

BOND ORDER AUTHORIZING THE ISSUANCE OF SPECIAL OBLIGATION BONDS TO PAY A PART OF THE COST OF A BEACH NOURISHMENT PROJECT AND PROVIDING FOR CERTAIN RELATED MATTERS

WHEREAS, the Board of Commissioners (the "Board") of Town of Nags Head, North Carolina (the "Town") has determined that it is necessary to nourish its beach by placing sand thereon from other sources (the "Project") and has found that the Project would benefit the Town;

WHEREAS, the Board has determined that it is necessary to issue special obligation bonds of the Town secured by certain revenues pledged for their payment pursuant to this bond order for the purpose of providing funds, with other available funds, for paying the cost of accomplishing the Project;

WHEREAS, the Board has determined that it may be necessary to provide additions or improvements to the Project (all of such additions or improvements being collectively called "Project Improvements") and that it is advisable to make provision for the issuance of additional special obligation bonds secured on a parity with the bonds initially to be issued under the provisions hereof for paying the cost of accomplishing Project Improvements and for refunding bonds issued under the provisions hereof (all of such bonds being collectively called the "Bonds");

WHEREAS, under the Constitution and laws of the State of North Carolina, including particularly the Local Government Special Obligation Bond Act, being Chapter 159I of the General Statutes of North Carolina, as amended, and The Municipal Service District Act of 1973, being Article 23 of Chapter 160A of the General Statutes of North Carolina, the Town is authorized and empowered:

(i) to borrow money for the purpose of financing or refinancing the cost of projects involving beach erosion control and flood and hurricane protection works and to issue special obligation bonds and notes for such purpose; and

(ii) to pledge for the payment of such special obligation bonds or notes any available source or sources of revenues of the Town specifically identified for such purpose and, to the extent that the generation of such revenues is within the power of the Town, to enter into covenants to take action in order to generate such revenues, as long as the pledge of such sources of revenues to make such payments or any such covenant to generate revenues does not constitute a pledge of the Town's taxing power;

NOW, THEREFORE, BE IT ORDERED by the Board, as follows:

ARTICLE I

GENERAL PROVISIONS AND DEFINITIONS

Section 1.01 Contract with Owners. In consideration of the purchase and acceptance of the Bonds by those who shall hold the same from time to time, the provisions of this Bond Order shall be deemed to be and shall constitute a contract between the Town and the Owners from time to time of the Bonds; and the covenants and agreements herein set forth to be performed by or on behalf of the Town shall be for the equal benefit, protection and security of the Owners of any and all of the Bonds so issued or to be issued, without preference, priority or distinction as to lien or otherwise, except as otherwise hereinafter provided, of any one Bond over any other Bond by reason of priority in the issue, sale or negotiation thereof, or otherwise.

Section 1.02 Definitions. In addition to the terms defined elsewhere in this Bond Order, the following words and terms as used in this Bond Order shall have the following meanings, unless some other meaning is manifestly intended:

“Act” means the Local Government Special Obligation Bond Act, being Chapter 159I of the General Statutes of North Carolina, as amended.

“Additional Bonds” means the Additional Bonds referred to in **Article III** hereof.

“Bank” means RBC Bank (USA), together with its successors and assigns, as a Depository with which the Project Fund is created.

“Board” means the Board of Commissioners for the Town or the board or body in which the general legislative powers of the Town shall hereafter be vested.

“Bond” or “Bonds” means any bond or bonds authorized by this Bond Order and includes the Initial Bonds and any Additional Bonds issued in accordance with this Bond Order.

“Bond Order” means this bond order, together with all orders amendatory hereof and all orders supplemental hereto as herein permitted.

“Bond Registrar” means the Finance Officer or any successor as appointed by the Board.

“Commission” means the Local Government Commission of North Carolina.

“Consulting Engineers” means a professional engineer or engineering firm at the time employed by the Town to perform the functions and duties imposed on the Consulting Engineers by this Bond Order.

“Counsel” means an attorney or firm of attorneys selected by the Town.

“Debt Service Account” means the account created and so designated by **Section 5.02** of this Bond Order.

“Debt Service Requirements” means, with respect to Bonds in any Fiscal Year, the sum of (a) the amount required to pay the interest on the Bonds then Outstanding which is payable in such Fiscal Year and (b) the amount required to pay the principal of the Bonds then Outstanding which is payable in such Fiscal Year, the computation of such amounts to be based on the assumption that (a) the Bonds at the time Outstanding will be retired according to their stated maturities, principal installments or mandatory redemption requirements and (b) if the Bonds bears interest at a variable rate, the applicable rate is the average interest rate thereon for the twelve (12) months next preceding the month of the calculation of such average or, if such Bonds shall have had a variable rate for less than a twelve (12) month period, then the average interest rate thereon for such lesser period and, in respect of any proposed Bonds, the applicable rate is one hundred ten percent (110%) of the initial rate, such rate being established by a letter of a banking or investment banking or financial advisory or other institution knowledgeable in financial matters relating to municipally-owned utilities systems to the effect that the initial rate was established on a par offering basis.

“Debt Service Reserve Fund” means the fund created and so designated by **Section 5.02** of this Bond Order.

“Debt Service Reserve Fund Requirement” means, as of any particular date of calculation and with respect to any series of Bonds, such amount, if any, as shall be provided in the Series Resolution relating to such series of Bonds.

“Depository” means one or more banks, savings and loan associations or trust companies in the State or, with the written permission of the Secretary of the Commission, a national bank located in another state duly authorized under the laws of the United States of America or the State of North Carolina to engage in the banking business or to accept deposits within said State and designated by the Board as a depository of moneys under the provisions of this Bond Order.

“Finance Officer” means the Finance Officer of the Town or the officer succeeding to his principal functions and duties.

“Fiscal Year” means the period of twelve (12) months commencing on July 1 of any year and ending on June 30 of the following year.

“Fund Balance” means the amount of cash and unrestricted investments held for the credit of the Beach Nourishment Fund as of the date of the calculation of such amount.

“General Account” means the account so designated by **Section 5.01** of this Bond Order.

“Government Obligations” means direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America in either certificated or book-entry form.

“Initial Bonds” means the Bonds authorized under **Section 2.01** of this Bond Order.

“Interlocal Agreement” means the Interlocal Funding Agreement dated February 21, 2011 between the Town and Dare County, North Carolina.

“Mayor” means the Mayor of the Town or the officer succeeding to or exercising his principal functions and duties.

“Outstanding,” when used with reference to Bonds, means, as of a particular date, all Bonds theretofore authenticated and delivered under this Bond Order, except:

(1) Bonds theretofore cancelled by the Bond Registrar or delivered to the Bond Registrar for cancellation;

(2) Bonds for whose payment or redemption moneys or Government Obligations, or both, in the necessary amount have theretofore been deposited with an escrow agent in trust for the Owners of such Bonds (whether upon or prior to maturity or redemption of such Bonds), the principal of and the interest on such Government Obligations, if any, when due, providing sufficient moneys to pay, with any such other moneys so deposited with such escrow agent, the principal and redemption premium of and the interest on such Bonds being paid or redeemed;

(3) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Bond Order; and

(4) Bonds constituting tender indebtedness deemed to have been purchased in accordance with the provisions of the applicable Series Resolution in lieu of which other Bonds have been authenticated and delivered under such Series Resolution;

provided, however, that in determining whether the Owners of the requisite principal amount of Outstanding Bonds have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Bonds owned by the Town or any other obligor upon the Bonds shall be disregarded and deemed not to be Outstanding, except that the term “obligor upon the Bonds” shall not include any credit provider unless otherwise provided in a Series Resolution and except that, in determining whether any escrow agent, any trustee, any Depository or the Bond Registrar shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which any escrow agent, any trustee, any Depository or the Bond Registrar, as the case may be, knows to be so owned shall be so disregarded. Bonds so owned which have been pledged in good faith may be regarded as Outstanding for the purpose of determining whether the Owners of the requisite principal amount of Outstanding Bonds have given any request, demand, authorization, direction, notice, consent or waiver hereunder if the pledgee establishes to the satisfaction of any escrow agent, any trustee, any Depository or the Bond Registrar the pledgee’s right so to act with respect to such Bonds and that the pledgee is not the Town or any other obligor upon the Bonds except a credit provider.

“Owner” or any similar term, when used with reference to any Outstanding Bond or Bonds means any person who shall be the registered owner of such Bond or Bonds.

“Pledged Revenues” means (a) the occupancy tax payable to the Town by Dare County pursuant to Chapter 449 of the 1985 Session Laws, as amended by Chapters 177 and 906 of the 1991 Session Laws, Part VII of S.L. 2001-439 and Section 7 of S.L. 2010-78, (b) amounts payable to the Town pursuant to Section 1.b. of the Interlocal Agreement, and (c) to the extent authorized by law, any other revenues of the Town specifically designated as being Pledged

Revenues within the meaning of this Bond Order by an order or resolution of the Board adopted or passed after the issuance of the Initial Bonds and otherwise satisfying the requirements of the Act and any other applicable law.

“Project” means Project as defined in the preamble of this Bond Order.

“Project Fund” means the fund created and so designated by **Section 4.01** of this Bond Order.

“Qualified Investments” means any deposits or investments that the Town is permitted to make under Section 159-30 of the General Statutes of North Carolina, as amended, or any successor provision.

“Secretary” means the Secretary of the Commission or his designated assistant.

“Series Resolution” means the resolution of the Board providing for the issuance of any series of Bonds and fixing the details thereof.

“State Treasurer” means the Treasurer of the State of North Carolina or his designated assistant.

“Town” means the Town of Nags Head, North Carolina.

“Town Clerk” means the Town Clerk or the officer succeeding to or exercising his principal functions and duties.

“Town Representative” means the Town Manager of the Town or the Finance Officer and such other person or persons as are designated to act on behalf of the Town by resolution of the Board.

“Project Improvements” means any additions or improvements to the Project.

“Town” means the Town of Nags Head, North Carolina.

“Town Representative” means the Town Manager of the Town or the Finance Officer and such other person or persons as are designated to act on behalf of the Town by resolution of the Board.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words “Owner” and “person” shall include corporations and associations, including public bodies, as well as natural persons.

ARTICLE II

AUTHORIZATION OF PROJECT AND INITIAL BONDS; TERMS, EXECUTION, AUTHENTICATION, DELIVERY AND REGISTRATION OF BONDS

Section 2.01 Authorization of Project and Initial Bonds. The Board hereby confirms that it is in the best interest of the Town to proceed with the Project. The Town shall issue, in accordance with and pursuant to the Act and this Bond Order, its special obligation bonds (herein referred to also as the “Initial Bonds”) in an aggregate principal amount not exceeding \$18,000,000 for the purpose of providing funds, with other available funds, to pay the cost of the Project. The cost of the Project may include interest on such special obligation bonds and expenses of issuing such special obligation bonds as provided in the Series Resolution for such special obligation bonds.

Section 2.02 Character of Bonds. The Bonds shall be special obligations of the Town. Except as otherwise provided in this Bond Order, the principal of and interest and any redemption premium on the Bonds are secured solely by the Pledged Revenues pledged for their payment in this Bond Order and are payable solely from the Pledged Revenues.

Section 2.03 Terms of Bonds. The Bonds are issuable from time to time in one or more series as provided in this Bond Order and in one or more Series Resolutions adopted from time to time. The Bonds are issuable as fully-registered bonds. The Bonds shall be designated, shall be dated, shall bear interest until their payment, such interest to the maturity thereof being payable at such rate or rates and at such time or times, shall be stated to mature (subject to the right of prior redemption) in such amounts and at such times, shall have such denominations, shall be in such form or forms and may have such additional terms and details as set forth in the Series Resolution providing for the issuance of the respective series of Bonds. Both principal of and interest on the Bonds shall be paid by check mailed to the Owners thereof unless otherwise provided in the Series Resolution providing for the issuance of the respective series of Bonds. Each Bond shall be payable with respect to principal, redemption premium if any, and interest in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of public and private debts. The Bonds of any series and, if applicable, the respective installments of principal corresponding thereto, shall be subject to redemption prior to maturity in whole or in part and at such times and prices as may be provided in the Series Resolution providing for the issuance of such series of Bonds, and such Series Resolution may also provide for giving notice of such redemption, making payment of redeemed Bonds and other matters relating to such redemption.

Section 2.04 Execution of Bonds. Each Bond shall be executed in the name of the Town by the manual or facsimile signatures of the Mayor, Mayor Pro Tem or the Town Manager and the Town Clerk or any deputy or assistant Town Clerk and shall have impressed or printed thereon the official seal of the Town or a facsimile thereof; provided, however, that at least one manual signature must appear on each Bond (which may be the signature of the Secretary to the Commission’s certificate). Any Bond may be signed, sealed or attested on behalf of the Town by any person who, at the date of such act, shall hold the proper office, notwithstanding that at the date of such Bond or the date of delivery thereof such person shall not have held such office.

In case any officer who shall have signed or sealed any of the Bonds shall cease to be such officer of the Town before the Bonds so signed or sealed shall have been delivered, such Bonds may nevertheless be delivered as herein provided as if the person who so signed or sealed such Bonds had not ceased to be such officer.

Section 2.05 Authentication of Bonds. Only such of the Bonds as shall have endorsed thereon a certificate of authentication substantially in the form set forth in the applicable Series Resolution, duly executed by the Bond Registrar, shall be entitled to any benefit or security under this Bond Order. No Bond shall be valid or become obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Bond Registrar, and such certificate of the Bond Registrar, duly executed, upon any such Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Bond Order.

Section 2.06 Registration and Transfer of Bonds. The Town shall cause books for the registration of and for the registration of transfers of the Bonds as provided in this Bond Order to be kept by the Bond Registrar. The transfer of any Bond shall be registered upon the books kept for the registration of and registration of transfers of Bonds upon surrender thereof to the Bond Registrar together with an assignment duly executed by the Owner or his attorney or legal representative in such form as shall be satisfactory to the Bond Registrar. Upon any such registration of transfer, the Town shall execute and the Bond Registrar shall authenticate and deliver in exchange for such Bond a new Bond or Bonds of the same series registered in the name of the transferee in an aggregate principal amount equal to the unpaid principal amount of such Bond, having maturities corresponding to the principal installments of said Bond and bearing interest at the same rate.

In all cases in which the Bonds shall be transferred hereunder, the Town shall execute and the Bond Registrar shall authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of this Bond Order. The Town or the Bond Registrar may make a charge for every such registration of transfer of Bonds sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such registration of transfer. Neither the Town nor the Bond Registrar shall be required to make any such registration of transfer of Bonds during the fifteen (15) days immediately preceding an interest payment date on the Bonds or, in the case of any proposed redemption of Bonds, immediately preceding the date of mailing of notice of such redemption, or after such Bond or any portion thereof has been selected for redemption.

Section 2.07 Ownership of Bonds. As to any Bond, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of and the interest on any such Bond shall be made only to the Owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond including the interest thereon to the extent of the sum or sums so paid.

Section 2.08 Mutilated, Destroyed, Stolen or Lost Bonds. In case any Outstanding Bond shall become mutilated or be destroyed, stolen or lost, the Town may prepare and cause to be executed, authenticated and delivered a new Bond of like tenor, number and amount as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated

Bond and upon surrender of such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, upon the Owner furnishing to the satisfaction of the Bond Registrar, the Commission and the Town evidence that such Bond has been destroyed, stolen or lost, proof of the ownership thereof, a surety bond or other indemnification instrument in twice the face amount of the Bond or in such other amount required by applicable law, payment of the cost of preparing and issuing such new Bond, including the reasonable expenses and charges of the Town and the Bond Registrar in connection therewith, and evidence of compliance with such other reasonable regulations as the Bond Registrar and Board may prescribe. All Bonds surrendered hereunder shall be surrendered to the Bond Registrar and shall be cancelled. All Bonds issued in accordance with this Section shall be signed by the Mayor, Mayor Pro Tem or the Town Manager and the Town Clerk or any deputy or assistant Town Clerk who are in office at the time and shall contain a recital to the effect that they are issued in exchange for or in place of certain Bonds and are to be deemed a part of the same series as such Bonds.

Section 2.09 Delivery of Initial Bonds. The Initial Bonds shall be executed substantially in the manner hereinabove set forth and shall be deposited with the Bond Registrar for authentication, but prior to or simultaneously with the authentication by the Bond Registrar and delivery of the Initial Bonds by the State Treasurer there shall be filed with the Bond Registrar the following:

(a) copies, certified by the Town Clerk to be true and correct copies, of this Bond Order and the Series Resolution prescribing the details of the Initial Bonds, including form, maturities and redemption provisions;

(b) a certificate of the Commission approving the issuance and providing for the sale of the Initial Bonds;

(c) an opinion of Counsel to the effect that the issuance of the Initial Bonds has been duly authorized; and

(d) an opinion of bond counsel to the Town to the effect that the Initial Bonds are valid and binding special obligations of the Town except as may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights and by equitable principles, whether considered at law or in equity.

No Bond shall be valid or obligatory for any purpose unless authenticated by the Bond Registrar.

When the documents mentioned above in this Section shall have been filed with the Bond Registrar and when the Initial Bonds shall have been executed and authenticated as required by this Bond Order, the State Treasurer shall deliver or cause to be delivered the Initial Bonds to or upon the order of the purchasers thereof, but only upon payment to the State Treasurer or as otherwise directed by the State Treasurer of the purchase price of the Initial Bonds. The Bond Registrar shall be entitled to rely upon such documents with respect to the matters contained therein.

Section 2.10 Approval of Issuance and Sale of Initial Bonds. None of the Initial Bonds shall be issued unless they are approved and sold by the Commission and until the Secretary

shall have endorsed thereon a certificate evidencing approval in accordance with the provisions of the Act.

ARTICLE III

ADDITIONAL BONDS

Section 3.01 Refunding of Outstanding Bonds. The Town may, to the extent permitted by the Act and the provisions of this Section, issue, from time to time, its special obligation bonds (herein referred to as “Additional Bonds”) which shall be secured by and payable from the Pledged Revenues as provided in this Bond Order for the purpose of providing funds, with any other available funds, for refunding all or any portion of the Initial Bonds or any Additional Bonds and paying expenses of issuing such Additional Bonds, all as provided in the Series Resolution for any series of such Additional Bonds. Except as to any difference in the maturities thereof, the rate or rates of interest, the provisions for redemption or any funding of the Debt Service Reserve Fund that may be provided for the security thereof, such Additional Bonds shall be on a parity with and shall be entitled to the same benefit and security of this Bond Order as all other Bonds. The Bond Registrar shall not authenticate and deliver any Additional Bonds for this purpose unless theretofore or simultaneously therewith there shall have been filed with the Bond Registrar the following:

(a) a copy, certified by the Town Clerk to be a true and correct copy, of the Series Resolution authorizing the issuance of such Additional Bonds and prescribing the details thereof;

(b) a certificate of the Commission approving the issuance and providing for the sale of such Additional Bonds;

(c) a copy, certified by the Town Clerk to be a true and correct copy, of the resolution (which may be incorporated in the Series Resolution) of the Board approving the sale of such Additional Bonds by the Commission and directing the authentication and delivery thereof to or upon the order of the purchasers therein named upon payment of the purchase price therein set forth;

(d) an opinion of Counsel to the effect that the issuance of such Additional Bonds has been duly authorized and that all conditions precedent to the delivery of such Additional Bonds have been fulfilled;

(e) an opinion of bond counsel to the Town to the effect that such Additional Bonds are valid and binding special obligations of the Town except as may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors’ rights and by equitable principles, whether considered at law or in equity;

(f) a certificate, signed by the Town Representative stating that all payments required by **Section 5.04** of this Bond Order prior to the beginning of the month during which such Additional Bonds are to be issued have been made;

(g) (i) a certificate, signed by the Town Representative, to the effect that the amount of the Debt Service Requirements for each Fiscal Year thereafter on account of the Bonds to be

Outstanding after the issuance of such Additional Bonds shall be less than the amount of the Debt Service Requirements for such Fiscal Year on account of the Bonds Outstanding immediately prior to the issuance of such Additional Bonds or (ii) such certificates, statements or other items as may be required to show compliance with the provisions of **Section 3.02** hereof as if such Additional Bonds were not being issued under this Section but were being issued under **Section 3.02** hereof for paying the cost of Project Improvements; and

(h) such documents as shall be required by the Bond Registrar to evidence that provision has been satisfactorily made for the redemption of the Bonds to be refunded.

When the documents mentioned above in this Section shall have been filed with the Bond Registrar and when such Additional Bonds shall have been executed and authenticated as required by this Bond Order, the State Treasurer shall deliver or cause to be delivered such Additional Bonds to or upon the order of the purchasers thereof, but only upon payment to the State Treasurer or as otherwise directed by the State Treasurer of the purchase price of such Additional Bonds.

Section 3.02 Financing of Project Improvements. The Town may, to the extent permitted by the Act and the provisions of this Section, issue, from time to time, its special obligation bonds (herein also referred to as “Additional Bonds”), which shall be secured by and payable from the Pledged Revenues as provided in this Bond Order for the purpose of providing funds, with any other available funds, for paying the cost of Project Improvements, including interest on such Additional Bonds and expenses of issuing such Additional Bonds, all as provided in the Series Resolution for any series of such Additional Bonds. Except as to any difference in the maturities thereof, the rate or rates of interest, the provisions for redemption or any funding of the Debt Service Reserve Fund that may be provided for the security thereof, such Additional Bonds shall be on a parity with and shall be entitled to the same benefit and security of this Bond Order as all other Bonds. The Bond Registrar shall not authenticate and deliver any Additional Bonds for this purpose unless theretofore or simultaneously therewith there shall have been filed with the Bond Registrar the following:

(a) a copy, certified by the Town Clerk to be a true and correct copy, of the Series Resolution authorizing the issuance of such Additional Bonds and prescribing the details thereof;

(b) a certificate of the Commission approving the issuance and providing for the sale of such Additional Bonds;

(c) a copy, certified by the Town Clerk to be a true and correct copy, of the resolution (which may be incorporated in the Series Resolution) of the Board approving the sale of such Additional Bonds by the Commission and directing the authentication and delivery thereof to or upon the order of the purchasers therein named upon payment of the purchase price therein set forth;

(d) an opinion of Counsel to the effect that the issuance of such Additional Bonds has been duly authorized and that all conditions precedent to the delivery of such Additional Bonds have been fulfilled;

(e) an opinion of bond counsel to the Town to the effect that such Additional Bonds are valid and binding special obligations of the Town except as may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights and by equitable principles, whether considered at law or in equity;

(f) a certificate, signed by the Town Representative stating that all payments required by **Section 5.04** of this Bond Order prior to the beginning of the month during which such Additional Bonds are to be issued have been made; and

(g) a certificate, signed by the Town Representative, to the effect that (i) the Pledged Revenues for the complete Fiscal Year next preceding the issuance of the proposed Additional Bonds plus fifty percent (50%) of the Fund Balance as of June 30 or December 31 next preceding the issuance of the proposed Additional Bonds, whichever is more recent, were equal to at least one hundred twenty percent (120%) of the maximum Debt Service Requirements of all Outstanding Bonds and the proposed Additional Bonds to be issued for the current or any succeeding Fiscal Year and (ii) the Pledged Revenues for the complete Fiscal Year next preceding the issuance of the proposed Additional Bonds were equal to at least one hundred percent (100%) of the maximum Debt Service Requirements of all Outstanding Bonds and the proposed Additional Bonds to be issued for the current or any succeeding Fiscal Year.

When the documents mentioned above in this Section shall have been filed with the Bond Registrar and when such Additional Bonds shall have been executed and authenticated as required by this Bond Order, the State Treasurer shall deliver or cause to be delivered such Additional Bonds to or upon the order of the purchasers thereof, but only upon payment to the State Treasurer or as otherwise directed by the State Treasurer of the purchase price of such Additional Bonds.

Section 3.03 Approval by Local Government Commission. Additional Bonds shall not be issued unless they are approved and sold by the Commission and until the Secretary shall have endorsed thereon a certificate evidencing such approval in accordance with the Act.

ARTICLE IV

PROJECT FUND AND APPLICATION OF PROCEEDS OF BONDS

Section 4.01 Project Fund. A special fund is hereby created with the Bank and designated the Town of Nags Head, North Carolina Beach Nourishment Special Obligation Bond Project Fund (the "Project Fund") to the credit of which the proceeds of the Initial Bonds shall be deposited. The moneys in the Project Fund shall be held in trust and applied to the payment of the cost of the Project in accordance with the provisions of **Section 4.03** of this Bond Order and, pending such application, are hereby pledged for the payment of the Initial Bonds in favor of the Owners of the Initial Bonds Outstanding under this Bond Order and for the further security of such Owners until paid out or withdrawn as herein provided. The Town will deposit in the Project Fund or otherwise apply to the payment of the cost of the Project all amounts received by it as refunds of State sales taxes with respect to expenditures made in connection with the Project.

The Town has entered or shall enter into one or more contracts providing for the accomplishment of the Project and shall accomplish the Project as provided in **Section 7.02** hereof.

Section 4.02 Investment. The Town shall invest and reinvest moneys deposited in the Project Fund solely in Qualified Investments, and investment earnings on the Project Fund shall be retained in the Project Fund pending disbursement in accordance with **Section 4.03** hereof. The Town shall be solely responsible for ascertaining that all proposed investments and reinvestments comply with federal, state and local laws, regulations and ordinances governing the investment of funds similar in substance to the proceeds of the Initial Bonds. Accordingly, the Bank shall not be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to investment or reinvestment of all or a portion of the moneys held in the Project Fund, and the Town hereby agrees, to the extent permitted by law, to release and indemnify and hold harmless the Bank from any such liability, cost, expense, loss or claim.

Section 4.03 Disbursements. Unless the Project Fund is earlier terminated in accordance with the provisions of **Section 4.04** hereof, the moneys held in the Project Fund shall be used to pay Project costs upon the prior written consent of the Bank to a written requisition prepared by the Town Representative or his designee, substantially in the form set forth in Appendix A attached hereto, together with any documents and other items as the Bank may determine to be necessary, including, but not limited to, construction invoices, lien waivers, inspection reports, architect certificates, itemization of present and prospective expenditures and a list of items necessary for completion. If the moneys held in the Project Fund and other moneys provided by the Town are insufficient to pay all of the Project costs and costs of issuing the Initial Bonds, then the Town shall provide any balance of the funds needed to pay such costs.

Any moneys remaining in the Project Fund after the completion of the Project, as evidenced by a written certificate of completion executed by the Town Representative and delivered to the Bank stating that the Project has been completed and there are no mechanic's or other liens against the Project for labor or materials furnished in connection with the Project, shall be used to pay the cost of such Project Improvements as the Town may determine, provided that such purpose is authorized by law and, in the opinion of nationally recognized bond counsel, it is permissible to do so, or used to pay the principal of or interest on the Initial Bonds, provided that, in the opinion of nationally recognized bond counsel, it is permissible to do so.

Section 4.04 Termination. The Project Fund shall be terminated at the earliest of (a) the final distribution of moneys from the Project Fund, (b) written notice given by the Bank of an event of default by the Town under this Bond Order and (c) termination of this Bond Order.

Section 4.05 Reliance of Bank on Documents. The Bank may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Bank shall not be liable in any manner for the sufficiency or correctness as to the form, manner of execution, or validity of any instrument or as to the identity, authority, or right of any person executing the same; and the Bank's duties hereunder shall be limited to the receipts of

such moneys, instruments or other documents received by it as the Bank, and for the disposition of the same in accordance herewith.

Section 4.06 Application of Proceeds of Additional Bonds. The proceeds of any Additional Bonds shall be applied in accordance with the provisions of **Article III** of this Bond Order as may be applicable and the provisions of the respective Series Resolution.

ARTICLE V

REVENUES AND OTHER FUNDS

Section 5.01 Beach Nourishment Fund and Deposit of Pledged Revenues. The Town has also heretofore created the Town of Nags Head, North Carolina General Account (the "General Account"). The General Account is established with a Depository and administered by the Town as a cash account for the purpose of receiving, holding and investing moneys from the operation by the Town of its various activities and paying moneys deposited in it for their respective purposes.

A special fund within the General Account (which need not be physically segregated) is hereby created and designated the Town of Nags Head, North Carolina Beach Nourishment Fund (the "Beach Nourishment Fund"). The Town covenants that all Pledged Revenues shall be deposited as received in the General Account to the credit of the Beach Nourishment Fund.

Section 5.02 Creation of Debt Service Account and Debt Service Reserve Fund. There are hereby created the following designated special account and fund: (a) Town of Nags Head, North Carolina Beach Nourishment Debt Service Account (the "Debt Service Account") and (b) Town of Nags Head, North Carolina Beach Nourishment Debt Service Reserve Fund (the "Debt Service Reserve Fund").

The Initial Bonds shall not be secured by the Debt Service Reserve Fund. Additional Bonds issued hereunder may be secured by the Debt Service Reserve Fund as may be provided by the Board in the respective Series Resolution. If a series of Additional Bonds is to be secured by the Debt Service Reserve Fund, the respective Series Resolution shall establish a separate account within the Debt Service Reserve Fund to provide a reserve in the amount of the applicable Debt Service Reserve Fund Requirement for such series of Bonds. Any such separate account may also be established to secure more than one series of Bonds. Any such separate account shall be funded in the manner and at the times required by the applicable Series Resolution, shall be held separate and apart from moneys on deposit in the Debt Service Reserve Fund with respect to any other series of Bonds except as otherwise provided in the applicable Series Resolution and shall be held solely for the benefit and security of the one or more series of Bonds with respect to which such separate account was created.

The moneys in each such account and fund shall be held in trust with a Depository and applied as herein provided and, pending such application, are hereby pledged for the payment of the Bonds in favor of the Owners of the Bonds Outstanding under this Bond Order which are secured thereby and for the further security of such Owners until paid out or transferred as herein provided. Each such account and fund shall be maintained as long as any of the Bonds which are secured thereby are Outstanding.

Section 5.03 Application of Pledged Revenues. The Town will transfer or deposit moneys on deposit in the General Account held for the credit of the Beach Nourishment Fund as provided in **Section 5.04** hereof.

Section 5.04 Withdrawals from the General Account. The Town shall, on or before the tenth (10th) day of each month, commencing in the month following the month in which the Initial Bonds are delivered, or at such other times as may be provided in the respective Series Resolutions, withdraw from the General Account moneys held for the credit of the Beach Nourishment Fund in such amounts as shall be equal to the sum of the payment, transfers or deposits required to be made pursuant to **clauses (a) and (b)** of this Section and pay such amounts to the Owners or transfer or deposit such amounts to the credit of the following accounts and funds in the following order:

(a) to the credit of the Debt Service Account or pay to the Owners, such amount thereof (or the entire sum so withdrawn if less than the required amount) as is equal to the amounts to be paid to the Owners or deposited therein as specified in the Series Resolution for each series of Bonds then Outstanding for the payment of the interest on and the principal and redemption price of such Bonds; and

(b) to the credit of the Debt Service Reserve Fund, such amount, if any, of the balance remaining after making the transfer under **clause (a)** above (or the entire balance if less than the required amount) as is required to make the amount in the Debt Service Reserve Fund, including each account which may separately secure any series of Bonds, equal to the amount required to be therein as provided in the applicable Series Resolutions.

Any balance of Pledged Revenues on deposit with the Town after such transfers or deposits have been made in each Fiscal Year in amounts sufficient to enable the Town to make the deposits required under **clauses (a) and (b)** above for such Fiscal Year may be withdrawn and transferred by the Town prior to the end of such Fiscal Year for application to such other lawful purposes of the Town as the Board may determine.

If the moneys paid, transferred or deposited pursuant to **clauses (a) and (b)** above shall be less than the required amounts under **clauses (a) and (b)** above, then the amount of any deficiency in any such payment, transfer or deposit shall be added to the amount otherwise required to be paid, transferred or deposited thereafter until such time as all such deficiencies shall have been made up.

The Town may provide for a disposition of moneys in the General Account held for the credit of the Beach Nourishment Fund in addition to the payments, transfers or deposits mentioned in **clauses (a) and (b)** above but only after such payments, transfers or deposits mentioned in **clauses (a) and (b)** above.

Section 5.05 Application of Moneys in Debt Service Account. Moneys held for the credit of the Debt Service Account shall be used for the payment of the principal of and the interest on the Bonds as provided herein and in the respective Series Resolution. The Town shall, from time to time, withdraw from the Debt Service Account and (a) remit by mail or wire transfer or as otherwise provided in the respective Series Resolution to or for the benefit of the

Owner of each Bond the amount required for paying interest on such Bond as such interest becomes due and (b) set aside or remit as provided in the respective Series Resolution the amount required for paying the principal or redemption price of each Bond as such amount becomes due. If the amount required pursuant to clause (a) or (b) of the preceding section shall be less than the amount available, then the amount available shall be allocated to each series of Bonds pro rata based on respective principal amounts outstanding.

Section 5.06 Application of Moneys in Debt Service Reserve Fund. If at any time the moneys held for the credit of the Debt Service Account with respect to the Bonds of a series which are secured by moneys in the Debt Service Reserve Fund are insufficient to pay when due the interest on and principal of the Bonds of such series, including any amortization requirements thereof, and if the amounts transferred to the credit of the Debt Service Account from Pledged Revenues pursuant to **Section 5.04** hereof are insufficient to make up such deficiency, then the Town shall, not earlier than two (2) business days prior to the applicable interest or principal payment date, transfer from the Debt Service Reserve Fund to the credit of the Debt Service Account an amount sufficient to make up any such deficiency, such amount to be deposited to the credit of the Debt Service Account for the applicable series of Bonds as provided in **Section 5.04** of this Bond Order. Any moneys so withdrawn from the Debt Service Reserve Fund shall be restored from available moneys held for the credit of the Beach Nourishment Fund, subject to the same conditions as are prescribed for deposits to the credit of the Debt Service Reserve Fund under the provisions of **Section 5.04** hereof. If at any time the moneys held for the credit of the Debt Service Reserve Fund shall exceed the amount of the respective Debt Service Reserve Requirements, such excess may be transferred to the credit of the Beach Nourishment Fund.

Section 5.07 Unclaimed Moneys. All moneys which the Town shall have withdrawn from the Debt Service Account or Debt Service Reserve Fund or shall have received from any other source and set aside for the purpose of paying any of the Bonds hereby secured, either at the maturity thereof or upon call for redemption, shall be held in trust for the respective Owners of such Bonds. Any moneys which shall be set aside and which shall remain unclaimed by the Owners of such Bonds for the period of five (5) years after the date on which such Bonds shall have become payable shall be treated as abandoned property pursuant to the provisions of Section 116B-18 of the General Statutes of North Carolina, as amended, and the Town shall report and remit this property to the Escheat Fund according to the requirements of Article 3 of Chapter 116B of the General Statutes of North Carolina, as amended. Thereafter the Owners of such Bonds shall look only to the Escheat Fund for payment and then only to the extent of the amounts so received without any interest thereon, and the Town shall have no responsibility with respect to such moneys.

Section 5.08 Cancellation. Except as may be provided otherwise in any Series Resolution, all Bonds paid, redeemed or purchased either at or before maturity, shall, at the direction of the Town, be delivered to the Bond Registrar or to the Town when such payment, redemption or purchase is made and such Bonds shall thereupon be cancelled. All Bonds cancelled under any of the provisions of this Bond Order shall be destroyed by the Bond Registrar who shall execute a certificate in duplicate describing the Bonds so destroyed, and one executed certificate shall be filed with the Town and the second executed certificate shall be retained by the Bond Registrar.

ARTICLE VI

SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 6.01 Security for Deposits. All moneys deposited with the Town or any other Depository designated by the Board hereunder in excess of the amount guaranteed by the Federal Deposit Insurance Corporation or other federal agency shall be continuously secured, for the benefit of the Town and the Owners of the Bonds, in such manner as may then be required or permitted by applicable state or federal laws and regulations regarding the security for, or granting a preference in the case of, the deposit of trust funds, including applicable regulations of the Commission.

Section 6.02 Investment of Funds. Moneys held for the credit of the Project Fund, the Debt Service Account and the Beach Nourishment Fund shall, as nearly as may be practicable, be continuously invested and reinvested in Qualified Investments which shall mature, or which shall be subject to redemption by the owner thereof at the option of such owner, not later than the respective dates when the moneys held for the credit of each such fund will be required for the purposes intended.

Moneys held for the credit of the Debt Service Reserve Fund shall, as nearly as may be practicable, be continuously invested and reinvested in Qualified Investments which shall mature, or which shall be subject to redemption by the owner thereof at the option of such owner, not later than such time or times after the date of such investment as may be specified in the respective Series Resolution.

Obligations purchased as investments of moneys in any such fund shall be deemed at all times to be part of such fund, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund, and any loss resulting therefrom shall be charged to such fund. The Town shall sell at the best price obtainable or present for redemption any obligations so purchased whenever it shall be necessary so to do in order to provide moneys to meet any payment or transfer from any such fund. Neither the Town nor the Town Representative shall be liable or responsible for any loss resulting from any such investment.

For the purpose of determining the amount on deposit to the credit of any such fund, obligations in which moneys in such fund have been invested shall be valued at the lower of cost or market.

ARTICLE VII

PARTICULAR COVENANTS

Section 7.01 Security for and Payment of Bonds and Observance of Covenants. The Town covenants that it will promptly pay the principal of and the interest on every Bond issued under the provisions of this Bond Order at the places, on the dates and in the manner provided herein and in said Bonds and any premium required for the retirement of said Bonds by purchase or redemption, according to the true intent and meaning thereof. The Town hereby pledges the Pledged Revenues for the payment of the principal of and interest and any redemption premium on the Bonds. The Pledged Revenues, as received by the Town, shall immediately be subject to

the lien of this pledge without any physical delivery of the Pledged Revenues or further act, and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Town without regard to whether the parties have notice thereof.

Except as otherwise provided in this Bond Order, the principal of and interest and any redemption premium on the Bonds shall be secured solely by the Pledged Revenues pledged for their payment in this Bond Order and the Town is not obligated to pay such principal, interest and any redemption premium except from the Pledged Revenues. Any such use of the Pledged Revenues will not constitute a pledge of the Town's taxing power. Neither the faith and credit nor the taxing power of the Town are pledged for the payment of the principal of or interest or any redemption premium on the Bonds, and no owner of the Bonds has the right to compel the exercise of the taxing power by the Town in connection with any default thereon.

The Town covenants that it shall faithfully do and perform and at all times fully observe any and all covenants, undertakings, stipulations and provisions contained herein or in any Series Resolution or the Bonds.

Section 7.02 Accomplishment of Project and Project Improvements. The Town covenants that it will forthwith diligently proceed to acquire and construct the Project and any Project Improvements in accordance with plans and specifications which shall have been approved by the Consulting Engineers, if Consulting Engineers have been engaged in connection therewith, and in conformity with law and all requirements of all governmental authorities having jurisdiction thereover, and that it will complete such accomplishment with all expedition practicable.

The Town further covenants and agrees that it will require each person, firm or corporation with whom it may contract for labor or materials in connection with the accomplishment of the Project or any Project Improvements to furnish a performance bond in the full amount of any contract exceeding Thirty Thousand Dollars (\$30,000) in amount, or of any contract of such lesser amount if then required by law, to insure completion and performance of such contract, or, in lieu thereof, to deposit with a Depository marketable securities having a market value equal to the amount of such contract and eligible as security for the deposit of trust funds under regulations of the Comptroller of the Currency of the United States, and to carry such workmen's compensation or employers' liability insurance as may be required by law and such builder's, risk insurance, if any, as may be required by the Consulting Engineers. The Town further covenants and agrees that in the event of any default under any such contract and the failure of the surety to complete such contract, the proceeds of any such performance bond or securities shall forthwith, upon receipt of such proceeds, be applied toward the completion of the contract in connection with which such performance bond or securities shall have been furnished.

Section 7.03 Liens. The Town covenants that it will not create or permit to be created any lien on the Pledged Revenues or any moneys in the Project Fund, the Debt Service Account or the Debt Service Reserve Fund other than the liens of the pledges of the Pledged Revenues and such moneys for the payment of the Bonds and any bond anticipation notes in this Bond Order unless otherwise required by applicable law.

Section 7.04 Instruments of Further Assurance. The Town covenants that at any and all times it shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver all and every such further orders, resolutions, acts, conveyances, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting and confirming all and singular the rights, Pledged Revenues and other funds pledged herein or intended so to be, or which the Town may hereafter become bound to pledge or as may be reasonable and required to carry out the purposes of this Bond Order and comply with the Act. The Town further covenants that it shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Pledged Revenues and other funds pledged herein and all the rights of the Owners against all claims and demands of all persons whomsoever.

Section 7.05 Interlocal Agreement. The Town covenants not to alter the Interlocal Agreement in any way that could jeopardize the Town's receipt of Pledged Revenues, and further covenants to enforce against Dare County, North Carolina the provisions of the Interlocal Agreement relating to Pledged Revenues. The Owners, and the Trustee on their behalf, shall be third party beneficiaries of the Interlocal Agreement.

ARTICLE VIII

DEFAULTS AND REMEDIES

Section 8.01 Events of Default. Each of the following events is hereby declared an "event of default;" that is to say, if:

(a) payment of the principal of and premium, if any, on any of the Bonds shall not be made when the same shall become due and payable, either at maturity or by proceedings for redemption or otherwise; or

(b) payment of any interest on the Bonds shall not be made when the same shall become due and payable; or

(c) the Town shall for any reason be rendered incapable of fulfilling its obligations hereunder; or

(d) an order or decree shall be entered, with the consent or acquiescence of the Town, appointing a receiver or receivers of the Pledged Revenues, or if such order or decree, having been entered without the consent or acquiescence of the Town, shall not be vacated or discharged or stayed on appeal within sixty (60) days after the entry thereof; or

(e) any proceeding shall be instituted, with the consent or acquiescence of the Town, for the purpose of effecting a composition between the Town and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable out of Pledged Revenues; or

(f) the Town shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds or in this Bond Order or any Series Resolution on the part of the Town to be performed, and such default shall continue

for thirty (30) days after written notice specifying such default and requiring same to be remedied shall have been given to the Town by the Owners of not less than twenty percent (20%) in principal amount of the Bonds then Outstanding; or

(g) Dare County shall have failed to pay the Town all Pledged Revenues due to the Town for a fiscal year by sixty (60) days after the close of that fiscal year.

Section 8.02 Bonds Declared Due and Payable. Upon the happening and continuance of any event of default specified in **Section 8.01** of this Bond Order, then and in every such case the Owners of a majority of the principal amount of the Bonds then Outstanding may, by a notice in writing to the Town, declare the principal of all of the Bonds then Outstanding (if not then due and payable) to be due and payable immediately, and upon such declaration the same shall become and be immediately due and payable, anything contained in the Bonds or in this Bond Order to the contrary notwithstanding; provided, however, that if at any time after the principal of the Bonds shall have been so declared to be due and payable, and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under this Bond Order, moneys shall become available to pay the principal of all matured Bonds and all arrears of interest, if any, upon all the Bonds then Outstanding (except the principal of any Bonds not then due by their terms and the interest accrued on such Bonds since the last interest payment date), and all other amounts then payable by the Town hereunder shall have been paid or a sum sufficient to pay the same shall have been deposited with an escrow agent for the benefit of the Owners, and every other default in the observance or performance of any covenant, condition or agreement contained in the Bonds or in this Bond Order (other than a default in the payment of the principal of such Bonds then due only because of a declaration under this Section) shall have been remedied to the satisfaction of the Owners of a majority of the principal amount of the Bonds then Outstanding, then and in every such case the Owners of a majority of the principal amount of the Bonds then Outstanding may, by written notice to the Town, rescind and annul such declaration and its consequences, but no such rescission or annulment shall extend to or affect any subsequent default or impair any right consequent thereon.

Section 8.03 Additional Remedies. Upon the happening and continuance of any event of default specified in **Section 8.01** of this Bond Order, then and in every case the Owners of a majority of the principal amount of the Bonds then Outstanding may proceed to protect and enforce their rights hereunder and under the laws of the State of North Carolina, including the Act, by such suits, actions or special proceedings in equity or at law, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, as such Owners shall deem most effectual to protect and enforce such rights.

Section 8.04 Payments When Funds are Insufficient. Anything in this Bond Order to the contrary notwithstanding, if at any time moneys are insufficient to pay the interest on or the principal of the Bonds as the same become due and payable (either by their terms or by acceleration of maturities), all moneys in the Debt Service Account, together with any moneys then available or thereafter becoming available for such purpose, shall be applied as follows:

(a) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied

first: to the payment to the persons entitled thereto of all installments of interest on the Bonds then due, in the order of the maturity of the installments of such interest, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds;

second: to the payment to the persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Bond Order), in the order of their due dates, with interest on such Bonds from the respective dates upon which they became due, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment first of such interest, ratably, according to the amount of such interest due on such date, and then to the payment of such principal, ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or preference; and

third: to the payment of the interest on and the principal of the Bonds, to the purchase and retirement of the Bonds and to the redemption of the Bonds, all in accordance with the provisions hereof.

(b) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds.

(c) If the principal of all of the Bonds shall have been declared due and payable and if such declaration shall thereafter have been rescinded and annulled, then the moneys then remaining in and thereafter accruing to the Debt Service Account shall be applied in accordance with the provisions of **paragraph (a)** of this Section.

Section 8.05 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Owners is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 8.06 Waiver of Default. No delay or omission of the Owners to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Article to the Owners may be exercised from time to time and as often as may be deemed expedient.

The Owners of a majority in aggregate principal amount of the Bonds then Outstanding may waive any default which shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by them under the provisions of this Bond Order or before the completion of the enforcement of any other remedy under this Bond Order, but no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

Section 8.07 Notice of Default. The Town shall mail to the Commission and to the Owner of each Bond then Outstanding written notice of the occurrence of any event of default set forth in **Section 8.01** hereof within thirty (30) days after the Town shall have notice that any such event of default has occurred.

Section 8.08 Right to Enforce Payment of Bonds Unimpaired. Except as may be provided in a Series Resolution, nothing in this Article shall affect or impair the right of any Owner of Bonds to enforce the payment of the principal of and the interest on his Bonds or the obligation of the Town to pay the principal of and the interest on any Bond to the Owner thereof at the time and place in said Bond expressed.

ARTICLE IX

THE TRUSTEE

Section 9.01 Designation of Trustee. The Town may at any time, with the approval of the Commission, appoint a Trustee to administer the provisions of this Bond Order and may adopt such supplements to this Bond Order as shall be necessary or desirable to effectuate such appointment. In addition, upon the occurrence and continuance of an event of default under **Section 8.01** hereof, the Owners of a majority of the principal amount of the Bonds then Outstanding may, with the approval of the Commission, appoint a trustee to administer the provisions of this Bond Order and, in such case, the Town shall adopt such supplements to this Bond Order as shall be necessary to effectuate such appointment.

ARTICLE X

SUPPLEMENTAL ORDERS

Section 10.01 Without Consent of Owners. The Board may amend this Bond Order in any respect prior to the delivery of the Initial Bonds. The Board may from time to time and at any time following delivery of the Initial Bonds adopt such orders supplemental hereto as shall not be inconsistent with the terms and provisions hereof (which supplemental orders shall thereafter form a part hereof):

(a) to cure any ambiguity or formal defect or omission or to correct any inconsistent provisions in this Bond Order or in any supplemental order, or

(b) to grant to or confer upon the Owners any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Owners, or

(c) to add to the conditions, limitations and restrictions on the issuance of Bonds under the provisions of this Bond Order other conditions, limitations and restrictions thereafter to be observed, or

(d) to add to the covenants and agreements of the Town in this Bond Order other covenants and agreements thereafter to be observed by the Town or to surrender any right or power herein reserved to or conferred upon the Town.

At least thirty (30) days prior to the adoption of any supplemental order for any of the purposes set forth in the immediately preceding paragraph of this Section, the Bond Registrar, at the expense of the Town, shall cause a notice of the proposed adoption of such supplemental order to be mailed, postage prepaid, to the Owner of each Bond at the address appearing on the registration books and to the Commission. Such notice shall briefly set forth the nature of the proposed supplemental order and shall state that copies thereof are on file at the principal office of the Bond Registrar for inspection by all Owners.

Section 10.02 With Consent of Owners. Subject to the terms and provisions contained in this Section, and not otherwise, the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time following delivery of any Bonds, anything contained in this Bond Order to the contrary notwithstanding, to consent to and approve the adoption of such order or orders supplemental hereto as shall be deemed necessary or desirable by the Board for the purpose of modifying, altering, amending, adding to or rescinding, in particular, any of the terms or provisions contained in this Bond Order or in any supplemental order; provided, however, that nothing herein contained shall permit, or be construed as permitting: (a) an extension of the maturity of the principal of or the interest on any Bond issued hereunder without the consent of the Owner of such Bond, or (b) a reduction in the principal amount of any Bond or the redemption premium or the rate of interest thereon without the consent of the Owner of such Bond, or (c) the creation of a lien upon or a pledge of Pledged Revenues other than the lien and pledge created by this Bond Order without the consent of the Owners of all Bonds Outstanding, or (d) a preference or priority of any Bond over any other Bond without the consent of the Owners of all Bonds Outstanding or (e) a reduction in the aggregate principal amount of the Bonds required for consent to any supplemental order without the consent of the Owners of all Bonds Outstanding.

Section 10.03 Obtaining Consent of Owners. If at any time the Board shall determine that it is necessary or desirable to adopt any supplemental order for any of the purposes of **Section 10.02** hereof, the Bond Registrar, at the expense of the Town, shall cause notice of the proposed adoption of such supplemental order to be mailed, postage prepaid, to each Owner at the address appearing on the registration books. Such notice shall briefly set forth the nature of the proposed supplemental order and shall state that copies thereof are on file at the principal office of the Bond Registrar for inspection by all Owners. The Bond Registrar shall not, however, be subject to any liability to any Owner by reason of its failure to cause the notice required by this Section to be mailed and any such failure shall not affect the validity of such supplemental order when consented to and approved as provided in this Section.

Whenever, at any time within one (1) year after the date of the first mailing of such notice, the Town shall deliver to the Bond Registrar an instrument or instruments in writing

purporting to be executed by the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding, which instrument or instruments shall refer to the proposed supplemental order described in such notice and shall specifically consent to and approve the adoption thereof in substantially the form of the copy thereof referred to in such notice, thereupon, but not otherwise, the Board may adopt such supplemental order in substantially such form, without liability or responsibility to any Owner, whether or not such Owner shall have consented thereto.

If the Owners of not less than a majority in aggregate principal amount of the Bonds Outstanding at the time of the adoption of such supplemental order shall have consented to and approved the adoption thereof as herein provided, no Owner shall have any right to object to the adoption of such supplemental order, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Board from adopting the same or from taking any action pursuant to the provisions thereof.

Upon the adoption of any supplemental order pursuant to the provisions of this Section, this Bond Order shall be and be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Bond Order of the Town, the Bond Registrar and all Owners of Bonds then Outstanding shall thereafter be determined, exercised and enforced in all respects under the provisions of this Bond Order as so modified and amended.

Bonds owned or held by or for the account of the Town shall not be deemed Outstanding and shall be excluded for the purpose of any consent or any calculation provided for in this Article.

Bonds delivered after the effective date of any action taken as in this Article provided may bear a notation by endorsement or otherwise in form approved by the Town and Bond Registrar as to such action. If the Town and Bond Registrar shall so determine, new Bonds modified to conform to any such action shall be prepared, authenticated and delivered to the Owner of any Bond then Outstanding without cost to such Owner in exchange for and upon surrender of such Outstanding Bond.

Section 10.04 Unanimous Consent of Owners. Notwithstanding anything contained in the foregoing provisions of this Article, the terms and provisions of this Bond Order or any order supplemental hereto and the rights and obligations of the Town and of the Owners of the Bonds may be modified or amended in any respect upon the adoption by the Board of an order to that effect, approved by the Bond Registrar, and the filing with the Board of the written consent of the Owners of all Outstanding Bonds. No notice to Owners shall be required.

ARTICLE XI

MISCELLANEOUS PROVISIONS

Section 11.01 Discharge of Bond Order. If, when the Bonds secured hereby shall have become due and payable in accordance with their terms or otherwise as provided in this Bond Order or are to be paid at maturity or shall have been duly called for redemption or irrevocable

instructions to call the Bonds for redemption shall have been given by the Town and the whole amount of the principal and the interest and redemption premium, if any, so due and payable upon all of the Bonds then Outstanding shall be paid or sufficient moneys, or Government Obligations the principal of and interest on which when due and payable, together with any other available moneys, will provide sufficient moneys, shall be held by an escrow agent in trust for such purpose, then and in that case the right, title and interest of the Owners of the Bonds secured hereby in the Pledged Revenues and funds mentioned in this Bond Order shall thereupon cease, terminate and become void, and the Town, in such case, may apply any and all balances remaining in any funds to any lawful purpose of the Town as the Board shall determine; otherwise this Bond Order shall be, continue and remain in full force and effect.

Section 11.02 Effect of Town's Undertakings. All of the covenants, stipulations, obligations and agreements contained in this Bond Order shall be deemed to be covenants, stipulations, obligations and agreements of the Town and of the Board to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations and agreements shall be binding upon the successor or successors thereof from time to time, and upon any officer, board, commission, authority, agency or instrumentality to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law.

Section 11.03 Notices. Any notice, demand, direction, request or other instrument authorized or required by this Bond Order to be given to or filed with the Town or the Bond Registrar shall be deemed to have been sufficiently given or filed for all purposes of this Bond Order if and when sent by registered mail, return receipt requested:

to the Town or to the Board, if addressed to Town of Nags Head, Nags Head Town Hall, PO Box 99, Nags Head, NC 27959, Attention: Town Manager;

to the Bond Registrar, if addressed to the address set forth in the applicable Series Resolution; and

to the Commission, if addressed to the Secretary, Local Government Commission, 325 N. Salisbury Street, Raleigh, North Carolina 27603-1385;

Section 11.04 Execution of Instruments by Owners and Proof of Ownership of Bonds. Any request, direction, consent or other instrument in writing required or permitted by this Bond Order to be signed or executed by Owners may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Owners in person or by agent appointed by an instrument in writing. Proof of the execution of any such instrument and of the ownership of Bonds shall be sufficient for any purpose of this Bond Order, and shall be conclusive in favor of the Bond Registrar with regard to any action taken by him under such instrument, if in accordance with the registration books.

Any request or consent of the Owner of any Bond shall bind every future Owner of the same Bond in respect of anything done by the Bond Registrar in pursuance of such request or consent.

Section 11.05 Parties Interested Herein. Except as herein otherwise expressly provided, nothing in this Bond Order expressed or implied is intended or shall be construed to confer upon any person other than the Town, the Bond Registrar and the Owners of the Bonds issued under and secured by this Bond Order any right, remedy or claim, legal or equitable, under or by reason of this Bond Order or any provision hereof, this Bond Order and all its provisions being intended to be and being for the sole and exclusive benefit of the Town, the Bond Registrar and the Owners.

Section 11.06 Limited Obligations. Nothing in the Bonds or in this Bond Order shall be construed as pledging either the faith and credit or the taxing power of the Town for their payment or as conveying or mortgaging the Project or any part thereof.

Section 11.07 No Recourse Against Members, Officers or Employees of Town or Commission. No recourse under, or upon, any statement, obligation, covenant or agreement contained in this Bond Order, or in any Bond or bond anticipation note hereby secured, or in any related document or certification whatsoever, or under any judgment obtained against the Town or the Commission, or by the enforcement of any assessment, or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any member, officer or employee of the Town or the Commission, either directly or through the Town for the payment for, or to, the Town or the Commission or any receiver of either of them, or for, or to, any Owner of Bonds or owner of bond anticipation notes or otherwise, of any sum that may be due and unpaid upon any Bond or bond anticipation note. Any and all personal liability of every nature, whether at common law or in equity or by statute or by constitution or otherwise, of any such member, officer or employee to respond by reason of any act or omission on his or her part or otherwise, for the payment for, or to, the Town or the Commission or any receiver of either of them, or for, or to, any Owner of Bonds or owner of bond anticipation notes or otherwise, of any sum that may remain due and unpaid upon the Bonds or bond anticipation notes hereby secured or any of them, is hereby expressly waived and released as an express condition of, and in consideration for, the adoption of this Bond Order and the issuance of the Bonds.

Section 11.08 Severability of Invalid Provisions. In case any one or more of the provisions of this Bond Order or of the Bonds issued hereunder shall for any reason be held to be illegal or valid, such illegality or invalidity shall not affect any other provision of this Bond Order or the Bonds, but this Bond Order and the Bonds shall be construed and enforced as if such illegal or invalid provision had not been contained herein or therein. In case any covenant, stipulation, obligation or agreement contained in the Bonds or in this Bond Order shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Town to the full extent permitted by law.

Section 11.09 Applicable Law. This Bond Order is adopted with the intent that the laws of the State of North Carolina shall govern its construction.

Section 11.10 Headings, Etc. Any headings preceding the texts hereof and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of

reference and shall not constitute a part of this Bond Order, nor shall they affect its meaning, construction or effect.

Section 11.11 Officers' Authority. The officers and agents of the Town are hereby authorized and directed to (a) do all the acts and things required of them by the Bonds and this Bond Order for the full, punctual and complete performance of all of the terms, covenants, provisions and agreements contained in the Bonds and this Bond Order and (b) make further agreements relating hereto so long as not inconsistent hereto or materially negative to the Town.

Section 11.12 Inconsistent Matters. All orders and resolutions of the Board, or parts thereof, which are in conflict or inconsistent with any provisions of this Bond Order are hereby repealed and declared to be inapplicable to the provisions of this Bond Order.

Section 11.13 Effective Date. This Bond Order shall be effective immediately upon its adoption.

APPENDIX A

RBC Bank (USA)

Attention:

Re: Disbursement from the Project Fund pursuant to **Section 4.03** of the bond order adopted by the Board of Commissioners for the Town of Nags Head, North Carolina (the "Town") on March 21, 2011 authorizing the issuance of special obligation bonds of the Town (the "Bond Order")

REQUISITION NO. _____

1. Amount; Payee. The Town intends to reimburse itself or to pay to _____ for _____, \$_____ as a Project cost from the Project Fund as provided in **Section 4.03** of the Bond Order [by wire transfer] [by check]. This Project cost has been properly incurred, is a proper charge against the Project Fund and has not been the basis of any previous disbursements.

2. Sufficiency of Remaining Moneys. The amount remaining in the Project Fund, together with interest earnings thereon and other available funds, will, after payment of the amount set forth in this requisition, be sufficient to pay all remaining Project costs and costs of issuing the Initial Bonds (as defined in the Bond Order) as presently estimated.

Very truly yours,

Title:

RBC Bank (USA) hereby agrees to payment of the foregoing amounts from the Project Fund.

RBC Bank (USA)

By: _____
Title: _____
Date: _____