



Resolution No. 22-2275

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CAROLINA BEACH, NORTH CAROLINA, APPROVING AN INSTALLMENT FINANCING CONTRACT AND DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING; THE EXECUTION AND DELIVERY THEREOF; AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS

WHEREAS, the Town of Carolina Beach, North Carolina (the “*Town*”) is a validly existing political subdivision of the State of North Carolina, existing as such under and by virtue of the Constitution, statutes and laws of the State of North Carolina (the “*State*”);

WHEREAS, the Town has the power, pursuant to the General Statutes of North Carolina to (1) purchase real and personal property, (2) enter into installment financing contracts in order to finance and refinance the purchase of real and personal property used, or to be used, for public purposes and (3) grant a security interest in some or all of the property purchased to secure repayment of the purchase price;

WHEREAS, the Town Council of the Town (the “*Town Council*”) has determined that it is in the best interest of the Town to finance all or a portion of the costs of acquiring real property to be used by the Town as the site of a future expansion of the Town’s Municipal Complex, facilities and infrastructure (the “*Property*”);

WHEREAS, the Town Council hereby determines that it is in the best interest of the Town to enter into an Installment Financing Contract, dated on or about January [13], 2023 (the “*Contract*”), between SouthState Bank, National Association (the “*Lender*”) and the Town in order to (i) finance all or a portion of the costs of acquiring the Property and (ii) pay certain costs incurred in connection with the execution and delivery of the Contract;

WHEREAS, the Town Council hereby further determines that it is in the best interest of the Town to execute and deliver a Deed of Trust, Security Agreement and Fixture Filing, dated on or about January [13], 2023 (the “*Deed of Trust*”), to the deed of trust trustee named therein for the benefit of the Lender, granting a lien on the Town’s fee simple interest in all or some portion of the Property, as more particularly described in the Deed of Trust (the “*Mortgaged Property*”), in order to secure the Town’s obligations under the Contract;

WHEREAS, a public hearing was held on [December 13], 2022 to receive public comments on the Contract, the Deed of Trust and the financing of the Property;

WHEREAS, the Town filed an application with the Local Government Commission (the “*LGC*”) for the approval of the LGC with respect to the Town entering into the Contract in an aggregate principal amount of not to exceed \$2,000,000, and the Town hereby determines that all findings, conclusions and determinations of the Town in this Resolution are subject to such approval by the LGC;

WHEREAS, there have been described to the Town Council the forms of the following documents (collectively, the “*Instruments*”), copies of which have been made available to the Town Council, which the Town Council proposes to approve, enter into and deliver, as applicable, to effectuate the proposed installment financing:

- (1) the Contract; and

- (2) the Deed of Trust; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CAROLINA BEACH, NORTH CAROLINA, AS FOLLOWS:

Section 1. ***Ratification of Prior Actions.*** All actions of the Town, the Town Manager, the Finance Director, the Town Clerk and their respective designees in effectuating the proposed financing of the Property are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the Contract.

Section 2. ***Findings.*** The Town Council hereby finds and confirms that (i) the financing of the Property by an installment financing contract with the Lender is necessary and expedient for the Town; (ii) the financing of the Property by an installment financing contract with the Lender, under the circumstances, is preferable to a bond issue by the Town; (iii) the sums to fall due under said installment financing contract with the Lender are adequate and not excessive for their proposed purpose; (iv) the Town's debt management procedures and policies are good and its debt will continue to be managed in strict compliance with law; (v) the increase in taxes, if any, necessary to meet the sums to fall due under said installment financing contract with the Lender will not be excessive; and (vi) the Town is not in default regarding any of its debt service obligations.

Section 3. ***Approval, Authorization and Execution of Contract.*** The Town Council hereby approves the financing of the Property in accordance with the terms of the Contract, which will be a valid, legal and binding obligation of the Town in accordance with its terms. The Town Council hereby approves the amount advanced by the Lender to the Town pursuant to the Contract in an aggregate principal amount not to exceed \$2,000,000, the annual interest rate (in the absence of default or change in tax status) shall not exceed 3.69% per annum, calculated on a 30/360 day basis, and the financing term shall not exceed ten (10) years from the date of closing, such amount to be repaid by the Town to the Lender as provided in the Contract. The form, terms and content of the Contract are in all respects authorized, approved and confirmed, the Town Manager, the Finance Director and the Town Clerk or their respective designees are authorized, empowered and directed, individually and collectively, to execute and deliver the Contract for and on behalf of the Town, including necessary counterparts, in substantially the form presented to the Town Council, but with such changes, modifications, additions or deletions therein as they may deem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all such changes, modifications, additions or deletions. From and after the execution and delivery of the Contract, the Town Manager, the Finance Director and the Town Clerk or their respective designees are hereby authorized, empowered and directed, individually and collectively, to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Contract as executed.

Section 4. ***Approval, Authorization and Execution of Deed of Trust.*** The form, terms and content of the Deed of Trust are in all respects authorized, approved and confirmed, the Town Manager, the Finance Director and the Town Clerk or their respective designees are authorized, empowered and directed, individually and collectively, to execute and deliver the Deed of Trust for and on behalf of the Town, including necessary counterparts, in substantially the form presented to the Town Council, but with such changes, modifications, additions or deletions therein as they may deem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all such changes, modifications, additions or deletions. From and after the execution and delivery of the Deed of

Trust, the Town Manager, the Finance Director and the Town Clerk or their respective designees are hereby authorized, empowered and directed, individually and collectively, to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Deed of Trust as executed.

Section 5. **Further Actions.** The Town Manager and the Finance Director are each hereby designated as the Town's representatives to act on behalf of the Town in connection with the transactions contemplated by the Contract. The Town Manager and the Finance Director are authorized and directed, individually and collectively, to proceed with the financing of the Property in accordance with the terms of the Contract and to seek opinions on matters of law from the Attorney for the Town, which the Attorney for the Town is authorized to furnish on behalf of the Town, and opinions of law from such other attorneys for all documents contemplated hereby as required by law. The Town Manager and the Finance Director are hereby authorized to designate one or more employees of the Town to take all actions which the Town Manager or the Finance Director is authorized to perform under this Resolution, and the Town Manager, the Finance Director or their designees are in all respects authorized on behalf of the Town, individually and collectively, to supply all information pertaining to the transactions contemplated by the Contract. The Town Manager, the Finance Director and the Town Clerk are authorized, individually and collectively, 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 Contract or as they may deem necessary or appropriate to implement and carry out the intent and purposes of this Resolution.

Section 6. **Sworn Statement of Debt.** The Finance Director shall prepare and file a sworn statement of debt with the LGC and with the Town Clerk, which shall be available for public inspection in the office of the Town Clerk, in accordance with North Carolina General Statutes Section 159-150.

Section 7. **Repealer.** All motions, orders, resolutions, ordinances, and parts thereof in conflict with this Resolution are hereby repealed.

Section 8. **Qualified Tax-Exempt Obligation.** The Town Council hereby designates the Contract as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

Section 9. **Severability.** If any section, phrase or provision of this Resolution is for any reason declared to be invalid, such declaration will not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

Section 10. **Effective Date.** This Resolution is effective on the date of its adoption.

WITNESS my hand and the corporate seal of said Town, this 13th day of December, 2022.

Albert L Barbee
Mayor of Carolina Beach, North Carolina

[SEAL]