

## RESOLUTION 65-2022

### **A RESOLUTION AUTHORIZING A LEASE-PURCHASE FINANCING FOR THE PURPOSE OF REFINANCING COSTS RELATING TO THE CONSTRUCTION OF THE COUNTY'S NURSING HOME AND RELATED FACILITIES; APPROVING A SITE LEASE, A LEASE PURCHASE AGREEMENT AND RELATED TRANSACTION DOCUMENTS TO COMPLETE THE REFINANCING AND PROVIDING PARAMETERS IN CONNECTION WITH THE LEASE-PURCHASE FINANCING.**

**WHEREAS**, Washington County, Colorado (the "County"), is a duly and regularly created, organized and existing political subdivision and public body corporate of the State of Colorado (the "State"); and

**WHEREAS**, the County is authorized (i) by Section 30-11-101(1)(c), Colorado Revised Statutes, as amended ("C.R.S."), to purchase, sell, convey and lease, as lessor or as lessee, real and personal property and (ii) by Section 30-11-104.1, C.R.S., to enter into lease purchase agreements to provide for the financing of any county building or equipment used, or to be used, for governmental purposes provided (A) such agreements include an option for the County to acquire title to such property within a period not exceeding the useful life of such property and any improvements, but in no case exceeding thirty years, (B) the obligation of the County under the lease is only from year to year and does not constitute a mandatory charge or requirement in any ensuing budget year and (C) the obligation of the County to make payments under such lease and to pay any other charges incident to any such agreement does not constitute or give rise to an indebtedness within the meaning of any constitutional or statutory debt limitation; and

**WHEREAS**, the County is the fee title owner and operator of a 40-bed nursing home facility (as described in the Lease defined below, the "Leased Property"); and

**WHEREAS**, in order to generate moneys to finance the acquisition, construction and equipping of the Leased Property, on or about May 28, 2015 the County sponsored and participated in a new market tax credit financing involving, among other things, the Chase NMTC Washington County Green Homes Investment Fund, LLC and related project loans (the "Construction Financing"); and

**WHEREAS**, the County has been presented with a proposal by MidWestOne Bank (the "Lender") to finance the agreed-upon put price relating to the Construction Financing and the Board of County Commissioners of the County (the "Board") has determined it is in the best interests of the County and its inhabitants to: (i) refinance the County's outstanding Colorado Housing Investment Fund loan through the Colorado Department of Housing; and (ii) pay in full the put price and discharge the Construction Financing (collectively, the "Refunding Project") and unwind the new market tax credit structure; and

**WHEREAS**, to finance the Refunding Project, the County shall convey a long-term leasehold interest in the Leased Property pursuant to a Site Lease (the "Site Lease") between the County, as lessor, and the Lender, as lessee, for a lump-sum payment to the County (as described

in Section 1 hereof, the “Lender Rental Payment”) to be determined as provided herein, and contemporaneously with the execution and delivery of the Site Lease, sublease the Leased Property back from the Lender pursuant a Lease Purchase Agreement (the “Lease Purchase Agreement”) between the Lender, as sublessor, and the County, as sublessee for renewal terms not to exceed 20 years; and

**WHEREAS**, the County has determined that entering into the Site Lease and the Lease Purchase Agreement is in the best interests of the County and its residents; and

**WHEREAS**, the Base Rentals and Additional Rentals (both as defined in the Lease Purchase Agreement) payable by the County under the Lease Purchase Agreement shall constitute currently appropriated expenditures of the County and shall not constitute a debt or multiple fiscal year direct or indirect obligation whatsoever of the County or a mandatory charge or requirement against the County in any fiscal year beyond the fiscal year for which such payments have been appropriated; and

**WHEREAS**, no provision of the Site Lease or the Lease Purchase Agreement shall be construed or interpreted (a) to directly or indirectly obligate the County to make any payment in any fiscal year in excess of amounts appropriated for such fiscal year; (b) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the County within the meaning of Article XI, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; (c) as a delegation of governmental powers by the County; (d) as a loan or pledge of the credit or faith of the County or as creating any responsibility by the County for any debt or liability of any person, company or corporation within the meaning of Article XI, Section 1 of the Colorado Constitution; or (e) as a donation or grant by the County to, or in aid of, any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution; and

**WHEREAS**, the Board has been presented with forms of the Site Lease and the Lease Purchase Agreement; and

**WHEREAS**, the Board desires to authorize and otherwise proceed with the lease-purchase financing;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY, COLORADO:**

**Section 1: Site Lease Authorization.** The Board hereby approves the lease of the Leased Property in accordance with the Site Lease to the Lender, for a lump sum rental payment (as defined in the Site Lease, the “Lender Rental Payment”) to be determined by the Chairman of the Board (the “Chairman”) and to be payable to the County in accordance with the terms of the Site Lease, all subject to the provisions of Section 3 hereof. The Site Lease in the form presented to the Board is in all respects approved, authorized and confirmed, and the Chairman is authorized and directed to execute the Site Lease in substantially the form and with substantially the same content as the form thereof presented to the Board, for and on behalf of the County, but with such changes therein as the Chairman may deem necessary or appropriate, as evidenced by the execution thereof, including incorporation of the terms to be determined by the Chairman in

accordance with the provisions hereof. The Board hereby finds and determines that the Lender Rental Payment, as limited hereby, will be the fair market value of the leasehold interest in the Leased Property and such amount will represent fair and adequate consideration to the County for the conveyance of the leasehold interest in the Leased Property. The Board hereby authorizes the application of the Lender Rental Payment solely to the costs of the Refunding Project, including the costs related to the lease-purchase financing.

**Section 2: Lease Purchase Agreement Authorization.** The Lease Purchase Agreement, in substantially the form and with substantially the content presented at this meeting of the Board, is in all respects approved, authorized and confirmed, and the Chairman is authorized and directed to execute the Lease Purchase Agreement in substantially the form and with substantially the same content as the form thereof presented at this meeting of the Board, for and on behalf of the County but with such changes therein as the Chairman may deem necessary or appropriate, as evidenced by the execution thereof, including incorporation of the terms to be determined by the Chairman in accordance with the provisions hereof. The Board hereby approves the leasing of the Leased Property by the County from the Lender for the dollar amounts determined by the Chairman, in accordance with and subject to the provisions of Section 3 hereof.

**Section 3: Delegation and Parameters.** The Board hereby delegates to the Chairman of the Board the authority to determine:

- (i) the maximum number of optional renewal terms of the Lease Purchase Agreement, which shall not exceed 20 years, and the term of the Site Lease, which shall end no later than December 31, 2052;
- (ii) the amount of the Lender Rental Payment, which shall not exceed \$5,200,000;
- (iii) the amount of the Base Rentals payable under the Lease Purchase Agreement, which shall not exceed a total of \$7,200,000, with annual payments not to exceed \$360,000;
- (iv) the Base Rental Payment Dates (as defined in the Lease Purchase Agreement); and
- (v) the net effective rate for the lease-purchase of the Leased Property, which rate shall not be in excess of 3.75% per annum.

**Section 4: Execution and Delivery of Documents.** The County Clerk and Recorder (the "Clerk") is hereby authorized and directed to attest all signatures and acts of any official of the Board or the County in connection with the matters authorized by this Resolution, and to place the seal of the County on the Site Lease, the Lease Purchase Agreement and all other additional certificates, documents, tax certificates and other papers associated with the transactions and other matters authorized by this Resolution. The Chairman and other officials, employees and agents of the Board or the County are hereby authorized to execute and deliver for and on behalf of the County any and all additional agreements, certificates, documents and other papers and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized or contemplated by this Resolution. The costs associated

with or related to the lease-purchase financing which are not otherwise paid from proceeds of the Lender Rental Payment shall be paid from legally available revenues of the County.

**Section 5: Obligations of the County.** No provision of this Resolution or the Lease Purchase Agreement shall be construed as creating or constituting a general obligation or multiple-fiscal year direct or indirect indebtedness or other financial obligation whatsoever of the County nor a mandatory payment obligation of the County in any ensuing fiscal year beyond any fiscal year during which the Lease Purchase Agreement shall be in effect. The term of the Lease Purchase Agreement shall not extend beyond one year, subject to annual renewal as provided therein, and the County shall have no obligation to make any payment except in connection with the payment of the Base Rentals and Additional Rentals in accordance with the provisions of the Lease Purchase Agreement.

**Section 6: Declarations and Findings.** The Board hereby determines and declares that the Base Rentals in an amount not to exceed the amounts set forth in Section 3 hereof represent the fair value of the use of the Leased Property, and that the Purchase Option Price (as defined in the Lease Purchase Agreement) represents the fair purchase price of the Leased Property. The Board hereby determines and declares that the Base Rentals will not exceed a reasonable amount so as to place the County under an economic or practical compulsion to appropriate moneys to make payments under the Lease Purchase Agreement or to exercise its option to purchase the Leased Property pursuant to the Lease Purchase Agreement. In making such determinations, the Board has given consideration to the current market value of the Leased Property, the cost of acquiring, constructing or equipping property similar to the Leased Property, the uses and purposes for which the Leased Property is being and will be employed by the County, the benefit to the citizens and residents of the County by reason of the use of the Leased Property pursuant to the terms and provisions of the Lease Purchase Agreement, the option of the County to purchase the Leased Property, and the expected eventual vesting of full title to the Leased Property in the County. The Board hereby determines and declares that the leasing of the Leased Property pursuant to the Lease Purchase Agreement will result in facilities of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition of the Leased Property were performed by the County other than pursuant to the Lease Purchase Agreement. The Board hereby determines and declares that the duration of the Lease Purchase Agreement, including all optional renewal terms, authorized under this Resolution, will not exceed the weighted average useful life of the Leased Property.

**Section 7: Bank Qualification.** The County hereby designates the Lease as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

**Section 8: Ratification of Prior Actions.** All actions heretofore taken (not inconsistent with the provisions of this Resolution) by the Board or by the officers and employees of the County directed toward satisfaction of the County’s obligations under the Site Lease and the Lease Purchase Agreement are hereby ratified, approved and confirmed.

**Section 9: Severability.** It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or

unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

**Section 10: Repealer.** All resolutions, or parts thereof, in conflict with this Resolution are hereby repealed, provided that this repealer shall not repeal the repealer clauses of such resolution nor revive any resolution thereby.

**Section 11: Effective Date.** This Resolution shall be in full force and effect immediately upon adoption by the Board.

ADOPTED AND APPROVED this 17th day of May, 2022.



By KARV  
Chairman, Board of County Commissioners

By Ann Kunt  
County Clerk and Recorder