shall not apply to construction and maintenance worker vehicles **while performing legitimate services on that location** (emphasis added), except:

- (1) No vehicle may be left parked overnight (from dusk to dawn); and
- (2) All vehicles must be as far off the public street rights-of-way as possible; and
- (3) No vehicle may be left parked on any portion of any roadway; and
- (4) No vehicle may be parked on portion of the sidewalk.

All other parking regulations shall be enforced.

Post and rope, maximum 2" above grade, within the ten feet of rights-of-way was put in place without more specification because at that time it was considered clear what was meant. Unfortunately, there are now numerous cases of materials being used in lieu of the maximum 2" high proper post and rope, many potentially harmful (e.g., metal stakes driven into the ground right at road side; thin, hard to see sticks with no rope; sharp metal poles). However, this is not a legitimate reason to ban the current allowance for

post and rope within the 10 feet of right of way. Owners with inappropriate post and rope should be cited for being out of compliance and made to remove unauthorized materials, which they can replace with appropriate post and rope. If a definition of what is an acceptable post and a minimum as well as maximum height are necessary, these can be defined. If there needs to be a foot or two between the roads edge and the posts to allow for minor swerves by bikes or cars (but not enough to enable parking), this can be discussed and an agreement reached.

There is no legitimate reason to eliminate post and rope within the ten feet of rights-of-way. Enforcement of clearly non-compliant existing cases and better definitions moving forward can address any safety concerns.

Proposed Paid Parking Identification on Streets Served by Private Accesses

The last Town owned beach access is at Deal Street. Starting 2 streets west of Deal (Frigate thru Shell), property owners have organized themselves to build and maintain at their own cost a number of private beach accesses for the side street properties and some of the nearby OBW properties.

Otto/the parking committee has included Frigate thru Shell in the paid parking proposal, identifying 49 LSV paid parking spaces with the claim these spaces will be for the residents of the street who want to be able to leave their golf carts closer to their access after delivering family and stuff to the access, a want that has reportedly been stated by various canal and marsh street property owners (who have available nearby public accesses).

I have had several comments from "down west" side street owners that they don't want more people coming down and using their private accesses than currently happens, which they believe will occur if their streets are made part of the paid parking plan. I agree with them and I support their right to protect their private property, knowing that we cannot rely on having resources available to discourage trespassers given our already stretched police force.

The streets west of Seagull are not that long. The distances owners have to cover to get to their private accesses are considerably less than what many of the canal and marsh street owners have to walk. Unless the owners on these western streets specifically want golf cart parking to be available during the designated times, understanding that if their street is not included there will be no permitted ROW parking during the designated times, these streets should not have designated ROW parking.

The owners of Frigate, By the Sea, Marshwalk, Clippership, Sunshine, Windhammer, Schooner and Seashell should be asked whether they want their streets to be designated for LSV paid parking or prefer not have ROW parking during the defined times. Unlike canal and marsh street property

owners they rely on their privately owned and maintained beach accesses and may not want non-neighborhood use of their private walkways "encouraged" by having designated LSV paid parking.

In closing, I appreciate Staff's consideration of my concerns and suggestions as you move forward with making parking location and ordinance wording decisions.

Commissioner Kwiatkowski

Discussion and action for the Town Manager to proceed with appropriate steps to convert the Town owned properties in the 800 block of OBW to a lot to be designated for paid parking ASAP.

With the BOC decision to begin a paid parking program on Holden Beach starting April 1, 2022, converting the Town owned 800 block marsh side properties on OBW to a formal parking lot is time critical. The Town Manager should be given the BOC's go ahead to do whatever necessary along with permission to use BPART funds to expedite the project.



Memo To: Holden Beach Board of Commissioners

10 January 2022

RE: Personnel Policy Administration Resolution

FROM: Town Manager

The attached resolution recommends suspending the existing personnel policy regarding the administration of excess vacation hours for one year and to compensate affected employees for same.

Implementation of the existing personnel policy as written regarding the administration of earned vacation hours in excess of 240 hours will cause ten of the town's twenty-four employees to lose this earned benefit. Updating of the personnel policy two years ago provided for implementation of this mechanism with the intent being to manage accrued vacation levels down to or below a 240-hour threshold. That has not been accomplished primarily due to demands placed on the workforce by COVID. Suspending the policy for a year and paying out of excess hours will reset vacation levels to more realistically manageable levels.

Total payout is calculated at approximately \$37,000 to be distributed according to individual accruals and can be accomplished from within existing resources.

RECOMMENDATION:

Board approval of Resolution 22-02.

**RESOLUTION 22-02
PERSONNEL POLICY ADMINISTRATION**

WHEREAS, the Town of Holden Beach Personnel Policy was adopted/amended on January 21, 2020; and,

WHEREAS, the Policy provides for the administration of town employee benefits and compensation for the Holden Beach Town staff; and,

WHEREAS, specifically addressed in the Policy is the manner by which vacation leave is accrued and used annually to include provisions for treatment of vacation accumulations in excess of 240 hours; and,

WHEREAS, by virtue of circumstance the existing Policy effectively penalizes employees by application of administrative provisions that requires a deletion of a portion of earned vacation in excess of 240 hours at the end of each calendar year; and,

WHEREAS, due to the COVID 19 viral pandemic a state of emergency has been in effect for the Town of Holden Beach since March 23, 2020- a period of 22 months; and,

WHEREAS, the COVID 19 pandemic state of emergency has precluded many town employees from being able to take earned vacation leave in accordance the policy and standard practices contributing to their physical and mental health and wellness; and,

WHEREAS, the policy if implemented as written will penalize town employees by taking away an earned benefit; and,

WHEREAS, accumulated employee compensated absences represent more than \$100,000 of balance sheet liability according to the Town's most recent audit; and,

WHEREAS, the Town Manager has calculated the total value of all employees having accrued vacation hours in excess of 240 hours to be approximately \$37,000 of that compensated absence liability; and,

WHEREAS, the Town of Holden Beach values its employees and does not wish to adversely impact their earnings by virtue of implementing a policy that is disadvantageous to them; and,

WHEREAS, the Town Manager is requesting concurrence of the Holden Beach Board of Commissioners with his recommendation to suspend the implementation of those policy provisions that would cause loss of vacation hours in excess of 240 hours and to compensate said potentially impacted employees according to their accruals and wages for that time in excess of 240 hours; and

WHEREAS, said employee compensation can be accomplished from within existing budgeted resources.

NOW THEREFORE BE IT RESOLVED by the Board of Commissioners of the Town of Holden Beach that the Town Manager is authorized to suspend the excess vacation leave provisions of the Personnel Policy for a period of one year from the effective date of this Resolution and is directed to affect such administrative actions necessary to compensate qualifying employees for their vacation accruals in excess of 240 hours.

This the 18th day of January, 2022.

J. Alan Holden, Mayor

ATTEST:

Heather Finnell, Town Clerk

**RESOLUTION 22-03
RESOLUTION REGARDING THE 15TH ANNIVERSARY OF THE
GFWC OF HOLDEN BEACH**

LET IT BE KNOWN THAT:

WHEREAS, GFWC of Holden Beach, a member of the General Federation of Women's Clubs (GFWC) and the General Federation of Women's Clubs of North Carolina (GFWC-NC), is a women's service club whose members comprise a diversity in ages, interests, and experiences united by a dedication to community improvement through volunteer service; and

WHEREAS, GFWC of Holden Beach began its service on January 9, 2007, and maintains its volunteer activities in Arts and Culture, Civic Engagement and Outreach, Education and Libraries, Environment, and Health and Wellness that educate and benefit its members and citizens of Holden Beach and beyond; and

WHEREAS, GFWC of Holden Beach members are award-winning advocates of the GFWC Signature Program: Domestic and Sexual Violence Awareness and Prevention, especially with its annual projects that benefit Hope Harbor Home and Providence Home; and

WHEREAS, GFWC of Holden Beach has donated over \$230,000 to Hope Harbor Home, Providence Home and other local charities; and

WHEREAS, GFWC of Holden Beach continues to offer opportunities for women to network with other women interested in civic leadership, helping others, education, and promoting cultural opportunities for women.

NOW THEREFORE BE IT RESOLVED, that the Town of Holden Beach is proud to recognize the fifteenth anniversary celebration of GFWC of Holden Beach in January 2022; therefore

BE IT ALSO RESOLVED, that the Town of Holden Beach thanks the members of GFWC of Holden Beach for the continued efforts to affect an impact wherever and whenever the need arises.

This is the 18th day of January, 2022.

J. Alan Holden, Mayor

ATTEST:

Heather Finnell, Town Clerk

Agenda item

Discussion and board endorsement of a revised proposed pier plan document and associated Resolution.

Explanation

The attached document reflects recalculation of parking revenue using corrected parking assumptions and possible upsides from the small RV lot that is part of the pier property.

8 January 2022

Pier Property Plan Version 2

Commissioner Kwiatkowski, with input from Commissioner Murdock and Town Manager Hewett

Introduction

This document has been created in response to the request from many Holden Beach property owners for development plans and financial forecasts for the Town's ownership of the pier property. The below provides estimates for eventual revenues and expenditures associated with repair and operation of the pier and building in the context of their continuing to provide restaurant and retail establishments and a fishing pier. The facilities will not be run as a business by the Town; they will be leased out following necessary repairs. The Town is expecting there will be sufficient revenue from the pier property and parking revenue to cover finance and operating expenses reasonably soon, with some profit in later years, but a full return on investment for repairs is not assumed. It is projected that the pier property can be repaired and maintained without having to increase property taxes or add any special assessments.

This document covers only the pier and building property; plans and costs for the parcel that will provide beach access for emergency vehicles and beachgoers are not included. Assumptions are made based on current knowledge and understanding of property condition and construction costs. Some possible pier property improvements are mentioned in the report; however, any additional improvements, either noted or identified in future, should be brought before the Board of Commissioners for specific discussion and approval of additional funding.

Background

The Town of Holden Beach is in the process of purchasing Parcels 246DB001 and 246DB002. These two parcels are adjacent and collectively total 350 feet of oceanfront. Parcel 246DB001, hereafter referred to as the "Pier Property", encompasses 300 ft of oceanfront real estate and contains the Holden Beach Ocean Pier, a building estimated to encompass 4000 sqft (as measured by Commissioner Murdock) with a grill and shop, a small general-purpose outbuilding, a small RV lot sufficient for parking 6 RVs and a paved parking lot. Parcel 246DB002, hereafter referred to as the beach access lot, encompasses 50 ft of oceanfront.

The desired outcome for Parcel 246DB001 is for the pier, building and land they are situated on to continue being used much as they currently are after necessary improvements/repairs and to also include public restroom facilities, all in accordance with current building and public safety standards. The Board's stated objective has been that the pier property purchase/debt service and repair costs are to be financed by revenues generated by the property, being a combination of paid parking revenue and leasing the pier and cafe building, coupled with available grant money, resulting in no property tax or assessment implications for owners. While there are grant money

opportunities, such as matching fund reimbursement grants from PARTF and Land and Water Conservation Fund, it must be considered that all grants have conditions and requirements that have the potential to restrict the Town's flexibility. It may be that accepting certain grants would not be in the best interests of the Town.

In case grant money is not available sufficient to cover repairs, and if realized revenues cannot fully cover debt service and operating expenses, funds could be assigned from the BPART fund for the purpose of providing and maintaining tourism related facilities and amenities. The financial state of the BPART fund is presented later in this document.

Parcel 246 DB002 will allow the Town to maintain a mid-island emergency and municipal services vehicle access, an additional improved public beach access and an as needed vehicle and/or equipment mobilization point for beach nourishment. Since December 2014 the Town has been granted a license by the current owners to use the western most twenty (20) feet of the adjacent campground property as an emergency vehicle access point to the beach strand, but with the RV park properties also on the market, the license will in all likelihood terminate. The need for an emergency, sanitation, public and beach nourishment mobilization access is important for the health and safety of everyone who uses the beach plus provides a separate access for beachgoers in an area that lacks a public access within ½ mile. A reimbursement CAMA access grant of approximately \$186K has been approved by the NC Division of Coastal Management to offset part of the costs associated with the beach access lot.

Pier and Building Condition Considerations

Building

There are two inspection reports for the building on the pier property: the MacPherson engineering services due diligence report of September 20, 2021 and the Town Inspector's Systems Evaluation report of September 17, 2021.

Summary of Findings

The building is a combination of three sections constructed at different times. The original building was constructed in 1960 (currently the center section) on a low crawl space with a cmu (cinder block) foundation wall, wood framed floor, exterior load bearing wood walls and a wood roof system. The west end of the building, constructed later, has a concrete slab floor on grade, a wood roof system supported on beams and round pilings and wood framed walls that appear to be non-load bearing curtain walls. The east end of the building, also constructed later, also has a concrete slab on grade floor, low cmu wall and a load bearing wood framed wall and roof system.

The middle section of the structure has been built to accommodate A2 occupancy (assembly uses intended for food and/or drink consumption) or business occupancy (use for office, professional or service transactions). The east end of the structure is an office.

The McPherson engineering services report states the building is overall in poor condition and concludes that the wood framed floor system in the center section of the building cannot be repaired and should be demolished and the east side addition could also be demolished. The west side addition, which is supported by beams and pilings, may be salvageable depending on a pile study and further assessment of the beams and roof system.

The Town Inspector's report states that overall, the building itself is in disrepair but has potential for improvements.

Proposed Plan and Estimated Costs

While some portions of the structure may appear derelict, there is the potential for repairs and improvements to the entire structure. Information provided by Commissioner Murdock, following a walk-through of the building with Town Staff and additional visits, indicates that the wood floor can be removed and replaced with concrete, poured in sections with the existing structure in place (estimated cost \$10K). Internal demolition including removal of all electrical (estimate \$10K) and site cleanup including trash removal (estimated cost \$5K) would bring the building to a leasable state for a tenant willing to be responsible for renovating to meet his or her requirements. Flood vents can be added if necessary (no estimate at this time). This estimate also does not include permit fees.

There are additional site improvements that could be made. There is ample space to add a large oceanfront deck between the building and the dune should the Town choose to add this amenity. The access to the pier can be rerouted and made accessible from the public walkway so that customers do not have to go through the middle of the building. There are also options for locating public restroom facilities on the pier property that need to be précised.

See Appendix 1 for specifics on deficiencies noted in the inspection reports.

Pier

Summary of Findings

The pier due diligence report duly notes that the pier, at 64 years old, is beyond the typical 50-year life span for a fixed timber pier that receives regular maintenance. Although there are no maintenance or construction records available for the Holden Beach Ocean Pier, it is noted that it does appear some maintenance and repairs have occurred, including installation of new piles and some pile caps and cross bracing (age and maintenance since installation unknown). Timber decking appears to be maintained.

With no as built information available, the construction condition evaluation of the pier was based on observations made during the due diligence site visit. The pier consists of a two-pile system spaced at approximately 12 feet with vertical and horizontal cross

members. The pier is approximately 750 ft long with 58 piles. Most of the seaward piles were recently replaced with newer vintage greenheart timber. The inshore section of the pier appears to be older vintage timber pilings.

NOTE:

1. Greenheart timber is one of the best woods to be used in coastal environments, especially for dock pilings, due to its resistance to insect and marine borer attack- greenheart timber pilings typically have a 30-year life expectancy in marine environments.
2. Regardless of its reported condition assessment, it should be noted that the ocean pier structure has weathered numerous strong hurricanes and tropical storms since Hurricane Floyd damaged the pier and destroyed the seaward section (which was not rebuilt).
3. It is possible newer pilings are post Hurricane Floyd repairs.

Proposed Plan and Estimated Costs

The due diligence report recommends a number of repairs, immediate and within 3 to 5 years, to extend the life of the pier to a reasonable period of time (10-15 years). It is estimated in the report repairs will total between \$500 and \$750K for the following:

1. Immediately replace the 3 cracked/broken piles and repair the 2 piles that have reduced load bearing and correct loose and/or structurally deficient handrails (presumably also exposed electrical)
2. Address cross-bracing inadequacies
3. Replace all fasteners and bolt connections of structural elements with marine grade stainless steel (a cost estimate of \$30K for hardware replacement has been provided by Commissioner Murdock)

The due diligence report recommends that before beginning repairs, a complete assessment should be performed by an engineer firm. Assuming no additional issues are identified, and given that maintaining a pier seems important to many island residents and property owners, repairs at the estimated cost in the due diligence report could be justified if repairs can be made without an increase in property tax or added assessments. As detailed later in the report, all of these repairs do not have to be accomplished in one year; the pier can be repaired in sections, with BPART fund balance available for appropriation in the absence of grant money.

See Appendix 2 for specifics on deficiencies noted in the pier inspection report.

Observations on Certain Town Finance Data

Total Debt

As of June 30, 2021, the Town of Holden Beach had total debt of \$10,100,771, excluding compensated absences. Since the amount reported in the external audit, the Town has borrowed an additional \$2.5 million for reimbursement of the cost of the upgrade to sewer lift station 3; therefore, total debt is currently approximately \$12.6 million (as a point of reference, the Town's legal debt limit is over \$100 million).

Recent History for 3 Town Funds

Year-end totals for the last 3 fiscal years are presented below for the General Fund, BPART fund and Beach Renourishment and Inlet Management Capital Reserve Fund. The health of these three funds is important when considering additional costs for parks and recreation purchases/projects. Transfer of general fund balance in excess of 70% occurs to the Beach and Inlet Management Capital Reserve Fund, providing an additional source for costs related to beach nourishment and inlet dredging. All three funds show stability and for the most part upward trajectories.

Table 1: Last 3 Audit Report Fund Balances in Million \$, Start and End of Fiscal Year

Fiscal Year Ending Date	General Fund		BPART Fund		Beach and Inlet Mgmt Cap Reserve Fund	
	July 1	June 30	July 1	June 30	July 1	June 30
June 30, 2019	2.17	2.61	6.87	3.56	Did not exist	3.25
June 30, 2020	2.61	3.23	3.56	3.79	3.25	3.49
June 30, 2021	3.23	4.01	3.79	5.22*	3.49	2.13

*Increase in 2021 BPART partly due to transfer from Sand Fund to pay Central Reach debt service and part of LWI dredge

BPART NOTES:

1. In 2021/2022FY 1.2 million is already appropriated from BPART reserve for bike paths (\$700K) and the US Army Corps of Engineers Coastal Storm Damage Reduction Study (\$500K) and \$383K is transferred from Beach and Inlet Management Capital Reserve Fund to BPART for Lockwood Folly Inlet navigation maintenance dredging.
2. Due Diligence costs paid from BPART related to the purchase of the pier property and the beach access lot are predicted to total in the range of \$75 - 100K.
3. There will be an additional appropriation to prepare for paid parking: estimate \$150K which includes the cost of converting several town owned lots in the 800 block to an off-street parking lot.
4. On the added revenue side, there is a revised occupancy tax budget estimate for the remainder of the fiscal year ending 30 June 2022; the Town's net increase is projected at \$700K. This will be partially offset by additional costs for LWI dredging (expanded Army Corps of Engineers bend widener project) and an unanticipated bulkhead repair at a Town Park.
5. Payment of the \$186K reimbursement grant for Parcel 246DB002 (the beach access lot) should be received in FY 22/23.

Recent History for BPART Revenues from Occupancy Tax

For a decade the revenues from occupancy tax generally showed annual increases, some as high as 13% but mainly single digit, with the occasional year showing a slight decrease. Gains were considered to be mainly driven by an increase in rental units, in large part fueled by new construction. However, in the fiscal year ending June 30, 2021, the revenue stream exhibited over 40% growth, surpassing property ad valorem tax revenues for the first time. Projections for the fiscal year ending 30 June 2022 indicate another large year to year increase based on occupancy tax revenues collected through October 2021. Increased occupancy tax revenue is likely due to increased rental activity in the shoulder seasons as well as an increase in high rent properties, many coming from new construction. While 2 years do not define a trend, it is likely annual occupancy tax revenues in excess of 3 million dollars can be expected in future.

Table 2: Property and Occupancy Tax Revenues on 30 June 2010 to 2022

Year	Tax Rate	Collected	Occ Tax/YTY Increase/Decrease
2010	6.9	1,465,512	1,345,386
2011	6.9	1,470,965	1,520,605 (+0.130)
2012	12.7	1,504,448	1,679,856 (+0.105)
2013	12.7	1,519,610	1,634,933 (-0.027)
2014	12.7	1,527,376	1,654,637 (+0.012)
2015	12.7	1,538,824	1,794,076 (+0.084)
2016	15	1,775,215	1,783,709 (-0.006)
2017	22	2,629,563	1,887,106 (+0.058)
2018	22	2,719,163	2,138,047 (+0.133)
2019	22	2,753,276	2,104,926 (-0.015)
2020	20	2,760,053	2,211,132 (+0.050)
2021	20	2,785,122	3,121,144 (+0.412)
2022 budget	20	2,727,167	3,615,537*

*reflects December 2021 budget amendment projecting an estimated \$800K increase in occupancy tax revenue for FY 21/22

Projected Future Spending

Below are compilations of debt service and existing foreseen capital expenditures for the General and BPART funds.

General Fund

The General Fund benefits from a \$7k reduction in debt service each year thru FY26/27, when the last programmed payment of \$199k retires the Town Hall debt. Annual projected capital project costs are moderate.

Transfers from the General Fund to the Beach and Inlet Maintenance Capital Reserve Fund will continue to be made based on the Board's consideration of the General Fund balance in combination with funding needs of priority projects.

Table 3: General Fund Debt Service and Existing Capital Projects Current Year and FY 22/23-26/27 in Thousands

FY/Expenditure	21/22	22/23	23/24	24/25	25/26	26/27
Town Hall Debt Service	245	238	230	223	215	199*
Road Capital Projects	145	100	112	105	102	128
Police Vehicles	145	145	73	0	145	145
Sanitation/Streets Trucks	100	36	0	38	0	38

*last payment

BPART Fund

The BPART Fund projected capital project expenses from FY 24/25 and out are modest, but this assessment does not incorporate any projects that are proposed in the recent update of the Parks and Rec Master Plan. Projects in the updated plan will of necessity compete with pier property projects if grants and revenues from the pier property are not sufficient to cover projected expenditures. However, as presented earlier, occupancy tax revenues have increased steadily over the years and can be expected to continue to provide an increasing revenue stream. In case there is not sufficient grant money and operating revenue to cover pier property repairs, debt service and routine expenses, funds could be assigned from the BPART fund for the purpose of providing and maintaining facilities and amenities for tourism purposes.

Table 4: BPART Debt Service and Existing Capital Projects Current Year and FY22/23-26/27 in Thousands

FY/Expenditure	21/22	22/23	23/24	24/25	25/26	26/27
Central Reach Debt Service	1344	1317	1291	1265	1239	1213*
Parks&Rec Facilities	0	55	25	25	25	25
Walkways	65	55	55	55	55	55
Bike Paths	700	0	0	0	0	0
ACE Study	500	800	200	0	0	0
Jordan Blvd Public Restroom	0	250	0	0	0	0
Sand Search	0	325	0	0	0	0
LWI Dredging**	341	83	341	83	341	
Parking Related***	150	?	?			

*Last payment

**THB total after County contribution

*** Added to existing Capital Projects list. For 800 block clearing, bulkhead, all lot parking space designations, curb stops, signage. Unknown costs in out years for property purchase and new lot preparation

Pier Plan Estimated Financials and Timelines

Expenditures

It is assumed that both the Pier and Building can be repaired rather than torn down.

The majority if not entirety of the building could be built back. Because the inspection reports define engineering and safety issues, these repair costs fall outside the 50% of appraised value limitation on remodeling a pre-FIRM structure. This may make it possible to manage repairs and remodeling of the building in one budget cycle so that the building would be out of commission only for the 2022 season. A preliminary estimate for overall cost to bring the building to a standard that is leasable of under \$30K (not including permit fees and adding flood vents) was provided by Commissioner Murdock. To allow ample room for uncertainties due to lack of construction information on the building and previous improvement/repair details, a total of \$50K will be assumed at this time.

While the pier has passed the "normal" timber pier lifespan of 50 years, the majority of the piles have been recently replaced with greenheart timber pilings, which have a projected lifespan of 30 years. The due diligence report estimates at least \$500-\$750K in repairs would be needed to extend the pier's life by 10 to 15 years assuming the stringers and decking are salvageable and repair work can be performed by land-based equipment. Before beginning repairs, a complete assessment should be performed by

an engineer firm as recommended in the due diligence report Based on the proposed cost for an above and below water due diligence inspection, an estimate of \$50K is proposed for FY21/22 (post-closing).

On the assumption an engineer assessment does not find significant issues beyond those specified in the due diligence report and no issues emerge unexpectedly at a later date, there are 5 pilings in critical condition that must be dealt with immediately along with a pile cap and stringer; the estimated cost given is \$37,000, assuming repairs can be made from the pier platform (will be known after the engineer assessment of load bearing capacity of the structure). Loose and damaged handrails and significant cross-bracing and hardware deficiencies must also be dealt with. However, these repairs do not have to all be accomplished in one year; the pier can be repaired in sections, with initial repairs made to the landward section and critical pilings in FY22/23. A preliminary estimate of \$150K in FY22/23 followed by \$250K in each of the following 3 years was provided by Commissioner Murdock (\$150K more than the upper end estimate given in the due diligence report to allow for construction cost uncertainties).

Annual insurance costs are estimated at \$5000 (including flood insurance on the building, which is mandatory since the Town is borrowing for the purchase, but only fire and vandalism coverage for the pier). Annual maintenance over the next 5 years should be minimal, since both the building and pier will be repaired. It is assumed \$5000 will be adequate for other site maintenance. In future, a routine inspection of the entire structure should be performed every 5 years as routine maintenance (due diligence report estimated cost \$20K).

One cost that is not addressed here is that of public restroom facilities (which could be treated as a tourism rather than pier property related item). One possible solution for the near term is to provide waterless restroom facilities as described in the updated Parks and Rec master plan (estimated at less than \$5K per year, not reflected below).

Table 5: **ESTIMATED** Proposed Purchase Debt Service, Repair and Annual Costs in Thousands

FY	21/22	22/23	23/24	24/25	25/26	26/27
Expenditures						
Debt Service total	0	270	260	250	240	230
Debt Service w/o access parcel*	0	231	223	214	206	197
Building Repair	0	50	0	0	0	0
Pier Repair	50	150	250	250	250	0
Insurance & Maintenance	5	10	10	10	10	30

*6/7 of the total is attributed to purchasing and maintaining the pier and building parcel based on the relative widths of the pier and access properties (300 & 50 ft, respectively)

Revenues

Generally speaking, off road parking revenue can be used by the Town as it chooses. In addition to the estimated 80 off road spaces at the pier property site, off road parking exists near lift station 3, and it is assumed additional spaces will be in place at the 800-block town owned properties by April 2022 (for a total of 120 spaces for the pier parking lot and the 2 parking lots near the 800-block beach access). Based on the Otto parking RfP of June 30, 2021, net parking income for 600 total parking spaces is provided on page 22. The pier property and 800 block lots would make up 20% of 600 total spaces, so calculations have been made based on 1/5th of the estimated parking revenue without considering parking violation revenue. Parking projections for April, May and June total \$184.2K; 20% of that is ca. \$37K for FY 21/22. Net revenue to HB from the rest of the 2022 paid parking months that apply to FY 22/23 totals \$341.2K; 20% is \$68.2K. For the first 3 months of the 2023 season, it's assumed a 15% increase will be observed over year 1 (assumption from December BOCM Otto document); 1.15 of 37K + 68K=\$110.5K in FY22/23. For FY23/24 an additional 10% increase in revenue has been assumed over FY22/23, total projected revenue is \$121.5K and applied to all subsequent years. Parking revenues may exceed these preliminary estimates if parking at the off road lots is more constant than modelled for the island overall, which is hoped will be the case when added amenities are in place.

A straightforward assumption method was also run to compare with the results obtained from the Otto RfP model. Using only 100 days, which is what we typically consider the duration of summer vacation season, at the \$20 daily rate for a space, gross and net values were calculated for parking assuming 50%, 75% and 100% occupancy of spaces available at the pier and the pier plus 800 block lots. At a daily occupancy rate of 75% of the pier plus 800 block lots during the summer season net to THB would be \$126K, which is not significantly different from the projection of \$121.5K by year 3 using information supplied by Otto.

Table 6: Gross and Net Income Values for 6 Parking Scenarios

			gross daily	net daily	full occ @	75% occ	50%occ
location	rate/day	# spaces	100%	70%	100 days	100 days	100 days
pier only	\$20	80	\$1,600	\$1,120.0	\$112,000.0	\$84,000.00	\$56,000.0
pier+800	20	120	\$2,400	\$1,680.0	\$168,000.0	\$126,000.00	\$84,000.0

As mentioned earlier, there is a section of the property fitted for RV camping. A quick search of rental costs of local RV parks on the mainland turned up a nightly rental range of \$80-\$90 for an RV park 2 miles off island. Monthly rates were said to be available in the Q&A section of the website but were not given. Until more thorough evaluation is done on rates and fees as well as administration costs, an \$800/month net to the town is being assumed for only 4 spaces; monthly revenue would be \$3200 and annual revenue \$38.4K.

If it would be possible to allow food trucks at the pier property (and possibly 800 block area) next season as an added amenity this could help maintain visitor parking activity at the beach near the pier property and bring in additional revenue in FY22/23.

Persons interested in leasing the building have approached some commissioners and the Town Manager separately. Until the Town owns the property there can be no action on arranging lessees, but it appears reasonable to assume the building will bring in **at minimum \$50K/year** once it has been brought up to a leasable standard (some interested parties have expressed willingness to remodel the facility at their own expense to meet their needs). No revenue is anticipated in FY 22/23, although it is possible that the building could be ready to lease for some of FY22/23 (a possible upside).

It is more difficult to estimate lease potential for the pier given the current uncertainties and proposed repair schedule for all 750 feet. At this point it is assumed no portion of the pier will be open before the 2024 season when it is estimated at least 50% will have been repaired. It is premature to estimate a possible lease price.

Table 7: **ESTIMATED** Proposed Purchase Annual Revenues in Thousands

FY	21/22	22/23	23/24	24/25	25/26	26/27
Revenues						
Off Road Parking (est 120 spaces)	37*	110.5**	121.5	121.5	121.5	121.5
Building Leases	0	0	50	50	50	50
RV Revenue****	9.6	38.4	38.4	38.4	38.4	38.4
Pier Lease	0	0	0	?	?	?
Food trucks?	?	?				

*20% of total revenue for 2022 season for April, May and June reported in Otto RfP

** 20% of total revenue for 2022 season for July thru October plus 15% increase in April thru June for 2023

***assume 10% increase over 22/23 total revenue

****assume 800/month, 4 RVs; 3 months in FY21/22, 12 thereafter

Timeline to Begin Work

Once the town owns the pier property both the building and pier should be closed to the public until all safety issues are addressed.

The earliest an engineering firm assessment of the pier can be attempted is probably late March/early April. If results could be available in May, the BOC could make a more fully informed decision on proceeding with pier repair before the end of FY21/22 (NOTE: if the full assessment indicates significantly higher repair costs than estimated in the due diligence report, the BOC will need to reassess whether tearing down the pier and planning for reconstruction or another use of the pier property is more cost effective than repairing the existing structure).

While this timing will not result in more specifics on pier repair costs before for the FY 22/23 budget cycle, budget amendments can be made as needed. Work on the pier

following the 2022 summer season could be feasible, dependent on the availability of firms experienced in marine structure repair.

In parallel, seeking a firm to precise the repair plan for the building could be actioned by the BOC for February.

Conclusion

Based on the above given assumptions, revenues will fall short of combined debt service and insurance expenditures in FY22/23 by an estimated \$92K. In FY23/24 estimated off road paid parking plus building lease and RV lot revenues totaling \$171.5 will cover approximately 90% of the combined debt service, insurance and routine maintenance costs for the pier property (shortfall of ca. \$23K) with a 94% percent estimate for FY 24/25 and 97% in FY 25/26. By FY 26/27 revenue will slightly exceed expenses. The differences between revenue and expense can be made up from BPART revenues.

No pier lease income has been assumed for any year; if lease revenue becomes available in FY 24/25 or 25/26, pier property revenues will exceed expenses earlier than projected below. The same can be said if parking at the off road lots is more constant than modelled for the island overall and/or RV parking value per space is more than \$800/month and/or building lease revenue exceeds \$50K.

Table 8: **ESTIMATED** Total Revenues vs Debt Service, Insurance and Maintenance Expenses from Tables 7 and 5

FY	21/22	22/23	23/24	24/25	25/26	26/27
Revenues						
Parking, Building Leases, RV	46.6	148.9	209.9	209.9	209.9	209.9
Expenses						
Debt Service, Insurance, Maintenance	5 (building flood insurance)	241	233	224	216	207
Difference	41.6	92	23	14	6	3

While securing revenue for building and pier repair expenses will remain a challenge thru FY25/26, one possibility is for the Town to seek and be granted permission to use on street parking revenue for expanded town use as an additional revenue source for pier repairs. However, even in the worst case, where no grant money or additional parking revenue becomes available, the BPART fund is forecast to have sufficient savings to cover the currently estimated cost of the pier project without unacceptable risk to the Town's finances and future plans. Using BPART funds is appropriate and justified to provide facilities and amenities that both tourists and our property owners will benefit from.

APPENDIX 1: Building Deficiencies

Between the two building inspection reports the following are noted:

Foundation

1. Cmu foundation wall damage in multiple locations
2. Cracks in mortar, misaligned blocks and cracks in concrete floor slab
3. Sand filled crawlspace (center section) preventing footing inspection

Floor

1. Center section wood floor is not level, bowing in places
2. Soft spots in wood indicating deterioration
3. Cracks and other damage in multiple places in concrete floors

Walls

1. There are no flood vents in the building
2. Wood framing and foundation tie down inspection not possible due to finish materials on inside and outside of framing

Roof

1. Further observation is needed to assess the structural integrity of the roof.

Electrical

1. obvious electrical disrepair and code violations with modified sections of the electrical system
2. several non-maintained electrical junction boxes
3. unpermitted newly added wiring

Plumbing

1. 11 items have fallen into disrepair, including the interior restroom (non-functional and appears to have a broken building drain

Mechanical

1. there are signs of deterioration in the 6-year-old HVAC outdoor unit.
2. the exhaust fan for the kitchen hood system appears intact but has been out of service for 2 years
3. the ventilation fan between the east end office and center A2 occupancy section is missing

Fire Safety

There are numerous egress issues that must be addressed for fire safety.

APPENDIX 2: Pier Deficiencies

The pier due diligence report specifically notes the following for various elements:

Pilings

Due to weather conditions at the time of inspection, underwater investigations were limited, however, it was found that subsurface pile conditions were similar to intertidal and above water pile conditions. The majority of piles appear to be in satisfactory condition; file piles in total were cracked, broken and/or overstressed and are in critical condition. Also, there are several locations where piles are non-plumb and are leaning or tilted. There are two critical areas where piles have a severely reduced load bearing capacity

Cross Bracing

A majority of the horizontal and vertical cross braces are either missing, detached or broken, which is a critical condition for the structure. Hardware throughout the entire structure is heavily corroded with greater than 50% section loss. Cross bracing along the pier is inconsistent.

Pile Bents

Most of the pile bents are in good condition, although some are exhibiting wood rot at the ends and are classified as poor condition.

Stringers

The stringers appear to be in fair condition, however, in several locations there was no apparent connection between the stringers and pile bents. The connection hardware was inconsistent and, in many cases, exhibited moderate to extreme corrosion.

Timber Decking

The timber decking is overall in fair condition. There is degradation consistent with age and exposure including rusting hardware and wood splitting. Areas where deflection and rotation of the walkway are apparent coincides with locations where piles are leaning significantly or are broken.

Handrails

Overall, the timber handrails are in poor condition which are a safety risk. The conduit for electricity is enclosed in timber along the railings; there are several locations where the connections were compromised and are a recognized safety hazard.

Utilities

Plumbing and electrical may be out of compliance and would likely need replacing.

Fish Cleaning Station

The fish cleaning station will require replacement.

RESOLUTION 22-04

LET IT BE KNOWN THAT:

WHEREAS, the Town of Holden Beach (the Town) is a municipality located in Brunswick County, North Carolina; and

WHEREAS, the Town is in the process of purchasing two privately owned parcels, 246DB001 and 246DB002, within its municipal limits for a total of 3.25 million dollars; and

WHEREAS, Parcel 246DB001, hereafter referred to as the Pier Property, encompasses 300 feet of oceanfront real estate and contains the Holden Beach Ocean Pier (the Pier) a building that includes a grill, shop and general purpose out-building (the Building), a small RV lot and a parking lot containing approximately 80 off road parking spaces; and

WHEREAS, the desired outcome for the Pier Property is for the Pier, Building and land they are situated on to continue to be used much as they currently are after necessary repairs and improvements; and

WHEREAS, the desired outcome for the Pier Property is for the Pier and the Building to be leased to interested business providers once repairs and improvements are completed; and

WHEREAS, according to reports of independent inspections made, which were arranged and conducted as part of the real estate purchase due diligence process, both the Building and the Pier require substantial investment in order to bring them to a usable and leasable standard; and

WHEREAS, the decisions taken by a majority of the Board of Commissioners to move forward on the purchase was predicated on the ability of revenue from the Pier Property leases, paid parking, grant money and occupancy tax to pay for the purchase and improvements, funding not to include revenue obtained from the ad valorem tax or special assessments; and

WHEREAS, in response to property owners' requests for development plans and financial forecasts for the Town's ownership of the Pier Property, a document entitled "Pier Property Plan" dated 8 January 2022 has been created; and

WHEREAS, said document has been endorsed by the Town of Holden Beach Board of Commissioners;

NOW THEREFORE BE IT RESOLVED by the Board of Commissioners of the Town of Holden Beach that the costs associated with the purchase and improvements of the Pier Property are intended to be paid as described in the Pier Property Plan document dated 8 January 2022, which does not foretell requiring funding by the Town's ad valorem tax revenue or a special property assessment.

This the 18th day of January, 2022.

J. Alan Holden, Mayor

ATTEST:

Heather Finnell, Town Clerk



Date: January 10, 2022
To: Commissioners and Mayor Holden
From: Heather Finnell, Town Clerk HF
Re: Audit Committee

Per Section 30.26 of the Code of Ordinances, the Audit Committee is comprised of a member of the Board of Commissioners and not less than two or more than four residents or property owners of the Town of Holden Beach as full members, plus one alternate member. The commissioner shall be appointed to the Audit Committee by the Board in January of each year. Other members of the Audit Committee shall be appointed by the Board for three-year terms, with the exception of this year when two members shall be appointed for three years and two members for two years (Attachment 1).

Commissioner Kwiatkowski is currently the commissioner serving on the Audit Committee. The Board may choose to extend Commissioner Kwiatkowski's term or select a different commissioner to serve on the committee.

Tony Chavonne, Mark Fleischhauer, Jeannine Richman and Jeff Tansill, the members who served during the 2021 term, are all interested in serving another term. I have included their applications from when they originally were selected. Mike Felmly has also expressed his interest in serving.

The Board can vote by ballot or verbally to fill the positions. If ballots are used, please make sure to sign your name on the ballot.

Attachment 1: Ordinance
Attachment 2: Application Forms

§ 30.26 AUDIT COMMITTEE.

CREATION, NAME AND NUMBER OF MEMBERS

There is hereby established an Audit Committee which shall be comprised of a member of the Board of Commissioners and not less than 2 or more than 4 residents or property owners of the Town of Holden Beach as full members plus 1 alternate member.

POWERS AND DUTIES

The Audit Committee shall

- (1) Serve as an advisory committee for the town's Board of Commissioners (BOC);
- (2) Assist and advise the BOC in its oversight responsibilities for the town's financial reporting, systems of internal financial controls and the external audit process;
- (3) Recommend to the BOC each year the selection of the independent external audit firm to conduct the annual external audit, using a request for proposals selection process when deemed necessary by the Audit Committee;
- (4) Monitor the performance of the commercial public accounting firms providing audit services to the Town;
- (5) Monitor the performance of the external audit firm as it relates to the annual audit of the town;
- (6) Review the annual audit report with the external auditor and provide a written opinion to the BOC
- (7) Periodically confirm the suitability of the town's internal control systems and/or policies, including information technology security and control;
- (8) Receive confirmation that audit report recommendations have been acted upon in advance of the commencement of the next external audit;
- (9) Perform other functions from time to time as shall be delegated or assigned to it by the BOC.

APPOINTMENT, TERMS

The Commissioner shall be appointed by the BOC in January of each year. Other members of the Audit Committee shall be appointed by the BOC for three-year terms, with the exception of 2022 when two members shall be appointed for three years and two members for two years. Appointments shall normally be made in January. Each member of the Audit Committee shall serve at the pleasure of the Board during their appointment.

MEETINGS AND ATTENDANCE

The Audit Committee shall meet quarterly and in addition at least one time per year to review the final audit with the external audit firm. Additional meetings may be called by the Chair as deemed necessary in fulfillment of the duties of the Committee.

The Audit Committee shall comply with the provisions of the North Carolina Open Meetings Law, G.S. §§ 143-318.9 et seq. A quorum shall be in attendance before any action of an official nature can be taken. A quorum is defined as at least one more than the number absent of the appointed members.

The Town Manager or his or her designee shall also be in attendance in addition to staff that he or she invites to provide pertinent information on agenda items. Auditors or other outside specialists may also be invited by the Committee or the Town Manager as appropriate.

An appointed member of the Audit Committee who misses three consecutive regular meetings loses their status as a member.

OFFICERS

There shall be a Chair and Vice Chair of the Audit Committee. An annual election of the Chair and Vice Chair shall occur at the first regular meeting of the year.

The Town Manager or his or her designee shall serve as secretary to the Audit Committee.

OFFICERS' DUTIES

The Chair of the Audit Committee shall preside at all meetings and shall appoint all committees.

When the Chair is absent, the Vice Chair shall perform the duties of the Chair. When both the Chair and Vice Chair are absent, a temporary Chair shall be selected by those members who are present.

The Chair shall assemble and provide an agenda to the Secretary at least one week in advance of a scheduled meeting.

The Secretary shall provide to all members copies of agendas, official reports, information relevant to the Committee's duties provided to the Secretary by any committee member and the official minutes of all regular and special meetings at least 3 working days prior to the next scheduled meeting.

(Ord. 16-02, passed 1-12-16; Am. Ord. 18-18, passed 12-18-18; Am. Ord 21-?)

Attachment 2



TOWN OF HOLDEN BEACH
Application for Town Board Membership

Personal Information:Name: Jeannine RichmanAddress: 157 Highpoint St. Holden Beach & 105 Lake Forest Dr SW
Pinehurst, NCEmail: jeannine.richman@gmail.com Phone #: _____
Occupation: VP Finance**Interest & Ability:**Board or Committee you are interested in serving on: FINANCE

Why are you interested in serving in this capacity?

To provide assistance to Holden Beach's Business/Finance areas

What do you feel you can contribute to the position?

I have an MBA, am a CPA & have 27 years of Business Experience**Background:**

School(s)	Dates	Area of Study	Degree
<u>Eastern University</u>	<u>1989-93</u>	<u>Finance</u>	<u>MBA</u>
<u>Eastern University</u>	<u>1982-86</u>	<u>Pre-MBA</u>	<u>BS</u>

Previous Residences:119 Bourswick Ave. E, Holden Beach, NCPrior/ current involvement in Town Government or related activities: Moore County
Chamber of CommerceSpecific experiences, training or interests you have that you feel would be useful in the work of the Board/
Committee: MBA, CPA**Certification of Eligibility:**

I am a resident of the Town of Holden Beach.

No person shall be appointed by the BOC or pursuant to any authority delegated by the BOC who is a member of the BOC; the Town Manager, Town Attorney, Town Clerk, Police Chief or any full or part-time employee of the Town who reports to any of the foregoing; a contractor, consultant or other person providing goods or services to the Town in consideration of cash or other thing valued at more than \$1,000 in any one year or an officer or material owner thereof; or the spouse, domestic partner, child, parent or sibling of any of the foregoing. I am not in conflict with this regulation.

Signature of Applicant: Jeannine Richman Date: 1-7-18

JEANNINE M. RICHMAN, CPA, MBA, CHFP

105 Lake Forest Drive SW
Pinehurst, NC 28374
910-690-4581
jeanninerichman@gmail.com

Healthcare Leader with over 27 years of progressive management success

- Financial Performance
- Strategic Planning
- Team Development
- New Business Analysis
- Budget Management
- Mission Effectiveness

LEADERSHIP CAREER HISTORY

St. Joseph of the Pines, Inc. (SJP) Southern Pines, NC Jun. 2008 to Present
A \$60M Non-Profit Aging Services Network serving approximately 1,500 residents/clients in service lines including Independent Living, Assisted Living, Skilled Nursing Facility, Home Care, HUD housing, PACE, and a Mobile Rural Health Unit with approx. 750 employees. SJP is a ministry of Trinity Health, Livonia, MI.

VP Finance Lead: Nov. 2014 to present

- Awarded the St. Joseph the Worker Award from Missions, the finance department being the first ever to receive this recognition.
- Served as the ministry lead in transitioning to new corporate General Ledger/financial reporting software, meeting all target dates.
- Identified internal control and financial weaknesses, working with internal audit and other ministries to improve processes, and increase accuracy and CMS compliance.
- Lead the preparation and development of the consolidated financial statements, responsible for all finance, revenue management and information technology departments.
- Member of senior management team.
- Board of Director meeting responsibilities, reporting of financial results, and lead the Finance Board Committee.

Controller: Apr. 2011 to Oct. 2014

- Developed departmental benchmarking tools for a new PACE service line, leading to departmental ownership of performance targets, resulting in more favorable participant utilizations approximating industry norms.

Director of Accounting: June 2008 to Aug. 2010

- Automated the financial reporting process, leading to more timely, accurate and efficient reporting. The transition from paper to electronic distributions provided for a real-time assessment of operations along with being a more cost-effective distribution mode.

Salina Office Services, Corp. (dba SOS Corp.) Syracuse, NY Sept. 2003 to May 2008
Application Analyst for a \$20M For-Profit long-term care software development company, serving approximately 150 communities and 30 employees.

- Monitored product compliance with all agencies, tracking regulatory changes and required updates, served on the CMS regulatory team.
- Performed operational reviews, provided financial statement design, customizations and analyses to meet stakeholders strategic planning and audit needs for Life Plan Communities across the country.

Saint Joseph Villa Flourtown, PA Mar. 1998 to May 2003
Director of Finance, Lead, for a \$22 M Non-Profit Life Plan Community, serving approximately 300 residents and 300 employees.

- Led the A/R, A/P, P/R, Marketing, Reception, and Gift Shop departments. Reduced employee turnover, increased employee engagement and significantly improved team performance.
- Provided the technology support, purchased hardware and software, and served as the network and benefits administrator.
- Converted the General Ledger to a new Long Term Care software, turning around a backlog of financials for the prior year; automated the payroll data collection processes.

OTHER PROFESSIONAL EXPERIENCE

Jordan-Reses Home Health Care & RX Center Sharon Hill, PA Sept. 1996 to Feb. 1998
Director of Finance, Lead, for a \$35 M For-Profit Durable medical equipment supplier and Pharmacy, serving the greater Philadelphia area with approximately 500 employees.

- Compiled Financials and budgets for Owners and Lending Institutions, automated the financial accounting system and fixed asset system gaining efficiencies and accuracy.
- Directed the due diligence in a successful acquisition of the organization.

Devon Manor Retirement Community Devon, PA Sept. 1989 to Sept. 1996
Controller, Finance Lead: Sept. 1991 to Sept. 1996, Business Office Manager: Sept. 1989 to Sept. 1991 for a \$35 M For-Profit Life Plan Community serving approximately 300 residents with 250 employees.

- Prepared and reported financials to the Board, compiled the operating budget, Annual Medicare Cost Report completion, Quarterly and Annual Audit lead and benefit administrator.
- Led a software RFP process, interviewed vendors, and ultimately converted the general ledger, accounts payable and billing packages which created timely billings and financials.
- Directed the due diligence in the successful sale of the corporation to Manor Care.

Paoli Hospital Physicians Billing Group Paoli, PA Part time 1985 – 1987
Part time Billing associate in the Hospital's Physician's billing department while attending College

COMMUNITY SERVICE

Campbell University, Lundy-Fetterman School of Business Buies Creek, NC
A coeducational, private university with Baptist roots serving approximately 6,500 students.
Part Time Adjunct Professor Healthcare Finance Aug. 2014 to Present

- At the request of a local Board member, who has since transitioned to the Trinity Health Corporate Board, teach Healthcare Finance at the senior collegiate level. Teaching a Healthcare focused review of accounting concepts, balance sheet, income statement, statement of cash flows, time value of money and financial risks. The class deliverables include the completion of a Skilled Nursing Facility budget and weekly submissions and presentations of Wall Street Journal article critiques.

Habitat for Humanity volunteer 2007 to present
Board Member 2016 to present
A Non-Profit, Christian ministry that builds homes with people in need.

MANNA! Of Moore County Volunteer Board Member 2012 to closure
A Non-Profit organization that worked with local churches and volunteers to provide lunches for community members in need.

EDUCATION

Masters of Business Administration
Eastern University St. Davids, PA 19087

Bachelor of Science
Eastern University St. Davids, PA 19087

CERTIFICATES

Certified Public Accountant, CPA Dec. 2017

Healthcare Financial Management Association Certified Healthcare Financial Professional,
HFMA CHFP 2016 to present



TOWN OF HOLDEN BEACH
Application for Town Board Membership

Personal Information:

Name: ANTHONY CHAVONE

Address: 156 YACHT WATCH

Phone #: 910.286.6837

Email: tony@chavone.net

Occupation: BUSINESS OWNER

Interest & Ability:

Board or Committee you are interested in serving on: AUDIT COMMITTEE

Why are you interested in serving in this capacity?

AS A CPA AND A FORMER MAYOR I HAVE AN UNDERSTANDING OF MUNICIPAL ACCOUNTING AND REPORTING. I AM HAPPY TO ASSIST OUR GREAT TOWN.

What do you feel you can contribute to the position?

Background:

School(s)	Dates	Area of Study	Degree
<u>UNC - CHAPEL HILL</u>	<u>1977</u>	<u>BUSINESS</u>	<u>BA</u>

Previous Residences: FAYETTEVILLE, NC - PART-TIME BUT I HAVE FLEXIBILITY TO ALLOW ME TO ATTEND MEETINGS WITH ADEQUATE NOTICE.

Prior/ current involvement in Town Government or related activities:

Specific experiences, training or interests you have that you feel would be useful in the work of the Board/ Committee: CPA

Certification of Eligibility:

I am a resident of the Town of Holden Beach.

No person shall be appointed by the BOC or pursuant to any authority delegated by the BOC who is a member of the BOC; the Town Manager, Town Attorney, Town Clerk, Police Chief or any full or part-time employee of the Town who reports to any of the foregoing; a contractor, consultant or other person providing goods or services to the Town in consideration of cash or other thing valued at more than \$1,000 in any one year or an officer or material owner thereof; or the spouse, domestic partner, child, parent or sibling of any of the foregoing. I am not in conflict with this regulation.

Signature of Applicant: Anthony G Chavone Date: 12/20/18



TOWN OF HOLDEN BEACH
Application for Town Board Membership

Personal Information:

Name: MARK FLEISCHHAUER
Address: 125 LIONS Paw St Phone #: 910 233 6866
Email: MarkFleischhauer@yahoo.com Occupation: RETIRED

Interest & Ability:

Board or Committee you are interested in serving on: AUDIT COMMITTEE

(and predecessor)

Why are you interested in serving in this capacity? HAVE served on this committee since 2009, and have gained considerable knowledge related to the financial methodology of the complex town budgeting and reporting accounts.

What do you feel you can contribute to the position? Spent majority of career in finance and accounting. Was CPA with national firm, Internal Audit manager, Chief Financial Officer and International VP for major US Corporation.

Background:

School(s)	Dates	Area of Study	Degree
<u>Purdue University</u>	<u>1972</u>	<u>Industrial Management</u>	<u>BSIM</u>
<u>Michigan State Univ.</u>	<u>1973</u>	<u>Finance/Accounting</u>	<u>MBA</u>

Previous Residences: Chicago; South Bend, IN; Clemmons, NC; Hong Kong, Perrysburg, OH.

Prior/ current involvement in Town Government or related activities: Planning & Zoning Board for 3+ years, Current Audit Committee

Specific experiences, training or interests you have that you feel would be useful in the work of the Board/ Committee: Retired member AICPA. Served on Board of Directors for four times; and considerable experience dealing with Audit Committee of major corporation.

Certification of Eligibility:

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Signature of Applicant: Mark A Fleischhauer

Date: 1/3/2019



TOWN OF HOLDEN BEACH
Application for Town Board Membership

Personal Information:

Name: Jeffrey (Jeff) Tansill

Address: 235 Brunswick Ave W Phone #: 252-230-5793

Email: JTANSILL@AIC.PE.COM Occupation: Retired

Interest & Ability:

Board or Committee you are interested in serving on: Audit Committee

Why are you interested in serving in this capacity? I would like to get involved in the town governance. My wife and I love living here and I want to contribute where I can.

What do you feel you can contribute to the position?

Through my previous work experience I have been intimately involved with audits from both sides of the fence - reviewing Background: and being audited

School(s)	Dates	Area of Study	Degree
<u>George Mason University</u>	<u>1976-1980</u>	<u>Business Administration</u>	<u>B.S.</u>

Previous Residences: 4704 Country Club Dr., Wilson, NC
Moved to Holden Beach September 2016

Prior/ current involvement in Town Government or related activities:

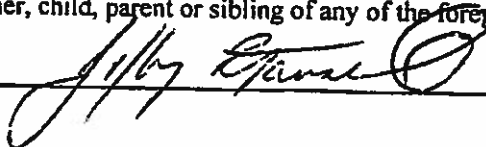
None with Municipal governments

Specific experiences, training or interests you have that you feel would be useful in the work of the Board/ Committee: see attachment

Certification of Eligibility:

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Signature of Applicant:  Date: 1/9/20



TOWN OF HOLDEN BEACH
Application for Town Board Membership

Personal Information:

Name: FELMLY, MIKE
Address: 137 CAROLINA AVE Phone #: 401-562-0595
Email: FELMLY@GMAIL.COM Occupation: U.S. NAVY (RET)

Interest & Ability:

Board or Committee you are interested in serving on: AUDIT

Why are you interested in serving in this capacity? SEVERAL PEOPLE OF H.B. +
LOOSE ACCOUNTABILITY OF FISCAL TAX \$\$\$

What do you feel you can contribute to the position? ACCOUNTABILITY

Background:

School(s)	Dates	Area of Study	Degree
<u>SUNY PUTNAM</u>	<u>70-74</u>	<u>BIOLOGY</u>	<u>B.A.</u>
<u>UNIV @ ALBANY</u>	<u>75-76</u>	<u>EDU. ADM</u>	<u>M.S.</u>
<u>NATIONAL UNIV</u>	<u>82-83</u>	<u>INST TECH</u>	<u>M.S.</u>
Previous Residences:			
<u>U.S. ARMY WAR COLL</u>	<u>96-97</u>	<u>NATIONAL SEC. CERTIFICAN</u>	
<u>U.C. TECH</u>	<u>13-14</u>	<u>NATIONAL TECH</u>	<u>A.S.</u>

Prior/ current involvement in Town Government or related activities:
AUDITS IN NAVY FOR 30 YEARS

Specific experiences, training or interests you have that you feel would be useful in the work of the Board/ Committee: ABOVE

Certification of Eligibility:

I am a resident of the Town of Holden Beach.

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Signature of Applicant: [Signature] Date: 11/10/22

PREVIOUS RESIDENCES: THROUGHOUT THE COUNTRY



Date: January 10, 2022

To: Commissioners and Mayor Holden

From: David W. Hewett, Town Manager

Re: Lease at 796 Ocean Boulevard West

This memo proposes the Board of Commissioners terminate the lease with 796 Ocean Boulevard West tenant effective 28 February 2022 and to direct the Town Manager to officially notify the tenant accordingly.

The term for the lease agreement between the tenant and Town for the residence at 796 Ocean Boulevard West was for six months, with an automatic month-to-month renewal option after completion of the initial term. The initial term ended on 1 May 2021.

With numerous conversations, planning and pending decisions/activities associated with 796 Ocean Boulevard West, it is recommended that the Town give the tenant notice of termination in order to facilitate an orderly progression of outcomes for the property.