

**RESOLUTION 2012-12**

**A RESOLUTION OF THE CITY OF LAKE WALES, FLORIDA AUTHORIZING THE ISSUANCE BY THE CITY OF NOT EXCEEDING \$27,000,000 AGGREGATE PRINCIPAL AMOUNT OF ITS SENIOR HOUSING COMMUNITY REVENUE BONDS (VIA VITA ON THE RIDGE PROJECT), SERIES 2012A AND SUBORDINATE SERIES 2012B; ESTABLISHING PARAMETERS FOR THE AWARD OF THE SALE THEREOF AND ESTABLISHING CRITERIA FOR DETERMINING THE TERMS THEREOF, INCLUDING THE DATE, INTEREST RATES, INTEREST PAYMENT DATES AND MATURITY SCHEDULE AND OTHER TERMS OF SUCH BONDS; APPROVING THE FORMS OF AND AUTHORIZING THE EXECUTION OF A TRUST INDENTURE, LOAN AGREEMENT, LAND USE RESTRICTION AGREEMENT, ASSIGNMENT OF MORTGAGE AND SECURITY AGREEMENT AND REMARKETING AGREEMENT; AUTHORIZING THE NEGOTIATED SALE OF THE BONDS AND APPROVING THE FORM OF THE BOND PURCHASE AGREEMENT AND EXECUTION THEREOF RELATING TO THE NEGOTIATED SALE OF THE BONDS; AUTHORIZING THE APPOINTMENT OF A TRUSTEE, PAYING AGENT, REGISTRAR AND REMARKETING AGENT OF THE BONDS; APPROVING THE FORM OF AN OFFICIAL STATEMENT WITH RESPECT TO THE BONDS AND AUTHORIZING THE DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT; AUTHORIZING THE MAYOR OR VICE MAYOR OR ANY CITY COMMISSIONER AND THE CITY CLERK TO TAKE ANY OTHER ACTIONS NECESSARY TO ISSUE THE BONDS AND MAKING OTHER PROVISIONS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Legislature of the State of Florida (the "State") has enacted the Florida Industrial Development Financing Act, Sections 159.25 through 159.431, Florida Statutes, as amended (the "Act"), pursuant to which the State has empowered each Local Agency, as defined therein, to issue its revenue bonds for the purpose of financing qualified Projects under the Act and thereby improving the prosperity and welfare of the State and its inhabitants; and

**WHEREAS**, pursuant to the Act, the City of Lake Wales, Florida (the "Issuer") has determined to authorize the issuance of not exceeding \$27,000,000 aggregate principal amount of its Senior Housing Community Revenue Bonds (Via Vita on the Ridge Project), Series 2012A and Subordinate Series 2012B (collectively, the "Bonds") for the purpose of financing the acquisition, construction and equipping of a senior living facility, a portion of which is to be utilized by persons of low and moderate income and constituting a Health Care Facility under the Act known as Via Vita on the Ridge (the "Project") located in Polk County, Florida (the "County"); and

**WHEREAS**, the City deems it necessary to provide for the form of the hereinafter described Indenture to be entered into with a bank or trust company to serve as trustee, to provide for the form of the hereinafter described Loan Agreement and Land Use Restriction Agreement for the Bonds, to provide for the form of the hereinafter described Assignment of Mortgage and Security Agreement and to authorize additional documents in connection therewith; and

**WHEREAS**, the Issuer intends to negotiate the sale of the Bonds as hereinafter provided with BB&T Capital Markets, a division of Scott & Stringfellow LLC (the "Purchaser" or "Underwriter") or to such other purchaser as may be acceptable to the Issuer; and

**WHEREAS**, the Issuer desires to approve the form of the hereinafter described Bond Purchase Agreement and set parameters for certain officials of the Issuer to approve the final terms of the sale of the Bonds and to execute the Bond Purchase Agreement in accordance therewith upon the terms and conditions established herein in connection with issuance of the Bonds; and

**WHEREAS**, a public hearing regarding the issuance of the Bonds was duly held on behalf of the Issuer on June 5, 2012 and notice thereof was published in the Polk County Democrat, and the issuance of said Bonds was subsequently approved by resolution of the Lake Wales City Commission, adopted June 5, 2012;

**NOW, THEREFORE, BE IT RESOLVED BY THE LAKE WALES CITY COMMISSION, as follows:**

**SECTION 1. ISSUER FOR THIS RESOLUTION.** This Resolution is adopted pursuant to the provisions of Part II of Chapter 159, Florida Statutes, and other applicable provisions of law.

**SECTION 2. APPROVAL OF PROJECT.** The financing of the acquisition and construction of the Project by One – HC – Lake Wales, LLC, a Florida limited liability company (the "Borrower"), as described in the Loan Agreement, is hereby approved.

**SECTION 3. AUTHORIZATION AND DESCRIPTION OF THE BONDS.** There is hereby authorized and directed to be issued the Issuer's Bonds in an aggregate principal amount not to exceed \$27,000,000. The Bonds shall be issued under and secured by the Indenture, in substantially the form attached hereto as Exhibit "A," the form of which by this reference is hereby incorporated into this Resolution as if set forth in full herein. The Bonds shall mature in the amounts and at the times, be eligible for tender at such times and in such manner, shall bear interest at the rates, be redeemable at the redemption prices and upon the terms and shall have the other characteristics, as set forth in the form of Bond Purchase Agreement attached hereto as Exhibit "F" and in the Indenture, all as shall be approved by the Mayor or the Vice Mayor, or the City Manager or their duly authorized alternate officers prior to

sale of said Bonds, as provided in this Resolution; provided, that (a) the average interest rate on the fixed-rate Bonds shall not exceed 11%, and (b) the Bonds shall finally mature not later than December 1, 2045. The Bonds shall be executed and delivered by the officers of the Issuer authorized below in substantially the form set forth in the Indenture in fully registered form.

**SECTION 4. BONDS ARE SPECIAL OBLIGATIONS OF THE ISSUER.** The Bonds are special obligations of the Issuer which are payable solely from moneys derived under the Loan Agreement. The Bonds, together with the interest thereon, are limited obligations of the Issuer and neither the Issuer, Polk County, Florida, the State, nor any political subdivision thereof shall be obligated to pay the Bonds or the interest thereon or other costs or payments incident thereto, except from the aforementioned revenues and receipts and neither the faith and credit nor the taxing power of the Issuer, Polk County, Florida, or the State or any political subdivision thereof is pledged to the payment of the Bonds or the interest thereon or other costs or payments incident thereto. The Bonds and obligations arising thereunder do not create or reflect liability of the Issuer or any commissioner, official or employee thereof, except as otherwise described in this Section 4.

**SECTION 5. AUTHORIZATION OF EXECUTION OF TRUST INDENTURE.** The Trust Indenture between the Issuer and Wells Fargo Bank, National Association (the "Trustee"), in substantially the form attached hereto as Exhibit "A" (the "Indenture") is hereby approved, and the Mayor, the Vice Mayor and the Clerk of the Issuer or their duly authorized alternate officers are hereby authorized and directed to execute and deliver the Indenture on behalf of and in the name of the Issuer with such additional changes, insertions and omissions therein, including but not limited to, the insertion of rates, maturities, sinking fund redemption provisions and other details of the Bonds determined as herein provided and as may be made prior to the delivery of the Bonds, and as may be otherwise made and approved by the said officers of the Issuer executing the same, such execution to be conclusive evidence of such approval.

**SECTION 6. AUTHORIZATION OF EXECUTION OF LOAN AGREEMENT.** The Loan Agreement among the Issuer, the Trustee and the Borrower, in substantially the form attached hereto as Exhibit "B" (the "Loan Agreement") is hereby approved, and the Mayor, the Vice Mayor and the Clerk of the Issuer or their duly authorized alternate officers are hereby authorized and directed to execute and deliver the Loan Agreement on behalf of and in the name of the Issuer with such additional changes, insertions and omissions therein as may be made and approved by the said officers of the Issuer executing the same, such execution to be conclusive evidence of such approval.

**SECTION 7. AUTHORIZATION OF EXECUTION OF LAND USE RESTRICTION AGREEMENT.** The Land Use Restriction Agreement among the Borrower, the Issuer and the Trustee in substantially the form attached hereto as Exhibit "C" (the "Land Use Restriction Agreement") is hereby approved, and the Mayor, the Vice Mayor and the Clerk of the Issuer or their duly authorized alternate officers are hereby authorized and directed to execute and deliver the Land Use Restriction Agreement on behalf of and in the name of the

Issuer with such additional changes, insertions and omissions therein as may be made and approved by the said officers of the Issuer executing the same, such execution to be conclusive evidence of such approval.

**SECTION 8. AUTHORIZATION OF EXECUTION OF ASSIGNMENT OF MORTGAGE AND SECURITY AGREEMENT.** The Assignment of Mortgage and Security Agreement from the Issuer to the Trustee in substantially the form attached hereto as Exhibit "D" (the "Assignment of Mortgage") is hereby approved, and the Mayor, the Vice Mayor and the Clerk of the Issuer or their duly authorized alternate officers are hereby authorized and directed to execute and deliver the Assignment of Mortgage on behalf of and in the name of the Issuer with such additional changes, insertions and omissions therein as may be made and approved by the said officers of the Issuer executing the same, such execution to be conclusive evidence of such approval.

**SECTION 9. AUTHORIZATION OF EXECUTION OF REMARKETING AGREEMENT.** The Remarketing Agreement among the Issuer, the Borrower and the Remarketing Agent in substantially the form attached hereto as Exhibit "E" (the "Remarketing Agreement") is hereby approved, and the Mayor, the Vice Mayor and the Clerk of the Issuer or their duly authorized alternate officers are hereby authorized and directed to execute and deliver the Remarketing Agreement on behalf of and in the name of the Issuer with such additional changes, insertions and omissions therein as may be made and approved by the said officers of the Issuer executing the same, such execution to be conclusive evidence of such approval.

**SECTION 10. SALE OF BONDS.** It is hereby found and determined that due to the characteristics of the financing and the prevailing and anticipated market conditions, it is in the best interest of the Issuer to negotiate the sale of the Bonds. The negotiated sale of the Bonds, upon substantially the terms and conditions set forth in a Bond Purchase Agreement among the Purchaser, the Issuer and the Borrower in substantially the form attached hereto as Exhibit "F" (the "Bond Purchase Agreement") is hereby approved, and the Bond Purchase Agreement is hereby approved in substantially the form attached hereto as Exhibit "F." The Issuer hereby authorizes said Mayor or Vice Mayor of the Issuer to execute and deliver (attested by the Clerk of the Issuer), said Bond Purchase Agreement in the name of and on behalf of the Issuer, with such changes, alterations and corrections, if any, as may be approved by said Mayor or Vice Mayor, all of the provisions of which, when executed and delivered by the Issuer as authorized herein, shall be deemed to be a part of this instrument as fully and to the same extent as if incorporated verbatim herein. The Bonds are hereby sold (subject to such terms and conditions) in the amount, at the price and upon the final terms set forth in the Bond Purchase Agreement as may be approved by the Mayor or Vice Mayor as attested by the Clerk; provided, that (a) the purchase price of the Bonds shall be not less than 100% of the original principal amount thereof, and (b) any fee to the Underwriter (including counsel fees and expenses) shall not exceed \$50 per \$1,000 principal amount of the Bonds.

**SECTION 11. APPOINTMENT OF TRUSTEE, PAYING AGENT, REGISTRAR, REMARKETING AGENT.** (a) With respect to the Bonds, Wells Fargo Bank, National

Association is hereby appointed as Trustee, Paying Agent and Registrar.

(b) With respect to the Issuer's Senior Housing Community Revenue Bonds (Via Vita on the Ridge Project), Series 2012A, Subseries 2, BB&T Capital Markets, a division of Scott & Stringfellow, LLC is hereby appointed as Remarketing Agent.

**SECTION 12. APPROVAL OF OFFICIAL STATEMENT.** The Issuer, without accepting responsibility for the matters contained therein, other than in the sections entitled "THE ISSUER" and "LITIGATION – Issuer", hereby approves the form of Official Statement set forth in Exhibit "G" attached hereto, with such changes as may be approved by the Mayor or Vice Mayor or City Manager of the Issuer, in connection with the offering and sale of the Bonds, and hereby authorizes the use of a Preliminary Official Statement in the marketing of the Bonds.

**SECTION 13. GENERAL ISSUER.** The Mayor, the Vice Mayor, and the Clerk and all other City Commissioners of the Issuer and the staff of the Issuer are hereby authorized and directed to execute any and all certifications or other instruments or documents, including the endorsement of the Promissory Notes to be made by the Borrower to the Issuer, required by the Indenture, the Loan Agreement, the Bond Purchase Agreement, the Assignment of Mortgage, or any other document referred to above as a prerequisite or precondition to the issuance of the Bonds and any representation made therein shall be deemed to be made on behalf of the Issuer. To the extent that the Mayor, Vice Mayor, and Clerk of the Issuer are unable for any reason to execute or deliver the documents referred to above, such documents may be executed, attested and/or delivered by their duly authorized alternate officers, with the same effect as if executed and/or delivered by the Mayor, Vice Mayor, or Clerk. All action taken to date by the members of the Issuer and the staff of the Issuer in furtherance of the issuance of the Bonds is hereby approved, confirmed and ratified and the City Commissioners of the Issuer are hereby authorized to take such additional actions as they or any of them deem necessary or appropriate in furtherance of the issuance of the Bonds.

**SECTION 14. REPEALING CLAUSE.** All prior resolutions and motions of the Issuer inconsistent with the provisions of this Resolution are hereby modified, supplemented and amended to conform with the provisions herein contained and except as otherwise modified, supplemented and amended hereby shall remain in full force and effect.

**SECTION 15. SEVERABILITY AND INVALID PROVISIONS.** If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof or of the Bonds issued hereunder.

**SECTION 16. EFFECTIVE DATE.** This Resolution shall become effective immediately upon its adoption.

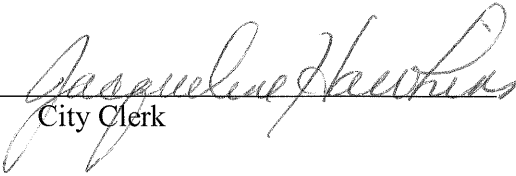
APPROVED AND ADOPTED this 19<sup>th</sup> day of June, 2012.

CITY OF LAKE WALES, FLORIDA

(SEAL)

By:   
Mayor

ATTEST

By:   
City Clerk