



855

MEMORANDUM

Town of Nags Head
\$105,900.00

Enclosed are the closing documents from the \$105,900.00 financing for the Town of Nags Head, dated November 20, 2009. The following documents are included:

1. Amortization Schedule
2. Installment Financing Contract
3. Escrow Deposit Agreement
4. Resolution
5. 8038-G Tax Form

Thank you

Susan Kenser

Schedule A

Town of Nags Head

Compound Period Annual
 Nominal Annual Rate 2.63%

| | Event | Start Date | Amount | Number | Period | End Date |
|---|---------|------------|------------|--------|--------|------------|
| 1 | Loan | 20-Nov-09 | 105,900.00 | 1 | | |
| 2 | Payment | 20-Nov-09 | 36,220.25 | 3 | Annual | 11/20/2011 |

AMORTIZATION SCHEDULE - Normal Amortization 360 Day Year

| # | Date | Payment | Interest | Principal | Balance |
|--------------|-----------|------------|----------|------------|------------|
| Loan | 20-Nov-09 | | | | 105,900.00 |
| 1 | 20-Nov-09 | 36,220.25 | 0.00 | 36,220.25 | 69,679.75 |
| 2009 Totals | | 36,220.25 | 0.00 | 36,220.25 | |
| 2 | 20-Nov-10 | 36,220.25 | 1,832.58 | 34,387.67 | 35,292.08 |
| 2010 Totals | | 36,220.25 | 1,832.58 | 34,387.67 | |
| 3 | 20-Nov-11 | 36,220.25 | 928.17 | 35,292.08 | 0.00 |
| 2011 Totals | | 36,220.25 | 928.17 | 35,292.08 | |
| Grand Totals | | 108,660.75 | 2,760.75 | 105,900.00 | |

Last interest amount decreased by 0.01 due to rounding.

INSTALLMENT FINANCING CONTRACT

\$105,900.00

between

RBC BANK (USA)
as the Lender

and

Town of Nags Head
as the Town

Dated: November 20, 2009

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INSTALLMENT FINANCING CONTRACT
EQUIPMENT

THIS INSTALLMENT FINANCING CONTRACT, dated as of November 20, 2009 (the "Contract"), by and between RBC BANK (USA), a North Carolina banking corporation (the "Bank"); and TOWN OF NAGS HEAD, a body politic and corporate of the State of North Carolina (the "Town");

WITNESSETH:

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

WHEREAS, the Town has the power, pursuant to Section 160A-20 of the General Statutes of North Carolina, to enter into installment contracts to finance the purchase of personal property, including property to be affixed or attached to real estate as fixtures; and

WHEREAS, the Bank desires to advance certain funds to enable the Town to finance the purchase and installation of the Equipment (as hereinafter defined); and

WHEREAS, the Town desires to obtain such advance from the Bank and to purchase and install the Equipment pursuant to the terms and conditions hereinafter set forth; and

WHEREAS, the obligation of the Town to make Installment Payments (as hereinafter defined) and other payments required under Section 3 hereof shall constitute a limited obligation payable solely from currently budgeted appropriations of the Town and shall not constitute a pledge of the faith and credit of the Town within the meaning of any constitutional debt limitation or as otherwise prohibited by the North Carolina Constitution; 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 moneys due under this Contract; and

WHEREAS, the Bank and the Town each have duly authorized the execution and delivery of this Contract.

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

SECTION 1. DEFINITIONS

For purposes of this Contract, the following definitions will apply:

1.1. "Equipment" means all of the property described in Exhibit A attached hereto, including any Equipment to be affixed to or attached to real estate as fixtures.

1.2. "Escrow Deposit Agreement" means the Escrow Deposit Agreement dated as of November 20, 2009 by and between the Town and the Bank pursuant to which the Bank agrees to hold the Escrow Funds on behalf of Town and to advance such Escrow Funds in accordance with the terms thereof.

1.3. "Escrow Fund" means the funds deposited by the Town with the Bank pursuant to the terms of the Escrow Deposit Agreement.

1.4. "Installment Payments" means those payments made by the Town to the Bank as described in Section 3 of this Contract and in the Payment Schedule.

1.5. "Loan Amount" means the amount described in Exhibit B hereto which will be advanced by the Bank to enable the Town to finance the purchase and construction, installation or repair of the Equipment, under the terms of this Contract.

1.6. "Net Proceeds," when used with respect to any proceeds from policies of insurance required hereunder or proceeds of any condemnation award arising out of the condemnation of all or any portion of the Equipment, 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.

1.7. "Payment Schedule" means the document labeled "Payment Schedule" attached hereto as Exhibit B and incorporated herein by reference, which describes the Town's Installment Payments.

1.8. "Prime Rate" means the Bank's prime rate, which is one of the Bank's variable rate indices for credit extensions and is set by the Bank at its discretion based on the Bank's perception of market interest rate levels, trends and general economic conditions. It is not tied to any specific index published by any third party and is not represented by the Bank to be the lowest rate at which the Bank extends credit.

SECTION 2. ADVANCE OF LOAN AMOUNT

The Bank agrees to advance the Loan Amount to the Town and the Town agrees to borrow the Loan Amount from the Bank to be applied in accordance with the terms and conditions of this Contract. The proceeds of the Loan Amount shall be used to purchase and to install, construct or repair the Equipment. The advance by the Bank shall be made by the deposit by the Bank to the Escrow Fund of the Loan Amount. The Loan Amount may be invested pending disbursement, and shall be disbursed to acquire and to install, construct or repair the Equipment in accordance with the Escrow Deposit Agreement. The Town shall pay any additional sums necessary to purchase and install, construct or repair the Equipment

and shall provide evidence of the payment of such additional sums to the Bank upon request.

SECTION 3. INSTALLMENT PAYMENTS AND OTHER PAYMENTS

3.1. Amounts and Times of Installment Payments and Other Payments. Subject to the provisions of Section 13 hereof entitled "Limited Obligation of the Town," the Town shall repay the Loan Amount in installments as provided in Exhibit B to this Contract. Each installment shall be deemed to be an Installment Payment and shall be paid in the amounts and at the times set forth in the Payment Schedule except as provided herein. Installment Payments shall be sufficient in the aggregate to repay the Loan Amount together with interest thereon at a per annum rate equal to the rate per annum described in Exhibit B hereto. A portion of each Installment Payment is interest.

Interest on the Loan Amount as set forth on Exhibit B is based upon a 360-day year, with twelve (12) thirty (30) day months. The amortization schedule is based on all payments being received by the Bank on the scheduled due date. Interest shall continue to accrue on any payment that is not paid when due until such payment is made.

3.2. Place of Payments. All payments required to be made to the Bank hereunder shall be made at the Bank's principal office or as may be otherwise directed by the Bank or its assignee.

3.3. Late Charges. Should the Town fail to pay any Installment Payment or any other sum required to be paid to the Bank within fifteen (15) days after the due date thereof, the Town shall pay a late payment charge equal to five percent (5%) of the delinquent payment.

3.4. Abatement of Installment Payments. Subject to Section 13 hereof entitled "Limited Obligation of the Town," there shall be no abatement or reduction of the Installment Payments or other payments by the Town for any reason, including but not limited to, any defense, recoupment, setoff, counterclaim, or any claim (real or contingent) arising out of or related to the Equipment. The Town assumes and shall bear the entire risk of loss and damage to the Equipment from any cause whatsoever, it being the intention of the parties that the Installment Payments and other payments shall be made in all events unless the obligation to make such Installment Payments and other payments is terminated as otherwise provided herein.

3.5. Prepayment of Installment Payments. The Town may prepay the Loan Amount in whole or in part at its option at any time upon giving the Bank not less than thirty (30) days written notice thereof, upon payment of the principal amount of the Loan Amount to be prepaid, interest accrued to the prepayment date and a payment premium equal to the Reinvestment Loss. "Reinvestment Loss" means the present value of the difference between (1) the amount that would have been realized by the Bank on the prepaid amount for the remaining term of the Contract at the Federal Reserve H.15 Statistical Release rate for the fixed-rate payers in the interest rate swaps for the a term corresponding to the term of the Contract, interpolated to the nearest month, if necessary,

that was in effect on the date of closing and (2) the amount that would be realized by the Bank by reinvesting such prepaid funds for the remaining term of the Contract at the Federal Reserve H.15 Statistical Release rate for fixed-rate payers in interest rate swaps, interpolated to the nearest month, that was in effect on the date fixed for prepayment; both discounted at the same interest rate utilized in determining the applicable amount for clause (2) above. Should the present value have no value or a negative value, the Town may prepay with no additional fee other than the minimum fee set forth below. Partial prepayments may be made subject to a prepayment charge based upon the same calculation methodology described above. Should the Federal Reserve no longer release rates for fixed-rate payers in interest rate swaps, the Bank may substitute the Federal Reserve H.15 Statistical Release with another similar index. The Bank shall provide the Town with a written statement explaining the calculation of the premium due, which statement shall, in absence of manifest error, be conclusive and binding on the Town. Notwithstanding the foregoing, any prepayment of the principal component of the Loan Amount, whether in whole or in part, will be subject to a minimum prepayment fee of 0.5% of the amount being prepaid, which minimum prepayment fee will be paid by the Town to the Bank at the time of prepayment of the principal component of the Loan Amount.

SECTION 4. NATURE OF CONTRACT

This Contract is an installment contract pursuant to Section 160A-20 and a security agreement under Article 9 of Chapter 25 (the "Uniform Commercial Code - Secured Transactions") of the General Statutes of North Carolina.

SECTION 5. RESPONSIBILITIES AND COVENANTS OF THE TOWN

5.1. Care and Use. The Town shall use the Equipment in a careful and proper manner, in compliance with all applicable laws and regulations, and, at its sole cost and expense or at the cost or expense of a third party other than the Bank, shall service, repair and maintain the Equipment so as to keep the Equipment in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear excepted, and shall replace any part of the Equipment as may from time to time become worn out, lost, stolen, destroyed or damaged or is unfit for use. Any and all additions to or replacements of the Equipment and all parts thereof shall constitute accessions to the Equipment and shall be subject to all terms and conditions of this Contract and included in the term "Equipment" as used in this Contract. If requested by the Bank, the Town shall enter into or cause to be entered into, and maintained in full force and effect during the term of this Contract, manufacturer's or supplier's standard maintenance contracts satisfactory to the Bank covering the Equipment and shall comply with all of its obligations thereunder. The Town shall furnish evidence to the Bank upon Bank's request of such signed maintenance contracts at or prior to the date of this Contract and the payment of all charges and premiums therefor.

5.2. Inspection. The Bank shall have the right upon reasonable prior notice to the Town to enter into and upon the premises where the Equipment is located to inspect the Equipment and observe its use during normal business hours.

5.3. Alterations. Without the prior written consent of the Bank, which consent shall not be unreasonably withheld, the Town shall not make any alterations, modifications or attachments to the Equipment which cannot be removed without materially damaging the functional capabilities or economic value of the Equipment.

5.4. Utilities. The Town shall pay, when due, all charges for utility services used in connection with the Equipment. There shall be no abatement of the Installment Payments on account of interruption of any such services.

5.5. Taxes. The Town shall pay, when due, any and all taxes levied by any governmental body as a result of the Town's ownership, possession, or use of the Equipment or as a direct or indirect result of the purchase of the Equipment by the Town.

5.6. Risk of Loss. Subject to the provisions of Section 13 hereof entitled "Limited Obligation of the Town," the Town shall bear all risk of loss to and condemnation of the Equipment. In the event of loss or damage to the Equipment, the Town shall either (a) continue to make the Installment Payments due hereunder and repair or replace the Equipment or (b) prepay in full the principal components of the outstanding Installment Payments in accordance with Section 3.5 hereof. Said repair or replacement of the Equipment shall meet with the satisfaction of the Bank.

5.7. 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 that event, the Bank shall be immediately reimbursed by the Town for such payments and for any costs and expenses, legal or otherwise, associated with the payments or other performance by the Bank, with interest thereon at a per annum rate equal to the Prime Rate in effect on the last business day of the calendar month preceding the payment (but not exceeding the maximum rate, if any, permitted by applicable law).

5.8. Financial Statements. The Town agrees that it will furnish the Bank current audited financial statements (as soon as practicable after the Town's acceptance thereof) and the Town's annual budget as submitted or approved, and permit the Bank or its agents and representatives to inspect the Town's books and records and make extracts therefrom at its own expense during regular business hours and in a manner which will not disrupt the normal business routine of the Town. Town shall furnish to Bank current financial statements at such reasonable times as the Bank may request. 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.

5.9. Other Responsibilities and Conditions. Simultaneously with the execution of this Contract and prior to the advancement of any funds hereunder by the Bank, the Town shall cause to be provided to the Bank the following:

(a) An Incumbency and Authorization Certificate in the form of Exhibit C attached hereto;

(b) An Opinion Letter of counsel for the Town in the form of Exhibit D attached hereto;

(c) A certificate in the form of Exhibit E attached hereto or other proof of insurance on the Equipment satisfactory to the Bank;

(d) Certified copies of resolutions of the Town's governing body authorizing the Town to enter into this Contract and carry out its terms;

(e) Properly completed UCC financing statements as required by Section 6.1 hereof sufficient in form and substance and filed in all necessary locations to perfect a first lien in the Equipment;

(f) An Escrow Deposit Agreement in a form satisfactory to the Bank; and

(g) A completed form 8038-G to be filed with the Internal Revenue Service on behalf of the Town;

(h) If required by the Bank, an opinion letter from tax counsel, in form and substance and from an attorney satisfactory to the Bank, which states that the interest on the Town's obligations under the Contract will not be included in the gross income of the Bank for Federal and North Carolina income tax purposes, will not be an item of tax preference for purposes of the Federal alternative minimum income tax, if applicable and that such obligations are "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986;

(i) Executed originals of any other documents and instruments required by Bank in connection with this Contract.

5.10. Special Tax Covenants. The Town covenants that: (a) it will make no use of the monies advanced by the Bank (the "proceeds") which would cause this Contract to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), or the Treasury Regulations promulgated thereunder; (b) so long as the Contract remains in effect, the Town will comply with the requirements of the Code and the applicable Treasury Regulations promulgated thereunder and will not take or omit to take any action which will cause the interest paid or payable under this Contract to be includible in the gross income of the registered owner hereof; (c) the Equipment shall be used exclusively for essential governmental purposes of the Town and no use shall be made of the proceeds or of the Equipment, directly or indirectly, which would cause this Contract to be a "private activity bond" within the meaning of Section 141 of the Code; (d) no part of the payment of principal or interest under this Contract is or shall be guaranteed, in whole or in part, by the United States or any agency or instrumentality thereof; (e) no portion of the proceeds shall be used, directly or indirectly, in making loans the payment of principal or interest with respect to which are to be guaranteed, in whole or in part, by the United States or any agency or any

instrumentality thereof; and (f) the Town shall not lease or otherwise make any of the Equipment available to any entity if such lease or other availability would cause the interest portion of the Installment Payments to be included in the gross income of the Bank under the Code for income tax purposes.

5.11. Appropriations of Payments. (a) The Town reasonably believes that funds sufficient to make all Installment Payments during the Term of this Contract can be obtained. While recognizing that it is not empowered to make any binding commitment to make Installment Payments or any other payments beyond its current fiscal year, the Governing Body of the Town in authorizing the execution of this Contract has stated its intent to make annual appropriations sufficient to make the Installment Payments and has recommended that future governing bodies continue to do so during the Term of this Contract.

(b) The Manager shall include in the initial proposal for each of the Town's annual budgets the amount of all Installment Payments coming due during the fiscal year to which such budget is applicable. Notwithstanding that the Manager includes an appropriation for Installment Payments in a proposed budget, the Town may terminate all its obligations hereunder by not appropriating sufficient funds to make the scheduled Installment Payments. In the event the Governing Body determines not to appropriate in its budget an amount sufficient to pay all Installment Payments coming due in the applicable fiscal year, the Governing Body shall adopt a resolution specifically deleting such appropriation from the proposed budget for that fiscal year. Such resolution shall state the reasons for such deletion, shall be adopted by a vote identifying those voting for and against and abstaining from the resolution, and shall be recorded in the minutes of the Governing Body. A copy of such resolution shall be promptly sent to the Bank. Such failure to appropriate shall constitute an Event of Default.

(c) The Budget Officer shall deliver to the Bank, within (15) days after the beginning of each Fiscal Year, a certificate stating whether an amount equal to the Installment payments and estimated Additional Payments coming due during the next Fiscal Year has been appropriated by the Town in such budget for such purposes. If such amount has not been so appropriated, the Budget Officer shall send a copy of such certificate to the LGC, to the attention of its Secretary, at the Albermarle Building, 325 North Salisbury St., Raleigh, NC 27603-1385.

SECTION 6. SECURITY INTEREST; LIENS

6.1. Security Interest. The Town hereby grants to the Bank a security interest in the Equipment and in any and all additions, accessions, repairs, replacements, substitutions, and modifications to the Equipment, and all proceeds of all the foregoing, including any insurance proceeds paid because of loss or damage to the Equipment to the extent necessary to secure the Town's payment obligations to the Bank under this Contract. The Town shall cause to be filed, at the Town's expense, financing statements and other related documents that are necessary under Article 9 of Chapter 25 (the "Uniform Commercial Code - Secured Transactions") of the General Statutes of North Carolina to perfect a first lien security interest by filing and to maintain that first lien

security interest in perfected form. If the Equipment is or includes one or more motor vehicles, the ownership of which is or are evidenced by a certificate of title(s), the Town shall cause the Bank's lien to be properly shown on such title(s) as a first lien security interest.

The Equipment is and shall throughout the term of this Contract be and remain personal property, regardless of whether the Equipment is now or may become in any manner affixed or attached to real estate or any building or fixtures on real estate. No portion of the Equipment may be affixed or attached to real estate or any building or fixtures on real estate. If the Equipment is permanently located on any real estate, not owned in fee simple by the Town, or if such real estate, is subject to any liens, the Town shall obtain a waiver of any rights in and to the Equipment (including the rights of levy and distraint) from the person who gives the Town permission to use the real property on which the Equipment is located and from any holder of liens on the real estate on which the Equipment is located.

6.2. Liens. The Town shall not directly or indirectly create, incur, assume or suffer to exist any lien, charge, security interest, encumbrance or claim on or with respect to the Equipment (except the security interest granted to the Bank). The Town shall promptly, at its own expense, take such action as may be necessary to duly discharge any such 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 it in order to discharge or remove any such lien, security interest, encumbrance or claim.

SECTION 7. INSURANCE AND UNFORESEEN LOSSES

7.1. Insurance. The Town shall obtain and maintain, at its expense, at all times until termination of this Contract a primary policy of insurance covering the Equipment and providing the insurance protection described in this Section. The Town shall maintain at its own expense fire, casualty, public liability, property damage and theft insurance, and such other insurance in such amounts and with such deductibles, if permitted, as required by the Bank from time to time. The Equipment shall be insured in an amount at least equal to its replacement value. All such insurance shall be maintained with such insurance company or companies as shall be satisfactory to the Bank and shall provide that losses shall be payable to the Bank and the Bank shall be named as an additional insured with respect to all such insurance. The Town shall deliver to the Bank the policies of insurance or duplicates thereof or other evidence satisfactory to the Bank of such insurance coverage. Each insurer shall agree by endorsement upon the policy or policies issued by it that (i) it will give thirty (30) days prior written notice to the Bank of the cancellation or material modification of such policy; and (ii) the coverage of the Bank shall not be terminated, reduced or affected in any manner regardless of any breach or violation by the Town of any warranties, declarations and conditions of such insurance. The Town agrees to cooperate fully in all accident insurance investigations, claims and litigation proceedings. The Town shall cooperate fully with the Bank in filing any proof of loss with respect to any insurance policy described above. In no event shall the Town voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim with respect to the Equipment without the written consent of the Bank.

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.

7.2. Condemnation. Any condemnation award paid as a result of the exercise of the power of eminent domain over the Equipment or any part thereof by any governmental body or any person or entity acting under governmental authority, which is not utilized by the Town to repair or replace the Equipment to the satisfaction of the Bank shall be paid to the Bank in accordance with Sections 3.5 and 5.6 hereof.

SECTION 8. WARRANTIES AND REPRESENTATIONS OF THE TOWN

The Town warrants and represents to the Bank (all such representations and warranties being continuing) as follows:

(a) The Town is a public body politic duly created and existing under the laws of the State of North Carolina as a political subdivision of the State of North Carolina, and has all powers necessary to enter into the transactions contemplated by this Contract and to carry out its obligations hereunder;

(b) This Contract and all other documents relating hereto, have been duly and validly authorized, approved, executed and delivered by the Town, and the performance by the Town of its obligations under such documents has been approved and authorized under all laws, regulations and procedures applicable to the Town, including, but not limited to, compliance with all applicable public meeting and bidding requirements, and the transactions contemplated by this Contract and all other documents relating hereto constitute a public purpose for which public funds may be expended pursuant to the Constitution and laws of the State of North Carolina, and, assuming due authorization, execution and delivery hereof by the Bank, constitute valid, legal and binding obligations of the Town, enforceable in accordance with their respective terms, except as enforcement thereof may be limited by general principles of equity or by bankruptcy, insolvency and other laws affecting the enforcement of creditors' rights generally and as those other laws may be further limited by the provisions of Section 160A-20 of the General Statutes of North Carolina, as amended;

(c) No approval or consent is required from any governmental authority with respect to the entering into or performance by the Town of this Contract and the transactions contemplated hereby, or, if any such approval is required, it has been duly obtained;

(d) 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 or any other documents relating hereto, or the performance of the Town's obligations hereunder, and compliance with the provisions hereof, under the circumstances contemplated hereby, 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) 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;

(e) There are no liens or encumbrances on the Equipment other than the lien created by this Contract;

(f) A resolution relating to the performance by the Town of this Contract and the transactions contemplated hereby has been duly adopted, is in full force and effect, and has not been in any respect amended, modified, revoked or rescinded;

(g) The purchase of the Equipment is essential to the proper, efficient and economical operation of the Town and the delivery of its service and the Equipment will provide an essential use and permit the Town to carry out public functions that it is authorized by law to perform;

(h) The security interest granted by the Town to the Bank in the Equipment shall have been duly perfected and shall constitute a first lien security interest in the Equipment; and

(i) The Town has designated its obligation hereunder as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code. The Town (i) has not, does not expect to and shall not issue, directly or indirectly through subordinate units, more than \$30,000,000 of tax-exempt obligations (other than private activity bonds) during this calendar year and (ii) has not and shall not designate during this calendar year more than \$30,000,000 of its obligations (or of its subordinate units) as "qualified tax-exempt obligations".

SECTION 9. INDEMNIFICATION

To the extent permitted by applicable law, the Town hereby agrees to indemnify protect and save the Bank, the Escrow Agent and the members and employees of each of the foregoing harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including attorneys fees, arising out of, connected with, or resulting directly or indirectly from the Equipment, including without limitation, the possession, condition or use thereof. The indemnification arising under this section shall continue in full force and effect notwithstanding the payment in full of all obligations under this Contract.

SECTION 10. DISCLAIMER OF WARRANTIES

10.1. No Representations by the Bank. The Town acknowledges that it has inspected the Equipment and found the Equipment to be satisfactory and acknowledges and agrees that it has selected the Equipment based upon its own judgment and disclaims any reliance upon any statements or representations made by the Bank with respect thereto.

10.2. Disclaimer By the Bank. THE BANK MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE EQUIPMENT OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT.

SECTION 11. DEFAULT AND REMEDIES

11.1. Definition of Event of Default. The Town shall be deemed to be in default hereunder upon the happening of any of the following events of default (each, an "Event of Default"):

(a) The Town shall fail to make any Installment Payment or fail to pay any other sum hereunder when due, in either case within ten (10) days after receipt of written notice of such failure; or

(b) The Town shall fail to perform or observe any term, condition or covenant of this Contract or shall breach any warranty by the Town herein or therein contained; or

(c) Proceedings under any bankruptcy, insolvency, reorganization or similar litigation shall be instituted by or against the Town, or a receiver, custodian or similar officer shall be appointed for the Town or any of its property, and such proceedings or appointments shall not be vacated or fully stayed after the institution or occurrence thereof; or

(d) Any warranty, representation or statement made by the Town herein or in any other document executed or delivered in connection herewith is found to be incorrect or misleading in any material respect on the date made; or

(e) An attachment, levy or execution of a security interest or lien, other than the lien and security interest of the Bank, is levied upon or against the Equipment.

11.2. Remedies on Default. Subject to Section 13 hereof entitled "Limited Obligation of the Town," upon 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 entire principal amount of the Installment Payments and all accrued interest and other charges immediately due and payable without notice or demand to the Town;

(b) Proceed by appropriate court action to enforce performance by the Town of the applicable covenants of this Contract or to recover for the breach thereof;

(c) Exercise all the rights and remedies of a secured party or creditor under the Uniform Commercial Code of the State of North Carolina and the general laws of the State of North Carolina with respect to the enforcement of the security interest granted or reserved hereunder, including, without limitation, to the extent permitted by law, take

possession of any collateral without any court order or other process of law and without liability for entering the premises and 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 costs, toward the balance due under this Contract and, thereafter, shall pay any remaining proceeds to the Town;

(d) Take possession of any proceeds of the Equipment, including Net Proceeds; or

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

11.3. Further Remedies. In connection with the exercise by the Bank of its remedies under Section 11.2(d), Town agrees to deliver the Equipment, at its own expense, to any location within North Carolina designated by the Bank. 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. The Town agrees to pay to the Bank all court costs and reasonable attorney fees incurred by the Bank in enforcing the Bank's rights and remedies under this Contract.

SECTION 12. ASSIGNMENT

12.1. Assignment by the Town. The Town agrees not to sell, assign, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance upon or against any interest in this Contract or the Equipment (except for the lien and security interest of the Bank therein) without the Bank's prior written consent.

12.2. Assignment by the Bank. The Bank may, at any time and from time to time, assign all or any part of its interest in the Equipment and/or this Contract, including without limitation, the Bank's rights to receive the Installment Payments due and to become due hereunder. Any assignment made by the Bank or any subsequent assignee may be made only to a bank, insurance company, or similar financial institution or other entity approved by the LGC. No such assignment shall grant or purport to grant any greater interest or rights than those held by the Bank pursuant to this Contract. The Town agrees that this Agreement may become part of a pool of obligations and 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 certificate evidencing participation interests in this Contract, but only if such certificates are sold to a bank, insurance company or similar financial institution or other entity assigned by the LGC. The Bank or its designees may assign or reassign either this entire Contract or a partial interest herein, subject to the foregoing restrictions. All assignments by the Bank shall be subject to the following rules and conditions:

(a) The Bank shall send written notice of the assignment and its effective date to the Town before it makes the assignment. Such notification shall be forwarded to the Town at least 30 days before the effective date of the assignment. The notification shall include an executed copy of the assignment document and shall specify the assignee's name and address, and shall provide the Town with instructions for making payments after the effective date of the assignment. The requirement of 30 days notice may be waived in writing by the Town.

(b) The Town shall not be obligated to make payments to anyone other than the Bank until the notification specified in part (a) of this Section is received by the Town or until the effective date of the assignment, whichever is later. Should the Town incorrectly make payments to the Bank after the conditions specified in the preceding sentence are met, the Bank shall return those payments to the Town.

(c) When it receives the notification specified in part (a) of this section, the Town shall send a written acknowledgement of the same to the Bank and shall record the assignment in the Town's "book entry system".

(d) The Bank shall require each of its assignees (1) to conform to the notification requirements of this section in the event of further assignments, and (2) to require such conformity from that assign's assignees.

(e) The Town shall execute, at the Bank's request, a notice of assignment and other related documents that are reasonably necessary to protect the security interest in the Equipment or in this Contract and to maintain those security interests in perfected form.

After the giving of notice described above to the Town, 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 acknowledgement shall in no way be deemed necessary to make the assignment effective.

SECTION 13. 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 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 OF NORTH CAROLINA. THIS CONTRACT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE TOWN TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE SOLE DISCRETION OF THE TOWN FOR ANY FISCAL YEAR IN WHICH THIS AGREEMENT IS IN EFFECT; PROVIDED, HOWEVER, ANY FAILURE OR REFUSAL BY THE TOWN TO APPROPRIATE FUNDS, WHICH RESULTS IN THE FAILURE BY THE TOWN TO MAKE ANY PAYMENT COMING

DUE HEREUNDER WILL IN NO WAY OBVIATE 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 UNDER THIS CONTRACT, AND THE TAXING POWER OF THE TOWN IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY MONEYS DUE UNDER THIS CONTRACT.

No provision of this Contract shall be construed to pledge or to create a lien on any class or source of the Town's moneys other than the Escrow Fund created pursuant to the Escrow Deposit Agreement referenced in Section 5.9(f). To the extent of any conflict between this Section and any other provision of this Contract, this Section shall take priority.

SECTION 14. TAX-EXEMPT INTEREST

14.1. Intent of Parties. It is the intention of the parties hereto that the interest portion of the Installment Payments paid by the Town to the Bank under this Contract shall be tax-exempt under Section 103 of the United States Internal Revenue Code.

14.2. Determination or Event of Taxability. If at any time there is a Determination of Taxability or Event of Taxability, as such terms are hereinafter defined, the principal portion of the indebtedness of the Town to the Bank which is represented by the Installment Payments shall, from and after the Date of Taxability, as hereinafter defined, bear interest at the Prime Rate, as the Prime Rate fluctuates from time to time, plus one percent (1%) per annum (the "Alternative Rate of Interest") payable from the Date of Taxability to such time. In such event, the Town also shall be required to pay to the Bank all amounts, if any, which may be necessary to reimburse the Bank for any interest, penalties or other charges assessed by the Internal Revenue Service and the Department of Revenue of the State of North Carolina against the Bank by reason of the Bank's failure to include the interest portion of the Installment Payments in its gross income for income tax purposes. Installment Payment amounts under this Contract shall be increased as a result of the increased interest rate and additional interest as a result of said rate increase on all previous payments shall be paid to the Bank upon demand thereof. The Town shall pay to the Bank the above-mentioned Alternative Rate of Interest notwithstanding any transfer by the Bank or payment or prepayment by the Town prior to the date such Determination of Taxability was made.

An Event of Taxability shall mean any event, occurrence or situation, resulting from an action, or failure to act, by the Town, the effect of which is to cause the interest portion of the Installment Payments to be includible in the gross income of the Bank for federal income tax purposes. A Determination of Taxability shall mean a determination that the interest portion of the Installment Payments is included in gross income of the Bank for federal income tax purposes, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following: (a) the date on which the Bank is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that, as a consequence of an action, or failure to act, by the Town, the interest

portion of the Installment Payments (hereinafter called "Interest") is included in the gross income of the Bank for federal income tax purposes; (b) the date on which the Town receives notice from the Bank that the Bank has been advised (i) in writing that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to the Bank which asserts, in effect, that Interest received by the Bank is included in the gross income of the Bank for federal income tax purposes, as a result of an action, or failure to act, by the Town, or (ii) by an opinion of counsel received by the Bank which concludes, in effect, that Interest is included in the gross income of the Bank for federal income tax purposes as a result of an action, or failure to act, by the Town; (c) the day on which the Town is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that there has been issued a public or private ruling of the Internal Revenue Service that the Interest is included in the gross income of the Bank for federal income tax purposes as a result of an action, or failure to act, by the Town; or (d) the day on which the Town is advised in writing by counsel to the Bank that a final determination, from which no further right of appeal exists, has been made by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the Town has been given written notice and an opportunity to participate and defend that the Interest is included in the gross income of the Bank for federal income tax purposes, as a result of an action, or failure to act, by the Town.

The Date of Taxability shall mean the first date upon which Interest is included in the gross income of the Bank for federal income tax purposes as a result of an Event of Taxability or a Determination of Taxability.

If at any time there is a Change in Deductibility (hereinafter defined), the interest rate payable hereunder shall increase to the rate which will provide to the Bank the effective yield which it would have received had there not been a Change in Deductibility. A "Change in Deductibility" means any determination by the Internal Revenue service or any court of competent jurisdiction that the obligation of the Town hereunder is not a "qualified tax-exempt obligation" within the meaning of Section 265(b) (3) of the Internal Revenue Code as a result or as a consequence of (i) an action, or failure to act, by the Town or (ii) a breach of any representation or warranty made by the Town to the Bank relating to the status of this Contract as a qualified tax-exempt obligation as defined above, including but not limited to the representations and warranties contained in Section 8(i) of this Contract.

14.3. Duty to Notify the Bank. The Town agrees to give prompt written notice to the Bank upon the Town's receipt of any oral or written notice or information from any source whatsoever to the effect that an Event of Taxability or a Determination of Taxability has occurred.

SECTION 15. MISCELLANEOUS

15.1. 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 conditions herein shall not be construed as a waiver of any other breach of the same or any other term, covenant or condition herein.

15.2. Severability. In the event any portion of this Contract shall be determined to be invalid under any applicable law, such provision shall be deemed void and the remainder of this Contract shall continue in full force and effect.

15.3. Governing Law. This Contract shall be construed, interpreted and enforced in accordance with the laws of the State of North Carolina.

15.4. Notices. Any and all notices, requests, demands, and other communications given under or in connection with this Contract shall be effective only if in writing and either personally delivered or mailed by registered or certified United States mail, postage prepaid, return receipt requested, addressed to the address of the recipient as described in this document, and shall be deemed to be received on the third day after the day it was deposited in the United States mail or on the day it was actually received, whichever is earlier.

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

15.6. Entire Contract. This Contract, together with the Exhibits and attachments hereto, constitutes the entire Contract between the parties and this Contract shall not be modified, amended, altered or changed except by written agreement signed by the parties.

15.7. Binding Effect. Subject to the specific provisions of this Contract, this Contract shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

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

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

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed as of the day and year first above written.

TOWN OF NAGS HEAD



By: M. Renee Cahoon

Title: Mayor

Attest: [Signature]

Title: Town Clerk

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

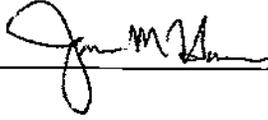
[Signature]
Town Finance Director

Town's Address:

Town of Nags Head
PO Box 99
Nags Head, NC 27959
Attn: Kim Kenny

Signature page to Installment Financing Contract between the Town of Nags Head, North Carolina (the "Town") and RBC Bank (USA) (the "Bank") dated November 20, 2009

RBC BANK (USA)

By: 

Title: Bank Officer

Bank's Address:

RBC Bank (USA)
301 Fayetteville Street, Suite 1100
Raleigh, North Carolina 27601
Attn: James M. Hansen

Signature page to Installment Financing Contract between the Town of Nags Head, North Carolina (the "Town") and RBC Bank (USA) (the "Bank") dated November 20, 2009

EXHIBIT A

DESCRIPTION OF EQUIPMENT

Installment Finance Contract Date: November 20, 2009

Town: Town of Nags Head

Loan Amount: \$105,900.00

| Description and Serial Number | Department and Location of Equipment Purpose or Function After Delivery |
|----------------------------------|--|
|----------------------------------|--|

| | |
|-----------------------|--|
| Two (2) pickup trucks | |
|-----------------------|--|

| | |
|---------------------|--|
| Two (2) patrol cars | |
|---------------------|--|

TOWN OF NAGS HEAD

By: 

Title: Mayor

Date: 11/3/09

Signature page to Installment Financing Contract between the Town of Nags Head, North Carolina (the "Town") and RBC Bank (USA) (the "Bank") dated November 20, 2009

EXHIBIT B

PAYMENT SCHEDULE

Installment Financing Contract Date: November 20, 2009

Town: Town of Nags Head

Loan Amount: \$105,900.00

Interest Rate/Payment Terms

X Fixed Rate 360-day year

The interest rate is 2.63% per annum fixed. Interest is calculated and imposed on the unpaid balance of the Loan Amount based on the payment schedule described herein. The Loan Amount plus interest shall be repaid by Town to Bank in three (3) equal consecutive annual installments of principal and interest in the amount of \$36,220.25 each, commencing November 20, 2009, and the final payment shall include all unpaid principal and interest.

* The amortization schedule is subject to change based on the closing and funding date of this financing. Therefore, an amortization schedule will be sent with copies of your documents after closing.

Town: TOWN OF NAGS HEAD

By: M. Reed Cahoon

Title: Mayor

Date: 11/13/09

Signature page to Installment Financing Contract between the Town of Nags Head, North Carolina (the "Town") and RBC Bank (USA) (the "Bank") dated November 20, 2009

EXHIBIT C

INCUMBENCY AND AUTHORIZATION CERTIFICATE

In connection with the execution and delivery by the Town of Nags Head (the "Town") of an Installment Financing Contract dated November 20, 2009 with RBC Bank (USA), I, Carolyn F. Morris, do hereby certify that I am the duly appointed Town Clerk of the Town of Nags Head, a political subdivision and body corporate and politic existing under the laws of the State of North Carolina, and that I have custody of the official minutes and other pertinent records of that body.

I further certify that:

(1) As of the date of this certificate, the persons named below hold the positions listed opposite their names.

(2) The persons named below were authorized by a resolution of the governing body of Town of Nags Head, passed in a regular meeting held on 11/4/09, at 9:00, to execute and deliver on behalf of the Town the aforesaid Installment Financing Contract to evidence the obligation of the Town in connection with the purchase of personal property, including any fixtures (the "Equipment") and the creation of a security interest in the Equipment, together with all other documents and instruments required and contemplated by said Installment Financing Contract, and to carry out the terms of all of the foregoing, all under and pursuant to the provisions of Section 160A-20 of the General Statutes of North Carolina, as amended. Attached hereto is a true, complete and accurate copy of such resolution. Such resolution has not been amended, rescinded, terminated or otherwise revoked and is in full force and effect.

(3) The persons named below were on the date or dates of the execution of the Contract, and are on the date hereof, the duly elected and qualified incumbents of the offices of the Town appearing at the left of their respective names and the signatures appearing at the right of their respective names are their genuine signatures.

(4) The signatures set opposite the names and positions of the persons named below are such persons' true and authentic signatures.

| Name | Position | Signature |
|------------------------|--------------|------------------------|
| <u>M. Renee Cahoon</u> | <u>Mayor</u> | <u>M. Renee Cahoon</u> |
| _____ | _____ | _____ |

Signature page to Installment Financing Contract between the Town of Nags Head, North Carolina (the "Town") and RBC Bank (USA) (the "Bank") dated November 20, 2009

(5) The Seal of the Town is the same seal of which an impression appears below and on the Contract.

(6) No litigation of any kind is now pending or, to the best of our information, knowledge and belief, threatened to restrain or enjoin the execution or delivery of the Contract, or in any manner questioning the proceedings and authority under which the Contract has been executed and delivered, or affecting the validity of such documents.

(7) The Town has obtained the proper authorization to execute and deliver the Contract and all related documents necessary to complete the transaction contemplated thereby.

(8) The Contract has been duly authorized, executed and delivered by the Town. Assuming the due authorization, execution and delivery of such agreement by the Bank, such agreement constitutes a legal, valid and binding agreement of the Town enforceable against the Town in accordance with its terms. Such obligation does not constitute a pledge of the faith and credit of the State of North Carolina or of any county, city or other political subdivision of the State, including the Town. The rights and enforceability of the obligations of the Town under such agreement may be limited or otherwise affected by (a) bankruptcy, insolvency, reorganization, moratorium or other laws affecting the rights of creditors generally and (b) principles of equity, whether considered at law or in equity.

There has been no material adverse change in the financial condition of the Town since the date of the last annual financial statement of the Town provided to the Bank.

IN WITNESS WHEREOF, I have duly executed this certificate and have affixed to it the seal of Town of Nags Head on this 20 day of November, 2009



Carolyn F. Morris
Carolyn F. Morris, Town Clerk

Signature page to Installment Financing Contract between the Town of Nags Head, North Carolina (the "Town") and RBC Bank (USA) (the "Bank") dated November 20, 2009

HORNTHAL, RILEY, ELLIS & MALAND, L.L.P.
ATTORNEYS AT LAW

POST OFFICE BOX 220

ELIZABETH CITY, NORTH CAROLINA 27907-0220

CLAYTON W. CHEEK
M. H. HOOD ELLIS
DAVID C. GADD
BENJAMIN M. GALLOP
ROBERT B. HOBBS, JR.
L. P. HORNTHAL, JR.
L. PHILLIP HORNTHAL, III
A. VANN IRVIN
JOHN D. LEIDY
MARK M. MALAND
W. BROCK MITCHELL
CHARLES W. OGLETREE*
DONALD C. PRENTISS
J. FRED RILEY*
MICHAEL P. SANDERS
THOMAS L. WHITE, JR.*

*OF COUNSEL

OFFICES:
301 EAST MAIN STREET
ELIZABETH CITY, NC 27909
TELEPHONE (252) 335-0871
TELEFAX (252) 335-4223
INTERNET: www.hrem.com
E-mail: hrem@hrem.com

OFFICES ALSO IN
NAGS HEAD, NC
&
COLUMBIA, NC

November 17, 2009

RBC Bank (USA)
301 Fayetteville Street, Suite 1100
Raleigh, North Carolina 27601

Re: Installment Financing Contract between the Town of Nags Head, North Carolina (the "Town") and RBC Bank (USA) (the "Bank")

We are acting as counsel to the Town in connection with the authorization and delivery of the above-referenced Installment Financing Contract (the "Contract"). The Town is entering the Contract to finance the acquisition by the Town of certain equipment, including any fixtures described therein (the "Equipment"). The Contract is being entered into by the Town pursuant to the provisions of Section 1 60A-20 of the General Statutes of North Carolina, as amended (the "Act"). This opinion is being rendered to the Bank in support of the obligation of Town of Nags Head under the Contract and the documents related thereto.

In connection with preparing this opinion, we have reviewed (a) the Constitution and laws of the State of North Carolina (the "State"), (b) certain proceedings taken by the governing body of the Town, (c) the form of the Contract, the Escrow Deposit Agreement dated November 20, 2009 between the Town and RBC Bank (USA) as Escrow Agent, and all other documents related thereto (collectively, the "Agreements"), and (d) such other information and documents as we have deemed appropriate.

Based upon the foregoing, we are of the opinion, as of the date hereof and under existing law, that:

1. The Town is a body politic and corporate duly existing under the Constitution and laws of the State. The Town has all necessary power and authority to (a) undertake the Project, (b) adopt the Resolutions, and (c) enter into and perform its obligations under the Agreements.
2. Each of the Resolutions was duly adopted.

EXHIBIT E

CONTINUOUS INSURANCE COVERAGE DECLARATION

Installment Financing Contract Dated: November 20, 2009

Town: Town of Nags Head
PO Box 99
Nags Head, NC 27959

Bank: RBC Bank (USA)
301 Fayetteville Street, Suite 1100
Raleigh, NC 27601

Insurance Co: NCLM Risk Management
Policy #: Town of Nags Head
Agency: NCLM - Penta Raleigh
P.O. Box 1310
Raleigh, NC 27602
Phone: 919-768-8600 Attn: Patricia Stewart

Whereas, the Town has entered into an agreement to finance equipment, including fixtures ("Equipment") and insurance coverage is required by the Bank to protect the security interest in such Equipment. Town agrees to maintain insurance coverage on the Equipment with the above designated company or another company of its selection during the term of financing. If coverage is not renewed or never acquired, and a loss occurs while the collateral is uninsured, the Town agrees to indemnify the Bank. The indemnification can be accomplished by the mutual agreement of the parties as follows:

- * The principal balance and accrued interest may be paid in full in satisfaction of the obligation as provided in Section 3.5 of the Installment Financing Contract entered into by and between the Bank and the Town.
- * The Equipment is repaired to its original condition or replaced with equal value property, at the expense of the Town.
- * A replacement or substitution of collateral satisfactory to the Bank is acquired by the Town, at the Town's expense.

The Town pledges to notify the Bank of a loss in whole or in part within ten (10) days of any loss and agrees to cooperate with the Bank in obtaining insurance proceeds or through indemnification for any losses. The Town further certifies that the Town takes full responsibility of notifying the insurance agency/company and maintaining continuous coverage on the collateral.

TOWN OF NAGS HEAD

By: M. Leno Cahoon

Title: Mayor

Date: 11/13/09

Signature page to Installment Financing Contract between the Town of Nags Head, North Carolina (the "Town") and RBC Bank (USA) (the "Bank") dated November 20, 2009

ESCROW DEPOSIT AGREEMENT

This ESCROW DEPOSIT AGREEMENT (the "Escrow Agreement"), dated as of November 20, 2009, by and among Town of Nags Head, North Carolina, a corporation and political subdivision duly created and existing under the laws of the State of North Carolina (the "Borrower"), RBC Bank (USA), a North Carolina banking corporation (the "Bank) and RBC Bank (USA) (the "Escrow Agent").

WITNESSETH:

WHEREAS, the Borrower is authorized by N.C.G.S. Section 160A-20 to acquire such items of personal property, including fixtures ("Equipment") as are needed to carry out its governmental and proprietary functions and to acquire such Equipment by entering into purchase agreements; and

WHEREAS, the Bank is willing to provide third-party financing for the acquisitions of such Equipment when delivered to and accepted by the Borrower; and

WHEREAS, the Borrower and the Bank have entered into an Installment Financing Contract dated as of November 20, 2009 (the "Contract") to provide financing for the property described below:

See Exhibit A to Contract

WHEREAS, the Bank will deposit to an escrow fund established and maintained by the Escrow Agent (the "Escrow Fund") in advance of the acquisition of the Equipment the sum of \$105,900.00 to be available, together with the earnings from the investment thereof, in periodic draws for the payment of the costs of the acquisition of such Equipment; and

WHEREAS, the Bank and the Borrower now desire to provide for the safekeeping and investment of such monies advanced by the Bank and for the procedures in disbursing such monies;

NOW THEREFORE, in consideration of the premises set forth above and the mutual covenants set forth below, the parties hereto agree as follows:

1. The Bank, the Borrower, and the Escrow Agent agree that the Escrow Agent will act as sole Escrow Agent under this Escrow Agreement in accordance with the terms and conditions set forth in the Escrow Agreement. The Escrow Agent shall not be deemed to be party to any Contract, and this Escrow Agreement shall be deemed to constitute the entire Escrow Agreement among the Bank, the Borrower, and the Escrow Agent.

2. Upon the execution of the Contract, the Bank shall deposit with the Escrow Agent the sum of \$105,900.00 which, together with the earnings from the investment thereof, shall be maintained separate and apart from other funds of the Bank, and shall be held and disbursed in accordance with this Escrow Agreement.

3. Prior to any disbursement from the Escrow Fund, the Borrower shall furnish the Escrow Agent and the Bank with evidence satisfactory to the Bank of appropriation by the Borrower of funds sufficient to pay the payments coming due under the Contract on or before June 30 of the then current budget year of the Borrower. After the receipt of such evidence, the Escrow Agent shall disburse funds from the Escrow Fund as directed by the Borrower, or to the Borrower to the extent the Borrower has spent its funds for the acquisition of the Equipment, upon receipt of a written request from the Borrower in the form attached hereto as Schedule A. The Borrower also agrees to submit to the Bank the written request in the form of Schedule A, together with such other documents and certificates as the Bank may reasonably request in connection therewith. The Escrow Agent has no duty to ascertain the correctness or completeness of any document submitted in connection with any direction to disburse funds. The Escrow Agent shall make disbursement of the Escrow Funds upon receipt of (i) the written request of the Purchase substantially in the form attached hereto as Schedule A and (ii) written approval of such request by the Bank.

4. The Equipment from time to time described in Exhibit A attached to the Contract has been designated and identified by the Borrower, and the Escrow Fund constitutes the source of payment for such Equipment as of the date of this Escrow Agreement. In the event that any portion of the Equipment is not finally accepted by the Borrower, the remaining unused Escrow Funds will be paid to the Bank, (i) to be applied toward the payoff of the principal balance of the obligations owed under the Contract, or (ii) to finance the cost of such other equipment as may be agreed upon in writing by the Borrower and the Bank, provided that the Bank receives a first lien perfected security in such equipment. Notwithstanding any other term or condition hereof, all Escrow Funds held by the Escrow Agent at the end of three (3) years from the date of the Contract, shall be distributed to the Bank to be applied as a prepayment under the Contract.

5. Upon written notification to the Escrow Agent by the Bank that an Event of Default has occurred under the Contract, the Escrow Agent shall forthwith disburse all monies on deposit in the Escrow Fund to the Bank on behalf of the Borrower. It is the intention of the parties that, to the extent permitted by law, the Borrower shall indemnify and hold the Bank harmless for all costs incurred in connection with the Contract and this Escrow Agreement. Escrow Agent shall have no duty to enforce the provisions of this paragraph.

6. Upon written notification to the Escrow Agent by the Borrower or by the Bank confirmed by the Borrower that the Borrower has failed to appropriate funds pursuant to paragraph 3 of the Contract, the Escrow Agent shall forthwith disburse all monies on deposit in the fund to the Bank on behalf of the Borrower to be applied to the payment of principal under the Contract.

7. To the extent permitted by the law, any monies held as part of the Escrow Fund shall be promptly invested and reinvested by the Escrow Agent upon the written direction of the Town of Nags Head in any of the following investments: (i) RBC Bank (USA)'s Public Escrow Account or (ii) any other investment permitted under N.C.G.S. §159-30 which is approved by the Bank. No investment shall be made in a security maturing later than the date on which the Town of Nags Head shall notify the Escrow Agent as to the dates on which funds are needed for disbursement and the estimated amount of each such disbursement and the Escrow Agent may rely upon this information in connection with all investments or reinvestments of funds. The Escrow Agent has no duty to make investment recommendations.

8. This Escrow Agreement may be modified or amended only with the written consent of Borrower, Bank and Escrow Agent.

9. The Borrower agrees to pay the Escrow Agent's fees in connection with its duties and obligations under this Escrow Agreement in accordance with the Installment Purchase Agreement Proposal from the Bank to the Borrower. In the event of litigation or dispute, the Escrow Agent is entitled to recover from the Borrower all attorney's fees, court costs, and all other reasonable costs to the extent permitted by law, in connection with the discharge of the obligations of the Escrow Agent under this Escrow Agreement.

10. In the event of the Escrow Agent's failure to account for any of the funds received by it, said funds shall be and remain the property of the Borrower in trust for the purposes set forth in this Escrow Agreement, and if for any reason such funds cannot be identified, the assets of the Escrow Agent shall be impressed with a trust for the amount thereof and the Borrower shall be entitled to a preferred claim upon such assets until such identification is made.

11. This Escrow Agreement shall terminate when all transfers required to be made with respect to the Escrow Fund by the Escrow Agent under the provisions hereof and all payments due to the Escrow Agent hereunder shall be made.

12. If any one or more of the covenants or agreements provided in this Escrow Agreement on the part of the Bank, the Borrower, or the Escrow Agent to be performed shall be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

13. This Escrow Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

14. This Escrow Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina.

15. Any and all notices, requests, demands and other communications given under or in connection with this Escrow Agreement shall be effective only if in writing and either personally delivered or mailed by United States Mail, postage prepaid, addressed to the address of the recipient as set forth below:

Borrower: Town of Nags Head
PO Box 99
Nags Head, NC 27959
Attention: Kim Kenny

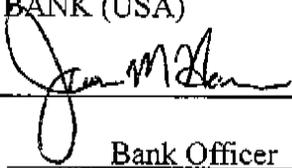
Bank: RBC Bank (USA)
301 Fayetteville St, Suite 1100
Raleigh, NC 27601
Attention: James M. Hansen

Escrow Agent: RBC Bank (USA)
301 Fayetteville St, Suite 1100
Raleigh, NC 27601
Attention: James M. Hansen

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement as of the date and year first written above.

BANK:

RBC BANK (USA)

By: 

Title: Bank Officer

Bank signature page to Escrow Deposit Agreement dated November 20, 2009 between RBC Bank (USA) as Escrow Agent, RBC Bank (USA) as the Bank and Town of Nags Head



(SEAL)

Attest: Cynthia Morris

Title: Town Clerk

BORROWER:

Town of Nags Head

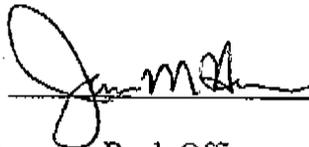
By: M. René Ahoon

Title: Mayor

Borrower signature page to Escrow Deposit Agreement dated November 20, 2009 between RBC Bank (USA) as Escrow Agent, RBC Bank (USA) as the Bank and Town of Nags Head

ESCROW AGENT:

RBC BANK (USA)

By:  _____

Title: Bank Officer

Escrow Agent signature page to Escrow Deposit Agreement dated November 20, 2009 between RBC Bank (USA) as Escrow Agent, RBC Bank (USA) as the Bank and Town of Nags Head



RESOLUTION AUTHORIZING TAX-EXEMPT LEASE/PURCHASE CONTRACT

WHEREAS, the Board of Commissioners approved within the budget financing the purchase of replacement vehicles and equipment in various Town departments; AND

WHEREAS, the Town of Nags Head through its Mayor, with the consent and approval of the Board of Commissioners, has entered into a contract with **RBC Bank** for the purchase of the following replacement capital items:

| | |
|------------------------------|-------------------------|
| Police Dept | Two (2) patrol vehicles |
| Public Works Facilities Dept | Pickup truck |
| Public Works Sanitation Dept | Pickup truck |

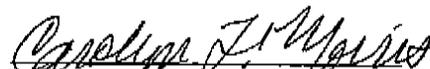
WHEREAS, the said contract, bearing the date November 20, 2009 qualifies as a tax-exempt obligation of the Town, pursuant to the Internal Revenue Code of 1986.

NOW, THEREFORE BE IT RESOLVED, that the Nags Head Board of Commissioners authorizes the aforesaid contract, bearing the date November 20, 2009 by and between the Town of Nags Head and **RBC Bank** together with the amount to be paid thereunder, be and the same are hereby designated as a qualified tax-exempt obligation of the Town for purposes of Section 265 (b) (3) of the Internal Revenue Code of 1986.

ADOPTED THIS THE 4TH DAY OF NOVEMBER 2009.


M. Renée Cahoon, Mayor
Town of Nags Head

ATTEST:


Carolyn F. Morris, Town Clerk



Information Return for Tax-Exempt Governmental Obligations

Under Internal Revenue Code section 149(e)

See separate instructions.

Caution: If the issue price is under \$100,000, use Form 8038-GC.

OMB No. 1545-0720

| | | | |
|--|---|--|--|
| Part I Reporting Authority | | If Amended Return, check here <input type="checkbox"/> | |
| 1 Issuer's name Town of Nags Head | 2 Issuer's employer identification number 56 6034273 | | |
| 3 Number and street (or P.O. box if mail is not delivered to street address) PO Box 99 | Room/suite | 4 Report number 3 - 1 | |
| 5 City, town, or post office, state, and ZIP code Nags Head, NC 27959 | 6 Date of issue 11/20/2009 | | |
| 7 Name of issue Installment Finance Contract-\$105,900.00 | 8 CUSIP number | | |
| 9 Name and title of officer or legal representative whom the IRS may call for more information Kim Kenny - Finance Officer | 10 Telephone number of officer or legal representative (252) 441-5508 | | |

| | |
|--|------------------------|
| Part II Type of Issue (check applicable box(es) and enter the issue price) See instructions and attach schedule | |
| 11 <input type="checkbox"/> Education | 11 |
| 12 <input type="checkbox"/> Health and hospital | 12 |
| 13 <input type="checkbox"/> Transportation | 13 |
| 14 <input type="checkbox"/> Public safety | 14 |
| 15 <input type="checkbox"/> Environment (including sewage bonds) | 15 |
| 16 <input type="checkbox"/> Housing | 16 |
| 17 <input type="checkbox"/> Utilities | 17 |
| 18 <input checked="" type="checkbox"/> Other. Describe Vehicles | 18 \$105,900.00 |
| 19 If obligations are TANs or RANs, check box <input type="checkbox"/> If obligations are BANs, check box <input type="checkbox"/> | |
| 20 If obligations are in the form of a lease or installment sale, check box <input type="checkbox"/> | |

| | | | | | |
|---|-------------------------|----------------------|---|-------------------------------|---------------|
| Part III Description of Obligations. Complete for the entire issue for which this form is being filed. | | | | | |
| | (a) Final maturity date | (b) Issue price | (c) Stated redemption price at maturity | (d) Weighted average maturity | (e) Yield |
| 21 | 11/20/2011 | \$ 105,900.00 | \$ 105,900.00 | 1.50 years | 2.63 % |

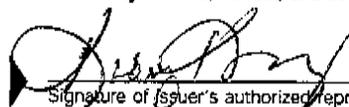
| | |
|---|----|
| Part IV Uses of Proceeds of Bond Issue (including underwriters' discount) | |
| 22 Proceeds used for accrued interest | 22 |
| 23 Issue price of entire issue (enter amount from line 21, column (b)) | 23 |
| 24 Proceeds used for bond issuance costs (including underwriters' discount) | 24 |
| 25 Proceeds used for credit enhancement | 25 |
| 26 Proceeds allocated to reasonably required reserve or replacement fund | 26 |
| 27 Proceeds used to currently refund prior issues | 27 |
| 28 Proceeds used to advance refund prior issues | 28 |
| 29 Total (add lines 24 through 28) | 29 |
| 30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here) | 30 |

| | |
|--|-------------|
| Part V Description of Refunded Bonds (Complete this part only for refunding bonds.) | |
| 31 Enter the remaining weighted average maturity of the bonds to be currently refunded | _____ years |
| 32 Enter the remaining weighted average maturity of the bonds to be advance refunded | _____ years |
| 33 Enter the last date on which the refunded bonds will be called | _____ |
| 34 Enter the date(s) the refunded bonds were issued | _____ |

| | |
|---|-----|
| Part VI Miscellaneous | |
| 35 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) | 35 |
| 36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions) | 36a |
| b Enter the final maturity date of the guaranteed investment contract | 37a |
| 37 Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units | |
| b If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the name of the issuer _____ and the date of the issue _____ | |
| 38 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box <input checked="" type="checkbox"/> | |
| 39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box <input type="checkbox"/> | |
| 40 If the issuer has identified a hedge, check box <input type="checkbox"/> | |

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Sign Here


 Signature of issuer's authorized representative

11-13-09
 Date

Kimberly Kenny Finance Officer
 Type or print name and title