

RESOLUTION NO. 2012-04

AN INDUCEMENT RESOLUTION OF THE CITY OF LAKE WALES RELATIVE TO THE PROPOSED ISSUANCE OF RETIREMENT FACILITY REVENUE BONDS IN ONE OR MORE SERIES FOR THE PRINCIPAL PURPOSE OF FINANCING AND REFINANCING COSTS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF SENIOR CARE FACILITIES OWNED OR TO BE OWNED BY HEARTLAND COMMUNITIES, LLC OR AN AFFILIATE THEREOF; PROVIDING FOR THE PRELIMINARY APPROVAL BY THE CITY FOR THE ISSUANCE OF NOT EXCEEDING \$22,000,000 OF SUCH BONDS IN ONE OR MORE SERIES; PROVIDING FOR CERTAIN RELATED MATTERS IN CONNECTION THEREWITH AND FOR AN EFFECTIVE DATE.

WHEREAS, Heartland Communities, LLC, a Florida limited liability company (the "Borrower"), has applied to the City of Lake Wales, Florida (the "City"), to issue certain tax-exempt revenue bonds in one or more series and in an initial aggregate principal amount not to exceed \$22,000,000 (the "Series 2012 Bonds") for the principal purposes of (1) financing and refinancing all or a portion of the costs of acquiring, constructing and equipping of senior care facilities consisting of 129 affordable housing units, located on an approximately 14-acre site on the east side of Buck Moore Road and south of Bel Ombre Circle in Lake Wales, Florida (collectively, the "Project"), (2) funding any necessary reserves, and (3) paying costs associated with issuance of the Series 2012 Bonds; and

WHEREAS, the Borrower has requested that the City loan the proceeds of the Series 2012 Bonds to said Borrower pursuant to Chapter 159, Parts I and II, Florida Statutes, and such other provision or provisions of Florida law as the City may determine advisable (the "Act") in order to accomplish the foregoing; and

WHEREAS, the bond resolution granting the final authority for the issuance of the Series 2012 Bonds has not yet been adopted by the City and will not be adopted until documents related to the issuance of the bonds are in substantially final form; and

WHEREAS, the issuance of the Series 2012 Bonds under the Act in one or more issues or series not exceeding an aggregate principal amount of \$22,000,000 and the

loaning of the proceeds thereof to finance and refinance the costs of the Project under a loan agreement or other financing agreement which will provide that payments thereunder be at least sufficient to pay the principal of and interest and redemption premium, if any, on such Series 2012 Bonds and such other costs in connection therewith as may be incurred by the City, will assist the Borrower and promote the public purposes provided in the Act; and

WHEREAS, in order to satisfy certain requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), the City held a public hearing on the proposed issuance of the Series 2012 Bonds for the purposes herein stated on the date hereof, which date is more than 14 days following the first publication of notice of such public hearing in a newspaper of general circulation in the City (a true and accurate copy of the affidavit of publication of such notice is attached hereto as EXHIBIT A), which public hearing was conducted in a manner that provided a reasonable opportunity for persons with differing views to be heard, both orally and in writing, on the issuance of such Series 2012 Bonds and the location and nature of the Project and was held in a location which, under the facts and circumstances, was convenient for the residents of the City, such notice was reasonably designed to inform residents of the City of the proposed issue, stated that the City would be the issuer of the Series 2012 Bonds, stated the time and place of the hearing and generally contained the information required by Section 147(f) of the Code and applicable regulations thereunder; and such 14 days were adequate for notice to be brought to the attention of all interested persons, exceeds the normal periods for notice of public hearings conducted by the City and provided sufficient time for interested persons to prepare for and to express their views at such hearing; and

WHEREAS, the Borrower has agreed to execute and deliver to the City the Memorandum of Agreement (the "Memorandum of Agreement") relating to the issuance of the Series 2012 Bonds, attached hereto as EXHIBIT B; and

IT IS, THEREFORE, DETERMINED AND RESOLVED BY THE CITY OF LAKE WALES, THAT:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This resolution, hereinafter called "Resolution" is adopted pursuant to the provisions of the Act and other applicable provisions of law.

SECTION 2. PRELIMINARY STATEMENT. This Resolution is entered into to permit the Borrower to proceed with commitments for financing the Project, to provide a limited expression of intention by the City, prior to the issuance of the Series 2012 Bonds, to issue and sell the Series 2012 Bonds and make the proceeds thereof available to finance and refinance all or part of the costs of the Project, all in accordance with and subject to the provisions of the Constitution and other laws of the State of Florida, including the Code and this Resolution, but subject in all respects to the terms of the Memorandum of Agreement.

SECTION 3. APPROVAL OF FINANCING THE PROJECT. The financing and refinancing of the Project as described in the notice of public hearing attached hereto as EXHIBIT A by the City through the issuance of the Series 2012 Bonds, pursuant to the Act, will promote the economic development and health and welfare of the citizens of the City, will provide the residents of the City with new jobs, will promote the general economic structure of the City, will thereby serve the public purposes of the Act and is hereby preliminarily approved, subject, however, in all respects to the Borrower meeting the conditions set forth in the Memorandum of Agreement to the sole satisfaction of the City.

SECTION 4. EXECUTION AND DELIVERY OF MEMORANDUM OF AGREEMENT. The Mayor and the City Clerk of the City are hereby authorized and directed to execute, for and on behalf of the City, the Memorandum of Agreement attached hereto as EXHIBIT B between the City and the Borrower providing understandings relative to the proposed issuance of the Series 2012 Bonds by the City to finance and refinance the costs of the Project in an initial aggregate principal amount not to exceed lesser of (a) \$22,000,000, or (b) the amount determined by the City and the Borrower to be necessary to accomplish the foregoing.

SECTION 5. AUTHORIZATION OF THE SERIES 2012 BONDS. There is hereby authorized to be issued and the City hereby determines to issue the Series 2012 Bonds, if so requested by the Borrower and subject to the conditions set forth in the Memorandum of Agreement attached hereto, in one or more issues or series of such tax-exempt and taxable revenue bonds in an aggregate principal amount not to exceed \$22,000,000 for the principal purpose of financing and refinancing the costs of the Project, and paying the costs associated with the issuance of the Series 2012 Bonds. The rate of interest payable on the Series 2012 Bonds shall not exceed the maximum rate permitted by law.

SECTION 6. APPOINTMENT OF BOND COUNSEL AND UNDERWRITER. The firm of Nabors, Gibling & Nickerson, P.A., Tampa, Florida, is hereby appointed by the City to act as bond counsel to the City and the Borrower in connection with the issuance by the City of the Series 2012 Bonds. The Underwriter for the Series 2012 Bonds will be BB&T Capital Markets.

SECTION 7. GENERAL AUTHORIZATION. The Mayor, City Manager and City Attorney are hereby further authorized to proceed with the undertakings on the part of the City and are further authorized to take such steps and actions as may be required or necessary in order to cause the City to issue the Series 2012 Bonds subject in all respects to the terms and conditions set forth herein and in the Memorandum of Agreement.

SECTION 8. AFFIRMATIVE ACTION. This resolution is an affirmative action of the City toward the issuance of the Series 2012 Bonds, as

contemplated in the Memorandum of Agreement, in accordance with the purposes of the laws of the State of Florida and the applicable United States Treasury Regulations.

SECTION 9. LIMITED OBLIGATIONS. The Series 2012 Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit or taxing power of the City, Polk County, the State of Florida or any political subdivision or agency thereof but shall be payable solely from the revenues pledged therefor pursuant to a loan agreement or other financing agreement entered into by and between the City and the Borrower prior to or contemporaneously with the issuance of the Series 2012 Bonds.

SECTION 10. LIMITED APPROVAL. The approval given herein shall not be construed as an approval of any necessary rezoning applications nor for any other regulatory permits or compliance with the City's development standards with respect to the Project and the City shall not be construed by reason of its adoption of this resolution to (a) attest to the Borrower's ability to repay the indebtedness represented by the Series 2012 Bonds, (b) a recommendation to prospective purchasers of the Series 2012 Bonds to purchase the same, or (c) have waived any right of the City or stopping the City from asserting any rights or responsibilities it may have in that regard.

SECTION 11. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this 21st day of February, 2012.

CITY OF LAKE WALES, FLORIDA

(SEAL)



Mayor

ATTEST:

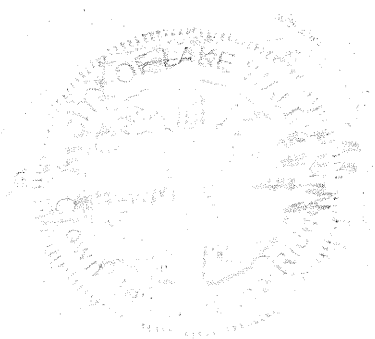

City Clerk

EXHIBIT A

**AFFIDAVIT OF PUBLICATION OF
NOTICE OF PUBLIC HEARING**

AFFIDAVIT OF PUBLICATION
The Polk County Democrat

Published Semi-Weekly
Bartow, Polk County, Florida

Case No.
STATE OF FLORIDA

COUNTY OF POLK:

Before the undersigned authority personally appeared Anita Swain, who on oath says that he or she is Classified Advertising Clerk of The Polk County Democrat, a newspaper published at Bartow in Polk County, Florida; that the attached copy of advertisement, being a Notice of Public Hearing in the matter of February 21, 2012, 6:00 pm/City of Lake Wales Retirement Facility Revenue Bonds, was published in said newspaper in the issues of Feb. 1, 2012.

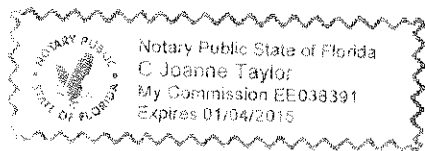
Affiant further says that The Polk County Democrat is a newspaper published at Bartow, in said Polk County, Florida, and that the said newspaper has heretofore been continuously published in said Polk County, Florida, each Wednesday and Saturday and has been entered as periodicals matter at the post office in Bartow, in said Polk County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Signed Anita Swain

Sworn to and subscribed before me this 1st day of February, 2012, by Anita Swain, who is personally known to me.

Joanne Taylor
(Signature of Notary Public)
C. Joanne Taylor
Notary Public

#2690648



NOTICE OF PUBLIC HEARING
The City of Lake Wales, Florida (the "City") will hold a public hearing on February 21, 2012, at 6:00 P.M., or as soon thereafter as the matter can be heard, at the City's Municipal Administration Building located at 201 W. Central Avenue, Lake Wales, Florida 33853 to consider adoption of a resolution providing for the preliminary approval of the issuance by the City of not exceeding \$22,000,000 of its City of Lake Wales Retirement Facility Revenue Bonds (Heartland Project), Series 2012 (the "Series 2012 Bonds") to be issued in one or more series. The proceeds of the Series 2012 Bonds will be loaned to Heartland Communities, LLC, or an affiliate thereof (the "Borrower") for the principal purposes of (1) financing and refinancing all or a portion of the costs of acquiring, construction and equipping of senior care facilities, consisting of 129 affordable housing residential units located on an approximately 14-acre site on the east side of Buck Moore Road and south of Bel Ombre Circle in Lake Wales, Florida (the "Project"), (2) funding any necessary reserves, and (3) paying costs associated with issuance of the Series 2012 Bonds. The Project will be owned and operated by the Borrower. The Series 2012 Bonds shall be payable solely from the revenues derived by the City from a loan agreement, mortgage and security agreement and other financing documents to be entered into by and between the City and the Borrower prior to or contemporaneously with the issuance of the Series 2012 Bonds. Such Series 2012 Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit or taxing power of the City, Polk County, the State of Florida or any political subdivision or agency thereof. Issuance of the Series 2012 Bonds shall be subject to several conditions including satisfactory documentation, the approval by bond counsel as to the tax-exempt status of the interest on all or a portion of the Series 2012 Bonds and receipt of necessary approvals for the financing. The aforementioned meeting shall be a public meeting and all persons who are interested will be given an opportunity to be heard concerning the same. Written comments may also be submitted to the City of Lake Wales, Florida prior to the hearing at 201 W. Central Avenue, Lake Wales, Florida 33853, Attention: Clara VanBlargan, City Clerk.

ALL PERSONS FOR OR AGAINST SAID APPROVAL CAN BE HEARD AT SAID TIME AND PLACE. IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE CITY WITH RESPECT TO SUCH HEARING OR MEETING, (S)HE WILL NEED TO ENSURE THAT A VERBATIM RECORD OF SUCH HEARING OR MEETING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS BASED.

In accordance with the Americans with Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the City of Lake Wales no later than seven days prior to the proceeding at the address given in this notice or phone 863/678/4182.
Feb 1, 2012-2690648

EXHIBIT B

MEMORANDUM OF AGREEMENT FOR ISSUANCE OF PRIVATE ACTIVITY REVENUE BONDS

This Memorandum of Agreement (the "Agreement") is between the City of Lake Wales, Florida, a municipal corporation (the "City") and Heartland Communities, LLC, a Florida limited liability company (the "Borrower").

WITNESSETH:

1. Preliminary Statement. Among the matters of mutual understanding and inducement which have resulted in the execution of this Agreement are the following:

(a) Whereas Chapter 159, Parts I and II, Florida Statutes, (the "Act") provides that the City may issue tax-exempt revenue bonds and loan the proceeds thereof to one or more persons, firms or private corporations, or use such proceeds, to defray the cost of acquiring, by purchase or by construction, certain qualifying health care and retirement facilities.

(b) The Borrower is considering financing and refinancing all or a portion of the costs of acquiring, constructing and equipping of senior care facilities consisting of 129 affordable housing units located on an approximately 14-acre site on the east side of Buck Moore Road and south of Bel Ombre Circle in Lake Wales, Florida (collectively, the "Project"). The Project will be owned and operated by the Borrower.

(c) The City intends this Agreement to constitute its official binding commitment, subject to the terms hereof, to issue its bonds (the "Series 2012 Bonds") in one or more series or issues pursuant to a plan of finance and the Act in the amount to be agreed upon by the City and the Borrower and to loan the proceeds thereof to the Borrower, or to use such proceeds, finance and refinance the costs of the Project, including all costs incurred in connection with the issuance of the Series 2012 Bonds by the City and the Borrower, up to an amount not to exceed \$22,000,000 initial aggregate principal amount.

(d) The City considers the issuance and sale of the Series 2012 Bonds, for the purposes hereinabove set forth, consistent with the objectives of the Act. This commitment is an affirmative official action of the City toward the issuance of the Series 2012 Bonds as herein contemplated in accordance with the purposes of both the Act and the applicable United States Treasury Regulations.

2. Undertakings on the Part of the City. Subject to the terms hereof, the City agrees as follows:

(a) Subject to the Borrower providing the City with sufficient evidence to enable the City to make the findings set forth in Section 159.29 of the Act, the City will authorize the issuance of the Series 2012 Bonds, in one or more series or issues, in the aggregate principal amount necessary and sufficient to finance all or a portion of the costs of the Project, as the City and the Borrower shall agree in writing, but in all events, the principal amount of such Series 2012 Bonds shall not exceed the lesser of (i) the amount determined by the City and the Borrower necessary to accomplish the foregoing, or (ii) \$22,000,000.

(b) The City will cooperate with the Borrower and with the underwriters, placement agents or purchasers of the Series 2012 Bonds and the bond counsel of the City with respect to the issuance and sale of the Series 2012 Bonds and will take such further action and authorize the execution of such documents as shall be mutually satisfactory to the City and the Borrower for the authorization, issuance and sale of such Series 2012 Bonds and the use of the proceeds thereof to finance and refinance the costs of the Project.

(c) The City may take further action to permit, in its sole discretion, the issuance from time to time in the future of additional bonds on terms which shall be set forth therein, whether pari passu with other series of bonds or otherwise, for the purpose of defraying the cost of completion, enlargements, improvements and expansions of the Project, or any segment thereof, or refunding of the Series 2012 Bonds.

(d) The loan agreement, trust indenture, mortgage and other financing documents (collectively, the "Financing Agreements") between the City and the Borrower shall, under terms agreed upon by the parties, provide for payments to be made by the Borrower in such sums as shall be necessary to pay the amounts required under the Act, including the principal of and interest and redemption premium, if any, on the Series 2012 Bonds, as and when the same shall become due and payable.

(e) The Series 2012 Bonds shall specifically provide that they are payable solely from the revenues derived pursuant to the Financing Agreements between the City and the Borrower or other agreements approved by the City, except to the extent payable out of amounts attributable to Bond proceeds. The Series 2012 Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit of the City, Polk County, the State of Florida or any political subdivision or agency thereof, and such fact shall be plainly stated on the face of the Series 2012 Bonds.

(f) Issuance of the Series 2012 Bonds by the City shall be contingent upon compliance with all provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations promulgated thereunder, including the ability of and desirability by the City to issue obligations to fund the costs of the Project.

3. Undertakings on the Part of the Borrower. Subject to the terms hereof, the Borrower agrees as follows:

(a) The Borrower will use reasonable efforts to insure that the Series 2012 Bonds in the aggregate principal amount as stated above are sold; provided, however, that the terms of such Series 2012 Bonds and the sale and delivery thereof shall be mutually satisfactory to the City and the Borrower.

(b) Prior to the issuance of the Series 2012 Bonds in the principal amount stated above, in one or more series or issues from time to time as the City and the Borrower shall agree in writing, the Borrower will enter into the Financing Agreements with the City, the terms of which shall be mutually agreeable to the City and Borrower, providing for the loan or use of the proceeds of the Series 2012 Bonds to finance and refinance the costs of the Project. Such Financing Agreements will provide that the Borrower will be obligated to pay the City (or the trustee for holders of the Series 2012 Bonds on behalf of the City, as the case may be) sums sufficient in the aggregate to enable the City to pay the principal of and interest and redemption premium, if any, on the Series 2012 Bonds, as and when the same shall become due and payable, and all other expenses related to the issuance and delivery of the Series 2012 Bonds.

(c) The Borrower shall, in addition to paying the amounts set forth in the Financing Agreements, pay all costs of operation, maintenance, taxes, governmental and other charges which may be assessed or levied against or with respect to the Project.

(d) To the extent not otherwise paid from Bond proceeds as part of the costs of the Project, the Borrower hereby agrees to pay all of the out of pocket expenses of officials and representatives of the City incurred in connection with the issuance of the Series 2012 Bonds and will pay fees and expenses of the City, including those of Albert C. Galloway, Jr., P.A., City Attorney, in the amount of one-third of the amount paid as a fee to bond counsel, plus expenses, and a fee to the City in the amount of $\frac{1}{4}$ of 1% of the principal amount of the Series 2012 Bonds.

(e) In the event the Series 2012 Bonds are not issued, the Borrower hereby agrees to pay the out of pocket expenses of the officials and representatives of the City incurred in connection with the issuance of the Series 2012 Bonds, including those of the City Attorney, on a time and materials basis in accordance with the usual hourly fees chargeable to the City under their respective contracts.

(f) The Borrower will hold the City free and harmless from any loss or damage and from any taxes or other charges levied or assessed by reason of any mortgaging or other disposition of the Project.

(g) The Borrower agrees to indemnify and defend the City and hold the City harmless against any and all claims, losses, liabilities or damages to property or any injury or death of any person or persons occurring in connection with the financing and refinancing of the Project or the issuance of the Series 2012 Bonds and the Borrower's undertaking thereof, or in any way growing out of or resulting from this Agreement including, without limitation, all costs and expenses of the City and reasonable attorneys'

and legal assistants' fees incurred in the enforcement of any agreement of the Borrower contained herein. In the event that the Series 2012 Bonds are not issued and delivered, this indemnity shall survive the termination of this Agreement.

(h) Prior to submitting an application for full or partial exemption from ad valorem taxes related to the Project, the Borrower shall enter an agreement with the City to make payments in lieu of taxes to the City. Such agreement shall touch, concern, bind and run with the real property related to the Project and shall be recorded. The City may exercise any legally available remedies to enforce this provision.

(i) The Borrower will take such further action as may be required to implement its aforesaid undertakings and as it may deem appropriate in pursuance thereof.

4. General Provisions. All commitments of the City under Section 2 hereof and of the Borrower under Section 3 hereof are subject to the conditions that all of the following events shall have occurred not later than December 31, 2012, or such other date as shall be mutually satisfactory to the City and Borrower:

(a) The City shall be lawfully entitled to issue the Series 2012 Bonds as herein contemplated.

(b) The City and Borrower shall have agreed on mutually acceptable terms for the Series 2012 Bonds and the sale and delivery thereof and mutually acceptable terms and conditions of any trust instrument or instruments in respect thereto and any Financing Agreements or other agreements incidental to the financing or referred to in Sections 2 and 3 hereof.

(c) Such other rulings, approvals, consents, certificates of compliance, opinions of counsel and other instruments and proceedings satisfactory to the Borrower and to the City as to such matters with respect to the Series 2012 Bonds, the financing and refinancing of the Project, the Financing Agreements and any other trust instrument or instruments, as shall be specified by the Borrower or the City, shall have been obtained from such governmental, as well as non-governmental, agencies and entities as may have or assert competent jurisdiction over or interest in matters pertinent thereto and shall be in full force and effect at the time of issuance of the Series 2012 Bonds.

(d) Compliance with all applicable provisions of Chapters 159, 215 and 218, Florida Statutes, relating to the issuance of the Series 2012 Bonds, the interest rate thereon, the type of purchasers of the Series 2012 Bonds and the terms on which the Series 2012 Bonds may otherwise be issued.

(e) Bond Counsel shall be directed to request private activity bond allocation from the State of Florida in an amount of \$22,000,000.

5. Binding Effect. All covenants and agreements herein contained by or on behalf of the City and the Borrower shall bind and inure to the benefit of the respective successors and assigns of the City and the Borrower whether so expressed or not.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement by their officers thereunder duly authorized as of the 21st day of February, 2012.

CITY OF LAKE WALES, FLORIDA

(SEAL)

By: *Mica Carter*
Mayor

ATTEST:

Clara J. Blayton
City Clerk

HEARTLAND COMMUNITIES, LLC

By: *[Signature]*
MANAGING PARTNER

ATTEST:

Jan N. Mills

