



**Town of Holden Beach  
Board of Commissioners  
Regular Meeting**

**Tuesday, March 8, 2022  
5:00 PM**

**Holden Beach Town Hall  
Public Assembly**



**TOWN OF HOLDEN BEACH  
BOARD OF COMMISSIONERS' REGULAR MEETING  
HOLDEN BEACH TOWN HALL – PUBLIC ASSEMBLY  
TUESDAY, MARCH 8, 2022 - 5:00 P.M.**

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1. Invocation
2. Call to Order/ Welcome
3. Pledge of Allegiance
4. Agenda Approval
5. Approval of Minutes
  - a. Minutes of the Special Meeting of January 26, 2022 (Pages 1 – 9)
  - b. Minutes of the Regular Meeting of February 15, 2022 (Pages 10 – 19)
6. Public Comments on Agenda Items
7. Presentation of Plaque from FEMA to the Holden Beach Planning Department for the Town's Successful Participation in the National Flood Insurance Program Community Rating System – Mayor Holden
8. Police Report – Chief Dixon (Pages 20 – 23)
9. Discussion and Possible Action on Items Necessary to Proceed with Paid Parking – Town Manager Hewett (Pages 24 – 62)
  - a. Ordinance 22-02, An Ordinance Amending the Holden Beach Code of Ordinances, Title VII: Traffic Code
  - b. Services Agreement between the Town and Otto Connect
  - c. Signage
  - d. Ordinance 22-04, An Ordinance Amending Ordinance 21-13, The Revenues and Appropriations Ordinance for Fiscal Year 2021 – 2022 (Amendment No. 10)
  - e. Seeking Local Legislation from the General Assembly Pertaining to NCGS 160A-301(a)
10. Discussion and Possible Approval of Resolution 22-05, Resolution of the Town of Holden Beach, Approving an Installment Financing Contract and Delivery Thereof and Providing for Certain Other Related Matters – Assistant Town Manager Ferguson (Pages 63 – 121)

11. Discussion and Possible Approval of Contract with the Division of Coastal Management for a Grant (50-Foot Lot Portion of the Holden Beach Pier Property) - Assistant Town Manager Ferguson (Pages 122 - 147)
12. Feedback from the Town Attorney Regarding the Possible Use of 796 Ocean Boulevard West as a Community Center in Light of Mayor's Question Whether a Town Ordinance Related to Clubhouses on Holden Beach is Applicable - Commissioner Kwiatkowski
13. Discussion and Possible Approval of Ordinance 22-05, An Ordinance Amending Ordinance 21-13, The Revenues and Appropriations Ordinance for Fiscal Year 2021 - 2022 (Amendment No. 11), Appropriating Funds for Sewer Capital Outlay - Budget & Fiscal Operations Analyst McRaine (Pages 148 - 149)
14. Public Comments on General Items
15. Town Manager's Report
16. Mayor's Comments
17. Board of Commissioners' Comments
18. Executive Session Pursuant to North Carolina General Statute 143-318.11(A)(6), To Discuss Qualifications, Competence, Performance of a Public Employee (Mayor Pro Tem Smith)
19. 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](mailto:heather@hbtownhall.com) prior to 1:00 p.m. on March 8, 2022.



**TOWN OF HOLDEN BEACH  
BOARD OF COMMISSIONERS  
SPECIAL MEETING  
WEDNESDAY, JANUARY 26, 2022 – 2:00 P.M.**

The Board of Commissioners of the Town of Holden Beach, North Carolina met for a Special Meeting on Wednesday, January 26, 2022 at 2:00 p.m. in the Town Hall Public Assembly. Present were Mayor J. Alan Holden; Mayor Pro Tem Rick Smith; Commissioners Gerald Brown, Brian Murdock, Page Dyer and Pat Kwiatkowski; Town Manager David W. Hewett; Town Clerk Heather Finnell; Assistant Town Manager Christy Ferguson; Inspections Director Tim Evans; Lieutenant Frank Dilworth; Budget & Fiscal Analyst Daniel McRainey; and Town Attorney Rick Green.

**PUBLIC COMMENTS ON AGENDA ITEMS**

Anne Arnold talked about the change and growth on the island. She is not happy to charge for parking, but it is necessary to deal with all the people. She said she is in support of whatever the Board decides to do.

Bob Babington is in favor of paid parking with a few exceptions. He reviewed his suggestions and encouraged the Board to procure more parking for boats and boat trailers. He also thinks the Town should purchase the pier for the parking.

Jim McCaskill would like the Board to consider making the parking where there are public facilities.

Ammie Archer explained why she is in support of paid parking. She said we need access that is affordable for visitors. She thinks the proposal needs to be reworked to be more affordable. She supports the Board.

Layton Johnson suggested looking into other options for parking, like a shuttle system. He would like research to be done before we move forward.

Jim Toombs talked about his concerns for parking on Ocean Boulevard East. He does support paid parking and generating revenue to support the island, but thinks it needs to be in a measured way.

Larry Blume asked the Board to consider deleting H23 and possibly H22 from the list.

Martie Arrowood spoke on behalf of the owners on Shrimp, Crab and Conch. They are fine with Ranger being used for LSV parking, but they would like their bike and wagon parking to remain. They would like two additional bike racks and additional trash cans. She thinks vehicle parking on the east end

should be limited to the designated lots. Mrs. Arrowood is in favor of the public access shown for the pier property. She is in support of paid parking to help with the trash pickup and police.

Kate Day is for paid parking, but wants it done in a measured, thoughtful way. She is not opposed to parking, but to people using other people's private accesses. She provided information regarding a petition sent to the homeowners on Sea Gull.

Amy White is opposed to any parking on marsh streets. She asked the Board to consider a discount plan for senior citizens, physically disabled people and veterans. She thinks the fees are excessive and would like to see a revision to the fee schedule. She is in support of paid parking, but not on the marsh streets, in front of people's homes or where there is no public access.

Sylvia Pate explained why she thinks the Town needs to ease into the paid parking program.

Lyn Holden is concerned about Ranger and Elizabeth. He would like those streets to remain as they are.

Ava Pailthorp is concerned about changing Elizabeth. She asked the Board to be careful in adding streets to use for parking. She thinks the Town should have paid parking. She said there is too much parking at the east end.

Tracey Thomas supports paid parking, but not at private walkways. She doesn't support purchasing property to create parking or excessive parking of 935 spots. She wants residents to get two free spaces to compensate for the taxes they pay. She thinks \$3.3 million is an expensive parking lot for the pier.

Becky Green is in favor of paid parking at a reasonable price. She is against it at places with private walkways.

Keith Smith provided his notes on Ottos' proposal to include the number of spaces, auto upgrade, enforcement, maintenance and signage. He would like free permits for homeowners.

Elaine Jordan said it is a balance of private property rights versus public need. She thinks the topics of the pier and paid parking should stand alone. She thinks public parking should be in commercial areas. Ms. Jordan would like to know the requirements for access/parking. She asked if the Board considered selling the parcels in the areas that are not consistent with public use and buying in commercial areas. Commissioner Kwiatkowski said the Corps has clear rules for accesses/parking. She provided information.

Craig Bromby thinks the ordinance should reflect low speed vehicles (LSV), not compact parking. He believes paid parking has support, but we need to look at the ordinance and put more thought into locations. He believes the Corps' rules are actually guidance.

Brian Decker said looking at where there is public access should be important in making the final determination on where the parking is.

Stephen Will asked how a fire truck will access a road if there are cars on both sides of the road.

Ron Verenese agreed with protecting the marsh. He said that also applies to Ocean Boulevard West. He said putting parking in the 800 block will affect the natural beauty and wildlife. He is also concerned about traffic.

John Pearce talked about scaling the plan back. The key is getting the plan right. He suggested using decals to exempt owners from paying.

Rick Paarfus is in favor of a paid parking plan. He understands that the Board may be considering Block Q. He thinks any properties being considered to be purchased should be included in the plan. He suggested advertising the information to the public when there is a final plan. He asked for more information to be provided on executive session items.

Bob Bean questioned what the goals for paid parking are.

Joe Utley is in favor of paid parking. He suggested having it more congregated than having it all up and down the island. He asked that considerations be made for seniors and military. He is for more handicapped parking.

Don Braswell understands the need for paid parking, but is against parking on canal streets and in highly residential areas. He thinks paid parking should be reserved to the bridge and common areas.

Patty Braswell said the Town needs to think about safety. She suggested keeping it centralized.

John Williams asked that the Town doesn't change the parking in rights-of-way in a way that affects the property owners. He wants the appropriate parking needed. He doesn't want to change the feel of the community.

#### **DISCUSSION AND POSSIBLE ACTION ON ITEMS NECESSARY TO PROCEED WITH PAID PARKING**

Commissioner Kwiatkowski went over her three scenarios that she shared with the Board (hereby incorporated into the minutes). The Board needs to look at the information Otto provided and come up with a reasonable plan. Mayor Pro Tem Smith said he wants to make it clear that they want to rename compact car to low speed vehicle. The Board discussed how to proceed with moving forward and designating spaces.

*Motion by Commissioner Dyer to eliminate paid parking from H01 – H08; second by Commissioner Kwiatkowski. The Board agreed by consensus.*

*Motion by Commissioner Dyer for H09, H10, and H11 for paid parking with LSV with four at each one; second by Commissioner Kwiatkowski.*

The Board discussed the motion and asked for audience feedback.

*Commissioner Dyer amended her motion to H09, H10, H11, LSV two each; second by Commissioner Kwiatkowski. The Board agreed to the motion and to change compact to LSV by consensus.*

Town Manager Hewett inquired about the layout for Deal Street. After discussion, the Board said we need to look at it to determine the layout.

The Board discussed H12 and H13. Commissioner Brown suggested that before we get a number on the canal streets, he would like to delineate the wetlands and if it is wet, we don't need to park there.

*Motion by Commissioner Dyer to eliminate parking on H12; second by Mayor Pro Tem Smith. The Board agreed by consensus.*

The Board discussed delineating the wetlands.

*Motion by Commissioner Dyer for delineation of H13, H18, H21, H24 H25 before we determine. The Board agreed by consensus.*

For purpose of this document, those zones will stay on the document for now.

*Commissioner Dyer said for H14, H15, H16, H17, we have LSV, two spots; second by Commissioner Kwiatkowski. The Board agreed by consensus.*

The Board talked about options for the 800-block property owned by the Town. Commissioner Kwiatkowski doesn't feel it will be ready for the first year.

*The Board's consensus is to take H19 off the list for right now.*

*The consensus is H20 stays.*

*The consensus is to keep two LSV spots at H22 and H23.*

*The consensus of the Board is to make Raleigh H31.5.*

*The consensus of the Board to make H26, H27, H29, H30, H31, H31.5, H32, H33, H34 and H35 as two LSV spots.*

*The consensus of the Board is to take off H28.*

*The Board agreed to eliminate H36, H37 and H38 from paid parking.*

*Motion by Commissioner Dyer for H39 to have 10 full size spots. The Board agreed by consensus.*

*The consensus of the Board is that it will be close timing to get permits and to have the lot at H40 ready, but they will leave it on the list.*

*Motion by Commissioner Dyer that H41 be both sides of the street, full sized parking. The Board agreed by consensus.*

*The Board came to a consensus to leave H42, H43, H44 and H45 as is.*

*The consensus of the Board is to designate H46 as boat trailer.*

*The consensus is to leave H47, H48 and H49, H50 and H51 as it is.*

*The consensus is H52 will stay. The discussion of the fee for that area will take place when discussing the fee schedule.*

*The Board agreed to make H53 two LSV spots. Halstead Park will remain free.*

*The Board came to a consensus to make H54 two LSV.*

*The Board came to a consensus that H55 & H56 will remain as it is.*

*The Board talked about the need to move parking if it blocks somebody's developable lot.*

*The Board agreed to leave H57 and H58 as is, in the current setup. The homeowners want LSV on the west, bike on the east for Ranger and the same as it is currently for Elizabeth. Staff will count the number of spots.*

*The Board came to a consensus for the following:*

*H59 will be two LSV spots*

*H60 and H61 will remain as is.*

*H62 will be two LSV spots.*

*H63 northside parking only, 40 spaces.*

*H64 will remain.*

*To eliminate H65.*

*H66, H67, H68, H69, H70 and H71 will remain.*

*Mr. Varner said the total is 506 spots.*

*Lieutenant Dilworth said H41 is closer to 30 spots.*

*Mayor Holden announced a five-minute recess at 4:26 p.m.*

*Mayor Holden called the meeting to order at 4:38 p.m.*

Mr. Varner said the breakdown is 445 full size vehicle spaces and 61 LSV.

The Board will wait until a future meeting to discuss the remaining parking items.

**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**

*Motion by Commissioner Brown to go into Executive Session at 4:40 p.m.; second by Mayor Pro Tem Smith.*

Town Clerk Finnell read the reason for Executive Session.

*The motion was approved by unanimous vote.*

**RECESS**

*Motion by Mayor Pro Tem Smith at 5:18 p.m. to recess until Wednesday February 2<sup>nd</sup> at 3:30 p.m., second by Commissioner Brown; approved by unanimous vote.*

Mayor Holden announced the meeting will reconvene at 3:30 p.m. on February 2<sup>nd</sup> in this room.

**RECONVENE**

The meeting was reconvened on Wednesday, February 2, 2022 at 3:30 p.m. in the Town Hall Public Assembly. Present were Mayor J. Alan Holden; Mayor Pro Tem Rick Smith; Commissioners Gerald Brown; Brian Murdock, Page Dyer and Pat Kwiatkowski; Town Manager David W. Hewett; Town Clerk Heather Finnell; Assistant Town Manager Christy Ferguson; Inspections Director Tim Evans; Police Chief Jeremy Dixon and Lieutenant Frank Dilworth; and Attorney Rick Green.

Mayor Holden reconvened the meeting.

Town Manager Hewett explained that staff revised the ordinance based on the Board's guidance from the last meeting.

Town Manager Hewett said he detailed in his memo to the Board in October that there is a specific difference between on street and off-street parking. In our table, there are some instances in language that use the words lot and in lot. He recommended that the language in those instances be changed to reflect verbiage that is more in line with using the terms on street and off-street parking. It is an important difference to provide clarity to ensure our ordinance is generally in sync with the general statutes regarding parking and the descriptive terms. He suggested that staff be provided with the administrative leeway to adjust that accordingly. Town Manager Hewett said additionally he would like

to be able to recalibrate the zone designations to begin sequentially at one, provided it's the best thing to do. There were no objections from the Board.

Commissioner Kwiatkowski provided the Board with her notes and suggestions for the ordinance (hereby incorporated into the minutes).

Commissioner Kwiatkowski brought up the definition of driveway. Lieutenant Dilworth explained staff made an assertive effort to clean the definitions up and make sure they agree with state law.

Commissioner Kwiatkowski questioned the Park or Parking definition. Lieutenant Dilworth answered it follows the state statute. He said it could be changed to any amount, instead of period. Bus/trolley stopping to drop people off was discussed. Lieutenant Dilworth explained these are definitions. He said something could be added in Section 72.02 to allow for loading or unloading or designated with signage.

Public Right-of-Way (ROW) versus Street ROW in definitions were discussed. After discussion, no changes will be made.

Street or Highway in definitions was discussed. After discussion, no change will be made.

Commissioner Kwiatkowski discussed her suggested changes to Section 72.02. After discussion, no change was made.

*Construction/maintenance vehicle parking was discussed. After discussion, the Board agreed to change the corresponding exemption to "private contractor or maintenance service vehicles performing legitimate services at a specific location receiving services, except".*

Signage was discussed. Signage needs to be approved by the Town.

Mayor Pro Tem Smith asked about covering the Turtle Patrol under Section 72.02. Lieutenant Dilworth explained the Turtle Patrol would currently be covered under 72.02D in the proposed ordinance.

The Board discussed adding loading/unloading to exemptions. Town Manager Hewett suggested that the Town may want to have the Police Department assess the best locations for trolley stops.

*The Board agreed to add designated loading zones to 72.03(B) Signage. The language can be added and the stops can be figured out soon.*

Adding no parking between the hours of 2:00 a.m. – 5:00 a.m. back to the ordinance was discussed.

*Motion by Commissioner Kwiatkowski that we maintain the no parking between the hours of 2:00 a.m. – 5:00 a.m., with the omission of boat trailers. No second was made.*

Commissioner Kwiatkowski read her revision for the opening of Section 72.03. No action was taken.

Commissioner Kwiatkowski suggested adding annual permits for one or two vehicles. She doesn't think annual permits should be available for rental golf carts. The Board discussed her suggestions.

*After discussion, the Board agreed to allow parking permits for one or two vehicles.*

Commissioner Kwiatkowski inquired about Section 72.03(D). She said people want to be able to put their cars in the ROW adjacent to their own home. This section was discussed. Enforcement was also discussed. Otto will be enforcing the areas with paid parking.

*Motion by Commissioner Kwiatkowski that 72.02(D) be added as written (There will be no parking in the street ROW except in designated places from April 1 – October 31 between the hours of 9:00 a.m. – 5:00 p.m. as stipulated in 72.03(A). Parking in the street ROW outside these times will be enforced according to prohibitions and exceptions outlined in 72.02 (B), (C) (D).), lettering issues can be corrected if necessary; second by Commissioner Murdock; approved by unanimous vote.*

*72.02 (B)(6) or (7) will be corrected to reflect the correct section.*

Commissioner Murdock suggested lowering the parking fee. He recommended that for the first year, the prices be dropped to Otto's minimum by the hour and proportionally from there up to a day price.

*Motion by Commissioner Murdock that we go to Otto's lowest allowable number on parking by the hour that he can afford to be a vendor and then proportionally increase it from there.*

Commissioner Kwiatkowski suggested that the target be \$3 per hour, \$15 per day based on Otto's feedback. The per week rate could be reduced to \$70 and we can keep the annual rate where it is, but also allow for a single vehicle, one at \$125 and two at \$250. The Board discussed the motion.

*Motion by Commissioner Dyer to ask his (Otto's) minimum requirement to execute the parking plan.*

*Mayor Holden suggested that the Board direct the town manager to get that information. The Board agreed.*

**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**

*Motion by Mayor Pro Tem Smith to go into Executive Session at 5:23 p.m.; second by Commissioner Murdock.*

Town Clerk Finnell read the reason for Executive Session.

*The motion passed by unanimous vote.*

**OPEN SESSION**

The Board went back into Open Session at 6:23 p.m.

**ADJOURNMENT**

*Motion by Commissioner Brown to adjourn at 6:24 p.m.; second by Commissioner Kwiatkowski; approved by unanimous vote.*

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J. Alan Holden, Mayor

ATTEST:

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Heather Finnell, Town Clerk



**TOWN OF HOLDEN BEACH  
BOARD OF COMMISSIONERS  
REGULAR MEETING  
TUESDAY, FEBRUARY 15, 2022 – 5:00 P.M.**

The Board of Commissioners of the Town of Holden Beach, North Carolina met for a Regular Meeting on Tuesday, February 15, 2022 at 5:00 p.m. in the Town Hall Public Assembly. Present were Mayor J. Alan Holden; Mayor Pro Tem Rick Smith; Commissioners Gerald Brown, Brian Murdock, Page Dyer and Pat Kwiatkowski; Town Manager David W. Hewett; Town Clerk Heather Finnell; Assistant Town Manager Christy Ferguson; Police Chief Jeremy Dixon; Lieutenant Frank Dilworth; and Town Attorney Rick Green.

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

**PLEDGE OF ALLEGIANCE**

**AGENDA APPROVAL**

*Motion by Commissioner Kwiatkowski to add an update to the public on the LGC review of the financial package linked to the pier purchase after public comments (6a); second by Commissioner Murdock.*

*The Board unanimously agreed to approve the amended agenda.*

**APPROVAL OF MINUTES**

Commissioner Kwiatkowski would like to add clarification on page 11, under her comments. She wanted to make sure it reflected that her comments were regarding the county commissioners and county staff. Town Clerk Finnell said she would listen to the minutes, but she doesn't believe that is what was said. She could note that in the minutes if it was said.

*Motion by Mayor Pro Tem Smith to approve the minutes of the January 18<sup>th</sup> Board of Commissioners' meeting as presented; second by Commissioner Brown; approved by unanimous vote.*

**PUBLIC COMMENTS ON AGENDA ITEMS**

Town Clerk Finnell said written comments were provided to the Board and placed on the website for the public's review.

Bob Bean talked about the shuttle pilot project. He inquired about the cost share and on the benefit of the transit project for the people on the island. He doesn't think the Town will see a measurable reduction in traffic. He suggested a Saturday trial.

Beverly Compton read a letter from the Brunos (previously supplied to the Board) regarding 796 OBW.

Mike Felmy is concerned with parking and the pier. He thinks people would support paid parking more if they knew what the end result would be. He recommended getting a community planning consultant to try and develop a strategy to keep the family beach.

Keith Smith would like the Town to implement the provision where if you park a certain number of times, it rolls over into a pass. He suggested that Otto doesn't police private property. He thinks there should be two free annual passes for homeowners.

Irvin Woods doesn't agree with 20 parking places on the one-way street on the east end. He thanked the Board for making the preliminary decision to remove it from the plan. He thinks overall the shuttle service is a good idea, but is opposed to stop #5. Mr. Woods talked about the pier. He appreciates the efforts the Board makes to try to do the right thing for the Town. He thanked the Board for the beach nourishment.

Jim Bauer said the parking plan is a disaster waiting to happen. He is concerned with access for the Fire Department's apparatus. He suggested the Town should make decisions based on if fire equipment/garbage trucks could access the streets when the parking plan is in place.

#### **UPDATE TO THE PUBLIC ON THE (LOCAL GOVERNMENT COMMISSION) LGC REVIEW OF THE FINANCIAL PACKAGE LINKED TO THE PIER**

Commissioner Kwiatkowski provided information on the finance application for the pier. She said a representative from the LGC notified the Town on January 19<sup>th</sup> that they had received numerous emails that were part of the public hearing and noted there were concerns expressed. At that point, they felt they should not put Holden Beach on the agenda in February. They would reevaluate the application for a March placement. It is still in the works to see if it can be on the March agenda.

Mayor Holden mentioned he received a copy of signatures that have been sent to Joe Futima. There are 700 signatures of support for the purchase of the pier.

#### **DISCUSSION AND POSSIBLE ACTION ON THE BEACH SHUTTLE PILOT PROJECT**

Town Manager Hewett explained in their annual goals, the Board has an item to specifically ask the county for help in establishing a shuttle service from the mainland. They have been working with the Grand Strand Area Transportation Study in order to investigate the potential for the service. He provided information from the Town's Land Use Plan. He introduced Jean Atkinson, Marketing/Mobility Director for the Brunswick Transit System (BTS).

Ms. Atkinson provided information on BTS. They are proposing using the existing vehicles they already have in their fleet and wrapping the vehicles with a beachy theme. They would add bicycle racks. BTS

would provide services for the fixed route at a fully allocated rate of \$52.66 per hour. She provided details on the calendar of services and the hours. She reviewed the proposed stops. The shuttle would run hourly.

Ms. Atkinson answered questions from the Board. They have a 15-passenger vehicle with wheelchair capacity and a 24-capacity vehicle. Ms. Atkinson said they will have a second vehicle if needed if the first one is full. Commissioner Kwiatkowski talked about her concerns with full shuttles at certain times and during bad weather and running a shuttle on Saturdays with the traffic. Ms. Atkinson stated the pilot would be about learning the feel of it. Commissioner Kwiatkowski said she knows Ocean Isle had some of the same concerns. They also had concerns dropping people where there aren't amenities, which is a concern for Holden Beach also. She stated it is a difficult program to see the benefit to the island. She is not sure the program is ready. Commissioner Dyer asked if the county is developing the parking lot on the mainland. Ms. Atkinson replied no. If the Town would like to develop it, it would need to be looked into. They have verbal permission from the county to use the property as a parking area. BTS has not asked them about turning it into a lot. It is already a flat, level area. Town Manager Hewett inquired if the local share of \$43,000 is the Town's responsibility or if part of that would be the county's responsibility. Ms. Atkinson said the county is not making a contribution, that is the Town's contribution. The Board discussed approaching the county to ask for their participation.

The Board agreed to wait, there isn't enough information tonight to make a commitment.

#### **POLICE REPORT – CHIEF DIXON**

- There is not a printed police report in the packets. They have been in the process of switching from Police Pak to Central Square. They did the integration in January. Next month the Board will have a report from the new program. Has been very impressed with the program. It will be a learning curve.

Commissioner Kwiatkowski thanked the Police Department for addressing contractor parking across the sidewalks. Chief Dixon responded they have tried to spend extra time on that recently. If you see it, call. They have seen a bit of a reduction as a result of their efforts. Commissioner Murdock asked for alternatives for contractors who are working on a home. Chief Dixon explained he was talking about parking on the sidewalk; side streets are different. When they encounter them on the sidewalk, they ask them to move. They can park on Ocean Boulevard; they just can't be on the pavement or sidewalk.

#### **DISCUSSION AND POSSIBLE ACTION ON ITEMS NECESSARY TO PROCEED WITH PAID PARKING**

Chief Dixon went over changes to the proposed ordinance and the Board discussed each change.

The definition for Park or Parking has been changed to reflect intended language.

The definition for Loading Zone was added.

The Board talked about the Public Right-of-Way definition. Attorney Green provided feedback on the use of the word unhindered in the definition.

Chief Dixon said there is the option of changing unhindered to unobstructed. There is also the option of using Kure Beach's definition that reads: a strip of land acquired for or dedicated to public transportation purposes over which is constructed a street or highway, and which includes areas adjacent thereto which may be used for, without limitations, sidewalks, planting strips, traffic circles, utilities, and/or medians.

The Board discussed the options.

*The consensus of the Board is to use the Kure beach definition for Public Right-of-Way.*

Chief Dixon went over the changes to §72.02(B). He said a proposal made after the document was put out was to add #8, from 2:00 a.m. to 5:00 a.m. in all public authorized parking areas except in the wildlife boat ramp and those at or adjacent to Jordan Boulevard. The Board discussed the proposal.

*Motion by Commissioner Kwiatkowski to include this in the ordinance.*

*After discussion Commissioner Kwiatkowski amended her motion to (B)(8) as Chief Dixon will read be added to the working document that will come for Board approval at a subsequent session; second by Commissioner Murdock; approved by unanimous vote.*

*Chief Dixon read the proposed #8: From 2:00 a.m. to 5:00 a.m. in all public authorized parking areas except in the wildlife boat ramp and those at or adjacent to Jordan Boulevard. The Board agreed with the language.*

Chief Dixon went over the changes to §72.02(D)(2) and (D)(9).

Chief Dixon reviewed the changes to §72.03. §72.03(B) Signage was discussed.

*The Board agreed to change the language under §72.03(B)(1) to Proper signage **may** be installed instead of **shall** as a result of Attorney Green's recommendation.*

Chief Dixon explained the changes to §72.04 Tow-Away Zones.

*Mayor Holden wants the effective date blanked out.*

Chief Dixon said he found several issues with the table. He reviewed the proposed changes.

Right-of-Way was changed to Authorized Parking Area. They added BT for boat trailer and HC for handicapped under designations.

Chief Dixon said Pump Station 3 (H20) needs to be in lot. Town Manager Hewett recommended that all references to lots be removed and they be changed to addresses. The address for the pump station will be added to the chart. Commissioner Kwiatkowski said there were two handicap spots that are not reflected. She suggested adding that. There was no objection. Chief Dixon will confirm the numbers.

Chief Dixon reviewed further changes.

Davis Street should be 120 Davis Street.

Zones H41 and H44 were combined.

The language for Pump Station 1 was cleaned up.

The boat ramp was divided into two sections. Six spaces need to be moved to off-street.

The language for Quinton Street was cleaned up.

Halstead Street was removed based on the recommendations.

Chief Dixon explained his proposed changes for Ferry Street, Elizabeth Street and Ranger. The Board discussed how to handle these streets.

After discussion the Board agreed to keep Ranger and Elizabeth as they are set up currently per the residents' request.

Chief Dixon continued with the changes.

Mullet Street will read 220 Ocean Boulevard East. The spaces are designated in the right area.

Bendigo lot needs to come off, it is on street. The eight will be moved to the other column.

H64 should say both sides of street.

*Mayor Holden called for a five-minute recess at 6:44 p.m. The Board reconvened at 6:51 p.m.*

Chief Dixon explained why H64 was changed on the proposed ordinance.

The number of spaces for H70 was updated.

Avenue D is changed to on street and the 16 spots are moved to the other column.

Mayor Pro Tem Smith asked about Canal Street not being on the list. Town Manager Hewett explained on the north end of Canal Street there are privately owned parcels. If you allow parking there, it would encourage trespassing.

Mayor Pro Tem Smith asked about Cole Street. Chief Dixon provided information on Cole Street.

Mayor Holden said where the Board is at is that the clerk will get the changes to the attorney for his review and it will come before the Board for future consideration.

*Motion by Commissioner Kwiatkowski that the Board approve Resolution 22-01 with the fee schedule as written on page 36; second by Commissioner Murdock.*

Commissioner Kwiatkowski said at the last meeting there was discussion about talking to Otto about lowering rates. Otto has given their revenue estimate based on the lower fees and information about lowering the fees. Commissioner Murdock added that Otto added a transaction fee. Mr. Varner said they don't charge extra to the end customer, above the rates that the Town sets, which is \$3. The 30%, plus the \$0.49 per transaction is what Otto would retain. It would reduce the amount to the Town.

*The motion passed by unanimous vote.*

In regard to the contract, Commissioner Kwiatkowski, said she thinks it is best if Otto enforces the entire street system for consistency. She referred to Exhibit E and language that was crossed out. Mr. Varner explained that they made changes in response to the request that Otto only would be monitoring the designated areas. If the Board agrees that Otto will be doing everything, they will put that statement back in and enforce all the infractions as previously discussed. The Board discussed what Otto should enforce. Mr. Varner confirmed they would call the Police Department if they needed help. He reviewed what they would monitor. Who to call for violations was discussed. Mr. Varner will reinsert the language.

Commissioner Kwiatkowski asked about the year to date spend by license plate. Mr. Varner said if the Board approves that, the system will convert the permit to an annual permit. *The Board agreed.*

Mr. Varner will also adjust the statement of work based on the updated ordinance.

Mayor Pro Tem Smith inquired about having Otto Connect cooperate with the local golf cart companies as the Police Department does currently in order to notify them of tickets on their rentals so they have the ability to collect before people leave town. Mr. Varner said that is not in the Statement of Work. It would be more of a practice as they work with the local businesses, including the golf cart vendors. They will notify the companies to the extent that they can.

#### **DISCUSSION AND POSSIBLE ACTION ON THE PARKS AND RECREATION ADVISORY BOARD'S (PRAB) RECOMMENDATIONS FOR 796 OCEAN BOULEVARD WEST**

Assistant Town Manager Ferguson provided background information. John McEntire, chair, went through the PRAB's slideshow (hereby incorporated into the minutes). Mr. McEntire reviewed the options they considered and how they reached their findings. The options included: Option 1 - use the facility as it is, Option 2 - renovate the facility similar to Ocean Isle, Option 3 – a completely new structure, Option 4 – remove the structure and not build it back, use the space for parking and restroom and shower facilities and Option 5 – sell the property. The PRAB thought the best fit for the property was Option 2, assuming there are no community areas planned at the pier site. He went over the details of Option 2. Mr. McEntire went over potential costs and timing associated with the options.

Commissioner Kwiatkowski commented that the Town originally talked about using the upstairs as an office/break area. Mr. McEntire agreed that could be done, there just couldn't be public access because it wouldn't meet ADA requirements. Mayor Pro Tem Smith asked where people would park if there is a community center. Commissioner Kwiatkowski replied this was always linked to creating more 800-block parking. Mr. McEntire agreed the PRAB thought there is limited parking. He added you could

expect a minor contribution from rentals at the facility. Commissioner Kwiatkowski said parking is manageable with organization. Commissioner Murdock inquired about occupancy limits. Mr. McEntire was not sure.

Mayor Holden stated in the past, the Town put in place regulations on adding clubhouses in neighborhoods. He asked the town manager and attorney to look if we are violating our own ordinance. He is aware public facilities are allowed, but he would like that looked at. He said when the Town bought the property, a decision was made to save money by having that house there to make sure we are not in violation of the sound ordinance. Commissioner Kwiatkowski agreed it was purchased as a buffer for noise.

#### **DISCUSSION AND POSSIBLE APPROVAL OF CONTRACT BETWEEN THE TOWN AND MARTIN STARNES AND ASSOCIATES FOR AUDIT SERVICES FOR FISCAL YEAR 2021 - 2002**

Town Manager Hewett said at the December meeting, the Board received the Audit Committee's recommendation that the Town select Martin Starnes as the firm to conduct the audit for the fiscal year ending June 30<sup>th</sup>. Based on the recommendation, the Board directed the development of the annual audit contract with Martin Starnes. The attached contract represents what the Board would need to approve in order to select Martin Starnes as the audit firm.

*Motion by Mayor Pro Tem Smith that we approve the fiscal year ending June 30, 2022 audit contract with Martin Starnes; second by Commissioner Brown; approved by unanimous vote.*

#### **DISCUSSION AND POSSIBLE ACTION ON DEFINING BOARD OF COMMISSIONERS' OBJECTIVES FOR FISCAL YEAR 2022 - 2023**

Commissioner Kwiatkowski explained the Board sets objectives every year. She explained the process. The objectives set for this year are in the packets. There will be a number of carryovers this year. She asked each member to pass their goals to Town Clerk Finnell. Town Manager Hewett said we will need to get the Board's calendars in conjunction with the process.

#### **PUBLIC COMMENTS ON GENERAL ITEMS**

Ken Rogers suggested having a strategic plan for the future. He said the Town also needs an external and internal review and evaluation process. He thinks the Town can manage time better and get better results.

#### **TOWN MANAGER'S REPORT**

- Happy to announce that our beach project to put down approximately 1.5 million cubic yards of sand over a four and a half mile stretch of beach is about one third of the way done. We are going to lose about another week, reduced down to about half the production capacity because one of the dredges had to go to Norfolk and get a Z drive repaired.
- Ordered the wetland delineation for the marsh streets and the 800 block lots. Hopefully that will be accomplished within the next two weeks.

## MAYOR'S COMMENTS

- Had a Meet the Mayor gathering this week on our 53<sup>rd</sup> birthday anniversary. It was a very successful event. Appreciates those who attended. Thinks there were about 40 people there.
- Everything else seems to be moving well. Will do the best we can to make the tough decisions on things like parking, the pier, beach nourishment and everything else going on.

## BOARD OF COMMISSIONERS' COMMENTS

### Mayor Pro Tem Smith

- Echoed Mayor Holden's comments for the gathering at the picnic shelter on Valentine's Day. The Town flag is a flag he flies outside his house continuously. It celebrates the 14<sup>th</sup> of February, 1969. It was a little cold, but we had quite a few people. Was able to talk to some of the residents and got to explain some things where there are some misconceptions on what we are trying to do.
- Over the past three – four weeks has been inundated with emails, calls and texts about the property acquisition of the pier. At current count there are over 600 people who have signed a petition to purchase the pier. A lot of the questions asked were on what the real plan is.
- Really enjoyed having this many people here tonight. Nice to see people come in. The Board's information is on the website. It's nice to have concerned people call and voice their concerns.
- Spent a lot of time on parking. We have come a long way. Still have some things to iron out.
- Thanked everyone for being here.

### Commissioner Murdock

- Thanked everyone for showing up. Good to see a crowd. Appreciates everyone that talked and every email he gets. Reads them all.
- Thanked Chief Dixon, Lieutenant Dilworth and the Board for putting in timeless hours on parking. Fully expect we will not get it 100% right. Will need to make some corrections moving forward. Thinks we have done the best we can at this point. Hopes everything goes well with it.
- Hears about keeping this a family beach every day. The pier property is in the center of your family beach. If you want your family beach to be condominiums you will very well get your wish if we do not purchase it. The market has increased incredibly. Thinks the Town has a very good deal. Thinks they put together the best plan to pay for it. Would like to see the Town preserve every piece of property on the island it can afford to preserve. If you let it get away, it is gone. We all take a risk being over here. The pier is a risk, but the 350 feet of oceanfront property would hopefully remain there for people to continue to enjoy and access the beach for a long time. Let's all hope we can preserve it.
- Thanked everyone for coming. Wished everyone the best.

### Commissioner Brown

- Thanked staff, Chief Dixon, Lieutenant Dilworth, Attorney Green and Town Manager Hewett.
- The nourishment project - it is amazing to go out and watch what is actually going on.
- Have a beautiful place to call home. Sometimes need to stop, look and reflect. There will always be disagreement. We are striving to do what's right for the Town and will continue to do that. Won't be able to please everyone. Remember the Town first and foremost.
- Have a good evening. Thanks for coming out. Glad to see a good crowd.

#### Commissioner Dyer

- Thanked Chief Dixon and Lieutenant Dilworth. They put together a really good plan. Thinks they have worked to try and iron out what the Parking Committee started. Thinks the parking plan moving forward will be beneficial. The east end has suffered enough with the crazy parking situation and we are moving in a positive direction to get that organized so they don't need to go through another summer of what they are going through. We know it is getting worse.
- Hopefully we can continue to move forward with the pier purchase. Keeping it is important to our community so we can keep that area green and not developed.
- Thanked the PRAB. It is a very thorough plan. They are moving in the right direction. Thinks we need something down there.
- Thanked staff and commissioners.

#### Commissioner Kwiatkowski

- Thanked everyone. Your comments are appreciated.
- We do have documents that direct us for a 10-year window. We have a relatively new Land Use Plan and a new Parks & Recreation Master Plan. We need to pull these together and pull out the priorities that our property owners have said they wanted to see. We do use those documents. One of those things that was highlighted was that people wanted to see bike lanes. We had an opportunity to get bike lanes and we jumped on the opportunity. We need to have a little bit of time to pull all of this together. We have a capital project plan that reflects the developments. It needs to be flushed out, but we don't operate totally blind and do not operate within only one year. Be patient and let us get through this budget session where we should be working on some of the things on where we will go with capital projects over the next couple of years. It will help people get a better idea of the direction that will be taken.
- Listened to Ocean Isle Beach's meeting. They were talking about doing more amenities for people using the beach, people on the island and coming from off the island. They need to have places to go to relax, to use the bathroom and to shower. We are a little bit ahead. We have identified that and have an idea of bathrooms. We have Jordan Boulevard; the pier purchase, part of it was to have ADA compliant restrooms; and 796 OBW, it's another area to try to have facilities. Have heard horror stories from owners on what they find in their outdoor showers when beach goers are looking for somewhere to relieve themselves. Facilities are a necessity and will be even more as the population of the county grows. It's not that we don't have ideas/plans. It is the money that we will need to plan carefully to get this into reality. Be patient.

#### **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**

*Motion by Commissioner Brown to go into Executive Session at 8:19 p.m.; second by Mayor Pro Tem Smith.*

Town Clerk Finnell read the reason for Executive Session.

*The motion passed by unanimous vote.*

**OPEN SESSION**

The Board went back into Open Session 8:54 p.m.

*Motion by Mayor Pro Tem Smith that we approve the contract extension on purchasing the pier and the funds involved to do that, \$10,000, earnest money; second by Commissioner Smith; approved by unanimous vote.*

**ADJOURNMENT**

*Motion to adjourn at 8:54 p.m. by Commissioner Brown; second by Commissioner Kwiatkowski; approved by unanimous vote.*

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J. Alan Holden, Mayor

ATTEST:

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Heather Finnell, Town Clerk



# Holden Beach Police Department

110 Rothschild St  
Holden Beach, NC 28462  
[www.hbtownhall.com](http://www.hbtownhall.com)

Phone: 910-842-6707  
Fax: 910-846-6907  
[hbp.d@hbtownhall.com](mailto:hbp.d@hbtownhall.com)



February '22 CFS Log

Printed on March 1, 2022

Descriptions	Totals	
911 Hang Up (911HU)	1	1
Alarm (SIG45 Signal 45)	17	17
Animal Control Call	5	5
Armed with Gun Knife or Other Weapon (10-84)	1	1
Assist Other Agency (Law) or 10-77	1	1
Attempt to Locate (ATL)	2	2
Breaking and Entering in Progress (10-62)	3	3
Call By Phone (10-21Law)	10	10
Check Point (Traffic)	1	1
Chest Pain or Discomfort [Delta]	1	1
Disabled Motorist (10-87)	2	2
Disturbance or Disorderly Subject	4	4
Domestic Disturbance (10-82)	3	3
Falls [Bravo]	3	3
Falls [Delta]	1	1
Fire Alarm Activation	2	2
Gas Leak or Spill or Odor	1	1
Improperly Parked Vehicle (10-70)	12	12
Investigation (Law)	3	3
Meet with Complainant (10-83)	8	8

Descriptions	Totals	
Noise Complaint	1	1
Open Door	4	4
Psychiatric or Abnormal Behavior or Suicidal [Bravo]; Juvenile Out of Control	1	1
Sick Person [Alpha]	2	2
Special Check - Business - Residence (10-79)	383	383
Stopping Vehicle (10-61)	16	16
Suspicious Vehicle or Subject (10-60)	3	3
Take Written Report (10-92)	6	6
Take Written Report (10-92); Call By Phone (10-21Law)	1	1
Traffic Accident (Property Damage Only 10-50PD)	1	1
Traffic Control (10-58)	6	6
Water or Sewer Problems	5	5
Water or Sewer Problems; Good Intent Call (Fire)	1	1
Welfare Check	3	3
	3	3
<b>Totals</b>	<b>517</b>	<b>517</b>



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hdpd@hbtownhall.com



HBPD Monthly Report (Jan-Feb '22)

Printed on March 1, 2022

Reported	Case Number	Address	Offenses	Disposition
01/06/22 16:34	HBP22-00001	444 OCEAN BLVD W	14-74 - LARCENY BY EMPLOYEE - KEEP	Closed - Unfounded
01/07/22 11:32	HBP22-00002	227 OCEAN BLVD W	14-223 - RESISTING PUBLIC OFFICER; 14-4 - LOCAL ORDINANCE VIOLATION	Closed - Cleared By Arrest
01/07/22 16:47	HBP22-00003	156 S SHORE DR	14-72(B) - LARCENY OF A FIREARM - KEEP	Closed - Unfounded
01/11/22 10:56	HBP22-00004	112 GOLDEN DUNE	14-104 - FAIL TO WORK AFTER PAID	Investigator Requested
01/13/22 18:05	HBP22-00005	227 OCEAN BLVD W	FIRE - UNDER INVESTIGATION	Further Investigation
01/14/22 14:26	HBP22-00006	125 DAVIS ST	14-127 - DAMAGE TO REAL PROPERTY	Closed - Juvenile/No Custody
01/26/22 11:47	HBP22-00007	762 OCEAN BLVD W	14-160 - INJURY TO PERSONAL PROPERTY; 14-72(A) - FELONY LARCENY; 14-56 - BREAK OR ENTER A MOTOR VEHICLE	Investigator Requested
01/30/22 12:52	HBP22-00008	214 OCEAN BLVD E	14-72(A) - FELONY LARCENY; 14-54(A) - BREAKING AND OR ENTERING (F) LARCENY	Investigator Requested
02/02/22 12:50	HBP22-00009	114 SAND DOLLAR DR	14-72(A) - FELONY LARCENY	Investigator Requested
02/08/22 15:04	HBP22-00010	755 OCEAN BLVD W	14-100 - OBT PROP FALSE PRET >=\$100,000	Open - Forward to Other Agency
02/11/22 14:57	HBP22-00011	137 OCEAN BLVD E	14-72.5 - LARCENY OF MOTOR FUEL	Investigator Requested

Reported	Case Number	Address	Offenses	Disposition
02/17/22 10:54	HBP22-00012	232 BRUNSWICK AVE	14-72(A) - MISDEMEANOR LARCENY	Closed - Leads Exhausted
02/17/22 11:36	HBP22-00013	383 OCEAN BLVD W	14-127 - DAMAGE TO REAL PROPERTY; 14-54(B) - BREAKING OR ENTERING (M)	Investigator Requested
02/18/22 23:21	HBP22-00014	125 OCEAN BLVD W	90-113.22A - POSSESS MARIJ PARAPHERNALIA; 90-95(A)(3) - SIMPLE POSS LESS THAN 1/2 OZ	Closed - Cleared By Arrest
02/22/22 17:02	HBP22-00015	385 OCEAN BLVD W	14-55 - POSSESSION OF BURGLARY TOOLS; 14-160 - INJURY TO PERSONAL PROPERTY; 14-54(B) - BREAKING OR ENTERING (M)	Further Investigation

**Total Records: 15**

Memo to Board

28 February 2022

RE: Paid Parking Items

There are several items on the 8 March agenda associated with parking. The following attempts to address some of them specifically and additional practical implementation matters as well.

1. Delineation and deconfliction of parking spaces:
  - A. Assuming the draft ordinance is sufficiently refined to consider for adoption I would like to have the Police Department and Public Works ground truth it by marking all locations where parking is proposed to occur; for both on street and off street categories.
  - B. Marking the spaces will allow public safety officials to realistically test and evaluate whether the distances from intersections and parking locations provide sufficient turning access in addition to allowing other large public services and recreational vehicle towing combinations to gauge the effect of the new reduced intersection spacing.
2. Signage:
  - A. Templates and content examples are included for Board review and approval if satisfactory.
  - B. A budget amendment is included to accommodate the funding streams for both on and off street parking in accordance with the Fiscal Control Act and GS 160A-301 (a) and (b) regarding use of same. The budget amendment represents estimates for the last 90 days of the current fiscal year and funds generated will primarily be used for signage and any site work required for implementation. The General Fund will house the program with expenses being made from the Streets department.

Both the sign templates and budget amendment will require Board approval before signs can be ordered.
3. Implementation date; advertising and consideration of “no pay” days
  - a. Recommend Board consider “soft start” of paid parking 1 May 2022 for several reasons.
    - i. Uncertain delivery times for signage and delivery.
    - ii. Uncertainty on prep work for Davis Street property; minimal but required.
    - iii. Easter week begins 10 April (Palm Sunday) thru the 17<sup>th</sup>. Large influx of visitors – not the best time to test a new system. Believe the extra month would be better utilized to advertise the beginning of the paid parking program via large digi sign at foot of bridge. It will be critically important to be able to standardize and communicate the program’s specifics through various Town media/message platforms.
    - iv. Days at the Docks is 23/24 Apr and will locate vendors in paid parking spaces; there is enough activity associated with this event that it would be cleaner to not complicate the paid parking program issue further until the Board decides on a protocol and schedule of “no pay/reduced pay” days and schedule which can be determined at a later date.

4. Follow on action regarding ask of the General Assembly

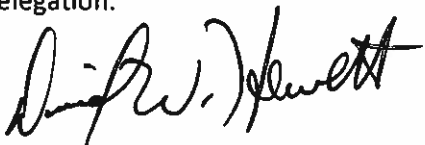
It is suggested that the Town of Holden Beach seek local legislation from the General Assembly essentially waiving the constraints imposed by GS 160A-301 (a) relating to the use of on street parking revenues; similar to the flexibility afforded to several towns in New Hanover County via HB 212 Session Law 2001-9 that allows for the use of all paid parking revenues for any public purpose.

Feedback from the NC League of Municipalities indicates that bill filing deadlines for local bills have not yet been announced but the best guess is mid April or mid May. The League suggests that now is the appropriate time to reach out to the town's local delegation to educate them on the need and request they have legislative staff draft a bill if the Town is ready to proceed in that direction.

RECOMMENDATION:

If the Board is satisfied that the ordinance as drafted is sufficient to implement a paid parking program a motion as follows would provide for sufficient staff direction to move the program forward:

"Motion to approve the paid parking ordinance, the services agreement with Otto Connect, sign templates and budget amendment 22-04 and direct the Town Manager (or other designee as determined by the Board) to seek enabling legislation from the General Assembly through its local delegation."

A handwritten signature in black ink, appearing to read "David W. Hewitt". The signature is fluid and cursive, with the first name "David" and last name "Hewitt" clearly distinguishable.

**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.

**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 excluding those vehicles defined as low-speed vehicles 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.

**LOADING ZONE.** A specific area designated by signage for temporary parking to load or unload passengers and/or equipment.

**LOW SPEED VEHICLE.** A registered motor conveyance as defined in G.S. § 20-4.01(27)(g), a four-wheeled electric vehicle whose top speed is greater than 20 miles per hour but less than 25 miles per hour.

**PARK or PARKING.** The act of leaving any vehicle standing, whether attended or unattended, in a stationary position for any amount 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.~~ A strip of land acquired for or dedicated to public transportation purposes over which is constructed a street or highway, and which includes areas adjacent thereto which may be used for, without limitations, sidewalks, planting strips, traffic circles, utilities, and/or medians.

**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:
  - (1) Street intersections or adjacent right-of-way, within 25 feet.
  - (2) Any portion of the roadway, pavement or travel lane.
  - (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.
  - (8) From 2 a.m. to 5 a.m. in all public authorized parking areas except in the wildlife boat ramp and those at or adjacent to Jordan Blvd.
- (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 at a specific location receiving services, 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 the Halstead Park for direct use of the park and its facilities only. This applies to the parking area on the lot located at 125 South Shore Drive only.
- ~~(6)~~(7) 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 and on the same side of the street as the park on Sailfish Dr. only.
- ~~(7)~~(8) 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 and on the same side of the street as the park on Sand Dollar Dr. only.
- ~~(8)~~(9) Parking is authorized without a permit in any designated handicap space in accordance with the definition(s) in 72.01, when said vehicle displays a valid placard or registration plate.
- ~~(9)~~(10) Parking is authorized without a permit on street rights-of-way in accordance with the following:
- (a) In accordance with all of the provisions of 72.02(B) and (C), and
  - (b) Only between 5 p.m. and 9 a.m., April 1<sup>st</sup> through October 31<sup>st</sup>, and

- (c) Anytime between November 1<sup>st</sup> and March 31<sup>st</sup>, and
- (d) On all streets except Ocean Blvd West and Ocean Blvd East between Jordan Blvd and the intersection with McCray St.

### **§ 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 1<sup>st</sup> through October 31<sup>st</sup> 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 one or 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) Proper signage ~~shall~~ may be installed and maintained by the Town or its authorized agent to:

- a. Designate authorized parking areas in accordance with the table in 72.03(E).
- b. Designate parking for low-speed vehicles in accordance with table 72.03(E).
- c. Designate loading/unloading zones and stop locations for mass transit vehicles.
- d. Designate handicap parking spaces.
- e. Indicate no parking areas.
- f. 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 full-size vehicle in any space designated for low-speed vehicle parking.
- (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 unless otherwise exempted in 72.02(D).
- (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.

**{ Insert Completed Table Here }**

#### **§ 72.04 TOW-AWAY ZONES.**

Vehicles may be towed at the discretion of any law enforcement officer in accordance with all current North Carolina General Statutes.

#### **§ 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(B)(6) or (7).

(D) Civil. In accordance with § 10.99(B), Any person who violates § 72.02(B)(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 \_\_\_\_\_ of \_\_\_\_\_, 2022.

This the \_\_\_\_\_ of \_\_\_\_\_, 2022.

\_\_\_\_\_  
J. Alan Holden, Mayor

ATTEST:

\_\_\_\_\_  
Heather Finnell, Town Clerk

**Town of Holden Beach**  
**Parking Zone and Area Table**

The following table shall indicate the specific areas within the corporate limits of the Town of Holden Beach where parking is specifically authorized pursuant to Ordinance 72 and its counterparts and references. Changes and/or modifications to this table are restricted to actions by the Board of Commissioners.

Street/Location (West to East)	Type of Space LSV=Low Speed Vehicle F=All Vehicles BT = Attached Boat Trailer HC = Handicapped	Authorized Parking Area	Number of Spaces		Parking Zone
			Off-Street	On-Street	
Seagull Dr	LSV	Westside only		2	H09
Deal Dr	LSV	Both sides of street		2	H10
Seaside Dr	LSV	Eastside only		2	H11
Sailfish Dr	F	Westside only		*	H13
Tarpon Dr	LSV	Both sides of street		2	H14
Marlin Dr	LSV	Both sides of street		2	H15
Tuna Dr	LSV	Both sides of street		2	H16
Dolphin Dr	LSV	Eastside only		2	H17
Swordfish Dr	F	Eastside only		*	H18
<b>Pump Station 3 Lot</b> <u>792-788 Ocean Blvd W</u> <u>(Parcel Number</u> <u>246BC01601)</u>	<del>F</del> <u>10 x F / 2 x HC</u>	In lot	12		H20
Sand Dollar Dr	F	Westside only		*	H21
Starfish Dr	LSV	Eastside only		2	H22
Lionspaw Dr	LSV	Eastside only		2	H23
Scotch Bonnet Dr	F	Eastside only		*	H24
Greensboro	F	Westside only		*	H25
Charlotte St	LSV	Both sides of street		2	H26
Durham St	LSV	Eastside only		2	H27
Burlington St	LSV	Both sides of street		2	H29
Salisbury St	LSV	Both sides of street		2	H30
Sanford St	LSV	Both sides of street		2	H31
Raleigh St	LSV			2	H31.5
Fayetteville St	LSV	Westside only		2	H32
Lumberton St	LSV	Both sides of street		2	H33
Highpoint St	LSV	Both sides of street		2	H34
Neptune St	LSV	Eastside only		2	H35
Davis St, Ocean Blvd W to Brunswick Ave W	F	Eastside only		10	H39

<u>120 Davis St</u> <del>Lot</del>	F	In lot	16		H40
Brunswick Ave West, Davis St. to Jordan Blvd (includes restrooms)	F	Both sides of street		44	H41
Jordan Blvd (OBW to Brunswick Ave)	F	Both sides of street		24	H42
Jordan Blvd (Brunswick to Pavilion)	F	Both sides of street		24	H43
Pump Station 1 South (North of bridge, between BAW and Jordan Blvd)	F	Both sides of street		24	H45
Boat Ramp Area East	5 x BT / 3 x F / 1 x HC	Under Bridge		9	H46
Boat Ramp Area West (Parcel # 247BB001)	BT	Hill Portion of Parcel #247BB001	<u>6</u>	<del>6</del>	<u>H46.5</u>
Southshore Dr, West of Jordan Blvd	F	Both sides of street		12	H47
Southshore Dr, Carolina Ave to Quinton St	F	Both sides of street		15	H48
Carolina Ave, Southshore Dr to Quinton St	F	Both sides of street		20	H49
Brunswick Ave East, Jordan Blvd to Quinton St	F	Both sides of street		18	H50
Quinton St	15 x F / 2 x LSV	Westside only		17	H51
<del>Quinton St Handicap</del> <del>Lot</del> <u>114 Ocean Blvd</u> <u>East</u>	HC	In lot	10		H52
Ferry St, North of Ocean Blvd E	LSV	Westside only		2	H54
Ferry St <del>Lot</del> , <u>South of</u> <u>Ocean Blvd E</u>	F	<del>In lot</del> <u>Both sides of street</u>	<del>15</del>	<u>15</u>	H55
Holden St	F	Westside only		10	H56
Ranger St <del>Lot</del> , <u>South of</u> <u>Ocean Blvd E</u>	LSV	<del>In lot</del> <u>Westside only</u>		<del>Current</del> <u>3</u>	H57
Elizabeth St <del>Lot</del> , <u>South</u> <u>of Ocean Blvd E</u>	LSV	<del>In lot</del> <u>Both sides of street</u>		<del>Current</del> <u>8</u>	H58
Mullet St	LSV	Both sides of street		2	H59
<del>Mullet St</del> <del>Lot</del> <u>220</u> <u>Ocean Blvd E</u>	F	In lot	12		H60
Bendigo St <del>Lot</del> , <u>South</u> <u>of Ocean Blvd E</u>	F	<del>In lot</del> <u>Both sides of street</u>	<del>8</del>	<u>8</u>	H61
Blockade Runner Dr	LSV	Westside only		2	H62

McCray St, Ave A to Dunescape Dr.	F	Northside only		40	H63
Ocean Blvd East, McCray to Ave A	F	Both sides of street		20	H64
Ave A	F	Westside only		6	H66
Ave B	F	Both sides of street		10	H67
Dunescape Dr, South of McCray St.	LSV	Both sides of street		2	H68
McCray St, Dunescape Dr. East to Ave D <del>Lot</del>	F	Northside only, parallel only		16	H69
McCray Street, East of Ave D	F x 50 / HC x 2	Northside of street only		52	H70
Ave D <del>Lot</del>	F	<del>In lot</del> Both sides of street	<del>16</del>	<u>16</u>	H71

\*delineate before number of spots are determined, but leave on for document



### 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
<b>Services:</b> <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>	
<b>Services Fees:</b> SurfCAST = 30% of consumer parking fees collected plus \$.49 per transaction and 30% of Violation fees collected plus \$.49 per transaction. The above all subject to the terms of Section 4 herein and a minimum of 500 parking spaces.	<b>Initial Service Term:</b> Two (2) Years Automatically renewed for subsequent one (1) year periods unless cancelled 90 days prior to the end of the current year period.
<b>Implementation Services:</b> 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.	
<b>Implementation Fee (one-time):</b> \$0.00	
<b>Pilot Use:</b> 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 CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER 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 3<sup>rd</sup> party collection service as contracted by Company.
4. Monthly auditable reports and web-based dashboard

SurfCAST provides a mobile parking solution with little upfront 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 and collected citations
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 Violation” (SDV) Payment Discount feature for violations for a maximum of three (3) times per vehicle for selected violations as noted below.

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 1<sup>st</sup>, through October 31<sup>st</sup>*

*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. Coverage will include all parking zones and side-streets and will issue citations as applicable based on the list below or as may be updated in writing and agreed by both parties.*

***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 each licensed vehicle in all designated parking areas will be:

- \$3 per hour for up to 4 hours
- \$15 per day and for any duration greater than 4 hours
- \$60 per week for 7 consecutive days

**Annual Permit** – for one or two vehicles (users will be allowed to change License Plate Numbers only once per vehicle each year). Exceptions can be allowed on a case-by-case basis via Otto Customer Service.

- \$125 per calendar year for any one vehicle
- \$250 per calendar year for any two license vehicles including Car, Truck, LSV, or Trailer.

**Parking Zone Types** will have financials split between them. Where annual permits are used, they will be split 50/50 between the two zone types or as separately agreed by the parties.

- On-Street
- Off-Street

**Parking Permit upgrade to Annual**

- Individual parking permits per license plate will be tracked for amount spent. When the total in a calendar year reaches the equivalent of an annual permit, the system will automatically upgrade the permit for that vehicle to an annual permit.

**Parking Violations and Citation Fees**

Listed below are the violations that will result in a parking citation – or as may be updated in Exhibit E by mutual agreement:

Violation fine of \$25 Same Day Violation (SDV) payment by midnight of the day of the issued citation, then \$50 next day thru day 30, then \$25 late payment penalty = \$75. Note: SDV use is limited to 3 times per account and license plate.

- Parking without a valid paid permit in an authorized parking area (Section 72.03)

The following violations will carry a fine of \$50 if paid within 30 days. After 30 days, a \$25 late payment penalty will be applied = \$75

- Parking within 25 feet of a Street Intersection (Section 72.02)
- Parking in a Crosswalk, Sidewalk, or Pedestrian Access ways (Section 72.02)
- Parking blocking a driveway or mailbox (Section 72.02)
- Parking facing opposing traffic (Section 72.02)
- Parking in a No Parking Zone, or within Right-of Way (Section 72.02)
- Parking on any portion of the roadway or travel lane (Section 72.02)
- Parking a Non-LSV vehicle in an authorized LSV location (Section 72.03 and subject to Section 72.01 definitions)

The following violations will carry a fine of \$250

- Parking adjacent to (within 15 feet) or blocking a Fire Hydrant, Fire Lane, or Emergency Access (Section 72.02)
- Parking in a designated Handicap space without proper license plate or hangtag (Section 72.02)
  - Note: Handicap space violations will be referred to the Police Dept for verification prior to issuing a citation.

**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. – Attn. Parking Services*
  - *PO Box 2448*
  - *Surf City, NC 28445*

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

- *Email: [customerservice@ottoconnect.us](mailto: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](mailto: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 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 in a designated parking zone without an Active Permit or in a No Parking area:
  - a. Immediate Citation with reason noted on the ticket
  - b. 2<sup>nd</sup> 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 equivalent zone within the Permit Period.
  - b. If parked in a lot specified for a different vehicle type (i.e., large 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. 1<sup>st</sup> 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 parked 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 allowed per app account for hour, day, week permits – where each vehicle must have a parking permit
    - i. Note: multiple vehicles can be entered, but each must have an individual, active permit when parked in a designated parking space.
  - b. 2 vehicles allowed per app account for annual permits – both vehicles are valid from the time of permit purchase
  - c. Each vehicle must have a parking permit including cars, trucks, LSVs (including Golf Carts), trailers, etc.
  - d. License Plate Changes are permitted at the start of a parking session, except for annual permits which can only be changed once each year
  - e. 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: \_\_\_\_\_



**Pay  
to Park**

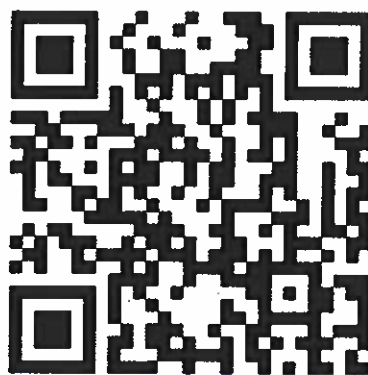
## **General Parking**

**Download & Pay  
via the Mobile App**



**SurfCAST**  
by otto CONNECT

**or Scan for Secure  
Web Link**



**Parking Rates are on the app and website**

**Zone: Hxx**

**Pay to Park from April 1<sup>st</sup> through Oct 31<sup>st</sup>**

**9:00 AM – 5:00 PM**

**For support - call Otto Connect: 910-200-1497  
or email at: [customerservice@ottoconnect.us](mailto:customerservice@ottoconnect.us)**



**Pay  
to Park**

## **General Parking**

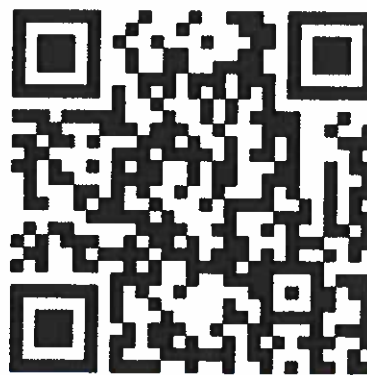


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**Pay  
to Park**

**General Parking**

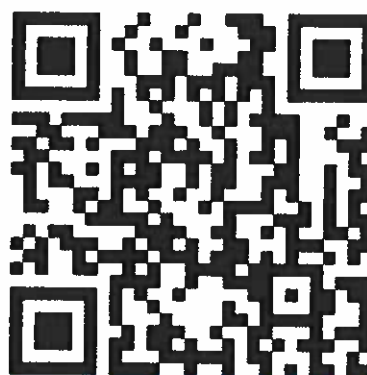


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**Pay  
to Park**

**Low-Speed Vehicles Only**

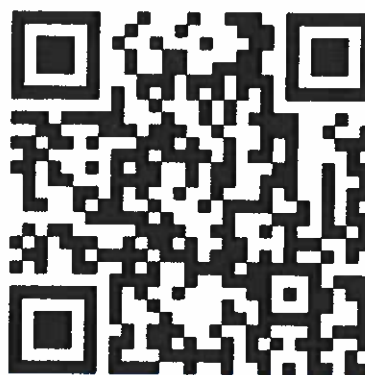


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Web Link**



**Parking Rates are on the app and website**

**Zone: Hxx**

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**Pay  
to Park**

**Low-Speed Vehicles Only**



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**Parking Rates are on the app and website**

**Zone: Hxx**

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**Pay  
to Park**

**Low-Speed Vehicles Only**

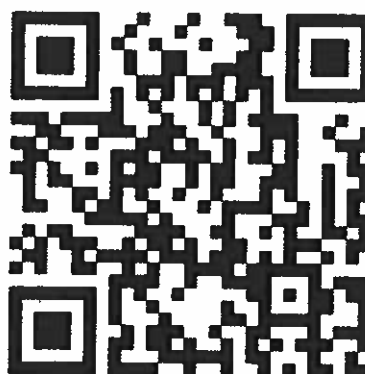


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**Parking Rates are on the app and website**

**Zone: Hxx**

**Pay to Park from April 1<sup>st</sup> through Oct 31<sup>st</sup>**

**9:00 AM – 5:00 PM**

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or email at: [customerservice@ottoconnect.us](mailto:customerservice@ottoconnect.us)**



**Pay  
to Park**

**Vehicle + Trailer Only**

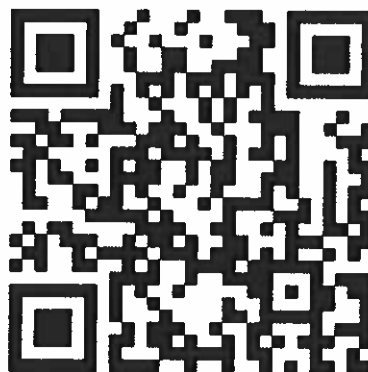


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**For support - call Otto Connect: 910-200-1497  
or email at: [customerservice@ottoconnect.us](mailto:customerservice@ottoconnect.us)**



**Pay  
to Park**

**Vehicle + Trailer Only**



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**Parking Rates are on the app and website**

**Zone: Hxx**

**Pay to Park from April 1<sup>st</sup> through Oct 31<sup>st</sup>  
9:00 AM – 5:00 PM**

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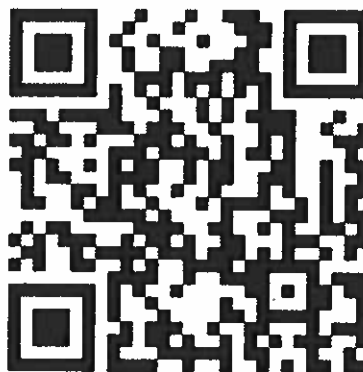


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# **TOWN OF HOLDEN BEACH**

## **ORDINANCE 22-04**

### **AN ORDINANCE AMENDING ORDINANCE 21-13, THE REVENUES AND APPROPRIATIONS ORDINANCE FOR FISCAL YEAR 2021 – 2022 (AMENDMENT NO. 10)**

Be it ordained by the Mayor and Board of Commissioners of the Town of Holden Beach, North Carolina that Ordinance No. 21-13, appropriating funds for fiscal year 2021 – 2022 be amended as follows:

Purpose: Provide budgetary program to account for paid parking revenues & expenses

Fund	Account #	Description	Amount	Action
Revenues				
General	New tbd	On street parking	9868	Increase
General	New tbd	Off street parking	82336	Increase
total			92204	
Expenses				
General	New tbd	On street parking	9868	Increase
General	New tbd	Off street parking	82336	Increase
total			92204	

The Town Manager acting in his capacity as Budget Officer or Finance Officer as may be appropriate is hereby authorized to effect such administrative actions as necessary to ensure compliance with the Local Government Fiscal Control Act and Governmental Accounting Standards Board.

This the 8<sup>th</sup> day of March, 2022.

\_\_\_\_\_  
J. Alan Holden, Mayor

ATTEST:

\_\_\_\_\_  
Heather Finnell, Town Clerk



Date: March 2, 2022

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

From: <sup>dh</sup>Christy Ferguson, Assistant Town Manager 

Re: Pier Property Financing Contract and Resolution

Attached are the installment financing contract with Truist (attachment 1), the deed of trust (attachment 2), the required approval resolution (attachment 3), and the wire transfer agreement (the installment financing contract and deed of trust are redlined to reflect revisions negotiated with Truist from the drafts that were available at the public hearing). The wire transfer agreement sets forth certain security and verification procedures to prevent unauthorized or fraudulent wire transfers through cyber fraud and other means. The required public hearing on the installment financing contract was held at the January meeting. The Local Government Commission approved the financing on March 1, 2022. Approval of Resolution #22-05 regarding the installment financing contract and other related matters as outlined in the resolution is needed to move forward with installment financing to purchase the property at 441 Ocean Boulevard West.

Attachment 1: Installment Financing Contract

Attachment 2: Deed of Trust

Attachment 3: Resolution #22-05

Attachment 4: Wire Transfer Agreement

PARKER POE DRAFT ~~01/11/2022~~02/17/2022

**INSTALLMENT FINANCING CONTRACT**

BETWEEN

**TRUIST BANK**

AND

**TOWN OF HOLDEN BEACH, NORTH CAROLINA**

DATED AS OF  
~~FEBRUARY 28~~[CLOSING DATE], 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~~[CLOSING DATE], 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 pay or reimburse~~ 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~~March 8, 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~~[CLOSING DATE], 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~~ [CLOSING DATE], 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[CLOSING DATE], 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~~3.18% 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~~ pay or reimburse the Costs of Acquisition, including 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]

## ARTICLE IV

### DEPOSIT OF PROCEEDS

On the Closing Date, the Bank will deposit the proceeds of the Advance in accordance with a closing memorandum or closing statement provided by or on behalf of the Town.

[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, licenses 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**~~(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.

. 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:~~ including national flood insurance in an amount acceptable to the Bank. Each insurance policy obtained pursuant to this Section shall 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. ~~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 8.2** *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 acquisition of 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 Advance~~ 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 OBLIVATE 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, or by such other means as may be acceptable to the recipient, 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~~[CLOSING DATE], 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~~[CLOSING DATE], 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 G. Edmundson  
Secretary  
Local Government Commission of North Carolina

**PAYMENT SCHEDULE**

[to come]

PARKER POE DRAFT 01/11/2022 02/28/2022

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[CLOSING DATE], 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~~ [CLOSING DATE], 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.

Notwithstanding the foregoing, this Section 1.4 shall not apply to the condemnation of any Improvements.

Section 1.5. **Care and Use of Mortgaged Property.** The Grantor 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.

~~(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.

Notwithstanding the foregoing, this Section 1.6 shall not apply to any Improvements.

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; provided, however, nothing in this Deed of Trust or the Contract will be construed to be a non-substitution clause in violation of N.C. Gen. Stat. §160A-20(d).

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 Appraisal, 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 appraisal, 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

appraisement, 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]

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.

**RESOLUTION 22-05****RESOLUTION OF THE TOWN OF HOLDEN BEACH, NORTH CAROLINA, APPROVING AN INSTALLMENT FINANCING CONTRACT AND DELIVERY THEREOF AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS**

**WHEREAS**, the Town of Holden Beach, North Carolina (the "*Town*") is a municipal corporation of the State of North Carolina (the "*State*"), validly existing under the Constitution, statutes and laws of the State;

**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 best interest of the Town to enter into an installment financing contract (the "*Contract*") with Truist Bank (the "*Bank*") in an aggregate amount not to exceed \$3,300,000, pursuant to which the Town will receive an advance of funds under which the Town will make certain installment payments, in order to (a) pay the costs of, or reimburse itself for paying the costs of, acquiring property in the Town located at 441 Ocean Boulevard W., including the pier (the "*Property*"), and (b) pay the costs associated with entering into the Contract;

**WHEREAS**, the Town anticipates that it may acquire the Property using funds currently on hand before executing and delivering the Contract, if necessary, and therefore may reimburse itself for the costs of acquisition of the Property from the proceeds of the Contract;

**WHEREAS**, the obligation of the Town to make Installment Payments under the Contract is a limited obligation of the Town payable solely from currently budgeted appropriations of the Town and does not constitute a pledge of the faith and credit of the Town within the meaning of any constitutional debt limitation;

**WHEREAS**, to provide security for the Town's obligations under the Contract, the Town will grant to the Bank a security interest under a deed of trust, security agreement and fixture filing (the "*Deed of Trust*") in the Town's fee simple interest in the Property, together all improvements and fixtures located thereon;

**WHEREAS**, to prevent unauthorized or fraudulent wire transfers through cyber fraud and other means, the Town and the Bank will enter into a wire transfer agreement (the "*Wire Transfer Agreement*");

**WHEREAS**, a public hearing on the Contract after publication of a notice with respect to such public hearing must be held and the Board conducted such public hearing at its January 18, 2022 meeting;

**WHEREAS**, there has been made available to the Board the form of the Contract, the Deed of Trust, and the Wire Transfer Agreement (collectively, the "*Instruments*") which the Town proposes to approve, enter into and deliver, as applicable, to effectuate the proposed financing; and

**WHEREAS**, it appears that each of the Instruments is in appropriate form and is an appropriate instrument for the purposes intended;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF HOLDEN BEACH, NORTH CAROLINA, AS FOLLOWS:**

**Section 1. Approval, Authorization and Execution of Instruments.** The Board hereby approves the financing of the acquisition of the Property in accordance with the terms of the Instruments, which will be valid, legal and binding obligations of the Town in accordance with their respective terms. The Board hereby approves the amount to be advanced by the Bank to the Town pursuant to the Contract in an aggregate principal

amount not to exceed \$3,300,000, at an interest rate of 3.18% per annum, such amount to be repaid by the Town to the Bank as provided in the Contract. The form, terms and content of the Instruments are in all respects authorized, approved and confirmed, and each of the Mayor, the Town Manager, the Assistant Town Manager, and the Town Clerk, or their respective designees (the "*Authorized Officers*") are authorized, empowered and directed to execute and deliver the Instruments for and on behalf of the Town, including necessary counterparts, in substantially the forms presented to the Board, but with such changes, modifications, additions or deletions therein as shall to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all such changes, modifications, additions or deletions, and that from and after the execution and delivery of the Instruments, each of the Authorized Officers are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Instruments as executed.

**Section 2. *Further Actions.*** Each of the Authorized Officers are hereby designated as the Town's representatives to act on behalf of the Town in connection with the transactions contemplated by the Instruments, and each of the Authorized Officers are authorized and directed to proceed with financing the acquisition of the Property in accordance with the terms of the Instruments and to seek opinions on matters of law from the Town Attorney, which the Town Attorney is authorized to furnish on behalf of the Town, and opinions of law from such other attorneys for all documents contemplated hereby as required by law. Each of the Authorized Officers is hereby authorized to designate one or more employees of the Town to take all actions which each of the Authorized Officers is authorized to perform under this Resolution, and each of the Authorized Officers, including their designees, is in all respects authorized on behalf of the Town to supply all information pertaining to the transactions contemplated by the Instruments. Each of the Authorized Officers is authorized to execute and deliver for and on behalf of the Town any and all additional certificates, documents, opinions or other papers and perform all other acts as may be required by the Instruments or as they may deem necessary or appropriate in order to implement and carry out the intent and purposes of this Resolution. Any and all acts of the Authorized Officers may be done individually or collectively.

**Section 3. *Reimbursement.*** The Town is authorized to reimburse itself from the proceeds of the Contract for any costs incurred and paid by the Town from funds on hand to acquire the Property, if necessary.

**Section 4. *Related Actions.*** All acts and doings of officers, employees and agents of the Town, whether taken prior to, on, or after the date of this Resolution, that are in conformity with and in furtherance of the purposes and intents of this Resolution as described above shall be, and the same hereby are, in all respects ratified, approved and confirmed.

**Section 5. *Repealer.*** All motions, orders, resolutions, ordinances and parts thereof, in conflict herewith are hereby repealed.

**Section 6. *Severability.*** If any section, phrase or provision of this Resolution is for any reason declared to be invalid, such declaration will not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

**Section 7. *Effective Date.*** This Resolution is effective on the date of its adoption.

STATE OF NORTH CAROLINA            )  
   )        ss:  
 COUNTY OF BRUNSWICK                )

I, HEATHER FINNELL, Town Clerk of the Town of Holden Beach, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of a resolution entitled “**RESOLUTION OF THE TOWN OF HOLDEN BEACH, NORTH CAROLINA, APPROVING AN INSTALLMENT FINANCING CONTRACT AND DELIVERY THEREOF AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS**” adopted by the Board of Commissioners of the Town of Holden Beach, North Carolina at a meeting held on the 8th day of March, 2022.

***WITNESS*** my hand and the corporate seal of the Town of Holden Beach, North Carolina, this the \_\_\_\_ day of March, 2022.

[SEAL]

\_\_\_\_\_  
 Heather Finnell  
 Town Clerk  
 Town of Holden Beach, North Carolina

## Attachment 4

PARKER POE DRAFT 02/18/2022

**Wire Transfer Agreement**

This Wire Transfer Agreement is dated as of [CLOSING DATE], 2022 (this "Agreement") and is by and between the TOWN OF HOLDEN BEACH, NORTH CAROLINA (the "Borrower"), a municipal corporation validly existing under and by virtue of the Constitution, statutes and laws of the State of North Carolina, and TRUIST BANK ("Truist").

**RECITALS**

The Borrower is, simultaneously with the execution and delivery of this Agreement, executing and delivering an Installment Financing Contract, dated as of the date hereof (the "Contract"), between the Borrower and Truist. The purpose of the Contract is to provide for Truist's advance of \$3,300,000 to the Borrower to enable the Borrower to pay (1) the costs of, or reimburse itself for paying the costs of, acquiring property in the Town located at 441 Ocean Boulevard W., including the pier, and (2) related financing costs.

In order to prevent unauthorized or fraudulent wire transfers through cyber fraud and other means, Truist and the Borrower hereby agree to the following:

**Section 1. Wire Transfer Requirements.** In the event a wire transfer is made by Truist to disburse funds as contemplated by the Contract (a "Disbursement"), said wire transfer shall be delivered as directed in a written "Disbursement Authorization" provided to Truist by a representative of the Borrower, subject to the terms and conditions set forth herein. For the purposes of this Agreement, a representative of the Borrower shall include the Town Manager/Finance Director and the Deputy Finance Officer of the Borrower.

**Section 2. Verification Procedures.** Prior to making any Disbursement pursuant to a Disbursement Authorization not delivered to Truist in person by a representative of the Borrower, Truist shall verify such Disbursement Authorization verbally via telephone communication with a representative of the Borrower. The Borrower shall ensure that a representative of the Borrower will provide such verification to Truist. The Borrower shall not disclose, or allow to be disclosed, such Truist verification procedures to any third party unless there is a legitimate business need to make such disclosure or such disclosure is required by law, and the Borrower accepts the risk of such third party knowledge of the security procedures. If the Borrower has reason to believe that a security procedure has been obtained by or disclosed to an unauthorized person or learns of any unauthorized transfer or of any discrepancy in a transfer request, then the Borrower shall notify Truist immediately.

**Section 3. Payee Identification.** The Borrower is solely responsible for accurately identifying the wire transfer information contained in the Disbursement Authorization delivered to Truist by a representative of the Borrower, including but not limited to the bank name and its ABA number, beneficiary's account name and account number and beneficiary's physical address, together with other information requested by Truist (collectively, "Remittance Instructions"). If the Remittance Instructions describe a beneficiary inconsistently by name and account number, the Borrower acknowledges that Truist may make payment on the basis of the account number alone, that Truist is not obligated to detect such errors, and that the Borrower assumes the risk of any loss resulting therefrom.

**Section 4. Duty to Reconcile Written Confirmation.** Upon request from a representative of the Borrower, Truist shall promptly send a representative of the Borrower written confirmation of the Disbursement in the form of a reference number, beneficiary name and wire amount. A representative of the Borrower shall promptly review and reconcile the written confirmation of the Disbursement sent by

Truist, and shall report to Truist in writing, promptly, but in no event later than ten (10) business days after the date of such written confirmation, any unauthorized, erroneous, unreceived or improperly executed payment. Truist and the Borrower agree that ten (10) business days is a reasonable time for the detection and reporting to Truist of such information. After that time, all items on the written confirmation will be considered correct and the Borrower will be precluded from recovering from Truist if such wire transfer identified in the written confirmation was actually made by Truist. For the avoidance of doubt, any such writings can be provided electronically.

**Section 5. Unauthorized Payments.** Notwithstanding any other provision herein, if a Disbursement has been verified by a representative of the Borrower pursuant to Section 2, it shall be binding on the Borrower if Truist acted in good faith in making such Disbursement. Truist shall be responsible for any unauthorized payment caused by Truist's failure to comply with the terms and conditions of this Agreement and applicable law.

**Section 6. Recordation.** Truist may record any telephone conversation between Truist and a representative of the Borrower in order to reduce the risk of unauthorized or erroneous transfers. Truist may retain such recordings for as long as Truist may deem necessary.

**Section 7. Indemnification and Hold Harmless.** If Truist complies with the provisions of this Agreement, the Borrower agrees that Truist shall not be responsible for any communication or miscommunication by a representative of the Borrower, and the Borrower further agrees to indemnify, to the extent allowed by law, Truist and hold Truist harmless from and against any and all losses, claims, expenses, suits, costs or damages, demands or liabilities of whatever kind or nature, whether now existing or hereafter relating in any way to a wire transfer made pursuant to the Contract.

**Section 8. Applicable Law.** All wire transfer orders are governed by Article 4A of the Uniform Commercial Code, except as any provisions thereof that may be and are modified by the terms hereof. If any part of the applicable wire transfer order involves the use of the Fedwire, the rights and obligations of Truist and the Borrower regarding that wire transfer order are governed by Regulation J of the Federal Reserve Board.

**Section 9. Choice of Law.** The parties intend that North Carolina law shall govern this Agreement.

**Section 10. Amendments.** This Agreement may not be modified or amended unless such amendment is in writing and signed by Truist and the Borrower.

**Section 11. No Third-Party Beneficiaries.** There are no parties intended to be or which shall be deemed to be third-party beneficiaries of this Agreement.

**Section 12. Successors and Assigns.** All of the covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and assigns.

**Section 13. Severability.** If any court of competent jurisdiction shall hold any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

**Section 14. Counterparts.** This Agreement may be executed in any number of counterparts, including separate counterparts, each executed counterpart constituting an original but all together only one agreement. An executed copy of this Agreement 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 Agreement. This Agreement and related documents may be sent and stored by electronic means.

**Section 15. Termination.** This Agreement shall cease and terminate upon termination of the Contract.

**Section 16. E-Verify.** Truist 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. Truist 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. Truist will require that any subcontractor that it uses in connection with the transactions contemplated by this Agreement certify to such subcontractor’s compliance with E-Verify.

[Signatures continued on following page]

**IN WITNESS WHEREOF**, each of the parties has caused this Wire Transfer Agreement to be signed and delivered by a duly authorized officer, all as of the date first above written.

**TOWN OF HOLDEN BEACH, NORTH CAROLINA**

By: \_\_\_\_\_  
David W. Hewett  
Town Manager

ATTEST:

\_\_\_\_\_  
Heather Finnell  
Town Clerk

**TRUIST BANK**

By: \_\_\_\_\_  
Andrew G. Smith  
Senior Vice President



Date: March 2, 2022

To: Mayor Holden and Board of Commissioners

*DH* Town Manager-IN TURN

From: Christy Ferguson, Assistant Town Manager *(CF)*

Re: Grant Contract DCM

In August 2021, the town submitted a final grant application for the 50-foot lot portion of the Holden Beach Pier Property located at 441 OBW (parcel id 246DB002). The purpose was primarily identified as providing pedestrian access to canal property owners, as well as to day trippers, while also providing emergency vehicle access and an entry point for large equipment during beach nourishment projects. The town was approved for funding by the Division of Coastal Management (DCM) as part of the Public Beach and Coastal Waterfront Access Program. The amount awarded to the town as outlined in the attached grant contract (attachment 1) is \$180,460. The town did provide a match as referenced in the application because match contributions make the application more competitive.

Items regarding stipulation of use and operation and maintenance provisions on pages 5 and 6 should be considered to understand the terms of the contract.

If the BOC would like to accept the grant for use toward the purchase of the 50-foot lot, the suggested motion would be: *Motion to enter into a contract with DCM, as outlined in attachment 1, and authorize the town manager to execute the contract and provisions therein.*

Attachment 1: Contract

**GRANT CONTRACT NO. CW25931**  
**Holden Beach Pier Property Acquisition**

STATE OF NORTH CAROLINA  
 COUNTY OF WAKE

GRANTEE'S FEDERAL  
 IDENTIFICATION  
 NUMBER: \*\*4997

**North Carolina Department of Environmental Quality  
 Financial Assistance Agreement**

This financial assistance agreement is hereby made and entered into this **28<sup>th</sup> day of February 2022**, by and between the **NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY** (the "Department") and **TOWN OF HOLDEN BEACH** (the "Grantee").

1. **Audit and Other Reporting Requirements of the Local Government Commission.** If subject to the audit and other reporting requirements of the Local Government Commission pursuant to Article 3 of Chapter 159 of the North Carolina General Statutes (Local Government Budget and Fiscal Control Act), the Grantee understands and agrees that the terms, conditions, restrictions and requirements hereinafter set forth shall only apply to the extent not inconsistent with, or superseded by, the audit and other reporting requirements of the Local Government Commission.
2. **Contract Documents.** The agreement between the parties consists of this document (the "Contract Cover") and its attachments, which are identified by name as follows:
  - a. State's General Terms and Conditions (Attachment A)
  - b. Department's Request for Proposal ("RFP") (Attachment B)
  - c. Grantee's Response to RFP, including scope of work, line item budget, budget narrative and, *if applicable*, indirect cost documentation (hereinafter referred to generally as the "Award Proposal") (Attachment C)
  - d. Notice of Certain Reporting and Audit Requirements (Attachment D)

Together, these documents (the "Contract Documents") constitute the entire agreement between the parties (the "Agreement"), superseding all prior oral or written statements or agreements. Modifications to this Contract Cover or to any other Contract Document may only be made through written amendments processed by the Department's Financial Services Division. Any such written amendment must be duly executed by an authorized representative of each party.
3. **Precedence Among Contract Documents.** In the event of a conflict or inconsistency between or among the Contract Documents, the document with the highest relative precedence shall prevail. This Contract Cover shall have the highest precedence. The order of precedence thereafter shall be determined by the order of documents listed in § 2 above, with the first-listed document having the second-highest precedence and the last-listed document having the lowest precedence. If there are multiple contract amendments, the most recent amendment has the highest precedence and the oldest amendment has the lowest precedence.
4. **Contract Period.** This Agreement shall be effective from **02/28/2022** to **08/28/2023**, inclusive of those dates.
5. **Grantee's Duties.** As a condition of the grant award, the Grantee agrees to:
  - a. Undertake and deliver the grant award project, plan or services as described in the Award Proposal (Attachment C), adhering to all budgetary provisions set out therein throughout the course of performance.
  - b. Ensure that all award funds are expended in a manner consistent with the purposes for which they were awarded, as described more fully in the attached Contract Documents.

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<sup>1</sup> The contract documents attached hereto may at times use alternative terms to describe the Grantee. Such terms might include, but are not necessarily limited to, the following (in common or proper form): "recipient," "applicant," or "participant."

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- c. Comply with the requirements of 09 NCAC 03M .0101, *et seq.* (Uniform Administration of State Awards of Financial Assistance), including, but not limited to, those provisions relating to audit oversight, access to records, and availability of audit work papers in the possession of any auditor of any recipient of State funding.
  - d. Comply with the applicable provisions of Attachment D, Notice of Certain Reporting and Audit Requirements.
  - e. Maintain all records related to this Agreement (i) for a period of six (6) years following the date on which this Agreement expires or terminates, or (ii) until all audit exceptions have been resolved, whichever is longer.
  - f. Comply with all laws, ordinances, codes, rules, regulations, and licensing requirements applicable to its performance hereunder and/or the conduct of its business generally, including those of Federal, State, and local agencies having jurisdiction and/or authority.
  - g. Obtain written approval from the Department's Contract Administrator (see § 14 below) prior to making any subaward or subgrant not already described in the Award Proposal.
  - h. Ensure that the terms, conditions, restrictions and requirements of this Contract Cover, including those incorporated by reference to other Contract Documents and/or applicable law, are made applicable to, and binding upon, any subgrantee who receives as a subaward or subgrant any portion of the award funds made available to the Grantee hereunder.
  - i. Take reasonable measures to ensure that any subgrantee (i) complies with the terms, conditions, restrictions and requirements set forth in this Contract Cover, including those incorporated by reference to other Contract Documents and/or applicable law, and (ii) provides such information in its possession as may be necessary for the Grantee to comply with such terms, conditions, restrictions and requirements.
6. **Historically Underutilized Businesses.** Historically Underutilized Businesses (HUBs) consist of minority, women and disabled business firms that are at least fifty-one percent owned and operated by an individual(s) of the categories. Also included in this category are disabled business enterprises and non-profit work centers for the blind and severely disabled.
- Pursuant to G.S. 143B-1361(a), 143-48 and 143-128.4, the Department invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. This includes utilizing subcontractors to perform the required functions in this contract. Any questions concerning NC HUB certification, contact the [North Carolina Office of Historically Underutilized Businesses](#) at (919) 807-2330.
7. **Department's Duties.** The Department shall pay the Grantee in the manner and amounts specified below and in accordance with the approved budget set forth in the Award Proposal.
8. **Total Award Amount.** The total amount of award funds paid by the Department to the Grantee under this Agreement shall not exceed **ONE HUNDRED EIGHTY THOUSAND FOUR HUNDRED AND SIXTY DOLLARS (\$180,460.00)** (the "Total Award Amount"). This amount consists of:

*Funding:*

Type of Funds	Funding Source	CFDA No.
Receipts	CAMA-PARTF	NA

*Account Coding Information:*

Dollars	GL Company	GL Account	GL Center
\$180,460.00	1612	536993	25005H05

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*Grantee Matching Information:*

☐ a. There are no matching requirements from the Grantee.

☐ b. There are no matching requirements from the Grantee; however, the Grantee has committed the following match to this project:

	In-Kind	\$
	Cash	\$
	Cash and In-Kind	\$
	Other / Specify:	\$

☒ c. The Grantee's matching requirement is **\$361,206.67**, which shall consist of:

	In-Kind	\$
X	Cash	\$361,206.67
	Cash and In-Kind	\$
	Other / Specify:	\$

☐ d. The Grantee is committing to an additional \$ to complete the project or services described in the Award Proposal.

Based on the figures above, the total contract amount is **\$541,666.67**.

**9. Invoice and Payment.** The award funds shall be disbursed to the Grantee in accordance with the following provisions:

- a. The Grantee shall submit invoices to the Department's Contract Administrator at least quarterly. The final invoice must be received by the Department within forty-five (45) days following the date on which termination or expiration of this Agreement becomes effective. Amended or corrected invoices must be received by the Department's Financial Services Division within six (6) months of such date. Any invoice received thereafter shall be returned without action.
- b. The Department shall reimburse the Grantee for actual allowable expenditures, with the Department retaining a minimum of ten percent (10%) of the Total Award Amount until all grant-related activities are completed and all reports/deliverables are received and accepted by the Department. As used herein, "allowable expenditures" are expenditures associated with work conducted to meet performance obligations under this Agreement, provided such work is carried out in a manner consistent with the Award Proposal. The Department may withhold payment on invoices when performance goals and expectations have not been met or when the manner of performance is inconsistent with Attachment C.

**10. Grantee's Fiscal Year.** The Grantee represents that its fiscal year is from July 1 to June 30.

**11. Availability of Funds.** The Grantee understands and agrees that payment of the sums specified herein shall be subject to, and contingent upon, the allocation and appropriation of funds to the Department for the purposes described in this Agreement.

**12. Reversion of Unexpended Funds.** The Grantee understands and agrees that any unexpended grant funds shall revert to the Department upon termination of this Agreement.

**13. Supplantation of Expenditure of Public Funds.** The Grantee understands and agrees that funds received pursuant to this Agreement shall be used only to supplement, not to supplant, the total amount of Federal, State and local public funding that the Grantee would otherwise expend to carry out the project or services described in the Award Proposal.

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- 14. Contract Administrators.** Each party shall submit notices, questions and correspondence related to this Agreement to the other party's Contract Administrator. The contact information for each party's Contract Administrator is set out below. Either party may change its Contract Administrator and/or the associated contact information by giving timely written notice to the other party.

<b>Grantee Contract Administrator</b>	<b>Department's Contract Administrator</b>
David Hewett, Town Manager Town of Holden Beach 110 Rothchild Street Holden Beach, NC 28462 Telephone: 910-842-6488  Email: david.hewett@hbtownhall.com	Mike Christenbury, District Planner NC Division of Coastal Management 127 Cardinal Drive Ext. Wilmington, NC 28405 Telephone: 910-796-7426  Email: mike.christenbury@ncdenr.gov

- 15. Assignment.** The Grantee may not assign its obligations or its rights to receive payment hereunder.
- 16. Procurement.** The Grantee understands and agrees that all procurement activities undertaken in connection with this Agreement shall be subject to the following provisions:
- a. None of the work or services to be performed under this Agreement involving the specialized skill or expertise of the Grantee shall be contracted without prior written approval from the Department.
  - b. In the event the Grantee or any subrecipient of the Grantee contracts for any of the work to be performed hereunder, the Grantee shall not be relieved of any duties or responsibilities herein set forth.
  - c. The Grantee shall not contract with any vendor who is restricted from contracting with the State of North Carolina pursuant to N.C.G.S. §§ 143-133.3, 143-59.1, 143-59.2 or 147-86.60.
- 17. Subawards.** The Grantee understands and agrees that any subaward or subgrant of any portion of the financial assistance provided hereunder shall not relieve the Grantee of any duties or responsibilities herein set forth.
- 18. Title VI and Other Nondiscrimination Requirements.** Throughout the course of its performance hereunder, the Grantee shall comply with all applicable State and Federal laws, regulations, executive orders and policies relating to nondiscrimination, including, but not limited to:

Title VI of the Civil Rights Act of 1964, as amended;

Civil Rights Restoration Act of 1987, as amended;

Section 504 of the Rehabilitation Act of 1973, as amended;

Age Discrimination Act of 1975, as amended;

Titles II and III of the Americans with Disabilities Act of 1990, as amended;

Title IX of the Education Amendments of 1972, as amended;

Part III of Executive Order No. 11246 (September 24, 1965), as amended; and

Section 13 of the Federal Water Pollution Control Act Amendments of 1972.

In accordance with the above laws and their implementing regulations, the Grantee agrees to ensure that no person in the United States is, on the basis of race, color, national origin, sex, age or disability, excluded from participation in, denied

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the benefits of, or subjected to discrimination under any program or activity for which the Grantee receives Federal assistance. For purposes of this provision, "program or activity" shall have the meaning ascribed to that term under Federal law (see 42 U.S.C.S. § 2000d-4a).

The Grantee understands and acknowledges that, in addition to itself, any lower-tier recipient of the financial assistance provided hereunder must also comply with the requirements of this section. Accordingly, the Grantee agrees to include a similar provision in any financial assistance agreement made with any lower-tier recipient of such assistance.

19. **E-Verify.** To the extent applicable, the Grantee represents that it and each of its subgrantees, contractors and/or subcontractors performing work pursuant to, or in association with, this Agreement are in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes, including, in particular, the requirement that certain employers verify the work authorization of newly hired employees using the Federal E-Verify system.
20. **Termination by Mutual Consent.** This Agreement may be terminated by mutual consent of the parties, provided the consent is documented in writing and duly executed by an authorized representative of each party.
21. **Survival.** Any provision contained in this or any other Contract Document that contemplates performance or observance subsequent to the termination or expiration of this Agreement shall survive the termination or expiration hereof and continue in full force and effect.
22. **Signature Warranty.** The undersigned represent and warrant that they are authorized to bind their principals to the terms and conditions of this Contract Cover and the Agreement generally, including those incorporated by reference to applicable law.

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IN WITNESS WHEREOF, each party has caused this Agreement to be executed by the duly authorized representative in duplicate originals, one of which is retained by each of the Parties.

**TOWN OF HOLDEN BEACH**

**NORTH CAROLINA DEPARTMENT OF  
ENVIRONMENTAL QUALITY**

By \_\_\_\_\_  
Grantee's Signature

By \_\_\_\_\_  
Signature of Department Head or Authorized Agent

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Tommy Kirby, Purchasing Director  
Printed Name and Title

\_\_\_\_\_  
Organization

\_\_\_\_\_  
Financial Services Division, Purchasing and Contracts Section  
Division/Section

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Date Signed

**ORIGINAL**

## General Terms and Conditions Governmental Entities

### DEFINITIONS

Unless indicated otherwise from the context, the following terms shall have the following meanings in this Contract. All definitions are from 9 NCAC 3M.0102 unless otherwise noted. If the rule or statute that is the source of the definition is changed by the adopting authority, the change shall be incorporated herein.

- (1) "Agency" (as used in the context of the definitions below) means and includes every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political sub-agency of government. For other purposes in this Contract, "Agency" means the entity identified as one of the parties hereto.
- (2) "Audit" means an examination of records or financial accounts to verify their accuracy.
- (3) "Certification of Compliance" means a report provided by the Agency to the Office of the State Auditor that states that the Grantee has met the reporting requirements established by this Subchapter and included a statement of certification by the Agency and copies of the submitted grantee reporting package.
- (4) "Compliance Supplement" refers to the North Carolina State Compliance Supplement, maintained by the State and Local Government Finance Agency within the North Carolina Department of State Treasurer that has been developed in cooperation with agencies to assist the local auditor in identifying program compliance requirements and audit procedures for testing those requirements.
- (5) "Contract" means a legal instrument that is used to reflect a relationship between the agency, grantee, and sub-grantee.
- (6) "Fiscal Year" means the annual operating year of the non-State entity.
- (7) "Financial Assistance" means assistance that non-State entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance. Financial assistance does not include amounts received as reimbursement for services rendered to individuals for Medicare and Medicaid patient services.
- (8) "Financial Statement" means a report providing financial statistics relative to a given part of an organization's operations or status.
- (9) "Grant" means financial assistance provided by an agency, grantee, or sub-grantee to carry out activities whereby the grantor anticipates no programmatic involvement with the grantee or sub-grantee during the performance of the grant.
- (10) "Grantee" has the meaning in NCGS 143C-6-23(a)(2): a non-State entity that receives a grant of State funds from a State agency, department, or institution but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission. For other purposes in this Contract, "Grantee" shall mean the entity identified as one of the parties hereto. For purposes of this contract, Grantee also includes other State agencies such as universities.
- (11) "Grantor" means an entity that provides resources, generally financial, to another entity in order to achieve a specified goal or objective.
- (12) "Non-State Entity" has the meaning in NCGS 143C-1-1(d)(18): A firm, corporation, partnership, association, county, unit of local government, public authority, or any other person, organization, group, or governmental entity that is not a State agency, department, or institution.
- (13) "Public Authority" has the meaning in NCGS 159-7(10): A municipal corporation that is not a unit of local government or a local governmental authority, board, commission, council, or agency that (i) is not a municipal corporation, (ii) is not subject of the State Budget Act, and (iii) operates on an area, regional, or multiunit basis, and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government.
- (14) "Single Audit" means an audit that includes an examination of an organization's financial statements, internal controls, and compliance with the requirements of Federal or State awards.
- (15) "Special Appropriation" means a legislative act authorizing the expenditure of a designated amount of public funds for a specific purpose.
- (16) "State Funds" means any funds appropriated by the North Carolina General Assembly or collected by the State of North Carolina. State funds include federal financial assistance received by the State and transferred or disbursed to non-State entities. Both Federal and State funds maintain their identity as they are sub-granted to other organizations. Pursuant to NCGS 143C-6-23(a)(1), the terms "State grant funds" and "State grants" do not include any payment made by the Medicaid program, the Teachers' and State Employees' Comprehensive Major Medical Plan, or other similar medical programs.
- (17) "Sub-grantee" has the meaning in NCGS 143C-6-23(a)(4): a non-State entity that receives a grant of State funds from a grantee or from another sub-grantee but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.

- (18) "Unit of Local Government has the meaning in NCGS 159-7(b)(15): A municipal corporation that has the power to levy taxes, including a consolidated city-county as defined by NCGS 160B-2(1), and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations.

#### **Relationships of the Parties**

**Independent Contractor:** The Grantee is and shall be deemed to be an independent contractor in the performance of this Contract and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Grantee represents that it has, or shall secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with, the Agency.

**Subcontracting:** To subcontract work to be performed under this contract which involves the specialized skill or expertise of the Grantee or his employees, the Grantee first obtains prior approval of the Agency Contract Administrator. In the event the Grantee subcontracts for any or all of the services or activities covered by this contract: (a) the Grantee is not relieved of any of the duties and responsibilities provided in this contract; (b) the subcontractor agrees to abide by the standards contained herein or to provide such information as to allow the Grantee to comply with these standards, and; (c) the subcontractor agrees to allow state and federal authorized representatives access to any records pertinent to its role as a subcontractor.

**Sub-grantees:** The Grantee has the responsibility to ensure that all sub-grantees, if any, provide all information necessary to permit the Grantee to comply with the standards set forth in this Contract.

**Assignment:** The Grantee may not assign the Grantee's obligations or the Grantee's right to receive payment hereunder. However, upon Grantee's written request approved by the issuing purchasing authority, the Agency may:

- (a) Forward the Grantee's payment check(s) directly to any person or entity designated by the Grantee, or
- (b) Include any person or entity designated by Grantee as a joint payee on the Grantee's payment check(s).

Such approval and action does not obligate the State to anyone other than the Grantee and the Grantee remains responsible for fulfillment of all contract obligations.

**Beneficiaries:** Except as herein specifically provided otherwise, this Contract inures to the benefit of and is binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, are strictly reserved to the Agency and the named Grantee. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Agency and Grantee that any

third person receiving services or benefits under this Contract is an incidental beneficiary only.

#### **Indemnity**

**Indemnification:** In the event of a claim against either party by a third party arising out of this contract, the party whose actions gave rise to the claim is responsible for the defense of the claim and any resulting liability, provided that a party may not waive the other party's sovereign immunity or similar defenses. The parties agree to consult with each other over the appropriate handling of a claim and, in the event they cannot agree, to consult with the Office of the Attorney General.

**Insurance:** During the term of the contract, the Grantee at its sole cost and expense provides commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the Grantee provides and maintains the following coverage and limits:

- (a) **Worker's Compensation:** The Grantee provides and maintains Worker's Compensation insurance as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$500,000.00, covering all of Grantee's employees who are engaged in any work under this contract. If any work is sublet, the Grantee requires the subgrantee to provide the same coverage for any of his employees engaged in any work under this contract.
- (b) **Commercial General Liability:** General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)
- (c) **Automobile:** Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles used in performance of the contract. The minimum combined single limit is \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$25,000.00 medical payment.

Providing and maintaining adequate insurance coverage is a material obligation of the Grantee and is of the essence of this contract. The Grantee may meet its requirements of maintaining specified coverage and limits by demonstrating to the Agency that there is in force insurance with equivalent coverage and limits that will offer at least the same protection to the Agency. Grantee obtains insurance that meets all laws of the State of North Carolina. Grantee obtains coverage from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Grantee complies at

all times with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the Grantee do not limit the Grantee's liability and obligations under the contract.

#### **Default and Termination**

**Termination by Mutual Consent:** Either party may terminate this agreement upon sixty (60) days notice in writing from the other party. In that event, all finished or unfinished documents and other materials, at the option of the Agency, be submitted to the Agency. If the contract is terminated as provided herein, the Grantee is paid in an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grantee covered by this agreement; for costs of work performed by subcontractors for the Grantee provided that such subcontracts have been approved as provided herein; or for each full day of services performed where compensation is based on each full day of services performed, less payment of compensation previously made. The Grantee repays to the Agency any compensation the Grantee has received which is in excess of the payment to which he is entitled herein.

**Termination for Cause:** If, through any cause, the Grantee fails to fulfill in timely and proper manner the obligations under this agreement, the Agency thereupon has the right to terminate this contract by giving written notice to the Grantee of such termination and specifying the reason thereof and the effective date thereof. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Grantee, at the option of the Agency, be submitted to the Agency, and the Grantee is entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials. The Grantee is not relieved of liability to the Agency for damages sustained by the Agency by virtue of any breach of this agreement, and the Agency may withhold payment to the Grantee for the purpose of set off until such time as the exact amount of damages due the Agency from such breach can be determined.

**Waiver of Default:** Waiver by the Agency of any default or breach in compliance with the terms of this Contract by the Grantee is not a waiver of any subsequent default or breach and is not a modification of the terms of this Contract unless stated to be such in writing, signed by an authorized representative of the Agency and the Grantee and attached to the contract.

**Availability of Funds:** The parties to this Contract agree and understand that the payment of the sums specified in this Contract is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the Agency.

**Force Majeure:** Neither party is in default of its obligations hereunder if it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

**Survival of Promises:** All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

#### **Intellectual Property Rights**

**Copyrights and Ownership of Deliverables:** Any and all copyrights resulting from work under this agreement shall belong to the Grantee. The Grantee hereby grants to the North Carolina Department of Environmental Quality a royalty-free, non-exclusive, paid-up license to use, publish and distribute results of work under this agreement for North Carolina State Government purposes only.

#### **Compliance with Applicable Laws**

**Compliance with Laws:** The Grantee understands and agrees that it is subject to compliance with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

**Equal Employment Opportunity:** The Grantee understands and agrees that it is subject to compliance with all Federal and State laws relating to equal employment opportunity.

#### **Confidentiality**

**Confidentiality:** As authorized by law, the Grantee keeps confidential any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Grantee under this agreement and does not divulge or make them available to any individual or organization without the prior written approval of the Agency. The Grantee acknowledges that in receiving, storing, processing or otherwise dealing with any confidential information it will safeguard and not further disclose the information except as otherwise provided in this Contract or without the prior written approval of the Agency.

#### **Oversight**

**Access to Persons and Records:** The State Auditor and the using agency's internal auditors shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with NCGS 147-64.7 and Session Law 2010-194, Section 21 (i.e., the State Auditors and internal auditors may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees or performance). The Contractor shall retain all records for a period of six (6) years

following completion of the contract or until any audits begun during this period are completed and findings resolved, whichever is later.

**Record Retention:** The Grantee may not destroy, purge or dispose of records without the express written consent of the Agency. State basic records retention policy requires all grant records to be retained for a minimum of six (6) years or until all audit exceptions have been resolved, whichever is longer. If the contract is subject to Federal policy and regulations, record retention may be longer than six (6) years since records must be retained for a period of three years following submission of the final Federal Financial Status Report, if applicable, or three years following the submission of a revised final Federal Financial Status Report. Also, if any litigation, claim, negotiation, audit, disallowance action, or other action involving this Contract has started before expiration of the six (6) year retention period described above, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular six (6) year period described above, whichever is later.

**Time Records:** The GRANTEE will maintain records of the time and effort of each employee receiving compensation from this contract, in accordance with the appropriate OMB circular.

#### Miscellaneous

**Choice of Law:** The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, are governed by the laws of North Carolina. The Grantee, by signing this Contract, agrees and submits, solely for matters concerning this Contract, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purpose, that the exclusive venue for any legal proceedings shall be Wake County, North Carolina. The place of this Contract and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

**Amendment:** This Contract may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of the Agency and the Grantee.

**Severability:** In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect.

**Headings:** The Section and Paragraph headings in these General Terms and Conditions are not material parts of the agreement and should not be used to construe the meaning thereof.

**Time of the Essence:** Time is of the essence in the performance of this Contract.

**Care of Property:** The Grantee agrees that it is responsible for the proper custody and care of any State owned property furnished him for use in connection with the performance of his contract and will reimburse the State for its loss or damage.

Ownership of equipment purchased under this contract rests with the Grantee. As it relates to software development or study results, ownership rests with the Agency. In the event that clarification of ownership is required, the Agency Contract Administrator will make the determination.

**Travel Expenses:** All travel, lodging, and subsistence costs are included in the contract total and no additional payments will be made in excess of the contract amount indicated in above. Contractor must adhere to the travel, lodging and subsistence rates established in the Budget Manual for the State of North Carolina.

**Sales/Use Tax Refunds:** If eligible, the Grantee and all sub-grantees shall: (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this Contract, pursuant to NCGS 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their reimbursement reports.

**Advertising:** The Grantee may not use the award of this Contract as a part of any news release or commercial advertising.

**Recycled Paper:** The Grantee ensures that all publications produced as a result of this contract are printed double-sided on recycled paper.

**Sovereign Immunity:** The Agency does not waive its sovereign immunity by entering into this contract and fully retains all immunities and defenses provided by law with respect to any action based on this contract.

**Gratuities, Kickbacks or Contingency Fee(s):** The parties certify and warrant that no gratuities, kickbacks or contingency fee(s) are paid in connection with this contract, nor are any fees, commissions, gifts or other considerations made contingent upon the award of this contract.

**Lobbying:** The Grantee certifies that it (a) has neither used nor will use any appropriated funds for payments to lobbyist; (b) will disclose the name, address, payment details, and purpose of any agreement with lobbyists whom the Grantee or its sub-tier contractor(s) or sub-grantee(s) will pay with profits or non-appropriated funds on or after December 22, 1989; and (c) will file quarterly updates about the use of lobbyists if material changes occur in their use.

**By Executive Order 24, issued by Governor Perdue, and**

**NCGS § 133-32:** It is unlawful for any vendor or contractor ( i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Natural and Cultural Resources, Environmental Quality, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

- (1) have a contract with a governmental agency; or
- (2) have performed under such a contract within the past year; or
- (3) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and NCGS Sec. 133-32.

Executive Order 24 also encouraged and invited other State Agencies to implement the requirements and prohibitions of the Executive Order to their agencies. Vendors and contractors should contact other State Agencies to determine if those agencies have adopted Executive Order 24."

**ON FILE DOCUMENTS**  
**Holden Beach Pier Property Acquisition - Public Access Grant**  
**2021-2022**

The following documents along with the **Governor's grant award letter**, are on file and available for review at North Carolina Division of Coastal Management's (DCM) main office in Morehead City, located at 400 Commerce Avenue. The contact phone number is 252-808-2808.

1. North Carolina Public Beach and Coastal Waterfront Access Fund 2021-2022 Cycle Grant Pre-application RFP packet.
2. Holden Beach 2021-2022 Pre-application submission: Holden Beach Pier Property Acquisition - Public Access Grant.
3. North Carolina Public Beach and Coastal Waterfront Access Fund 2021-2022 Cycle Grant Final Application RFP packet.
4. Holden Beach 2021-2022 Final Application submission: Holden Beach Pier and Property Acquisition - Public Access Grant.



## **NORTH CAROLINA COASTAL MANAGEMENT**

### **Public Beach and Coastal Waterfront Access Program**

#### **Holden Beach Pier Property Acquisition - Public Beach Access Grant-2021-2022**

**Local Government:** Holden Beach

**Federal ID #:** 56-0944997

**Local Project Administrator:**

David Hewett, Town Manager  
110 Rothschild Street  
Holden Beach, NC 28462

Phone: (910) 842-6488

Email: David.hewett@hbtownhall.com

**Site Location/Address:** Located at 441 Ocean Blvd. West along the oceanfront and adjacent to the Holden Beach Pier in the Town of Holden Beach, Brunswick County.

**Project Description:** The Town of Holden Beach has been presented the opportunity to purchase the Holden Beach Fishing Pier and property, which includes a 300 ft. wide oceanfront lot and an adjacent 50 ft. wide oceanfront lot. This grant will apply to the 50 ft. wide lot only.



**B. VICINITY MAP**

- C. **PROJECT SITE PLAN:** Below is the Project Site Plan submitted by the local community. The site plan is provided for reference only. Only those improvements specifically mentioned in the Project Description will be considered under the grant award.



Pier & Property

**D. OTHER REQUIREMENTS, GUIDANCE AND CONDITIONS:**

1. Costs ineligible for grant award reimbursement or local match, unless specifically included in project description:
  - a. Environmental Assessments other than preliminary work associated with site planning and wetland delineation.
  - b. Remediation Plans associated with contaminated sites. However, some costs of actual remediation or clean up may be eligible for non-cash in-kind match.
2. Other state and federal requirements:
  - a. All utility lines funded with a grant award must be placed underground unless otherwise agreed to within the contract.
  - b. All facilities funded with a grant award must comply with the Americans with Disabilities Act Accessibility Guidelines (ADAAG). Prior to closing out a project and receiving final payment of grant funds, the local building official will be required to provide a letter certifying compliance.
3. Project signage, retention of use, and operation and maintenance:
  - a. The community is required to install CAMA public access signs at the project site(s). The State will provide these signs at no cost to the community.
  - b. Any future improvements, modifications, or changes to the project site are required to be subject to full review and approval by DEQ/DCM. This can include any changes that require permits or any modifications (reductions or additions) to recreational amenities. Unapproved changes to the project site may be or can be the cause for DEQ to seek repayment of previously granted funds for site acquisition and improvements.
  - c. The community is required to allow the inspection of property and facilities acquired or in development pursuant to the grant award by DEQ/DCM to ensure work progress is in accordance with the grant award, including a final inspection upon project completion.
  - d. Development plans and specifications are required to be available for review by DEQ/DCM upon request. All significant deviations from the project proposal outlined in the grant award will be required to be submitted to DEQ/DCM for prior approval.
  - e. The acquisition cost or fair market value of real property, including interest in donated lands, is required to be based upon the appraisal of a licensed appraiser. The reports are required to be provided for review and acceptance by DEQ/DCM. Grant funds dispersed for acquisition cannot exceed the fair market value of the real property associated with the award.
  - f. Any tract or parcel of, or interest in, real property subject to being purchased under the provisions of the grant award that is determined by DEQ/DCM for any reason not to be suitable can be the basis for all obligations of the State to cease with regard to the property associated with the award.
  - g. Retention of Use: Any property acquired or developed with grant assistance is required to be retained and used for public access. The community is required to agree to transfer title to any real property acquired with the grant funds to DEQ if the local government uses the property for a purpose other than public access; or the local government shall reimburse the State with an equal percentage of access grant funds, at current market value.
  - h. Operation and Maintenance: The community is required to agree to operate and maintain solely at its own expense, insofar as it is legally empowered to do so, for as long as they exist, the facilities and areas covered by the grant award contract. Acquired or developed property is required to be operated and maintained as follows:
    1. The property must be maintained in such a manner that DEQ/DCM finds it to appear attractive and inviting to the public.

2. Sanitation must be kept at reasonable standards for public use. Fire protection and other similar services must be maintained in accordance with applicable state and local public health standards.
  3. Properties must be kept reasonably safe for public use. The community will determine the level of maintenance and supervision necessary to maintain the facility in a safe condition.
  4. Buildings, roads, and other structures and improvements must be kept in reasonable repair throughout their estimated lifetime, so as to prevent undue deterioration and not to discourage public use.
  5. Buildings, roads, and other structures and improvements must be kept open for public use at reasonable hours and times of the year, according to the type of area or facility.
  6. Reasonable user fees may be assessed, as long as those fees are used exclusively for the operation and maintenance of the access facility and/or other public access facilities within the local jurisdiction. Local governments shall provide biannual accounting reports for fees generated by CAMA-funded access sites. Accounting reports may be included in Biannual LUP Implementation Status Reports required under 15A NCAC 7L.0511.
- i. Reasonable Use Limitations: The use of property acquired or developed with grant assistance may not be changed from that proposed and approved in the grant award, unless approval is obtained from DEQ/DCM. The community may impose reasonable limits on the type and extent of use of areas and facilities acquired or developed with grant assistance when such a limitation is necessary for maintenance or preservation. All limitations will be required to be in accord with the applicable grant contract.
  - j. Use of Proceeds of Sales of assisted areas and facilities: The proceeds of sale of assisted areas and facilities will be required to be held by DEQ/DCM or community and be disposed of only in accordance with a plan approved by DEQ/DCM.
4. Notice of Limitations of Use and Restrictions: The community and/or owner of the real property acquired or improved with grant funds awarded is required to file in the office of the local Register of Deeds a Notice of Limitation of Use and Restrictions that sets forth the land-use restrictions outlined in the grant award contract and to provide a copy to DEQ/DCM.
  5. Acquisition and Development of the Site: Following acquisition, the Grantee has five years to begin developing facilities that ensure the site is useable for public access. Prior to closeout, a 'Plan for Future Development' must be provided which describes how the public will be able to use the site for public access until facilities are provided. A conceptual site plan showing proposed facilities and a timeline for development. Failure to ensure the property is accessible for public access after five years will be the basis for meeting Section D. Condition 3 (g).

Local Government: Town of Holden Beach  
Project: Holden Beach Pier Property Acquisition

**E. BUDGET SUMMARY**

Below is the Project Timeline for improvements under the grant award. Progress monitoring will occur at 6-month intervals for the duration of the 18-month contract. Adjustments to the timeline will require approval by the Contract Administrator.

**Q. Proposed Summary Budget:** The form below must be completed and included with your application.

	Grant Assistance Requested	Local Cash Contribution	Local In-Kind Contribution	TOTAL
<b>Land Acquisition Costs:</b>				
50 foot lot	\$ 180,460.00	\$ 361,206.67	\$	\$ 541,666.67
	\$	\$	\$	\$
Subtotal	\$	\$	\$	\$
<b>Permit and Design Fees:</b>				
	\$	\$	\$	\$
	\$	\$	\$	\$
Subtotal	\$	\$	\$	\$
<b>Site Improvement Costs:</b>				
<b>Materials</b>				
	\$	\$	\$	\$
	\$	\$	\$	\$
Subtotal	\$	\$	\$	\$
<b>Site Improvement Costs: Labor</b>				
	\$	\$	\$	\$
	\$	\$	\$	\$
Subtotal	\$	\$	\$	\$
<b>Local Administrative Costs:</b>				
<b>In-kind</b>				
	\$	\$	\$	\$
	\$	\$	\$	\$
Subtotal	\$	\$	\$	\$
<b>TOTAL BUDGET</b>	<b>\$ 180,460.00</b>	<b>\$ 361,206.67</b>	<b>\$</b>	<b>\$ 541,666.67</b>

**F. PROJECT SCHEDULE & ACTIVITIES CHART**

This chart illustrates grant and local cash match amounts tied to deliverables per project period. Local funds must be spent before drawing down grant funds. Non-cash match is not illustrated or represented in this chart. However, non-cash match documentation must still be reported at the time of project closeout.

**PROJECT SCHEDULE & ACTIVITIES CHART****Grant: \$180,460****Cash Match: \$361,206.67****Total cash: \$541,666.67****Non-cash Match: \$0****Total Project Cost: \$541,666.67**

<b>% of total work to be completed</b> <u><b>100%*</b></u> <b>Grant funds to be spent:</b> \$180,460.00 <b>Local funds to be spent:</b> \$361,206.67	<b>Project Period 1</b> <ul style="list-style-type: none"> <li>• Obtain Financial Approval</li> <li>• Sign Contract</li> <li>• Purchase and close on the property</li> <li>• Perform grant closeout.</li> </ul>
<b>% of total work to be completed</b> <u><b>0%</b></u> <b>Grant funds to be spent:</b> \$ 0.00 <b>Local funds to be spent:</b> \$ 0.00	<b>Project Period 2</b>
<b>% of total work to be completed</b> <u><b>0%</b></u> <b>Grant funds to be spent:</b> \$ 0.00 <b>Local funds to be spent:</b> \$ 0.00	<b>Project Period 3</b>

\*The final project period includes a holdback of 10% of the grant award, which is retained until a closeout packet is received and approved by the District Planner/Contract Administrator.

**G. PROJECT/CONSTRUCTION/PROCESSES/REPORTING BY THE APPLICANT**

1. The project will be required to be completed consistent with 15A NCAC 7M SECTION .0303 are all deliverables outlined in the "Project Schedule and Activities Chart".
2. The DEQ/DCM will withhold the initial payment of grant funds until the community has documented expenditure of the local cash match sum. The in-kind services match is to be documented by the community and delivered to DCM with contract closeout materials.
3. Consistent with the "Project Schedule & Activities Chart", the community will be required to submit reports as to the status and progress of the project. The local District Planner (Contract Administrator) will provide the periodic and final closeout report form templates.
4. Grant funds will not be disbursed until a Title Opinion for the site has been submitted to and approved by the local District Planner/Contract Administrator.
5. No construction credited towards the grant is to occur prior to the receipt of all required local, state, and federal permits. Coordination with permitting agency personnel will be required to assure the least amount of impact on coastal resources.
6. If the community subcontracts with a company engaged in another project(s) for the locality, all accounting and reporting specific to the project associated with the grant award will be required to be wholly separate from that of the other project(s).

**Reimbursement of project cost:**

7. Actual payments of the award will be based on the local District Planner/Contract Administrator's approval of a monitoring report. Final requisitions and invoices for payment will be required to be received by DCM within 30 days after the end of the grant contract period. Upon approval of the closeout packet, the State will release the final 10% as provided for in the contract.
8. The community is required to maintain and make available to DEQ/DCM upon request all bid documents and accurate records of all expenditures for costs applicable to the grant award, and to submit properly certified billings for such costs on forms as may be prescribed by DEQ/DCM. The community will need to keep complete accounting records, including original invoices, payrolls, contracts, or other documents clearly showing the nature and property of all costs incurred under the grant award for a period of five years following project completion, or until an audit has been completed, whichever is later. All accounting records and supporting documents must clearly display the project's contract number assigned by the State.
9. Community will be required to agree to refund to DEQ/DCM, subsequent to an audit of the project financial records by DEQ/DCM, any funds not expended in compliance with the grant contract.
10. **Cash and Non-Cash In-kind Contributions (General):** Cash and in-kind contributions may be claimed as part of the local government's match when such contributions meet all of the following criteria:
  - a. Are provided for in the project budget approved by DCM;
  - b. Are verifiable from the local government's records;
  - c. Are necessary and reasonable for proper and efficient completion of the project;
  - d. Are not included as contributions for matching any other state or federally assisted projects or program, except where authorized by state or federal statute;

- e. Use of other state or federal funds for local cash match must be identified to ensure that double matching does not occur;
- f. Do not include N.C. state sales tax; and
- g. Conform to other provisions of these guidelines, as applicable.

In general, in-kind contributions are derived from resources already on hand or from donations, whereas, cash contributions will be utilized to purchase new services or equipment necessary for proper completion of the access project.

11. **Cash Contributions:** Local cash contributions may be claimed for the following accountable items: planning and project design fees, permit fees, land acquisition (including survey and appraisal), labor (other than local government salaried employees), materials, construction equipment rental, amenities, and infrastructure. These costs must be incurred during the contract period.
12. **Site Amenities:** The cost of other amenities purchased by the local government during the contract period may be included as part of the cash contribution if it is an integral part of the access facility or its construction. Examples include park benches, bike racks, water fountains, trashcans and lights.
13. **Rental of Construction Equipment:** If the local government must rent construction equipment to complete the proposed project, such as front loaders, graders or dump trucks, rental costs may be included as cash contribution. The purchase of tools, maintenance equipment, office equipment and indoor furniture are not eligible for reimbursement with grant funds. (Also see 17b below)
14. **State and Federal Funds:** State and federal funds may be counted as cash match, provided the funds are not being used as a match for other programs. Such funds must be identified within the project budget chart. Local government employee salaries do not qualify as cash match, but may be counted toward non-cash in-kind match.
15. **In-kind Contributions:** Local in-kind non-cash contributions may be claimed for the following accountable items: project design fees, permit fees, land acquisition (including survey and appraisal), labor (including local government salaried employees), materials, construction equipment rental, amenities, and infrastructure. These costs must be incurred during the contract period, except as specifically indicated below.
  - a. **Site Assessments:** Title opinions, property appraisals, boundary surveys, and wetland delineations associated with land acquisitions and site improvements may be counted toward in-kind match, provided the costs are incurred within three (3) years of the grant award date. Please note the District Planner/Contract Administrator can require a more current appraisal.
  - b. **Donations of Property and Services:** Land/Structures - If the local government has land that has recently been donated or that will be donated, or structures for an access facility, and the donation is allowed by DCM to be counted as local contribution, the value of the donation for purposes of in-kind contributions shall be established by an independent licensed appraiser. The donor of the land must be a private or non-profit organization, or individual. The community must provide a five-year history of conveyance for the property. Land that is transferred to the community due to a statute or rule is not considered a donation. If a landowner is proposing to sell land to the community for less than the appraised value, the amount of the donation is the difference between the appraised value and the amount paid by the applicant. Donation to, or acquisition of, the property/structure by the local government must have occurred within five (5) years of the grant award. A long-term easement (more than 25 years from the date of the grant award) of land may also be considered under this guideline.

- c. **Property Lease:** Lease arrangements must be for the life of the project (generally 25 years). When property is leased to the local government for an annual fee, the first year's lease payment may be considered as in-kind contribution.
  - d. **Professional Fees:** If the usual fees of a licensed professional, such as architects and engineers, are waived or donated to the local government for work associated with the access project, the fees may be claimed as in-kind contributions. Rates shall be consistent with local pay scales. Partial contribution of a fee (for example, the balance of a discount rate) will not be considered as in-kind match. All volunteer services must be documented by invoice showing the billing rate for the service and the number of hours, and that the charges are forgiven.
  - e. **Construction Equipment:** The use of privately-owned construction equipment (graders, loaders, dump trucks, etc.) donated for construction of the access facility may be claimed as in-kind contribution. The use value of the rented equipment shall not exceed its fair rental value.
  - f. **Building Materials, Site Amenities and Landscaping Materials:** Building materials (lumber, hardware, marl, etc.), site amenities (benches, bike racks, water fountains, etc.) and landscaping materials (plants, soil, timbers) donated to the project may be claimed as in-kind contribution. The value of any of these goods shall not exceed fair market value at the time of donation. To be eligible as in-kind contributions, the building material, amenities or landscape materials must be an integral part of the original access project as presented in the Final Application submitted to DCM and specified in the contract.
16. **FEMA Buyout Properties:** Property that was part of a FEMA buyout or other similar mitigation program is eligible for this grant program, provided the original conditions for the buyout is not in conflict with the proposed improvements. Use of recent buyout property's value as non-cash in-kind match may be considered similarly as previously purchased or donated property.
17. **Volunteer Services:** The eligibility of volunteer services as in-kind contribution is limited to professional engineering and architectural services when those services are not found in the local government. Paid fringe benefits that are reasonable, allowable and allocable may be included in the valuation, if approved by DCM. When an employer other than the local government furnishes the services of an employee, or when an individual contractor volunteers, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits, as described above), provided these services employ the same technical skill for which the employee is normally paid. All volunteer services must be documented by signed invoice showing the billing rate for the service, number of hours, and a statement that the charges are forgiven.
- a. Excluded from volunteer services are prison labor, court-required community service and other work programs, and volunteer civic groups.
  - b. In those instances in which the required skills are not found in the local government, or for other activities specifically approved by DCM, rates shall be consistent with those paid for similar work in the labor market in which the local government competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.
18. **Site Control:** The applicant must own or have at least a 25-year lease or easement on the property where improvements or renovated facilities would be located. The community must submit copies of the deed or of the signed lease or easement, as well as the opinion by the community's attorney, regarding site control as part of the Final Application submittal. *Proposals that include the leasing or acquisition of easements as part of the total project cost must include them in both the project description and budget chart.* Leases and easements shall be recorded in a similar manner as Section D., Condition 4.

19. Joint-Use Agreement: Where property is owned or controlled by another governmental entity or agency, a joint-use agreement may suffice, subject to approval of DEQ. (Also see Section G., Condition 18)
20. When to Take Title to Land/Leases/Easements: All communities must sign a contract with the State before accepting title/lease/easement to land that will be accomplished using grant funds, unless otherwise approved by DCM. This also applies to property that is donated to the local government. The exception is when the intent is to use it toward non-cash match.

#### H. SIGNATURE

David W. Hewitt  
Town Manager  
Holden Beach N.C.

### Notice of Certain Reporting and Audit Requirements

A recipient or subrecipient shall comply with the all rules and reporting requirements established by statute or administrative rules found in 09 NCAC Subchapter 3M. For convenience, the requirements of 09 NCAC Subchapter 3M.0205 are set forth in this Attachment.

#### Reporting Thresholds.

There are three reporting thresholds established for recipients and subrecipients receiving State awards of financial assistance. The reporting thresholds are:

- (1) Less than \$25,000 – A recipient or subrecipient that receives, hold, uses, or expends State financial assistance in an amount less than twenty-five thousand dollars (\$25,000) within its fiscal year must comply with the reporting requirements established by this Subchapter including:
  - (A) A certification that State financial assistance received or held was used for the purposes for which it was awarded; and
  - (B) An accounting of all State financial assistance received, held, used, or expended.
- (2) \$25,000 up to \$500,000 -A recipient or subrecipient that receives, holds uses, or expends State financial assistance in an amount of at least twenty-five thousand (\$25,000) but less than five hundred thousand dollars (\$500,000) within its fiscal year must comply with the reporting requirements established by this Subchapter including:
  - (A) A certification that State financial assistance received or held was used for the purposes for which it was awarded; and
  - (B) An accounting of all State financial assistance received, held, used, or expended.
  - (C) A description of activities and accomplishments undertaken by the recipient, including reporting on any performance measures established in the contract.
- (3) Greater than \$500,000 – A recipient or subrecipient that receives, holds, uses, or expends State financial assistance in the amount equal to or greater than five hundred thousand dollars (\$500,000) within its fiscal year must comply with the reporting requirements established by this Subchapter including:
  - (A) A certification that State financial assistance received or held was used for the purposes for which it was awarded; and
  - (B) An accounting of all State financial assistance received, held, used, or expended.
  - (C) A description of activities and accomplishments undertaken by the recipient, including reporting on any performance measures established in the contract.
  - (D) A single or program-specific audit prepared and completed in accordance with Generally Accepted Government Auditing Standards, also known as the Yellow Book.

#### Other Provisions:

1. All reports shall be filed with the disbursing agency in the format and method specified by the agency no later than three (3) months after the end of the recipient's fiscal year, unless the same information is already required through more frequent reporting. Audits must be provided to the funding agency no later than nine (9) months after the end of the recipient's fiscal year.
2. Unless prohibited by law, the costs of audits made in accordance with the provisions of 09 NCAC 03M .0205 shall be allowable charges to State and Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with cost principles outlined in the Code of Federal Regulations, 2CFR Part 200. The cost of any audit not conducted in accordance with this Subchapter shall not be charged to State awards.
3. Notwithstanding the provisions of 09 NCAC 03M .0205, a recipient may satisfy the reporting requirements of Part (3)(D) of this Rule by submitting a copy of the report required under the federal law with respect to the same funds.
4. Agency-established reporting requirements to meet the standards set forth in this Subchapter shall be specified in each recipient's contract.



Date: March 2, 2023

To: Commissioners and Mayor Holden

From: Daniel McRainey, Budget & Fiscal Analyst

Re: Ordinance 22-05, An Ordinance Amending Ordinance 21-13, The Revenues & Appropriations Ordinance for Fiscal Year 2021 – 2022 (Amendment No. 11)

Considering the rapid nature of new construction that the Town has experienced, revenues from system development fees have exceeded original projections. These fees are collected and transferred to the capital reserve fund to help pay for cost incurred to increase sewer capacity. The staff is asking the Board to approve the amendment to be able to transfer this money from the CRF to the Water and Sewer fund to be used for the purchase of valve pits that will expand sewer service to new homes constructed in the town.

Staff recommends approval of Ordinance 22-05.

# TOWN OF HOLDEN BEACH

## ORDINANCE NO. 22-05

### AN ORDINANCE AMENDING ORDINANCE 21-13, THE REVENUES AND APPROPRIATIONS ORDINANCE FOR FISCAL YEAR 2021-2022 (AMENDMENT NO. 11)

Be it ordained by the Mayor and Board of Commissioners of the Town of Holden Beach, North Carolina, that Ordinance No. 21-13 appropriating funds for fiscal year 2021-2022 be amended as follows:

#### SECTION I:

In accordance with GS 159-22, the Town of Holden Beach Board of Commissioners hereby authorizes the transfer of \$43,000 from the Sewer Capital Reserve Fund to the Water and Sewer Fund (fund 30).

#### SECTION II:

##### REVENUE

TRANSFER FROM CRF SEWER	30.0398.0000	43,000.00 INCREASE
<u>TOTAL</u>		<u>43,000.00</u>

##### EXPENSE

CAPITAL OUTLAY-VALVE PITS	30.0810.7401	43,000.00 INCREASE
<u>TOTAL</u>		<u>43,000.00</u>

The Town Manager acting in his capacity as Budget Officer or Finance Officer as may be appropriate is hereby authorized to effect such administrative actions as necessary to ensure compliance with the Local Government Fiscal Control Act and Governmental Accounting Standards Board.

This is the 8th day of March, 2022.

ATTEST:

\_\_\_\_\_  
J. Alan Holden, Mayor

\_\_\_\_\_  
Heather Finnell, Town Clerk