

RESOLUTION 21-18

RESOLUTION OF THE TOWN OF HOLDEN BEACH, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO

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

WHEREAS, the Town has the power, pursuant to the General Statutes of North Carolina to (1) enter into installment contracts in order to purchase, or finance or refinance the purchase of, real or personal property and to finance or refinance the construction or repair of fixtures or improvements on real property and (2) create a security interest in some or all of the property financed or refinanced to secure repayment of the purchase price;

WHEREAS, the Board of Commissioners (the “*Board*”) of the Town hereby determines that it is in the best interest of the Town to (1) enter into an installment financing contract (the “*Contract*”) with a financial institution to be determined in order to pay the costs of purchasing property in the Town located at 441 Ocean Boulevard W., including the pier (the “*Property*”), and (2) in order to provide security for the Town’s obligations under the Contract, grant to such financial institution a security interest under a deed of trust on all or a portion of the real property comprising the Property, and the improvements thereon, as the financial institution providing the funds to the Town under the Contract may require;

WHEREAS, the Town staff has retained (1) Parker Poe Adams & Bernstein LLP, as special counsel (“*Special Counsel*”) and (2) DEC Associates Inc., as financial advisor, in connection with the proposed installment financing;

WHEREAS, the Board hereby determines that the acquisition of the Property is important to the general health and welfare of the Town’s inhabitants; that acquiring the Property will permit the Town to carry out public functions that it is authorized by law to perform, including, without limitation, providing regional public beach access, public parking, recreation and access for beach nourishment and emergency operations; and that entering into the Contract is necessary and expedient for the Town by virtue of the findings presented herein;

WHEREAS, the Board hereby determines that such cost of acquiring the Property exceeds the amount that can be prudently raised from currently available appropriations, unappropriated fund balances and non-voted bonds that could be issued by the Town in the current fiscal year pursuant to Article V, Section 4 of the Constitution of the State;

WHEREAS, although the cost of financing the acquisition of the Property pursuant to the Contract is expected to exceed the cost of financing the acquisition of the Property pursuant to a bond financing for the same undertaking, the Town hereby determines that the cost of financing the acquisition of the Property pursuant to the Contract and the obligations of the Town thereunder are preferable to a general obligation bond financing or revenue bond financing for several reasons, including but not limited to the following: (1) the cost of a special election necessary to approve a general obligation bond financing, as required by the laws of the State, would result in the expenditure of significant funds; (2) the time required for a general obligation bond election would cause an unnecessary delay in the ability to acquire the Property; and (3) insufficient revenues are produced by the Property so as to permit a revenue bond financing;

WHEREAS, the Board hereby determines that the estimated cost of financing the acquisition of the Property pursuant to the Contract allows the Town to finance the acquisition of the Property at a favorable interest rate currently available in the financial marketplace and on terms advantageous to the

Town and reasonably compares with an estimate of similar costs under a bond financing for the same undertaking as a result of the findings delineated in the above preambles;

WHEREAS, the Town does not anticipate an increase in taxes to pay the installment payments under the Contract, but the increase in taxes, if any, necessary to service the installment payments falling due under the Contract will not be excessive;

WHEREAS, no deficiency judgment may be rendered against the Town in any action for its breach of the Contract, and the taxing power of the Town is not and may not be pledged in any way directly or indirectly or contingently to secure any money due under the Contract;

WHEREAS, the Town is not in default under any of its debt service obligations;

WHEREAS, the Town's budget process and Annual Budget Ordinance are in compliance with the Local Government Budget and Fiscal Control Act, and external auditors have determined that the Town has conformed with generally accepted accounting principles as applied to governmental units in preparing its Annual Budget Ordinance;

WHEREAS, past audit reports of the Town indicate that its debt management and contract obligation payment policies have been carried out in compliance with the law, and the Town has not been censured by the Local Government Commission of North Carolina (the "LGC"), external auditors or any other regulatory agencies in connection with such debt management and contract obligation payment policies;

WHEREAS, a public hearing on the Contract, after publication of a notice with respect to such public hearing, must be held and approval of the LGC with respect to entering the Contract must be received; and

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

Section 1. That the Mayor and the Town Manager, and their designees, with advice from the Town Attorney and the Town's financial advisor, are hereby authorized and directed to negotiate on behalf of the Town (1) the financing of the acquisition of the Property for a principal amount not to exceed \$3,300,000 under the Contract, to be entered into in accordance with the provisions of Section 160A-20 of the General Statutes of North Carolina, as amended, and (2) the provision of a security interest under a deed of trust in the Town's fee simple interest in all or a portion of the real property comprising the Property, together with all improvements thereon, as may be required by the financial institution providing the funds to the Town under the Contract to secure the Town's obligations thereunder.

Section 2. That the Board finds and determines:

- (1) That the proposed Contract is necessary and expedient;
- (2) That the Contract, under the circumstances, is preferable to a bond issue for the same purpose;
- (3) That the sums to fall due under the Contract are adequate and not excessive for its proposed purpose;
- (4) That the Town's debt management procedures and policies are good;
- (5) That the increase in taxes, if any, necessary to meet the sums to fall due under the Contract will not be excessive; and
- (6) That the Town is not in default in any of its debt service obligations.

Section 3. That the Town Manager or his designee is hereby directed to file with the LGC an application for its approval of the Contract and all relevant transactions contemplated thereby on a form prescribed by the LGC and to state in such application such facts and to attach thereto such exhibits regarding the Town and its financial condition as may be required by the LGC.

Section 4. That Parker Poe Adams & Bernstein LLP has been retained by the Town to serve as special counsel for the installment financing and DEC Associates Inc. been retained to serve as financial advisor for the installment financing. The Town Manager, with advice from the Town Attorney, is hereby authorized to retain the assistance of other professionals as they deem necessary and desirable to carry out the intention of this Resolution.

Section 5. That a public hearing shall be conducted by the Board on January 18, 2022 (the “*Public Hearing*”) concerning the approval of the execution and delivery of the Contract for the financing of the acquisition of the Property. The Town Clerk is hereby directed to cause a notice of the Public Hearing, a form of which is attached hereto as Exhibit A, to be published at least once in a qualified newspaper of general circulation within the Town no fewer than 10 days prior to the Public Hearing.

Section 6. That all actions of the Town and its officials, whether previously or hereafter taken in effectuating the proposed installment financing as described herein, are hereby ratified, authorized and approved.

Section 7. That all motions, orders, resolutions and parts thereof in conflict herewith are hereby repealed.

Section 8. That this Resolution is effective on the date of its adoption.

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

I, *Heather Finnell*, Town Clerk of the Town of Holden Beach, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of a resolution entitled “**RESOLUTION OF THE TOWN OF HOLDEN BEACH, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO**” adopted by the Board of Commissioners of the Town of Holden Beach, North Carolina, at a meeting held on the 21st day of December, 2021.

WITNESS my hand and the corporate seal of the Town of Holden Beach, North Carolina, this the ___ day of December, 2021.

[Seal]

Heather Finnell
Town Clerk
Town of Holden Beach, North Carolina

EXHIBIT A

NOTICE OF PUBLIC HEARING

The Board of Commissioners (the “*Board*”) of the Town of Holden Beach, North Carolina (the “*Town*”) is considering entering into an installment financing contract (the “*Contract*”), in a principal amount not to exceed \$3,300,000, under which the Town will make certain installment payments, in order to (a) pay the costs of purchasing property in the Town located at 441 Ocean Boulevard W., including the pier (the “*Property*”), and (b) pay the costs associated with entering into the Contract. The Town expects that acquiring the Property will permit the Town to carry out public functions that it is authorized by law to perform, including, without limitation, providing regional public beach access, public parking, recreation and access for beach nourishment and emergency operations. In connection with the Contract, the Town will grant a security interest in all or a portion of the real property comprising the Property, and improvements thereon, for the benefit of the financial institution providing the funds to the Town under the Contract.

NOTICE IS HEREBY GIVEN, pursuant to Sections 160A-20 of the General Statutes of North Carolina, that on January 18, 2022 at 5:00 p.m., or as soon thereafter as practicable, at the Town Hall Public Assembly, 110 Rothschild Street, Holden Beach, NC 28462, the Board will conduct a public hearing concerning the approval of the execution and delivery of the Contract as described above. All interested parties are invited to present comments at the public hearing on the Contract. Any person wishing to comment in writing should do so by submitting comments to Town Hall, 110 Rothschild Street, Holden Beach, NC 28462, Attention: Town Clerk, or heather@hbtownhall.com. Written comments must be submitted between the date of publication of this notice and 24 hours before the public hearing.

/s/ Heather Finnell

Town Clerk

Town of Holden Beach, North Carolina