

MINUTES
BEECH MOUNTAIN TOWN COUNCIL
Regular Meeting – August 11, 2015
Reconvened – August 18, 2015, August 25, 2015, and September 1, 2015

I. CALL TO ORDER

Mayor Owen called the regular meeting of the Beech Mountain Town Council to order at 4:04 p.m., Tuesday August 11, 2015 in the Town Hall Council Chambers. Other Council Members present were Paul Piquet, Alan Holcombe, and E. 'Rick' Miller. Councilwoman Cindy Keller was not present. Town Attorney Stacy C. Eggers, IV. was present. Staff members present were Interim Town Manager James Scott; Town Clerk Jennifer Broderick, Finance Officer Steve Smith, Tax Collections Administrator Rebecca Ward, Public Works Director Riley Hatch, Public Utilities Director Robert Heaton, Fire Chief Robert Pudney, Police Chief Shawn Freeman, Director of Tourism and Economic Development Kate Gavenus, Finance Officer Steve Smith, and Parks and Recreation Director Sean Royall.

II. Invocation – Dewey 'Cyclone' Brett presented the invocation.

III. Pledge of Allegiance – All present joined in the Pledge of Allegiance to the flag.

Note: Councilwoman Cindy Keller arrived at the meeting at 4:07 p.m.

IV. Adoption of Agenda – Mayor Owen stated that the agenda would stand as presented.

V. Public Hearing

Public Hearing on Solid Waste Management Regulations – Vice Mayor Piquet motioned to open the public hearing. Councilman Holcombe seconded the motion and the vote passed unanimously. Interim Manager James Scott stated that the current situation with waste management has staff taking pictures of the debris with staff then writing the homeowner about the occurrence and asking them to take care of the mess. There is an issue with the amount of time that lapses and the issue being corrected. The measure that staff is asking to put into place is not punitive in nature but has been constructed to reimburse the Town for the cost of taking care of the mess. This would provide for an opportunity for staff to correct these issues quicker. In addition it is recommended that the fee structure be removed from the code book and housed in the corresponding department. Wendel Sauer, of 203 Pinnacle Ridge Road, questioned the fees. Interim Manager Scott stated that there was a recommended \$30 for a cleanup unless the cleanup took longer than a half an hour. The increased cost was \$60 an hour. Gloria Alge, of 136 Grassy Gap Loop, lived by a rental house that chronically had this issue. Who would assume this cost? Interim Manager Scott stated that the homeowner would assume this cost. Dava Carson, of 102 Ladybug Lane, questioned what happens when property owners have neighbors who use their garbage receptacle. If there was a

mess then this would not be their debris. Interim Manager Scott recommended a lock on the can until they return.

Jan Brooks of 317 N. Pinnacle Ridge Road questioned what the appeal process would be? Attorney Eggers advised that appeals can be taken up in front of the Town's Board of Adjustment. It was noted that there is a fee with associated with the Board of Adjustment process. Interim Manager Scott clarified that this fee is refundable if they win.

Hearing no more public comment Vice Mayor Piquet motioned to close the public hearing. Councilman Holcombe seconded the motion and the vote passed unanimously.

VI. *Public Comment*

Urs Gsteiger, of 115 West Shamrock Lane stated that three members of the Council has acted poorly and disregarded the needs of the Town with the removal of the Town Manager. Mr. Gsteiger requested that the Council establish a citizens committee to evaluate and assist in hiring the next Town Manager. The establishment of such a committee will assure the community that the Council would not be hiring a 'yes' man. This is one way that this Council could start to fix it's relationship with the community.

Wendal Sauer, of 203 Pinnacle Ridge Road, questioned the way the Parks and Recreation Director position hiring was completed. Mr. Sauer wanted to know what the process was of making the final selection. How many applied for the job, how many were interviewed, and who made the final selection.

Dava Carson, of 102 Ladybug Lane, stated that Northridge Road and Beech Mountain Parkway was a dangerous intersection and that the Town needed to do something to improve it. Mrs. Carson stated that she had spoken with Public Works Director Riley Hatch and that Mr. Hatch had recommended that this issue be addressed to with Council. Mrs. Carson stated that a second area of concern was the lack of striping on the roads by the North Carolina Department of Transportation and would like to know when striping is going to happen. Mr. Hatch stated that Kevin Whittington, Watauga County Maintenance Engineer, stated that Maymead is not going to pave the portion of the Beech Mountain Parkway this fall and that this project was being pushed back to the spring. There is a possibility that now this striping will take place. Interim Manager Scott stated that the State thought that a resurfacing project was taking place in Avery County. Mrs. Carson stated that striping should not have to be a fight every year.

Bert Hewitt, of 300 N. Pinnacle Ridge, stated that there were two employees that had recently left the Town and that he had thought each of these employees had done a great job.

VII. *New Business*

- a. *Water Plant Project Update*** – Public Utilities Director Robert Heaton presented the water update report from West Consultants. Mr. Heaton noted that the project was awarded to Frizzell Construction of Bristol, Tennessee at the July meeting, contingent on all financing being secured. Frizzell's subcontractor, T&B Contactors, has indicated they plan to begin the new water plant structure this fall. The estimated schedule is as follows:
- August 4, 2015 – Local Government Commission approves financing based on actual bids
 - August 11, 2015 – Town Council adopts Bond Order and Note Resolution.
 - Later that week, close the financing.
 - August 18, 2015 – Notice of Award to Contractor
 - September 8, 2015 – Notice to Proceed
 - March 2017 – Substantial Completion
- b. *Resolution No. 2015-08: United States Department of Agriculture Water and Sewer Revenue Bond Order*** – Mayor Owen asked Interim Manager Scott to present information on the bond order before Council. Interim Manager Scott presented information on the United States Department of Agriculture Water and Sewer Revenue Bond Order and the Water and Sewer Revenue Bond Anticipation Note to Council. Attorney Eggers stated that the interest rate is 1.07% and that the bank being awarded was First Citizens. The Water and Sewer system itself stands as collateral for these bonds, unlike general obligation bonds. Councilman Holcombe motioned to approve Resolution No. 2015-08. Vice Mayor Piquet seconded the motion and the vote passed unanimously. Resolution No. 2015-08 is attached as Exhibit A and incorporated by reference as if fully set out within these minutes.
- c. *Resolution No. 2015-09: Water and Sewer Revenue Bond Anticipation Note*** – Councilman Holcombe motioned to approve Resolution No. 2015-09. Vice Mayor Piquet seconded the motion and the vote passed unanimously. Resolution No. 2015-09 is attached as Exhibit B and incorporated by reference as if fully set out within these minutes. Mayor Owen thanked everyone that was involved with getting the Town to this point from staff to the Water Committee.
- d. *Artwork on the Mountain*** – Interim Manager James Scott stated that Suzie Knepka is proposing the placement of life sized metal replicas of a hiker (the greenway trail) and a child catching a fish (Lake Coffey). Mr. Scott stated that Mrs. Knepka has made application through the Tourism Development Authority for funding. Mayor Owen invited Mrs. Knepka into the conversation. Mrs. Knepka stated that there are six actual designs. They all represent activities on the mountain. The idea is to carry art theme through to Buckeye Recreation Center. Councilwoman Keller asked if these art pieces were flat. Mrs. Knepka confirmed they were flat. Councilman Miller motioned to approve these two sculptures. Councilman Holcombe seconded the motion. Vice Mayor Piquet asked for clarification that this approval was only for the two images before Council. Councilman Miller confirmed yes. Mayor Owen called for the vote and the motion passed unanimously. Mrs. Knepka stated that it would be

easier and would assist with closing the loop if all six pieces could be ordered simultaneously. The other forms and location were as follows: deer with little girl (Perry Park), canoer (Buckeye Lake), large golf ball with golfer inside (at the entrance to the Golf Course with the Clubs permission), and a skier (entrance of Ski Resort where the flagpole is located). Mayor Owen asked about the timeframe was having these made. Mrs. Knepek stated that the individual she was working with was out of Greensboro and could have them all completed within 5 weeks. Councilman Miller motioned to approve all 6 of the images. Councilman Holcombe seconded the motion. Attorney Eggers stated that the art would have to be placed on public property and if the property was not public property then a written easement agreement would have to be provided by the property owners. Mayor Owen asked if the motion could be modified to approve 5 locations, minus the resort, with the additional images that were approved being the girl with the deer, the hiker and the fisherman image. Councilman Miller amended his motion to reflect Mayor Owen's recommended modifications. Councilman Holcombe seconded Councilman Miller's motion with the vote passing unanimously.

VIII. Old Business

- a. Vote on Solid Waste Management Regulations*** – Mayor Owen stated that there is a special collection fee of \$30 per half hour and another of \$60 per hour. Council asked staff if both of these charges being charged together. Public Works Director Riley Hatch stated that it was his belief that this system would work best. Councilman Holcombe questioned just charging for the time that staff was picking up the garbage but not the use of the vehicle. Councilwoman Keller asked about the emergency numbers of homeowners that were housed with the Police Department and asked if staff could take care of collecting these numbers and email addresses. Councilwoman Keller stated that utility billing needs to put a notice out that this type of fee is coming. Council asked for clarification from staff on the intent to put the cost for this clean up service on the utility bill. Mr. Hatch stated that the initial charge will show up on the utility bill. Attorney Eggers stated that the fees need to be in line with the actual costs. Mayor Owen stated that with the fee schedule coming out of the code book the Town can amend the fee schedule when necessary. Vice Mayor Piquet motioned to approve the recommended proposed ordinance with the effective date being November 1, 2015 so that the public can be notified. Councilman Holcombe seconded the motion and the vote passed unanimously. Ordinance No. 2015-06 is attached as Exhibit C and incorporated by reference as if fully set out within these minutes.

IX. Town Manager, Staff Reports, and Council Concerns

Stop Sign on Beech Mountain Parkway – Interim Manager James Scott stated that Randy Steskal, of the North Carolina Department of Transportation, came up to assist with providing guidance regarding the traffic pattern and stop sign issue at the intersection of Pine Ridge Road and the Beech Mountain Parkway. Interim Manager

Scott distributed illustrations of four options to assist with the use of this intersection. It was noted that Police Chief Shawn Freeman and Public Works Director Riley Hatch were at the meeting as well. The best idea is to move the stop bar forward approximately 10' (feet). Councilman Holcombe motioned to implement Option 1 with the current 'stop bar' being moved forward, curving and extending yellow lines to align traffic more perpendicular to Beech mountain Parkway and paint dashed lines to show extension of travel lane. Vice Mayor Piquet seconded the motion and the vote passed unanimously.

Avery County Habitat for Humanity Golf Charity – Interim Town Manager James Scott stated that the Town had been approached to participate in the Avery County Habitat for Humanity Golf Charity event. The donation was \$200. This is a program that the Town has previously participated in. Councilman Holcombe motioned to donate the \$200. Vice Mayor Piquet seconded the motion. Mayor Owen stated that it was not his belief that Town money should be used for donations. Mayor Owen called the vote and the vote passed 3-2 with Councilwoman Keller, Vice Mayor Piquet, and Councilman Holcombe voting yes and Councilman Miller and Mayor Owen voting nay.

Police Sergeant Appointment – Police Chief Shawn Freeman addressed Council informing them of the recent hiring process for the Sergeant position. Police Chief Freeman stated that a committee had been formed, comprised of law enforcement individuals, and that applicants had to partake in a written, oral, and report review assessment. George Gary Miller was the applicant who achieved the highest score in the process and was awarded the Police Sergeant position.

Police Officer Appointment – Police Chief Shawn Freeman introduced Tyler Jones to Council as the Town's newest Police Officer. Mr. Jones had served with the Avery County Sherriff's Department.

Town Council Minutes – Councilman Holcombe asked about the lack of finished minutes for Councils approval. Mayor Owen stated that a portion of the regular minutes as well as other minutes had been taken on by Attorney Eggers and that these minutes were not prepared in time but would be ready for Councils consideration in September's meeting.

The Council took a recess at 5:20 p.m.

- X. ***Closed Session – Pursuant to NC GS 143-318.11(a)(3) Attorney Client Matters; NC GS 143-318.11(a)(6) Personnel Matters*** – At 5:30 p.m., Councilman Holcombe moved to enter closed session pursuant to N.C. Gen. Stat. §143-318.11 (a)(3) for the purpose of discussing attorney-client matters, including The Town of Beech Mountain v. Milligan and pursuant to N.C. Gen Stat. §143-318.11 (a)(6) for the purpose of discussing personnel matters. The motion was seconded by Vice Mayor Piquet and passed unanimously. Upon motion by Councilman Holcombe, seconded by Vice Mayor Piquet, the Council voted unanimously to exit closed session at 6:31 p.m.

XI. Other Business

Committee for Town Manager – Councilwoman Keller asked why there was opposition from the Council for allowing a public committee to get involved. Vice Mayor Piquet stated that the Council has the duty to hire and fire. Councilman Holcombe stated that he does not have an issue with the public helping but does not feel like this is something that the public should be doing. Mayor Owen stated that the committee should not be narrowing any of this down from the application portion of the process.

XII. Recessed – At 6:36 p.m., Paul Piquet moved to recess this meeting to 5:00 p.m. August 18, 2015 at Town Hall in the Council Chamber room. This motion was seconded by Councilman Holcombe and passed unanimously.

XIII. Reconvened – Vice Mayor Piquet reconvened the regular meeting of the Beech Mountain Town Council at 5:05 p.m., Tuesday August 18, 2015 in the Town Hall Council Chambers. Other Council Members present were Alan Holcombe, and E. ‘Rick’ Miller. Councilwoman Cindy Keller and Mayor Rick Owen were not present. Town Attorney Stacy C. Eggers, IV. was present. Staff members present were Interim Town Manager James Scott; Town Clerk Jennifer Broderick, and Finance Officer Steve Smith.

XIV Continuation of Other Business

Resolution Supporting the North Carolina League of Municipalities Advocating the General Assembly to Provide Cities with the Authority to Raise Local Revenue – Vice Mayor Piquet read aloud the resolution. The North Carolina League of Municipalities had requested each municipality ask their boards to consider approving the League’s actions to advocate to strengthen local governing agencies abilities to increase their revenues due to the passing and proposition of new legislation that would reduce the current revenue stream for municipalities. Councilman Holcombe motioned to approve Resolution No. 2015-10. Councilman Miller seconded the motion. Vice Mayor Piquet called the vote and the vote passed unanimously. Council asked that staff send mail this to each of the Town’s local representatives. Resolution No. 2015-10 is attached as Exhibit D and incorporated by reference as if fully set out within these minutes.

Request to Open Checking Account with First Citizens Bank – Vice Mayor Piquet stated that the request to open this checking account was being made to satisfy one of the components of the agreement for the financing of the Water Plant Project. Councilman Holcombe motioned to approve opening a checking account with First Citizens Bank with the signers being Finance Officer Steve Smith, Mayor Rick Owen, Vice Mayor Piquet. Vice Mayor Piquet seconded the motion. Attorney Eggers stated that this was closing today. Vice Mayor Piquet called for the vote and the vote passed unanimously.

Potential High Country Council of Government Presentation – Councilman Miller stated that he has already spoken with Interim Town Manager James Scott and Town Clerk Jennifer Broderick about working on putting a historical presentation together that illustrated the growth of Beech Mountain. Councilman Miller stated that the proposed presentation would be presented to the High Country Council of Government monthly Region D meeting. Councilman Holcombe stated that he liked the idea and would like to see this idea expanded upon. Council encouraged staff to move forward using the Town Planner, Human Resource Director and Director of Tourism and Economic Development to assist. It was recommended that the allotted time be kept to 15 minutes.

Note: Mayor Rick Owen arrived at the meeting at 5:15 p.m.

Notice – New Litter Policy – Interim Town Manager James Scott stated that Council had before them a draft statement that staff had crafted for Councils consideration to be inserted in the utility bill. Council approved the draft to be sent out with the utility billing.

Contract with Avery County and the Avery County Fire Commission– Attorney Eggers stated that there is a proposed contract with Avery County and the Avery County Fire Commission before Council. This contract is a product of the efforts of Fire Chief Bob Pudney, Attorney Eggers and Avery County Attorney Gerald R. McKinney. Attorney Eggers informed Council that Avery County has special legislation that makes Avery County a single fire district. Since Beech Mountain now has a municipal Fire Department services that would have been completed by Avery County will now be completed through the Town. Avery County will be paying the Town \$38,000. The contract also addresses the issue of ownership of equipment, showing that Avery County does not have any ownership of any Town vehicles as well as exempting Avery County from performing an audit. The contract also provides that the Town will continue to provide mutual aid to other areas if there is a large fire. Councilman Holcombe motioned to approve the contract. Councilman Miller seconded the motion. Attorney Eggers stated that this formalizes the Town's obligations to Avery County's fire district. Councilman Miller questioned still having to deal with Avery County with the Town having established a municipal fire department. Attorney Eggers stated that the amount that the Avery County fire district collects from the properties in Beech Mountain is significantly more than the amount of money that they return back to the Fire Department. Wendal Sauer interjected that this is the same amount of money that the Avery County Fire District has been willing to give the Town. Mr. Sauer believes that Watauga County has already started doing this with the Town. Fred France said it would be nice to find a way to have the Avery County Fire District rescind their Fire Tax from areas in the Town. Mayor Owen call for the vote and the vote passed unanimously.

XV. Closed Session – Pursuant to NC GS 143-318.11(a)(6) Personnel Matter – At 5:25 p.m., Councilman Miller moved to enter closed session pursuant to N.C. Gen Stat. §143-

318.11 (a)(6) for the purpose of discussing personnel matters. The motion was seconded by Vice Mayor Piquet and passed unanimously.

Note: Interim Town Manager James Scott and Town Clerk Jennifer Broderick were excused from closed session at 5:25 p.m. Attorney Eggers took over the responsibility of recording the minutes.

Upon motion by Vice Mayor Piquet, seconded by Councilman Holcombe, the Council voted unanimously to exit closed session at 6:13 p.m.

XVI. Other Business

Interim Manager Salary – Councilman Holcombe, seconded by Vice-Mayor Piquet moved to increase the salary of Interim Manager Scott to \$40.00 per hour during the period of his service as Interim Manager for the Town, with this increased rate of pay to be retroactive from the date Mr. Scott accepted the position of Interim Manager. The motion passed unanimously.

XVII. Recessed – Upon Motion by Councilman Holcombe, seconded by Vice-Mayor Piquet, the Council voted unanimously to recess their meeting until Tuesday, August 25, 2015 at 5:00 p.m. The meeting was recessed at 6:16 p.m.

Note: The following minutes for the continuation of the August 11, 2015 meeting on August 25, 2015 meeting were taken by Town Attorney Eggers.

XVIII. Reconvened – The meeting was reconvened by Mayor Owen at 5:03 p.m. on August 25, 2015 at Town Hall in the Council Chamber Room. Present were: Mayor Rick Owen, Vice-Mayor Paul Piquet, Councilman Alan Holcombe, Councilwoman Cindy Keller and Councilman Rick Miller. Not present were Clerk Broderick and Interim Manager Scott, having been previously excused.

XIX. Closed Session – Pursuant to NC GS 143-318.11(a)(6) Personnel Matter – Upon Motion of Councilman Miller and seconded by Vice-Mayor Piquet, the Board voted unanimously to go into Closed Session at 5:04 p.m. for purposes of discussing personnel matters pursuant to N.C. Gen. Stat. §143-318.11(a)(6). Upon Motion of Vice-Mayor Piquet and seconded by Councilman Holcombe, the Board voted unanimously to exit Closed Session at 8:18 p.m.

XX. Recessed – Upon Motion by Councilman Miller, seconded by Vice-Mayor Piquet, the Council voted unanimously to recess their meeting until Tuesday, September 1, 2015 at 5:00 p.m. at Town Hall in the Council Chamber Room. The meeting was recessed at 8:22 p.m.

XXI. Reconvened – Councilman Alan Holcombe called the Town Council meeting to order at 5:00 p.m. September 1, 2015 at Town Hall in the Council Chamber room. Council members Rick Owen, Paul Piquet, E. ‘Rick’ Miller, and Cindy Keller were not present.

XXII. Adjourned – At 5:15 p.m., Councilman Holcombe moved to adjourn the meeting based on a quorum not being present.

Minutes approved by Town Council on November 10, 2015.

Respectfully Submitted,

Stacy Eggers, IV.

Richard H. Owen, Mayor

ATTEST:

Jennifer Broderick, CMC
Town Clerk

**ATTACHMENT(S)
TO
MINUTES**

EXHIBIT A – Resolution No. 2015-08 '*United States Department of Agriculture Water and Sewer Revenue Bond Order*'

EXHIBIT B – Resolution No. 2015-09 '*Water and Sewer Revenue Bond Anticipation Note*'

EXHIBIT C – Ordinance No. 2015-06 '*An Ordinance to Amend the Solid Waste Management Regulations*'

EXHIBIT D – Resolution No. 2015-10 '*Resolution Supporting the North Carolina League of Municipalities Advocating the General Assembly to Provide Cities with the Authority to Raise Local Revenue*'

RESOLUTION No. 2015-08
TOWN OF BEECH MOUNTAIN

Extract of Minutes of a regular meeting of the Town Council of the Town of Beech Mountain, North Carolina held in Council Chamber Room at 403 Beech Mountain Parkway, Beech Mountain, North Carolina 28604 at 4:00 p.m. on August 11, 2015.

The following Council Members were present:

Mayor Richard Owen, Vice Mayor Paul Piquet, Councilmember Alan Holcombe, Councilmember Rick Miller, and Councilwoman Cindy Keller

The following Council Members were absent:

None

Also present: Attorney Stacy Eggers, IV.

* * *

Council Member Alan Holcombe moved that the following order, a copy of which was available with the Town Council and which was read by title:

BOND ORDER AUTHORIZING THE ISSUANCE OF WATER AND SEWER REVENUE BONDS OF THE TOWN OF BEECH MOUNTAIN, NORTH CAROLINA TO PROVIDE ADDITIONAL FUNDS TO MAKE CERTAIN IMPROVEMENTS TO THE WATER AND SEWER SYSTEM OF THE TOWN OF BEECH MOUNTAIN, NORTH CAROLINA; PROVIDING FOR THE ISSUANCE OF ADDITIONAL REVENUE BONDS; PROVIDING FOR THE ISSUANCE OF REVENUE BOND ANTICIPATION NOTES IN ANTICIPATION OF THE ISSUANCE OF REVENUE BONDS; PROVIDING FOR THE COLLECTION OF SERVICE CHARGES FOR THE USE OF THE SYSTEM; PROVIDING FOR THE CREATION OF CERTAIN SPECIAL FUNDS; PLEDGING TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE REVENUE BONDS AND NOTES CERTAIN REVENUES OF THE SYSTEM; SETTING FORTH THE RIGHTS AND REMEDIES OF OWNERS; AND SETTING FORTH THE DETAILS OF CERTAIN RELATED MATTERS.

WHEREAS, the Town of Beech Mountain, North Carolina (the “*Town*”) is authorized by The State and Local Government Revenue Bond Act, General Statutes of North Carolina, Section 159-80 et seq. (the “*Act*”), to issue, subject to the approval of the Local Government Commission of North Carolina, at one time or from time to time revenue bonds and revenue refunding bonds of the Town for the purposes as specified in the Act; and

WHEREAS, the Town Council of the Town (the “*Town Council*”) desires to finance improvements to the Town’s water and sewer system, specifically the construction and equipping of a water plant (the “*Project*”);

WHEREAS, the Local Government Commission of North Carolina has approved the application of the Town for the issuance of revenue bonds in an initial amount not exceeding \$4,300,000 for the purpose of providing funds, together with other available funds, to finance the cost of the Project;

NOW THEREFORE, BE IT ORDERED BY THE TOWN COUNCIL OF THE TOWN OF BEECH MOUNTAIN, NORTH CAROLINA:

ARTICLE I GENERAL PROVISIONS AND DEFINITIONS

Section 1.01 ***Contract with Holders.*** 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 Holders 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 Holders 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.*** The following words and terms as used in this Bond Order shall have the following meanings, unless some other meaning is manifestly intended:

"Account" or "Fund" means one of the special funds or accounts created and established pursuant to this Bond Order.

"Act" means The State and Local Government Revenue Bond Act, constituting Article 5 of Chapter 159 of the General Statutes of North Carolina, as amended.

"Additional Bonds" means the Bonds referred to in Article III hereof.

"Annual Budget" means any budget or amended budget of Operating Expenses adopted or in effect pursuant to Section 7.07 of this Bond Order.

"Auditors" means the independent firm of certified public accountants that is employed by the Town to audit the Town's books and accounts at the end of each Fiscal Year.

"Bond" or "Bonds" means any bond, bonds or bond anticipation notes authorized by this Bond Order or to a supplement to this Bond Order, and includes the Initial Bonds, any Additional Bonds and any bond anticipation note or notes issued in accordance with this Bond Order.

"Bondholder" or "Holder" or any similar term, when used with reference to a Bond or Bonds means any person who shall be the registered owner of any outstanding Bond or Bonds.

"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 of the Town or any successor as appointed by the Town Council.

"Clerk" means the Town Clerk or the officer succeeding to or exercising his or her principal functions and duties.

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

“Consultants” means an independent engineer or engineering firm or consultants otherwise experienced in matters relating to water and wastewater systems at the time employed by the Town under the provisions of Sections 5.01 and 7.02 to perform the functions and duties imposed on the Consultants by this Bond Order.

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

“Debt Service Fund” means the fund or account so designated by Section 5.02.

“Debt Service Requirement” 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 amount to be based on the assumption that (1) the Bonds at the time outstanding will be retired according to their stated maturities or mandatory redemption requirements and (2) if the Bonds bear interest at a variable rate, the rate is the maximum rate established in the applicable Series Resolution.

“Debt Service Reserve Fund” means the account so designated by Section 5.02 of this Bond Order.

“Debt Service Reserve Fund Requirement” means an amount equal to the maximum Debt Service Requirement for any Fiscal Year.

“Depository” means any bank or trust company duly authorized under the laws of the United States of America or the State of North Carolina to engage in the banking business within said State and designated by the Town Council 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 or her principal functions and duties.

“Fiscal Year” means the period of twelve months commencing on July 1 of any year and ending on June 30 of the following year, or any such other annual period permitted by State law.

“General Reserve Account” means the account of the Debt Service Reserve Fund created under Section 5.02 of this Bond Order.

“Identifiable Bondholder” means any Holder who shall have filed with the Bond Registrar a request in writing setting forth such Holder’s name and address and the particular reports, notices or other documents which the Holder desires to receive and which shall be mailed to the Holder under the provisions of this Bond Order.

“Initial Bonds” means the Water and Sewer Revenue Bonds authorized under Section 2.01 of this Bond Order and references to Initial Bonds include any revenue bond anticipation notes issued in anticipation of the Initial Bonds.

“Mayor” means the duly elected Mayor of the Town or other presiding officer of the Town Council or the officer succeeding to or exercising his or her principal functions and duties.

“Net Revenues” means the Revenues received by the Town during any period less the Operating Expenses for such Fiscal Year.

“Operating Expenses” means the Town’s reasonable and necessary current expenses of maintaining, repairing and operating the System, according to generally accepted accounting principles except as adjusted herein, including, without limiting the generality of the foregoing, all administrative, general and commercial expenses, insurance and surety bond premiums, payments for the billing and collection of Service Charges, architectural and engineering expenses, fees and expenses of Bond Registrar and any Trustee appointed hereunder, legal expenses, any taxes which may be lawfully imposed on the Town or its income or operations or the property under its control, ordinary and current rentals of equipment or other property, usual expenses of maintenance and repair, and any other current expenses required to be paid by the Town under the provisions of this Bond Order or by law, all to the extent properly and directly attributable to the System, but not including any reserves for operation, maintenance or repair or any allowance for depreciation, amortization, interest or similar charges.

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

“Qualified Investments” means any investments of political subdivisions of the State permitted under Section 159-30 of the General Statutes of North Carolina, as amended, or any successor provision.

“Revenue Fund” means the account so designated by Section 5.02 of this Bond Order.

“Revenues” means all income received by the Town from, in connection with, or as a result of, its ownership or operation of the System, according to generally accepted accounting principles except as adjusted herein, including all moneys received in payment of rates, fees and other charges for the use of and for the services furnished by the System and investment income, but excluding the proceeds of any borrowing for payment of the costs of, or grants or donations intended for, specific System Improvements.

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

“Series Resolution” means the resolution of the Town Council providing for the issuance of any Additional Bonds and fixing the details thereof.

“Service Charges” means rates, fees and charges, including service, connection and other charges, for the use of, and for the services and facilities furnished or to be furnished by the System, as prescribed or fixed by the Town Council.

“State” means the State of North Carolina.

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

“Subordinated Indebtedness” means indebtedness the terms of which shall provide that it shall be subordinate and junior in right of payment to the prior payment in full of the Bonds. For purposes of this Bond Order, obligations or debt instruments issued to the State as part of the State Revolving Loan Program or State Clean Water Bond Program are deemed to be Subordinated Indebtedness.

“Surplus Fund” means the account so designated by Section 5.02.

“System” means the Project and any System Improvements.

“System Improvements” means any construction, reconstruction, improvement, enlargement, betterment or extension of the System, including all plants, works, instrumentalities and properties used or useful in collecting, treating, pumping, distributing and disposing of wastewater and treating, pumping and distributing water.

“*Town Council*” means the Town Council of the Town of Beech Mountain, North Carolina, or the board or body in which the general legislative powers of the Town shall hereafter be vested.

“*Town Manager*” means the Town Manager of the Town or the officer succeeding to his or her principal functions and duties.

“*Town Representative*” means the person or persons designated to act on behalf of the Town by written certificate of the Town Council signed by the Mayor and furnished to the Bond Registrar and the Depository containing the specimen signature of such person or persons.

“*Trustee*” means the Trustee with respect to the Bonds as identified in any Series Resolution, such Trustee shall be capable of exercising trust powers in the State of North Carolina, must be a bank or trust company with a combined capital (exclusive of borrowed capital) and surplus of at least \$100,000,000, and subject to supervision or examination by federal or state authority, so long as any Bonds are outstanding hereunder. If such bank or trust company publishes a report of condition at least annually pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this definition the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

“*USDA*” means United States of America, United States Department of Agriculture, Rural Development.

“*USDA Reserve Account*” means the account of the Debt Service Reserve Fund created under Section 5.02 of this Bond Order.

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 “bond”, “owner”, “Holder” 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 Town shall issue, in accordance with and pursuant to the Act and this Bond Order, its negotiable Initial Bonds in an aggregate principal amount not exceeding \$4,300,000 for the purpose of providing funds to finance the cost of the Project.

Section 2.02 ***Character of Bonds.*** The Bonds shall be special obligations of the Town payable solely from Net Revenues.

Section 2.03 ***Terms of Bonds.*** The Bonds are issuable as fully registered bonds. The Bonds 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, and shall be stated to mature (subject to the right of prior redemption) at such times as set forth in the Series Resolution providing for the issuance of the Bonds. Both principal of and interest on the Bonds shall be paid by check mailed or wire transfer sent to the Holder thereof except that interest payments shall be made to the person shown as owner on the registration books on the 15th day of the month preceding each interest payment date (whether or not such 15th day is a business day). 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 shall be redeemable prior

to their respective maturities as provided in Article IV hereof and as additionally provided in the resolution or Series Resolution providing for the issuance of the Bonds.

Section 2.04 ***Execution of Bonds.*** Each Bond shall be executed in the name of the Town by manual or facsimile signatures of the Mayor and the 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 ***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 Holder 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 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 no event will the Bond Registrar transfer the Bond to any person other than a bank, an insurance company or a similar financial institution unless the Commission has previously approved such transfer.

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 and the Bond Registrar may make a charge for every such transfer of Bonds sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to such 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 2.06 ***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 Holder 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 2.07 ***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 any new Bonds, 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 Town Council 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 and the 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 2.08 ***Authentication 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) a copy, certified by the Clerk to be a true and correct copy, of this Bond Order prescribing the details of the Initial Bonds, including form, maturities and redemption provisions and a Series Resolution relating to the Initial Bonds;

(b) a certificate of the Commission showing the award of the Initial Bonds and specifying the interest rate or rates thereof; and

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

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

When the documents mentioned in clauses (a) to (c), inclusive, of 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 Bond Registrar shall authenticate and deliver the Initial Bonds to or upon the order of the purchasers thereof, but only upon payment to the State Treasurer of the purchase price of the Initial Bonds. The Bond Registrar shall be entitled to rely upon the foregoing certificates with respect to the matters contained therein.

Section 2.09 ***Approval of Issuance and Sale of Bonds.*** None of the 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.

Section 2.10 ***Issuance of Revenue Bond Anticipation Notes.*** The Town is authorized to issue, in anticipation of the receipt of the net proceeds of any Bonds, revenue bond anticipation notes for the purpose of providing funds to pay the cost of the Project or any System Improvements. The payment of the principal of, redemption premium, if any, and interest on said notes shall be secured by a pledge, charge and lien upon the proceeds of any Bonds, if and when issued, and by the pledge of the Net Revenues pursuant to Section 5.03. The Revenues, as received by the Town, shall immediately be subject to the lien of the pledge of the Net Revenues without any physical delivery thereof or further act. All covenants, obligations and agreements of the Town contained in this Bond Order shall be deemed to be covenants, obligations and agreements of the Town with the Holders of any notes hereafter issued and the Holders of any notes issued hereunder shall have the rights of Holders of any Bonds herein.

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, bonds (herein referred to as "*Additional Bonds*") which shall be payable from the same funds as previously issued Bonds for the purpose of

refunding all or any portion of the Initial Bonds or any Additional Bonds. Except as to any difference in the maturities thereof or in the rate or rates of interest or the provisions for redemption, such refunding obligations shall be on a parity with and shall be entitled to the same benefit and security of this Bond Order as 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 Clerk to be a true and correct copy, of the Series Resolution authorizing the issuance of the Additional Bonds and prescribing the details thereof;

(b) a certificate of the Commission showing the award of the Additional Bonds and specifying the interest rate or rates thereof;

(c) a copy, certified by the Clerk to be a true and correct copy, of the resolution (which may be incorporated in the Series Resolution) of the Town Council directing the authentication of the Additional Bonds and the 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 the Additional Bonds has been duly authorized and that all conditions precedent to the delivery of the Additional Bonds have been fulfilled and further stating that the Town is in compliance with all covenants and undertakings in connection with all outstanding Bonds; and

(e) such documents as shall be required by the Bond Registrar, the Town or the Commission to evidence that provision has been satisfactorily made for the redemption of the Bonds to be refunded and the extent to which the net debt service on such new bonds is less than the debt service on the Bonds to be refunded would have been but for the refunding.

When the documents mentioned in clauses (a) to (e), inclusive, of this Section shall have been filed with the Bond Registrar and when said Additional Bonds shall have been executed and authenticated as required by this Bond Order, the Bond Registrar shall deliver said Additional Bonds to or upon the order of the purchasers thereof, but only upon payment to the State Treasurer of the purchase price of said Additional Bonds.

Section 3.02 *Financing of System Improvements.* The Town may, to the extent permitted by the Act and the provisions of this Section, issue, from time to time, bonds (herein referred to as "*Additional Bonds*"), which shall be payable from the same funds as previously issued Bonds for the purpose of financing System Improvements. Except as to any difference in the maturities thereof or in the rate or rates of interest or the provisions for redemption, such obligations 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 Clerk to be a true and correct copy, of the Series Resolution authorizing the issuance of the Additional Bonds and prescribing the details thereof and providing that the System Improvements to be financed with the proceeds thereof are thereby made a part of the System and that the revenues of such System Improvements are thereby pledged to the Additional Bonds and as additional security for the outstanding Bonds;

(b) a certificate of the Commission showing the award of said Additional Bonds and specifying the interest rate or rates thereof;

(c) a copy, certified by the Clerk to be a true and correct copy, of the resolution (which may be incorporated in the Series Resolution) of the Town Council directing the authentication of said Additional Bonds and the 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 said Additional Bonds has been duly authorized and that all conditions precedent to the delivery of said Additional Bonds have been fulfilled and further stating that the Town is in compliance with all covenants and undertakings in connection with all outstanding Bonds;

(e) a certificate, signed by the Town Representative stating that all payments required by Section 5.04 into the Debt Service Fund and into the Debt Service Reserve Fund, if any, prior to the beginning of the month during which the Additional Bonds are issued have been made;

(f) a certificate, signed by the Town Representative, stating that the Net Revenues for each of the two complete Fiscal Years next preceding the issuance of the proposed Additional Bonds were equal to at least 110% of the Debt Service Requirement for such Fiscal Year, 100% of the amount necessary to pay annual debt service obligations on Subordinated Indebtedness, if any, and 100% of the amount necessary to meet annual debt service obligations coming due in that Fiscal Year with respect to the Town's general obligation bonds and installment financing obligations, if any, used to finance System Improvements; and

(g) a statement, signed by the Town Representative, to the effect that the estimated Net Revenues for the first two Fiscal Years following the Fiscal Year in which the Improvements being financed will be placed in service will be at least 110% of the Debt Service Requirement for such Fiscal Year on all outstanding Bonds, including the proposed Additional Bonds, 100% of the amount necessary to pay annual debt service obligations on Subordinated Indebtedness, if any, and 100% of the amount necessary to meet annual debt service obligations coming due in that Fiscal Year with respect to the Town's general obligation bonds and installment financing obligations, if any, used to finance System Improvements.

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 approval in accordance with the Act.

Section 3.04 ***Waiver of Additional Bonds Limitations.*** The limitations hereinabove set forth with respect to the issuance of Additional Bonds may be waived or modified by the written consent of Holders owning 60% or more of the outstanding Bonds and with the consent of the Commission.

ARTICLE IV REDEMPTION OF BONDS BEFORE MATURITY

Section 4.01 ***Terms and Conditions.*** The Bonds, and the respective installments of principal corresponding thereto, shall be subject to redemption, both in whole and in part, at such times and prices, as may be provided by the Series Resolution authorizing the issuance of such Bonds.

Section 4.02 ***Notice of Redemption and Prepayment.*** Whenever the Town shall elect to redeem Bonds notice thereof, stating the redemption date and place of payment and identifying the Bonds by reference to their numbers and further stating that on such redemption date there shall become due and payable upon each Bond so to be redeemed the principal thereof and the redemption premium, if any, together with the interest accrued to the redemption date and that from and after such date interest thereon shall cease to accrue, shall be given as may be provided by the Series Resolution authorizing the issuance of such Bonds.

Section 4.03 ***Payment of Redeemed Bonds.*** Notice having been given in the manner provided, the Bonds so called for redemption shall become due and payable on the redemption date so designated at the redemption price set forth in said notice. Upon presentation and surrender of the Bonds so called for redemption at the place of payment specified in said notice, together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the Holder or his duly authorized attorney, such Bonds shall be paid at the aforementioned redemption price. In case part but not all of an outstanding bond shall be selected for redemption, the Holder thereof or his attorney or legal representative shall present and surrender such Bond to the Bond Registrar for payment of the applicable redemption price and the Town shall execute and the Bond Registrar shall authenticate and deliver to or upon the order of such Holder or his legal representative, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered, a registered Bond of the same series and maturity, bearing interest at the same rate and of any authorized denomination.

If, on the redemption date, moneys for payment of the redemption price of all the Bonds to be redeemed shall be available therefor at the place of payment specified in the notice of redemption, then from and after the redemption date, the Bonds or the installments of principal thereof so called for redemption shall cease to bear interest. All moneys held for the redemption of particular Bond or for the prepayment of particular installments thereof shall be held in trust for the account of the Holders of the Bonds so to be redeemed or prepaid.

If said moneys shall not be so available on the redemption date, said Bonds shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

Section 4.04 ***Cancellation of Redeemed Bonds.*** All Bonds redeemed prior to maturity shall be cancelled forthwith.

ARTICLE V REVENUES AND FUNDS

Section 5.01 ***Rates and Charges.*** The Town covenants and agrees that, subject to any applicable requirements of law or regulations, it will fix Service Charges and from time to time revise such Service Charges in such manner that the Net Revenues for each Fiscal Year shall not be less than 110% of the Debt Service Requirement for such Fiscal Year, not less than 100% of the amount necessary to pay annual debt service obligations on Subordinated Indebtedness, if any, and not less than 100% of the amount necessary to meet annual debt service obligations coming due in that Fiscal Year with respect to the Town's general obligation bonds and installment financing obligations, if any, used to finance System Improvements.

The Town covenants that it will not reduce the Service Charges unless the Revenues after any such reduction of Service Charges will, in the opinion of the Consultants, be not less in each subsequent Fiscal Year than the total of the amounts referred to in subdivision (c) of this Section and further that it will not reduce the Service Charges unless:

(a) all deposits shall have been made to the credit of the Debt Service Fund or with respect to debt service which are required by this Article to have been made prior to the time of such reduction;

(b) the amount then on deposit to the credit of the Debt Service Reserve Fund shall be not less than the Debt Service Reserve Fund Requirement;

(c) the total amount of the Revenues during the preceding Fiscal Year shall have been not less than the total of the following:

(1) the Operating Expenses during the current Fiscal Year as shown by the Annual Budget for such Fiscal Year, and

(2) 110% of the maximum Debt Service Requirement for any Fiscal Year thereafter; and

(3) 100% of the amount necessary to pay annual debt service obligations coming due in that Fiscal Year with respect to Subordinated Indebtedness; and

(4) 100% of the amount necessary to pay annual debt service obligations coming due in that Fiscal Year with respect to any Town general obligation bonds or installment financing obligations used to finance System Improvements.

(d) the Revenues after any such reduction of Service Charges will, in the opinion of the Consultants, be not less in the then current Fiscal Year and in each subsequent Fiscal Year than the total of the amounts referred to in subdivision (c) of this Section.

Forthwith upon the adoption of any revision of the Service Charges, the Town will cause certified copies thereof to be filed with the Consultants and the Commission and mailed, upon request, to each Identifiable Bondholder.

The Town further covenants that if the Revenues in any Fiscal Year shall be less than the total amount set forth in the first paragraph of this Section, the Town will immediately request the Consultants to make their recommendations regarding revision of the schedule of Service Charges and improvements in the operation of or services rendered by the System, and copies of such request and of the recommendations of the Consultants shall be filed with the Commission and mailed by the Clerk, upon request, to each Identifiable Bondholder. Anything in this Bond Order to the contrary notwithstanding, if the Town shall substantially comply with all the recommendations of the Consultants respecting the schedule of Service Charges and improvements in the operation of or services rendered by the System, it will not constitute an event of default under this Bond Order if the Net Revenues shall be less than the amount set forth in the first paragraph of the Section; provided, however, that such Net Revenues are sufficient to meet the Debt Service Requirement.

Section 5.02 *Creation of Funds and Accounts.* There are hereby designated or created and designated the following special funds and accounts: (a) Town of Beech Mountain Water and Sewer Revenue Fund which is the account maintained for revenues received from water and sewer operations within the Town's Water and Sewer Fund (hereinafter called the "*Revenue Fund*"); (b) Town of Beech Mountain Water and Sewer Debt Service Fund which is the debt payment account maintained for water and sewer debt within the Town's Water and Sewer Fund (hereinafter called the "*Debt Service Fund*"); (c) Town of Beech Mountain Water and Sewer Bond Reserve Fund which is the account for this purpose in the Town's Water and Sewer Fund (hereinafter called the "*Debt Service Reserve Fund*"); and (d) Town of Beech Mountain Water and Sewer Surplus Fund (hereinafter called the "*Surplus Fund*"). Within the Debt Service Reserve Fund, there is hereby designated a USDA Reserve Account and a General Reserve Account. The moneys in each Fund and Account shall be held by the Town in trust with a Depositary and applied as hereinafter provided in this Article. Each Fund and Account shall be maintained as long as any of the Bonds are outstanding.

Section 5.03 *Pledge of Net Revenues.* The Town hereby pledges the Net Revenues to secure the payment of the principal of, redemption premium, if any, and interest on the Bonds. The Revenues, as received by the Town, shall immediately be subject to the lien of this pledge without any physical delivery thereof or further act and the lien of this pledge shall have priority over any or all other obligations and liabilities of the Town, including Subordinated Indebtedness, any general obligation bonds, or notes issued

in anticipation thereof, heretofore or hereafter issued by the Town for the purpose of providing Systems or facilities 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 irrespective of whether such parties have notice thereof.

Section 5.04 *Application of Revenues Received by the Town*

(a) All Revenues collected by or on behalf of the Town shall be deposited by the Town with one or more Depositaries as soon as practicable following the receipt thereof and held in the Revenue Fund. The Town shall withdraw and transfer or expend moneys held in the Revenue Fund only for the purposes and in the manner set forth in this Section.

(b) Operating Expenses shall be paid by the Town from, and shall be a first charge and lien against, the Revenue Fund. The Operating Expenses shall be paid from amounts held in the Revenue Fund as the same become due and payable in conformity with the applicable budgetary and payment procedures of the Town.

(c) The Town shall, after payment of such Operating Expenses then due and payable, withdraw from the Revenue Fund the amount necessary to make the following payments or deposits in the following manner and order:

(i) On or before the 5th day before each interest and principal payment date, to the credit of the Debt Service Fund, an amount equal to the amount required on the next payment date to pay the interest on and principal of the Bonds due on such date;

(ii) with respect to the Initial Bonds, on or before the 5th day before each principal payment date, to the credit of the USDA Reserve Account of the Debt Service Reserve Fund, until the amount on deposit therein is equal to the Debt Service Reserve Fund Requirement, an amount equal to 1/10 of the Debt Service Reserve Requirement;

(iii) with respect to any Additional Bonds, on or before the 5th day before each principal payment date, unless otherwise specified in the Series Resolution, to the credit of the General Reserve Account of the Debt Service Reserve Fund, until the amount on deposit therein is equal to the Debt Service Reserve Fund Requirement, an amount equal to 1/10 of the Debt Service Reserve Requirement; and

(iv) to the credit of the Surplus Fund the balance, if any, remaining after making the deposits under clauses (a), (b) and (c) above;

Provided, however, that if the amount so deposited to the credit of any Fund mentioned shall be less than the required amount, the requirement therefor shall nevertheless be cumulative and the amount of any deficiency shall be added to the amount otherwise required to be deposited to the credit of such Fund thereafter until such time as such deficiency shall be made up.

Section 5.05 *Application of Moneys in Debt Service Fund.* All moneys in the Debt Service Fund shall be held in trust for the payment of the principal of and the interest on the Bonds and no amount shall be withdrawn from or paid out of such Fund except as provided herein. The Town shall, from time to time, withdraw from the Debt Service Fund and (1) remit by mail or wire transfer to the Holder of each Bond the amount required for paying interest upon such Bond as such interest becomes due, and (2) set aside in trust an amount equal to the amount of, and for the sole and exclusive purpose of thereafter paying the principal of all Bonds as such principal becomes due.

Section 5.06 ***Application of Moneys in Debt Service Reserve Fund.*** Moneys held for the credit of the USDA Reserve Account of the Debt Service Reserve Fund shall be used for the purpose of paying interest on the Initial Bonds and maturing principal of Initial Bonds whenever and to the extent that the moneys held for the credit of the Debt Service Fund shall be insufficient for such purpose and for any other expenses with the consent of USDA. Moneys held for the credit of the General Reserve Account of the Debt Service Reserve Fund is to be used for the purpose of paying interest on the Additional Bonds and maturing principal of the Additional Bonds whenever and to the extent that the money held for the credit of the Debt Service Fund is insufficient for such purpose. Any moneys so withdrawn from such Fund shall be restored from available moneys in the Revenue Fund, subject to the same conditions as are prescribed for deposits to the credit of such 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 Debt Service Reserve Fund Requirement for any particular Account, such excess may be transferred by the credit of the Surplus Fund.

Section 5.07 ***Application of Surplus Fund.*** If, at any time, the amount available in the Revenue Fund is or has been insufficient to make required payments for Operating Expenses or to the Debt Service Fund or the Debt Service Reserve Fund, the Town shall withdraw from the Surplus Fund, to the extent the moneys therein are available, and pay into the Revenue Fund, such amount as is required to remedy such deficiency.

Moneys held for the credit of the Surplus Fund and not at the time required to be so withdrawn from such Fund may be withdrawn and applied by the Town, without accounting therefor to the Holders, for any lawful purpose, including, without limitation, to pay debt service on Subordinated Indebtedness and general obligation indebtedness of the Town.

Section 5.08 ***Unclaimed Moneys.*** All moneys which the Town shall have withdrawn from the Debt Service Fund and 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 Holders of such Bonds. Any moneys which shall be set aside and which shall remain unclaimed by the Holders of such Bonds for the period of three years after the date on which such Bonds shall have become payable shall be treated as abandoned property pursuant to the provisions of Article 3 of Chapter 116B of the North Carolina General Statutes, and the Town shall report and remit this property to the State Treasurer according to the requirements of Article 3 of Chapter 116B of the North Carolina General Statutes. Thereafter the Holders of such Bonds shall look only to the State Treasurer 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 5.09 ***Cancellation.*** 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 which 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 Town Council 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 Holders 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 Revenue Fund, the Debt Service Fund and the Surplus 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 holder thereof at the option of such holder, not later than the respective dates when the moneys held for the credit of each such Fund or Account 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 holder thereof at the option of such holder, not later than three years after the date of such investment. Obligations and certificates of deposit purchased as investments of moneys in any such Fund or Account shall be deemed at all times to be part of such Fund or Account, and the interest accruing thereon and any profit realized therefrom shall be credited to such Fund or Account, and any loss resulting therefrom shall be charged to such Fund or Account. 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 or Account. 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 or Account, obligations in which moneys in such Fund or Account have been invested shall be valued at the lower of cost or market.

ARTICLE VII PARTICULAR COVENANTS

Section 7.01 ***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. Except as in this Bond Order otherwise provided, the principal, interest and premiums are payable solely from Net Revenues, which are hereby pledged to the payment thereof in the manner and to the extent hereinabove particularly specified, and nothing in the Bonds or in this Bond Order shall be construed as obligating the Town to pay the Bonds or the interest thereon or any premium except from Net Revenues or as pledging the faith and credit of the Town or as obligating the Town, directly or indirectly or contingently, to levy or to pledge any form of ad valorem tax whatever therefor. 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 the Bonds.

Section 7.02 ***Construction of Project and System Improvements.*** The Town covenants that it will forthwith diligently proceed to complete the Project and any System Improvements in accordance with plans and specifications which shall have been approved by the Consultants and in conformity with law and all requirements of all governmental authorities having jurisdiction thereover, and that it will complete such construction 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 construction of the Project or any System Improvements to furnish a performance bond as required by law to insure completion and performance of such contract, or, in lieu thereof, to deposit with the Depositary 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 builders, risk insurance, if any, as may be required by the Consultants. 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 the 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 ***Operation and Maintenance of System.*** The Town covenants that it shall at all times operate the System properly and in a sound and economical manner, and shall maintain, preserve and keep the same properly or cause the same to be so maintained, preserved and kept, with the appurtenances and every part and parcel thereof, in good repair, working order and condition, and shall from time to time make or cause to be made, all necessary and proper repairs, replacements and renewals so that at all times the operation of the System may be properly and advantageously conducted.

Section 7.04 ***Rules, Regulations and Other Details.*** The Town covenants that it shall establish and shall enforce reasonable rules and regulations governing the operation, use and services of the System and that all compensations, salaries, fees and wages paid by the Town in connection with the maintenance, repair and operation of the System shall be reasonable. The Town shall observe and perform or shall cause to be observed and performed all of the terms and conditions contained in the Act, and shall comply with all valid acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body applicable to the System or the Town.

The Town further covenants that:

- (a) it may require the owner, tenant or occupant of each lot or parcel of land within the Town who is obligated to pay rates, fees or charges for the services and facilities furnished by the System to make a reasonable deposit with the Town in advance to insure the payment of such rates, fees or charges and to be subject to application to the payment thereof if and when delinquent;
- (b) if any rates, fees or charges for the services and facilities furnished by the System shall not be paid within thirty days after the same shall become due and payable, the Town shall at the expiration of such thirty day period disconnect the premises from the System, and the Town may proceed to recover by appropriate legal action the amount of any such delinquent rates, fees or charges;
- (c) it will not render, or cause to be rendered, any free services by the System nor will preferential rates be established for users of the same class; and
- (d) to the extent legally allowed, it will not consent to the furnishing of, or permit any person whatsoever to furnish, water and wastewater services within the Town except any providers which on the date of adoption of the Bond Order serve any areas the System does not or is unable economically to serve.

Section 7.05 ***Payment of Lawful Charges.*** The Town covenants that, from Revenues, it will pay all taxes and assessments or other municipal or governmental charges lawfully levied or assessed upon or in respect of the System or upon any part and that, from such Revenues, it will pay or cause to be discharged, or will make adequate provision to satisfy and discharge, within sixty days after the same shall accrue, all lawful claims and demands for labor, materials, supplies or other objects which, if unpaid, might by law become a lien upon the System or any part thereof or upon such Revenues; provided, however, that nothing in this Section contained shall require the Town to pay or cause to be discharged, or make provision for, any such lien or charge so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings.

Section 7.06 ***Insurance and Reconstruction.*** The Town covenants that it will obtain and maintain insurance, with reasonable terms, conditions, provisions and costs, which the Town Representative determines will afford adequate protection against such risks as are customarily insured against in connection with the operation of water and wastewater systems of type and size comparable to

the System. All such insurance policies shall be carried in an insurance company or companies authorized and qualified under the laws of the State of North Carolina to assume the risks thereof.

The proceeds of all such insurance covering damage to or destruction of the System shall be deposited with the Town and shall be available for and shall, to the extent necessary, be applied to the repair, replacement or reconstruction of the damaged or destroyed property, and shall be paid out in the manner determined by the Town. If such proceeds are more than sufficient for such purpose, the balance remaining shall be deposited to the credit of the Surplus Fund. If such proceeds shall be insufficient for such purpose, the deficiency may be supplied out of any moneys in the Surplus Fund. The proceeds of all insurance covering loss of Revenues shall be deposited to the credit of the Revenue Fund.

Section 7.07 ***Annual Budget of Operating Expenses.*** The Town covenants that it shall develop an Annual Budget for each Fiscal Year consistent with the budget preparation schedule set forth in the State's applicable fiscal control statutes. If for any reason the Town Council shall not have adopted the Annual Budget before the first day of any Fiscal Year, the budget for the preceding Fiscal Year shall, until the adoption of the Annual Budget, be deemed to be in force.

The Town Council may at any time adopt an amended or supplemental Annual Budget for the remainder of the then current Fiscal Year, but no such amended or supplemental budget shall be effective until it shall be approved in the manner hereinbefore prescribed for the Annual Budget.

The Town covenants that the Operating Expenses incurred in any Fiscal Year will not exceed the reasonable and necessary amount thereof, and that it will not expend any amount or incur any obligations for maintenance, repair and operation in excess of the amounts provided for Operating Expenses in the appropriate budget. Nothing in this Section contained shall limit the amount which the Town may expend for Operating Expenses in any Fiscal Year provided any amounts expended therefor in excess of the appropriate budget shall be received by the Town from some source other than Revenues and the Town shall not make any reimbursement therefor from such Revenues.

Section 7.08 ***Records, Books and Audits.*** The Town covenants that it will keep each of the funds of the System separate from all other funds of the Town and that it will keep accurate records and accounts of all items of cost and of all expenditures relating to the System and of the Revenues collected and the application of such Revenues. Such records and accounts shall at all times during normal business hours be open to the inspection of the Commission and the Holders of the Bonds.

The Town further covenants that promptly after the close of each Fiscal Year it will cause an audit to be made of its books and accounts relating to the System by a firm of independent certified public accountants to be chosen by the Town Council and will cause an annual report of operations of the System to be prepared, such annual report to cover the matters usually contained in annual reports for similar systems. Within a reasonable time thereafter, reports of each such audit and copies of each such annual report shall be mailed by the Clerk to the Commission, and, upon request, to each Identifiable Bondholder. Each such audit report shall be in accordance with generally accepted accounting principles and shall set forth in respect of the preceding Fiscal Year, among other matters, the Revenues and Operating Expenses of the System, all deposits or transfers to the credit of and all withdrawals from each special fund created hereunder, the amounts on deposit at the end of such Fiscal Year to the credit of each such special fund including the details of any investment thereof, a balance sheet and also the findings of such certified public accountants whether the moneys received by the Town under this Bond Order have been applied in accordance with the provisions of this Bond Order, whether any obligations for Operating Expenses were incurred in excess of the amounts appropriated in the Annual Budget and whether the Town is in default in the performance of any of the covenants contained in Article V hereof.

The audit must include a calculation of compliance for the fiscal year with the rate covenant set forth in Section 5.01.

Section 7.09 *Sale or Encumbrance.*

(a) The Town covenants that it will not sell, lease or otherwise dispose of or encumber the System or any part thereof except as expressly permitted by this Section or as agreed to by 100% of the Holders.

(b) The Town may, from time to time, sell or otherwise dispose of such property forming part of the System, including machinery, fixtures, apparatus, tools, instruments or other property, as the Town may determine is obsolete or no longer needed for the proper maintenance and operation of such System. The proceeds from any sale, lease or disposition of the System, in whole or in part, shall be applied to the replacement of the properties so sold or otherwise disposed of or shall be deposited in the Revenue Fund or otherwise used to pay or redeem Bonds.

(c) The Town may incur obligations secured by a lien on (a) rolling stock comprising a part of the System without limitation and (b) other property, plant and equipment comprising a part of the System; provided, however, that the principal amount of such obligations outstanding at any one time shall not exceed 20% of the net book value of the property, plant and equipment of the System (not taking into account any outstanding obligations with respect to rolling stock that is a part of the System) as shown on the audited financial statements of the Town for the most recent Fiscal Year for which audited financial statements are available.

Section 7.10. *Limitation on Liens.* The Town covenants that it will not create or permit to be created any charge or lien on the System or the Net Revenues ranking equally with or prior to the charge or lien on the Net Revenues of the Bonds issued and secured hereunder unless otherwise expressly permitted by this Bond Order or required by applicable law. The Town shall discharge or cause to be discharged, or shall make adequate provision to satisfy and discharge, within 60 days after the same become due and payable, all lawful costs, expenses, liabilities and charges relating to the maintenance, repair, replacement or improvement of the properties constituting the System and the operation of the System and lawful claims and demands for labor, materials, supplies or other objects that might by law become a lien upon the System or the Net Revenues if unpaid. Nothing contained in this Section shall require the Town to pay or cause to be discharged, or make provision for the payment, satisfaction and discharge of, any lien, charge, cost, liability, claim or demand so long as the validity thereof is contested in good faith and by appropriate legal proceedings. The Town may issue Subordinated Indebtedness secured by a charge or lien on the System or Net Revenues that is expressly subordinate to any Bonds issued hereunder.

Section 7.11 *Creation of Liens.* The Town covenants that it will not create or permit to be created any charge or lien on the Net Revenues ranking equally with or prior to the charge or lien on the Net Revenues of the Bonds issued and secured hereunder unless otherwise required by applicable law.

Section 7.12 *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, Revenues and other funds hereby pledged 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 Net Revenues and all the rights of the Holders against all claims and demands of all persons whomsoever.

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 and premium, if any, of 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 installment of interest shall not be made when the same shall become due; or

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

(d) any substantial part of the System, necessary for its efficient operation, shall be destroyed or damaged and shall not be promptly repaired, replaced or reconstructed (whether such failure promptly to repair, replace or reconstruct the same be occasioned by the impracticability of such repair replacement or reconstruction or the lack of funds therefor or any other reason); or

(e) an order or decree shall be entered, with the consent or acquiescence of the Town, appointing a receiver or receivers of the System or of the 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 60 days after the entry thereof; or

(f) 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 Revenues; or

(g) 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 on the part of the Town to be performed, and such default shall continue for 30 days after written notice specifying such default and requiring same to be remedied shall have been given to the Town by the Holders of not less than 20% in principal amount of the Bonds then outstanding.

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 Holders of a majority in 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 a Depositary, 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 Holders, then and in every such case the Holders may, and upon the written request of the Holders of a majority in principal amount of the Bonds not then due by their terms and then outstanding shall, 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 Holders 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 the Holders shall deem most effectual to protect and enforce such rights.

Section 8.04 ***No Remedy Exclusive.*** No remedy herein conferred upon or reserved to the Holders 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 8.05 ***Waiver of Default.*** No delay or omission of the Holders of the Bonds 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 Holders of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

The Holders of a majority of the Bonds 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 it 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 8.06 ***Notice of Default.*** The Town shall mail to the Commission and to the Holder of each Bond then outstanding written notice of the occurrence of any event of default set forth in Section 8.01 hereof within 30 days after the Town shall have notice that any such event of default has occurred.

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.

ARTICLE X SUPPLEMENTAL ORDERS

Section 10.01 ***Without Consent of Holders.*** The Town Council may amend this Bond Order in any respect prior to the delivery of the Initial Bonds.

The Town Council 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) and all of which are not materially adverse to bondholders:

(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 Holders any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Holders, 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 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 Holders.

Section 10.02 *With Consent of Holders.* Subject to the terms and provisions contained in this Section, and not otherwise, the Holders 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 Town Council 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 Holder 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 Holder of such Bond, or (c) the creation of a lien upon or a pledge of Revenues other than the lien and pledge created by this Bond Order without the consent of the Holders of all Bonds outstanding, or (d) a preference or priority of any Bond over any other Bond without the consent of the Holders of all Bonds outstanding or (e) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental order without the consent of the Holders of all Bonds outstanding and the consent of the Commission.

Section 10.03 *Obtaining Consent of Holders.* If at any time the Town Council shall determine that it is necessary or desirable to adopt any supplemental order for any of the purposes of Section 10.02, 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 Holder of Bonds at the addresses 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 corporate trust office of the Bond Registrar for inspection by all Holders. The Bond Registrar shall not, however, be subject to any liability to any Holder 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 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 Holders 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 and such amendment shall have been approved by the Commission, thereupon, but not otherwise, the Town Council may adopt such supplemental order in substantially such form, without liability or responsibility to any Holder of any Bond, whether or not such Holder shall have consented thereto.

If the Holders 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 Holder of any Bond 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 Town Council 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 Holders 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 Holder of any Bond then outstanding without cost to such Holder in exchange for and upon surrender of such outstanding Bonds.

Section 10.04 ***Unanimous Consent of Holders.*** 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 Holders of the Bonds may be modified or amended in any respect upon the adoption by the Town Council of an order to that effect, approved by the Bond Registrar, and the filing with the Town Council of the written consent of Holders of all the Bonds. No notice to Holders 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 shall have been duly called for redemption and the whole amount of the principal and the interest and premium, if any, so due and payable upon all of the Bonds then outstanding shall be paid, then and in that case the right, title and interest of the Holders of the Bonds secured hereby in the 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 Town Council shall determine; otherwise this Bond Order shall be, continue and remain in full force and effect.

Section 11.02 *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 Fund and Debt Service Reserve Fund, 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 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 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 Bonds and to the redemption of Bonds, all in accordance with the provisions of Article IV 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 Fund and the Debt Service Reserve Fund shall be applied in accordance with the provisions of paragraph (a) of this Section.

Section 11.03 *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 Town Council 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.

The Town Council shall have the right to enter into a contract with any public or private agency for the maintenance, operation and improvement of the System for such periods of time and under such terms and conditions which are not inconsistent with the provisions of this Bond Order as the Town Council shall determine to be in the best interests of the Town and of the Holders of Bonds issued pursuant to the provisions of this Bond Order.

Section 11.04 ***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 if addressed to Town of Beech Mountain, North Carolina, 403 Beech Mountain Parkway Beech Mountain, NC 28604, 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, Albemarle Building, 325 N. Salisbury Street, Raleigh, North Carolina 27603-1385.

Section 11.05 ***Execution of Instruments by Holders 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 Holders may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Holders 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 it under such instrument, if in accordance with the registration books.

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

Section 11.06 ***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, firm or corporation other than the Town, the Bond Registrar and the Holders 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 parties hereto and the Holders from time to time of the Bonds issued hereunder.

Section 11.07 ***Limited Obligations on Bonds.*** Nothing in the Bonds or in this Bond Order shall be construed or interpreted as pledging the faith and credit of the Town within the meaning of any Constitutional debt limitation. The taxing power of the Town is not pledged hereunder and nothing in the Bonds or this Bond Order shall be construed or interpreted as conveying or mortgaging the System or any part thereof.

Section 11.08 ***No Recourse Against Members, Officers or Employees of Town or Local Government Commission of North Carolina.*** 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 document or certification whatsoever, or under any judgment obtained against the Town or the Local Government Commission of North Carolina, 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 Local Government Commission of North Carolina, either directly or through the Town for the payment for or to, the Town or the Local Government Commission of North Carolina or any receiver of either of them, or for, or to, any owner or holder of Bonds or bond anticipation notes or otherwise, of any sum that may be due and unpaid upon any such 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 Local Government Commission of North Carolina or any receiver of either of them, or for, or to, any owner or holder of Bonds, 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 11.09 ***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 of said Bonds, but this Bond Order and said Bonds shall be construed and enforced as of such illegal or invalid provision had not been contained 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 nevertheless shall be deemed to be the covenant, stipulation, obligation or agreement of the Town to the full extent permitted by law.

Section 11.10 ***Issuance of Subordinate Obligations and Expenditures for System Improvements.*** Nothing in this Bond Order express or implied shall be construed as preventing the Town from financing System Improvements by the issuance of obligations which are not secured under the provisions of this Bond Order or from making expenditures for System Improvements from moneys received by the Town solely for such purpose. Any Subordinate Indebtedness shall include a provision prohibiting acceleration thereof while any Bonds are Outstanding hereunder.

Section 11.11 ***Applicable Law.*** This Bond Order is adopted with the intent that the laws of the State of North Carolina shall govern its construction.

Section 11.12 ***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 11.13 ***Officers' Authority.*** The officers and agents of the Town are hereby authorized and directed to 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.

Section 11.14 ***Inconsistent Matters.*** All orders and resolutions and 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 11.15 ***Effective Date.*** This Bond Order shall be effective immediately upon its adoption.

On motion of Commissioner Vice Mayor Paul Piquet, the foregoing order entitled "BOND ORDER AUTHORIZING THE ISSUANCE OF WATER AND SEWER REVENUE BONDS OF THE TOWN OF BEECH MOUNTAIN, NORTH CAROLINA TO PROVIDE ADDITIONAL FUNDS TO MAKE CERTAIN IMPROVEMENTS TO THE WATER AND SEWER SYSTEM OF THE TOWN OF BEECH MOUNTAIN, NORTH CAROLINA; PROVIDING FOR THE ISSUANCE OF ADDITIONAL REVENUE BONDS; PROVIDING FOR THE ISSUANCE OF REVENUE BOND ANTICIPATION NOTES IN ANTICIPATION OF THE ISSUANCE OF REVENUE BONDS; PROVIDING FOR THE COLLECTION OF SERVICE CHARGES FOR THE USE OF THE SYSTEM; PROVIDING FOR THE CREATION OF CERTAIN SPECIAL FUNDS; PLEDGING TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE REVENUE BONDS AND NOTES CERTAIN REVENUES OF THE SYSTEM; SETTING FORTH THE RIGHTS AND REMEDIES OF OWNERS; AND SETTING FORTH THE DETAILS OF CERTAIN RELATED MATTERS" was duly adopted by the following vote:

AYES:

NAYS:

Adopted this the 11th day of August, 2015.

Richard H. Owen, Mayor

Attest:

Jennifer Broderick, Clerk

STATE OF NORTH CAROLINA)
)
TOWN OF BEECH MOUNTAIN) ss:

I, *Jennifer Broderick*, Town Clerk of the Town of Beech Mountain, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of a resolution entitled “**BOND ORDER AUTHORIZING THE ISSUANCE OF WATER AND SEWER REVENUE BONDS OF THE TOWN OF BEECH MOUNTAIN, NORTH CAROLINA TO PROVIDE ADDITIONAL FUNDS TO MAKE CERTAIN IMPROVEMENTS TO THE WATER AND SEWER SYSTEM OF THE TOWN OF BEECH MOUNTAIN, NORTH CAROLINA; PROVIDING FOR THE ISSUANCE OF ADDITIONAL REVENUE BONDS; PROVIDING FOR THE ISSUANCE OF REVENUE BOND ANTICIPATION NOTES IN ANTICIPATION OF THE ISSUANCE OF REVENUE BONDS; PROVIDING FOR THE COLLECTION OF SERVICE CHARGES FOR THE USE OF THE SYSTEM; PROVIDING FOR THE CREATION OF CERTAIN SPECIAL FUNDS; PLEDGING TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE REVENUE BONDS AND NOTES CERTAIN REVENUES OF THE SYSTEM; SETTING FORTH THE RIGHTS AND REMEDIES OF OWNERS; AND SETTING FORTH THE DETAILS OF CERTAIN RELATED MATTERS**” adopted by the Town Council of the Town of Beech Mountain, North Carolina, at a meeting held on the 11th day of August, 2015.

WITNESS my hand and the corporate seal of the Town of Beech Mountain, North Carolina, this the ____ day of August, 2015.

Jennifer Broderick
Town Clerk
Town of Beech Mountain, North Carolina

RESOLUTION No. 2015-09

TOWN OF BEECH MOUNTAIN

Extract of Minutes of a regular meeting of the Town Council of the Town of Beech Mountain, North Carolina held in Council Chamber Room at 403 Beech Mountain Parkway, Beech Mountain, North Carolina 28604 at 4:00 p.m. on August 11, 2015.

The following Council Members were present:

Mayor Richard Owen, Vice Mayor Paul Piquet, Councilmember Alan Holcombe, Councilmember Rick Miller, and Councilwoman Cindy Keller

The following Council Members were absent:

None

Also present: Attorney Stacy Eggers, IV.

Council Member Alan Holcombe moved that the following resolution, a copy of which was available with the Town Council and which was read by title:

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BEECH MOUNTAIN, NORTH CAROLINA PROVIDING FOR THE ISSUANCE OF A \$4,300,000 WATER AND SEWER REVENUE BOND ANTICIPATION NOTE OF THE TOWN OF BEECH MOUNTAIN, NORTH CAROLINA

WHEREAS, the Bond Order hereinafter described was approved on August 11, 2015 and is in force and effect approving the issuance of \$4,300,000 Water and Sewer Revenue Bonds (the "*Bonds*") of the Town of Beech Mountain, North Carolina (the "*Town*"); and

WHEREAS, the Town desires to proceed with certain improvements to the water and sewer system (the "*Project*") for which the Bonds were approved through the issuance of a Note (as defined herein) as permitted by Section 159-161 of the General Statutes of North Carolina, as amended;

WHEREAS, First-Citizens Bank & Trust Company (the "*Bank*") has agreed to purchase the Note in the principal amount of \$4,300,000 to evidence a loan to the Town, which sum will be applied to the payment of a portion of the cost of the Project and the United States of America, United States Department of Agriculture, Rural Development, has agreed to purchase the Bonds in the aggregate principal amount of \$4,300,000 to evidence a loan to the Town, all of the proceeds of which will be applied to the repayment of the principal amount of the Note;

WHEREAS, the Local Government Commission of North Carolina (the "*LGC*") has approved the application of the Town for approval of the Bonds as required by Section 159-85 of the General Statutes of North Carolina, as amended and Section 2.01 of the Bond Order, and the issuance and private sale of the Bonds;

WHEREAS, the LGC has approved the issuance and private sale of the Note (as defined herein) under the provisions of Article 9 of Chapter 159 of the General Statutes of North Carolina, as amended, at its August 4, 2015 meeting.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Beech Mountain, North Carolina (the "*Town Council*"), as follows:

1. For purposes of this Resolution, the following words have the meanings ascribed to them below:

"*Bid for Note*" means the Bid for Note submitted to the Local Government Commission of North Carolina by the winning bidder selected to purchase the Note.

"*Bond Order*" means the Bond Order authorizing the Bonds adopted by the Town Council on August 11, 2015 and effective thereon.

"*Note*" means the Town's \$4,300,000 Water and Sewer Revenue Bond Anticipation Note.

"*Town*" means the Town of Beech Mountain, North Carolina, and its successors or assigns.

"*Town Council*" means the Town Council of the Town.

2. The Town shall issue not to exceed \$4,300,000 in total aggregate principal amount of its Note.

3. The Note is being issued to provide funds to pay the capital costs of improvements to the Town's water and sewer system, specifically the construction and equipping of a water plant (the "*Project*"), pursuant to and in accordance with the Bond Order.

4. The Note shall be dated August 18, 2015 and shall mature on May 19, 2017. It shall bear interest at the rate of 1.07% per annum, which interest shall be payable at the maturity of the Note and shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. No interest coupons shall be attached to the Note.

5. The Note will be payable as to both principal and interest at First-Citizens Bank & Trust Company in Raleigh, North Carolina, and both the principal of and interest on the Note shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. Should the Town fail to pay any principal or other payments on the Note within fifteen days after the due date thereof, the Town shall pay a late payment charge equal to 5% of the delinquent payment.

6. The Note is subject to prepayment prior to maturity at 100% of the principal amount solely from the proceeds of the Bonds received from the United States of America, United States Department of Agriculture, Rural Development.

7. The Note shall be sold to the Bank at a purchase price of \$4,300,000, such purchase price and the interest rate set forth above being in the best interests of the Town.

8. The Note, which shall be in the form attached hereto as Exhibit A and executed in the manner provided for in the Bond Order. An original or facsimile of the seal of the Town is to be imprinted on the Note.

9. The proceeds of the Note shall be deposited into an account as directed by the Finance Officer of the Town. The moneys held in such account shall be used to pay the costs of the Project or costs incurred in connection with the issuance of the Note. Funds in such account shall be invested in compliance with Section 159-30 of the North Carolina General Statutes, as amended, with interest earnings to be deposited to the credit of such account for the benefit of the Town and applied to the costs of the Project.

10. The Town covenants to take such action as may be required in the opinion of nationally recognized bond counsel to cause the Note and all actions of the Town with respect to the proceeds thereof to comply with Internal Revenue Code of 1986, as amended (the "*Code*") in order that interest with respect to the Note be or continue to be excluded from gross income for federal income tax purposes. In particular, the Town covenants as follows:

(a) At least one of the following two conditions will be satisfied: (i) less than 10% of the proceeds of the Note reduced by costs of issuance will be used directly or indirectly in the business of a person other than a state or local governmental unit or (ii) less than 10% of the principal or interest on the Note will be (under the terms of such issue or any underlying arrangement) directly or indirectly (A) secured by an interest in property used or to be used in a private business or by any interest in payments made with respect to such property or (B) derived from payments made with respect to property, or borrowed money, used or to be used in a private business;

(b) Less than 5% of the proceeds of the Note reduced by costs of issuance will be used by nongovernmental persons for a use unrelated to the purposes for which the Note was issued;

(c) It will not loan directly or indirectly more than 5% of the Note proceeds to nongovernmental persons;

(d) It has not and will not enter into any management contract with respect to the facilities financed with the proceeds of the Note unless it obtains an opinion of nationally recognized bond counsel that such management contract will not impair the exclusion from a recipient's gross income for federal income tax purposes of the interest on the Note;

(e) The Town acknowledges that the continued exclusion of interest on the Note from a recipient's gross income for federal income tax purposes depends, in part, upon compliance with the arbitrage limitations imposed by Section 148 of the Code. The Town covenants to comply with all the requirements of Section 148 of the Code, including the rebate requirements, and it shall not permit at any time any of the proceeds of the Note or other funds of the Town to be used, directly or indirectly, to acquire any asset or obligation, the acquisition of which would cause the Note to be "arbitrage bonds" for purposes of Section 148 of the Code;

(f) The Note is not and shall not be "federally guaranteed" as defined in Section 149(b) of the Code;

(g) The Town covenants to file or cause to be filed Form 8038G in accordance with Section 149(e) of the Code;

(h) The Town designates the Note as a "qualified tax-exempt obligation" eligible for the exception from the disallowance of the deduction of interest by financial institutions allocable to the cost of carrying tax-exempt obligations in accordance with the provisions of Section 265(b)(3) of the Code. The Town does not reasonably anticipate issuing more than

\$10,000,000 of qualified tax-exempt obligations pursuant to such Section 265(b)(3), including all entities which issue obligations on behalf of the Town and all subordinate entities of the Town, during calendar year 2015 and will not designate more than \$10,000,000 of qualified tax-exempt obligations pursuant to such Section 265(b)(3) during calendar year 2015.

11. The Mayor, the Town Manager, the Finance Officer and the Clerk, each acting on behalf of the Town, individually or collectively, are hereby authorized and directed to cause the Note to be prepared and to execute the Note and deliver it to the Bank.

12. If the maturity date of the Note occurs prior to the date that the Project is completed or substantially completed enough such that the United States of America, United States Department of Agriculture, Rural Development is willing to purchase the Bonds expected to be used to pay off the Note, then the Mayor, the Town Manager, the Finance Officer and the Clerk, each acting on behalf of the Town, individually or collectively, are authorized and directed to execute and deliver another note or notes in substantially the form of Exhibit A with such terms as they deem necessary to keep such note or notes outstanding until such time as the United States of America, United States Department of Agriculture, Rural Development is willing to purchase the Bonds to pay off the note or notes.

13. The Mayor, the Town Manager, the Finance Officer and the Clerk, each acting on behalf of the Town, individually or collectively, are authorized and directed to execute and deliver for and on behalf of the Town any and all additional certificates, documents, opinions or other papers and perform all other acts as may be required by the documents contemplated hereinabove or as may be deemed necessary or appropriate in order to implement and carry out the intent and purposes of this Resolution.

14. The Finance Officer shall cause the proceeds of the Note received by the Town to be deposited in a separate account of the Town, as described in Section 9 herein, and be applied to pay the costs of issuance of the Note and the cost of the Project, as described in Section 9 herein.

On motion of Vice Mayor Piquet the foregoing order entitled **"RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BEECH MOUNTAIN, NORTH CAROLINA PROVIDING FOR THE ISSUANCE OF A \$4,300,000 WATER AND SEWER REVENUE BOND ANTICIPATION NOTE OF THE TOWN OF BEECH MOUNTAIN, NORTH CAROLINA"** was duly adopted by the following vote:

AYES: 5

NAYS: 0

Adopted this the 11th day of August, 2015.

Richard H. Owen, Mayor

Attest:

Jennifer Broderick, Clerk

STATE OF NORTH CAROLINA)
) ss:
TOWN OF BEECH MOUNTAIN)

I, *Jennifer Broderick*, Town Clerk of the Town of Beech Mountain, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of a resolution entitled “**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BEECH MOUNTAIN, NORTH CAROLINA PROVIDING FOR THE ISSUANCE OF A \$4,300,000 WATER AND SEWER REVENUE BOND ANTICIPATION NOTE OF THE TOWN OF BEECH MOUNTAIN, NORTH CAROLINA**” adopted by the Town Council of the Town of Beech Mountain, North Carolina, at a meeting held on the 11th day of August, 2015.

WITNESS my hand and the corporate seal of the Town of Beech Mountain, North Carolina, this the ____ day of August, 2015.

Jennifer Broderick
Town Clerk
Town of Beech Mountain, North Carolina

EXHIBIT A

(Form of Note)

NO. R 1

\$4,300,000

**UNITED STATES OF AMERICA
STATE OF NORTH CAROLINA
TOWN OF BEECH MOUNTAIN, NORTH CAROLINA
WATER AND SEWER REVENUE BOND ANTICIPATION NOTE**

INTEREST RATE	MATURITY DATE	DATED DATE
1.07%	May 19, 2017	August 18, 2015

OWNER: First-Citizens Bank & Trust Company

PRINCIPAL SUM: Four Million Three Hundred Thousand Dollars

TOWN OF BEECH MOUNTAIN, NORTH CAROLINA (the "*Town*") acknowledges itself indebted and for value received hereby promises to pay to the Owner named above, on the Maturity Date specified above, on surrender hereof, the Principal Sum shown above and to pay to the Owner hereof interest thereon from the date of this Note which interest shall be payable at the maturity of the Note, each payment at the Interest Rate per annum specified above calculated on the basis of a 360-day year consisting of twelve 30-day months. Principal of and interest on this Note is payable in immediately available funds and is payable in U.S. dollars to the Owner of the Note.

This Note is issued pursuant to and in accordance with Article 5 and Article 9 of Chapter 159 of the General Statutes of North Carolina, both as amended, a bond order (the "*Bond Order*") adopted by the Town Council of the Town of Beech Mountain on August 11, 2015 and effective thereon and a resolution adopted by the Town Council on August 11, 2015 (the "*Note Resolution*"). This Note is issued in anticipation of the receipt of the proceeds of the sale of a like amount of the Town's Water and Sewer System Revenue Bonds, and the proceeds hereof shall be used to pay a portion of the cost of certain improvements to the Town's water and sewer system (the "*Project*").

The Note is a special obligation of the Town payable solely from the Net Revenues (as defined in the Bond Order) and from the proceeds of said Water and Sewer System Revenue Bonds of the Town. Neither the credit nor the taxing power of the Town is pledged for the payment of this Note and no holder of this Note has the right to compel exercise of the taxing power by the Town or the forfeiture of any of the Town's property in connection with any default hereon. Reference is hereby made to the Bond Order and the Note Resolution and to all amendments and supplements thereto for a description of the provisions, among others, respecting the nature and extent of the security, the rights, duties and obligations of the Town, the rights of the holder of this Note and the terms upon which this Note is issued and secured.

This Note is subject to prepayment prior to maturity at 100% of the principal amount hereof solely from the proceeds of the Bonds (as defined in the Note Resolution) received from the United States of America, United States Department of Agriculture, Rural Development.

It is hereby certified and recited that all conditions, acts and things required by the Constitution or statutes of the State of North Carolina to exist, be performed or happen precedent to or in the issuance of this Note, exist, have been performed and have happened, and that the amount of this Note, together with all other indebtedness of the Town, is within every debt and other limit prescribed by said Constitution or statutes.

This Note is not valid or obligatory for any purpose until the certification hereon has been signed by an authorized representative of the Local Government Commission of North Carolina.

IN WITNESS WHEREOF, the Town has caused this Note to bear the original or facsimile of the signatures of the Mayor and the Clerk and an original or facsimile of the seal of the Town to be imprinted hereon.

(SEAL)

CLERK

MAYOR

Date of Execution: August 11, 2015

The issue hereof has been approved under the provisions of The Local Government Bond Act.

Secretary of the Local Government Commission

FORM OF ASSIGNMENT

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

(Please print or typewrite Name and Address,
including Zip Code, and Federal Taxpayer Identification or
Social Security Number of Assignee)

the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints

Attorney to register the transfer of the within Note on the books kept for registration thereof,
with full power of substitution in the premises.

Dated: _____

Signature guaranteed by:

NOTICE: Signature must be guaranteed by a Participant in the Securities Transfer Agent Medallion Program ("*STAMP*") or similar program.

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within Note in every particular, without alteration, enlargement or any change whatever.

TRANSFER FEE MAY BE REQUIRED

ORDINANCE No. 2015-06

TOWN OF BEECH MOUNTAIN

**AN ORDINANCE TO AMEND THE SOLID WASTE MANAGEMENT
REGULATIONS**

WHEREAS, Beech Mountain is a resort area that is blessed with abundant environmental beauty; and;

WHEREAS, the Town of Beech Mountain desires to preserve the aesthetic qualities and charm of its residential and commercial areas; and;

WHEREAS, the Town of Beech Mountain desires to preserve environmental quality and minimize adverse conflicts between wildlife and humans; and

WHEREAS, garbage and litter detract from the natural beauty of Beech Mountain, and encourages negative behavior in animals who come to depend on human garbage as a food source; and

WHEREAS, removing garbage and litter expeditiously helps to minimize the adverse impacts herein described; and

WHEREAS, in order to function efficiently the Town of Beech Mountain needs to collect a reasonable fee for the service of removing garbage and litter; and

WHEREAS, the fees for Sanitation related services are housed in "Appendix A" to Chapter 51 of the Town of Beech Mountain Code of Ordinances; and

WHEREAS, the Town's policy is to remove such fee schedules from the Code of Ordinances and house them with the Department to which they pertain.

**NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE
TOWN OF BEECH MOUNTAIN THAT:**

SECTION I. The Town of Beech Mountain Code of Ordinances, Chapter 50: 'Solid Waste Management', Section: §50.04 'Fees,' and Chapter 51: 'Water and Sewer Use', Sections: §51.025 'Definitions', §51.027 'Customers Outside the Corporate Limits', and 'Appendix A' are hereby adopted by the Town Council and codified as follows:

§ 50.04 FEES.

C. The Town of Beech Mountain may remove or cause to be removed any litter, debris, or solid waste deposited in violation of this this chapter, Chapter 94.02 of the Town of Beech Mountain Code of Ordinances or North Carolina state law.

a. Any person who violates this chapter, Chapter 94.02 of the Town of Beech Mountain Code of Ordinances or North Carolina state law regarding littering or dumping shall be subject to a fee in the amount of the current rate for a special sanitation collection or the actual cost of the removal, in addition to any other applicable penalties.

• • •

§ 51.025 DEFINITIONS.

(C) **CONNECTION FEE.** Shall mean the fee charged the customer by the town for installing the necessary lines and meter according to the rate schedule ~~attached hereto as Appendix A and incorporated herein by reference.~~ as maintained in the Utilities Department.

• • •

§ 51.027 CUSTOMERS OUTSIDE CORPORATE LIMITS.

Rates for water and/or sewer service to properties outside the corporate limits shall be double the prices set out in ~~Appendix A.~~ the rate schedule as maintained in the Utilities Department.

• • •

APPENDIX A: RATES

<i>Quarterly Sanitation Fees</i>	
Recycling	\$4.08
Non-Dumpster	\$40.82
<i>Residential</i>	
2 cubic yard Dumpster	\$106.14
3 cubic yard Dumpster	\$126.56
4 cubic yard Dumpster	\$142.88
6 cubic yard Dumpster	\$175.54
8 cubic yard Dumpster	\$208.20

<i>Commercial</i>	
2 cubic yard Dumpster	\$122.47
3 cubic yard Dumpster	\$151.05
4 cubic yard Dumpster	\$179.62
6 cubic yard Dumpster	\$236.78
8 cubic yard Dumpster	\$272.16
<i>Availability Fees</i>	
Water	.90/sq. ft.
Sewer	.90/sq. ft.

SECTION II. CODIFICATION. The provisions of Section I of this Ordinance shall be published as appropriate in the Town of Beech Mountain Code of Ordinances as soon as practicable.

SECTION III. SEVERABILITY CLAUSE. If any section, part or provision of this Ordinance is declared unconstitutional or invalid by a court of competent jurisdiction, then it is expressly provided and it is the intention of the Town Council in passing this Ordinance that its parts shall be severable and all other parts of the Ordinance shall not be affected thereby and they shall remain in full force and effect.

SECTION IV. PUBLICATION AND EFFECTIVE DATE. This Ordinance shall take effect immediately upon its passage and publication according to law.

READ, CONSIDERED, PASSED AND APPROVED at a regular meeting of the Town Council of Beech Mountain, North Carolina, at which a quorum was present and which was held on the 11th day of August, 2015.

This Ordinance Adopted the 11th day of August, 2015.

Richard H. Owen, Mayor

Attest:

Jennifer Broderick, CMC
Clerk to the Board

Resolution No. 2015-10

TOWN OF BEECH MOUNTAIN, NC

**A RESOLUTION IN SUPPORT OF THE NORTH CAROLINA LEAGUE OF
MUNICIPALITIES ADVOCATING THE GENERAL ASSEMBLY TO PROVIDE
CITIES WITH THE AUTHORITY TO RAISE LOCAL REVENUE**

WHEREAS, the Town of Beech Mountain strives to provide quality services and infrastructure to its citizens and visitors and to protect and enhance the health, safety, prosperity, and general welfare of its citizens and the character of its community; and

WHEREAS, the Town of Beech Mountain recognizes that the provision of quality services and infrastructure is dependent on adequate municipal revenue sources; and

WHEREAS, revenue sources for municipalities in the State of North Carolina have been significantly restrained by recent legislation making it difficult for cities to grow in a manner that allows them to fiscally accommodate for expanding population as well as continue to provide the same high level of service that has come to be expected; and

WHEREAS, State legislators are currently favorably considering proposed re-allocation of sales tax revenues that will result in a further decrease in revenue for the Town of Beech Mountain; and

WHEREAS, the North Carolina League of Municipalities is advocating that the North Carolina General Assembly consider certain legislative items that would grant Municipalities broader flexibility in the ways in which they raise revenue to negate the loss of revenue; and

WHEREAS, these measures, advocated by the North Carolina League of Municipalities, include “service fees” to replace lost revenue from the expiration of the Privilege License Tax, Sales Tax Base Expansion, Occupancy Tax Flexibility and Uniformity, and the Flexibility to Charge Different Property Tax Rates for different classes of property;

NOW THEREFORE, the Town Council of the Town of Beech Mountain does hereby resolve to support the critical financial decisions advocated by the North Carolina League of Municipalities that would provide municipalities with the authority they need to offset lost revenue due to changes in state law, so that our great State can continue to be one of the top-ranked states for business and can continue to create a great quality of life for both citizens and visitors.

Adopted this the 18th day of August, 2015.

Richard H. Owen, Mayor

Attest:

Jennifer Broderick, CMC