

MEMORANDUM

DATE: March 11, 2014

TO: Honorable Mayor and City Commissioners

FROM: Kenneth Fields, City Manager

SUBJECT: Resolution 2014-06, For purposes of Section 147(f) of the Internal Revenue Code for the future reissuance of the Series 2008 Bonds (the "Resolution") and acknowledging the execution of a Waiver and Forbearance Agreement (the "Forbearance Agreement") - **Public Hearing**

SYNOPSIS: The approval will be the initial step for purposes of Section 147(f) of the Internal Revenue Code for the future reissuance of outstanding bonds, as described below.

RECOMMENDATION

Water's Edge of Lake Wales, LLC is requesting that the City Commission:

1. Hold a public hearing regarding the reissuance by the City of the Retirement Facility Revenue Bonds (Water's Edge of Lake Wales, LLC Project), Series 2008A and Retirement Facility Revenue Bonds (Water's Edge of Lake Wales, LLC Project), Taxable Series 2008B originally issued in the principal amount of \$26,025,000 and \$860,000, respectively (the "Series 2008 Bonds"), and
2. Adopt Resolution 2014-06, for purposes of Section 147(f) of the Internal Revenue Code for the future reissuance of the Series 2008 Bonds (the "Resolution") and acknowledging the execution of a Waiver and Forbearance Agreement (the "Forbearance Agreement").

BACKGROUND

The City previously issued the Series 2008 Bonds pursuant to an Indenture of Trust dated as of April 1, 2008 to generate funds to make a loan to Water's Edge of Lake Wales, LLC, a Florida limited liability company (the "Borrower"), for the purpose of financing and refinancing the Project described below. On March 3, 2014, a Notice of Public Hearing was published in *The Lakeland Ledger* noticing a hearing to be held by the City Commission on the date hereof at 6:00 p.m. regarding the reissuance of the Series 2008 Bonds. The Borrower has reached an agreement with National Church Residences, an Ohio non-profit organization, which has agreed to assist the Borrower with liquidity support and with its management experience from similar facilities. The Forbearance Agreement will be put in place to provide short-term debt service reduction for the Series 2008 Bonds and grant debt service relief to the Borrower.

The Series 2008 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. The Series 2008 Bonds are payable solely from the revenues pledged in the Indenture of Trust dated as of April 1, 2008, by and between the City and the bond trustee, as amended and supplemented, and in the Loan Agreement dated as of April 1, 2008, by and between the City and the Borrower.

PROJECT

The Series 2008 Bonds were issued to finance and refinance the costs of acquiring, constructing and equipping of senior care facilities including, but not limited to, 12 single-story duplex villas, a three-story building containing 63 independent living apartments, a two-story building containing 30 assisted living units, 16 memory support (dementia) assisted living units, six respite/rehabilitation assisted living units, and related common areas (including a two-story, approximately 21,000 square foot community center) located in Lake Wales, Florida (the "Project"). The Project has now been constructed and placed in service.

Adoption of the Resolution shall not be construed as an approval of any necessary rezoning applications or for any other regulatory permits relating to the Project.

The City's adoption of the Resolution shall not be construed to:

- a) Attest to the Borrower's ability to repay the indebtedness represented by the Series 2008 Bonds.
- b) Have waived any right of the City or stop the City from asserting any rights or responsibilities it may have in that regard.

The bond resolution granting the final authority for the reissuance of the Series 2008 Bonds will not be presented to the City Commission for adoption until documents related to the reissuance are in substantially final form.

OTHER OPTIONS

Not adopt the Resolution. The Borrower will have to pursue other refinancing alternatives.

FISCAL IMPACT

The Borrower will pay the bond reissuance costs including the City's Attorney and Bond Counsel fees and expenses, and **advertising costs**. As previously stated the bond issue does not constitute an indebtedness or pledge of the general credit or taxing power of the City.

ATTACHMENT

Resolution 2014-06

RESOLUTION 2014-06

A RESOLUTION OF THE CITY OF LAKE WALES, FLORIDA APPROVING FOR PURPOSES OF SECTION 147(F) OF THE INTERNAL REVENUE CODE THE REISSUANCE OF THE CITY OF LAKE WALES, FLORIDA RETIREMENT FACILITY REVENUE BONDS (WATER'S EDGE OF LAKE WALES, LLC PROJECT), SERIES 2008A AND CITY OF LAKE WALES, FLORIDA TAXABLE RETIREMENT FACILITY REVENUE BONDS (WATER'S EDGE OF LAKE WALES, LLC PROJECT), SERIES 2008B TO OCCUR ON OR AFTER OCTOBER 1, 2014; ACKNOWLEDGING THE DELIVERY OF A FORBEARANCE AGREEMENT AND RELATED INSTRUMENTS; PROVIDING CERTAIN MATTERS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAKE WALES, AS FOLLOWS:

Section 1: Authority for this Resolution: This resolution is adopted pursuant to the provisions of Chapter 159, Part II, Florida Statutes, Chapter 166, Part II, Florida Statutes, and other applicable provisions of law (collectively, the "Act").

Section 2: Findings:

A. The City of Lake Wales, Florida (the "Issuer") previously issued its Retirement Facility Revenue Bonds (Water's Edge of Lake Wales, LLC Project), Series 2008A and Taxable Retirement Facility Revenue Bonds (Water's Edge of Lake Wales, LLC Project), Series 2008B (collectively, the "Bonds") on April 28, 2008, pursuant to an Indenture of Trust dated as of April 1, 2008 (the "Indenture"), between the Issuer and Wells Fargo Bank, National Association, as bond trustee (the "Trustee"), to generate funds to make a loan to Water's Edge of Lake Wales, LLC (the "Borrower"), pursuant to a Loan Agreement (the "Loan Agreement") dated as of April 1, 2008, between the Borrower and the Issuer.

B. The Bonds were issued to finance and refinance the costs of acquiring, constructing and equipping of senior care facilities including, but not limited to, 12 single-story duplex villas, a three-story building containing 63 independent living apartments, a two-story building containing 30 assisted living units, 16 memory support (dementia) assisted living units, six respite/rehabilitation assisted living units, and related common areas (including a two-story, approximately 21,000 square foot community center) located in Lake Wales, Florida (the "Project"). The Project has now been constructed and placed in service.

C. The Project continues to constitute a "health care facility" within the meaning of Section 159.27(16), Florida Statutes, as amended.

D. The notice of hearing was published on March 4, 2014, in The Ledger (a copy of which notice is attached hereto as Exhibit A and incorporated herein), for the purpose of giving all interested persons an opportunity to express their views, either orally or in writing, as required by Section 147(f) of the Internal Revenue Code of 1986, as amended.

E. Upon review and consideration of the documents described herein and the information presented to the Issuer at or prior to the adoption of this Resolution, the Issuer does hereby make the following findings and determinations:

(1) The Issuer has previously issued the Bonds under the Indenture.

(2) The proceeds derived from the sale of the Bonds were loaned to the Borrower pursuant to the Loan Agreement.

(3) The Bonds were issued on April 28, 2008 and initially sold through an underwriting by Raymond James & Associates, Inc. with accredited investors and qualified institutional buyers which are clients of Hamlin Capital Management, LLC ("Hamlin Capital"), and according to information provided to the Issuer, remain with such clients.

(4) Hamlin Capital, as the Bondholder Representative (the "Bondholder Representative"), has been assisting the Borrower in reviewing the revenues available from the Project to manage the operating expenses and the debt service and has expressed a willingness to restructure the Bonds to assist in stabilizing the Project.

(5) The Bondholder Representative and the Borrower have requested that the Issuer acknowledge that a forbearance agreement will be put in place which will provide short-term debt service reduction for the Bonds and grant debt service relief to the Borrower.

(6) The Borrower has reached an agreement with National Church Residences, an Ohio non-profit organization (the "Sponsor"), which has agreed to assist the Borrower with liquidity support and with its management experience from similar facilities.

(7) All requirements precedent to the adoption of this Resolution, of the Constitution and other laws of the State, including the Act, have been complied with.

Section 3: Acknowledgement of Forbearance Agreement with Hamlin Capital. The Issuer hereby acknowledges the execution of a Waiver and Forbearance Agreement (the "Forbearance Agreement") among the Borrower, U.S. Bank National Association, as Bond Trustee, and Hamlin Capital.

Section 4: TEFRA Approval. Having considered any and all comments and concerns expressed at the public hearing, the City Commission hereby approves the reissuance of the Bonds to refinance costs of the Project for purposes of Section 147(f) of the Code. The reissuance of the Bonds shall be considered for approval under the terms and conditions approved by future resolution of the City Commission.

Section 5: City Commission Members of the Issuer Exempt from Personal Liability. No recourse under or upon any obligation, covenant or agreement of this Resolution or for any claim based thereon or otherwise in respect thereof, shall be had against any City Commission member of the Issuer, as such, past, present or future, either directly or through the Issuer it being expressly understood (a) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the City Commission member of the Issuer, as such, under or by reason of the obligations, covenants or agreements contained in this Resolution or implied therefrom, and (b) that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such City Commission member of the Issuer, as such, are waived and released as a condition of, and as a consideration for, the execution of this Resolution, on the part of the Issuer.

Section 6: No Third Party Beneficiaries. Except such other persons as may be expressly described in this Resolution, nothing in this Resolution or the Forbearance Agreement, expressed or implied, is intended or shall be construed to confer upon any person, other than the Issuer and the Sponsor, any right, remedy or claim, legal or equitable, under and by reason of this Resolution or the Forbearance Agreement, or any provision thereof, all provisions thereof being intended to be and being for the sole and exclusive benefit of the Issuer, the Borrower and the Sponsor.

Section 7: Limited Obligation. NEITHER THE FORBEARANCE AGREEMENT REFERENCED HEREIN NOR THE INDENTURE SHALL DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE ISSUER, THE STATE NOR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF TO LEVY OR TO PLEDGE ANY FORM OF TAXATION WHATEVER, OR TO LEVY AD VALOREM TAXES ON ANY PROPERTY WITHIN THEIR TERRITORIAL LIMITS TO PAY THE PRINCIPAL, PREMIUM, IF ANY, OR INTEREST ON SUCH BONDS OR OTHER PECUNIARY OBLIGATIONS OR TO PAY THE SAME FROM ANY FUNDS THEREOF OTHER THAN SUCH REVENUES, RECEIPTS AND PROCEEDS SO PLEDGED, AND THE BONDS SHALL NOT CONSTITUTE A LIEN UPON ANY PROPERTY OWNED BY THE ISSUER OR THE STATE OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF, OTHER THAN THE BORROWER'S PAYMENTS PURSUANT TO THE LOAN AGREEMENT AND THE PROPERTY RIGHTS, RECEIPTS, REVENUES AND PROCEEDS PLEDGED BY THE BORROWER OR THE SPONSOR THEREFOR UNDER AND AS PROVIDED IN THE INDENTURE AND ANY OTHER AGREEMENTS SECURING THE BONDS.

Section 8: Severability. If any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable in any context, the same shall not affect any other provision herein or render any other provision (or such provision in any other context) invalid, inoperative or unenforceable to any extent whatever.

Section 9: Captions. The captions and headings in this Resolution are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Resolution.

Section 10: Authorizations. The Mayor and any member of the City Commission, the City Manager, the City Attorney, the City Clerk, Bond Counsel and such other officials and employees of the Issuer as may be designated by the Issuer are each designated as agents of the Issuer and are authorized and empowered, collectively or individually, to take all action and steps and to execute all instruments, documents, and contracts on behalf of the Issuer that are necessary or desirable in connection with the TEFRA approval and the Forbearance Agreement, and which are specifically authorized or are not inconsistent with the terms and provisions of this Resolution.

Section 11: Repealer. All resolutions or parts thereof in conflict herewith are hereby repealed.

APPROVED AND ADOPTED by the City of Lakes Wales, Florida this 18th day of March, 2014.

CITY OF LAKE WALES, FLORIDA

(SEAL)

By: _____
Name: Eugene Fultz
Title: Mayor

ATTEST:

APPROVED AS TO FORM:

By: _____
Name: Clara VanBlargan
Title: City Clerk

By: _____
Name: Albert C. Galloway, Jr.
Title: City Attorney

EXHIBIT A

TEFRA AFFIDAVIT OF PUBLICATION

AFFIDAVIT OF PUBLICATION
THE LEDGER
Lakeland, Polk County, Florida

STATE OF FLORIDA)
COUNTY OF POLK)

Before the undersigned authority personally appeared Paula Freeman, who on oath says that she is Customer Service for Advertising at The Ledger a daily newspaper published at Lakeland in Polk County, Florida; that the attached copy of advertisement, being an

PUBLIC NOTICE OF HEARING

In the matter of **CITY OF LAKE WALES**

Concerning **RETIREMENT REVENUE BONDS NOTICE**

was published in said newspaper in the issues of

3-3; 2014

Affiant further says that said The Ledger is a newspaper published at Lakeland, in said Polk County, Florida, and that the said newspaper has heretofore been continuously published in said Polk County, Florida, daily, and has been entered as second class matter at the post office in Lakeland, in said Polk County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he 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.....

Paula Freeman
Customer Service for Advertising
Who is personally known to me.

Sworn to and subscribed before me this.....

day of..... A.D. 2013

Patricia Ann Rouse
Notary Public

(SEAL)

My Commission Expires - October 17, 2016

NOTICE OF PUBLIC HEARING
REGARDING

\$23,250,000
CITY OF LAKE WALES, FLORIDA
RETIREMENT FACILITY REVENUE
BONDS
(WATER'S EDGE OF LAKE WALES, LLC
PROJECT)
SERIES 2008A
AND
\$555,000
CITY OF LAKE WALES, FLORIDA
RETIREMENT FACILITY REVENUE
BONDS
(WATER'S EDGE OF LAKE WALES, LLC
PROJECT)
TAXABLE SERIES 2008B

TO WHOM IT MAY CONCERN:

You are hereby notified that on Tuesday, March 18, 2014 at 6:00 p.m., or as soon thereafter as the matter may be heard, in the City Commission Chambers in the Municipal Administration Building, 201 West Central Avenue, Lake Wales, Florida, a Public Hearing will be held by the City of Lake Wales, Florida on the proposed amendment and restructuring of the City of Lake Wales, Florida Retirement Facility Revenue Bonds (Water's Edge of Lake Wales, LLC Project), Series 2008A and Retirement Facility Revenue Bonds (Water's Edge of Lake Wales, LLC Project), Taxable Series 2008B (collectively, the "Bonds") and on the location and nature of the facility which was financed by the Bonds. The Bonds were issued for financing the costs of acquiring, constructing and equipping of senior care facilities including, but not limited to, 22 single-story duplex villas, a three-story building containing 63 independent living apartments, a two-story building containing 30 assisted living units, 16 memory support (dementia) assisted living units, six respite/rehabilitation assisted living units, and related common areas (including a two-story, approximately 21,000 square foot community center) located in Lake Wales, Florida (the "Project"), which is owned and operated by Water's Edge of Lake Wales, LLC, a limited liability company organized and existing under the laws of the State of Florida (the "Borrower"). National Church Residences is undertaking the sponsorship of the Project.

THE BONDS SHALL NEVER CONSTITUTE AN INDEBTEDNESS OR GENERAL OBLIGATION OF THE STATE OF FLORIDA, THE CITY OF LAKE WALES, POLK COUNTY OR ANY OTHER POLITICAL SUBDIVISION OR AGENCY OF THE STATE OF FLORIDA, BUT SHALL BE PAYABLE SOLELY FROM REVENUES OF THE BORROWER.

Persons wishing to express their views regarding the Project and the restructuring of the Bonds may appear at the hearing or may submit their views in writing. Written comments should be submitted to the City of Lake Wales at P. O. Box 1320, Lake Wales, Florida 33859 1320 or 201 West Central Avenue, Lake Wales, Florida 33853. Attention: City Manager, and should be mailed in sufficient time to be received before March 18, 2014, the date of the hearing. Should any person decide to appeal any decision made by the City of Lake Wales, Florida following the hearing, he or she will need a record of the proceedings and he or she may need to assure that a verbatim record of the proceedings be made, which record includes the testimony and evidence upon which the appeal will be heard. Following the hearing, the City Commission will approve or disapprove the documents restructuring the Bonds.

Any person requiring reasonable accommodation at this meeting because of a disability or physical impairment should contact the City Clerk or the City Manager at (863) 678-4182 or fax a written request to (863) 678-4180 at least 48 hours prior to the meeting.

CITY COMMISSION OF LAKE WALES,
FLORIDA
L9207 3-4; 2014