

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

**Meeting Date:** December 5, 2017       Consent       Regular  
     Ordinance       Public Hearing

**Department:** Department of Housing and Economic Sustainability

**I. EXECUTIVE BRIEF**

**Motion and Title: Staff recommends motion to: Adopt** a resolution of the Board of County Commissioners of Palm Beach County, Florida, authorizing the issuance of the County's Revenue Bonds, (Tuscan Gardens of Delray Beach Project), Series 2017 Bonds, in the aggregate principal amount of not exceeding \$9,500,000 for the purpose of providing funds to make a loan to Tuscan Gardens of Delray Beach Properties, LLC or any one or more affiliates thereof (the "Borrower") to provide funds to finance, refinance or reimburse all or a portion of the acquisition, construction, development, installation and equipping of a senior living facility and the underlying land, including related facilities, fixtures, furnishings and equipment and to pay the costs of issuing the Bonds; authorizing the execution and delivery of loan agreement with the Borrower and a trust indenture; awarding the sale of the Bonds by a negotiated sale; authorizing officials of the County to take certain action in connection with the issuance of the Bonds; making certain other covenants and agreements in connection with the issuance of the Bonds; and providing an effective date.

**Summary:** The Borrower has requested that the County issue its industrial development revenue bonds in an amount not to exceed \$9,500,000. Bond proceeds will be used to finance, refinance or reimburse all or a portion of the acquisition, construction, development, installation and equipping of a senior living facility and the underlying land, including related facilities, fixtures, furnishings and equipment, to be located on approximately 7.5 acres at the southwest corner of the intersection of Frost Lane and Sims Road in unincorporated Palm Beach County. Pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended, the Board of County Commissioners held a TEFRA Public Hearing on December 20, 2016, and approved the Borrower's application for the issuance of up to \$45,000,000 in bonds. **Neither the taxing power nor the faith and credit of the County, nor any County funds, shall be pledged to pay the principal, premium, if any, or interest on the Bonds.** District 5 (DB)

**Background and Justification:** The Internal Revenue Code requires that certain tax-exempt bonds be approved by an elected governmental agency after a public hearing. This approval does not in any way obligate the County on the Bonds or imply that the County has determined that the Bonds are credit-worthy or serve a public purpose. The Bonds are being purchased by BB&T Capital Markets, a division of BB&T Securities, LLC.

**Attachment(s):**

- 1. Resolution

**Recommended By:** Jonathan Brown      11/16/17  
    Department Director      Date

**Approved By:** [Signature]      11/29/17  
    Assistant County Administrator      Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures					
Operating Costs					
External Revenues	(\$42,750)				
Program Income					
In-Kind Match (County)					
<b>NET FISCAL IMPACT</b>	<b>(\$42,750)</b>				

# ADDITIONAL FTE POSITIONS (Cumulative)					
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Is Item Included In Current Budget? Yes \_\_\_\_\_ No X  
 Does this Item include the use of Federal funds? Yes \_\_\_\_\_ No X

Budget Account No.:

Fund 1539 Dept 143 Unit 2102 RSRC 4133 Program Code/Period N/A

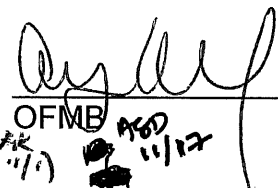
**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

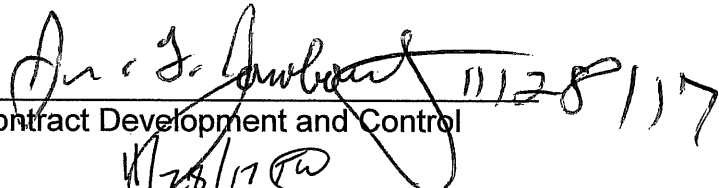
All costs to be borne by the Applicant. Palm Beach County is expected to receive an issuance fee of approximately \$42,750, as well as legal fees for services rendered in connection with the issuance of the Bonds.

C. Departmental Fiscal Review:   
 Beverley Reid, Fiscal Manager I

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

 11/17  
 OFMB ASO 11/17

 11/28/17  
 Contract Development and Control 11/28/17

**B. Legal Sufficiency:**

 11/29/17  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

RESOLUTION NO. R2017- \_\_\_\_\_

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE ISSUANCE OF THE COUNTY'S REVENUE BONDS, (TUSCAN GARDENS OF DELRAY BEACH PROJECT), SERIES 2017 BONDS, IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT EXCEEDING \$9,500,000 FOR THE PURPOSE OF PROVIDING FUNDS TO MAKE A LOAN TO TUSCAN GARDENS OF DELRAY BEACH PROPERTIES, LLC OR ANY ONE OR MORE AFFILIATES THEREOF (THE "BORROWER") TO PROVIDE FUNDS TO FINANCE, REFINANCE OR REIMBURSE ALL OR A PORTION OF THE ACQUISITION, CONSTRUCTION, DEVELOPMENT, INSTALLATION AND EQUIPPING OF A SENIOR LIVING FACILITY AND THE UNDERLYING LAND, INCLUDING RELATED FACILITIES, FIXTURES, FURNISHINGS AND EQUIPMENT AND TO PAY THE COSTS OF ISSUING THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT WITH THE BORROWER AND A TRUST INDENTURE; AWARDING THE SALE OF THE BONDS BY A NEGOTIATED SALE; AUTHORIZING OFFICIALS OF THE COUNTY TO TAKE CERTAIN ACTION IN CONNECTION WITH THE ISSUANCE OF THE BONDS; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, Tuscan Gardens of Delray Beach Properties, LLC (the "Borrower") has requested Palm Beach County, Florida (the "County") to assist the Borrower by the County issuing the County's Revenue Bonds (Tuscan Gardens of Delray Beach Project) in a principal amount of not exceeding \$9,500,000 (the "Bonds") and by a loan (the "Loan") of the proceeds of the Bonds to the Borrower to provide funds to (A) finance, refinance or reimburse all or a portion of the acquisition, construction, development, installation and equipping of a senior living facility and the underlying land, including related facilities, fixtures, furnishings and equipment to be located on approximately 7.5 acres at the southwest corner of the intersection of Frost Lane and Sims Road near Delray Beach in Palm Beach County, Florida 33484 (collectively, the "Project"); and (B) pay costs associated with the issuance of the Bonds; and

**WHEREAS**, BB&T Capital Markets, a division of BB&T Securities, LLC, or an affiliate thereof (together with its successors and assigns, the "Underwriter") is expected to purchase the Bonds; and

**WHEREAS**, it is necessary and desirable to authorize the execution of a Loan Agreement (the "Agreement"), among the County, the Borrower and the Underwriter, and a Trust Indenture (the "Trust Indenture") between the County and the Trustee (as defined in the Trust Indenture) to specify the terms of the Bonds;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA THAT:**

**SECTION 1: AUTHORITY FOR THIS RESOLUTION**

This resolution, hereinafter called the "Resolution," is adopted pursuant to Part II, Chapter 159, Florida Statutes (the "Act") and other applicable provisions of law.

**SECTION 2: FINDINGS**

Upon consideration of the documents described herein and the information presented to the County at or prior to the date hereof, it is hereby ascertained, determined and declared as follows:

- A. The Project constitutes a "project" within the meaning and contemplation of the Act. The Project will serve a public purpose by advancing the economic prosperity and the general welfare of the County, the State of Florida, and the people thereof. As of the date hereof, the Borrower has represented and shown that it is financially responsible and fully capable of and willing to fulfill any obligations which it may incur in connection with the Bonds as contemplated by this Resolution. Local government will be able

to cope satisfactorily with the impact of the facilities included in the Project and will be able to provide, or cause to be provided when needed, the public facilities, including utilities and public services, that will be necessary for the construction, operation, repair and maintenance of such facilities and on account of any increases in population or other circumstances resulting therefrom.

- B. The Agreement and Trust Indenture will make provision for the operation, repair and maintenance of the Project at the expense of the Borrower and for the payment of the principal and interest on the Bonds and all other costs incurred by the County in connection with the Bonds and the Project.
- C. The County has been advised that due to the desire to coordinate the sale of the Bonds and due to the limited market for obligations such as the Bonds, it is in the best interest of the Borrower to sell the Bonds by negotiated sale, and the County, wishing to obtain the best interest rate on the Bonds for the benefit of the Borrower, has determined to sell the Bonds by negotiated sale to the Lender, permitting the County to enter such market at the most advantageous time, rather than at a specified advertised date, and accordingly it is in the best interest of the County that a negotiated sale of the Bonds be authorized.
- D. The County conducted a public hearing concerning the issuance of the Bonds at the Board of County Commissioners meeting held on December 20, 2016. The notice of which hearing, inviting comments and discussion concerning the issuance of the Bonds by the Issuer to finance all or a portion of the Project, was published in *The Palm Beach Post*, a newspaper of general circulation in Palm Beach County, Florida, on December 4, 2016 for the purpose of providing the affected public with an opportunity to comment on the issuance of the Bonds, in accordance with the requirements of Section 147(f) of the Internal Revenue Code, as amended.

### **SECTION 3: AUTHORIZATION OF BONDS**

For the purpose of making the Loan to the Borrower, there are hereby authorized to be issued under this Resolution the Bonds, in one or more series, in the aggregate principal amount of not to exceed \$9,500,000 and to be designated "Palm Beach County, Florida Revenue Bonds (Tuscan Gardens of Delray Beach Project) Series 2017 (the "Bonds"). The Bonds shall be issued as fully registered Bonds, shall be dated as of the date of issuance, shall mature, shall bear interest at a rate not in excess of the maximum lawful rate, shall be issued in such denominations, shall be subject to optional, extraordinary and mandatory redemption at such time or times, and upon such terms and conditions, shall be subject to option and mandatory tender at such time or times and upon such terms and conditions, shall be payable at the place or places and in the manner, shall be executed, authenticated and delivered, all as provided in the Agreement of the Trust Indenture; and shall have such other terms and conditions, and shall be in such form of as may be approved by the Mayor, Vice-Mayor or any other member of the Board of County Commissioners of the County (the "Authorized Signatory"), such approval to be conclusively presumed by the execution thereof by the Authorized Signatory. The Bonds shall be issued on such date as shall be mutually agreed upon by the Underwriter, the Borrower and the Authorized Signatory. The County hereby authorizes and directs the Authorized Signatory to execute the Bonds and to deliver the same to the Underwriter, upon payment of the purchase price thereof, all as further provided in the Agreement and the Trust Indenture.

### **SECTION 4: LIMITED OBLIGATION**

The Bonds will not be a general obligation of the County but will be limited obligations payable solely from the loan payments received from or on behalf of the Borrower. The Bonds shall not be an obligation of the State of Florida or of any political subdivision thereof, other than the County (limited as aforesaid), and any and all payments of any nature thereunder shall be payable only from amounts provided for such purpose under the bond documents and not from other funds of the County.

**SECTION 5: LIMITED LIABILITY OF ISSUER**

Anything in this Resolution or the Agreement, the Trust Indenture or Bonds to the contrary notwithstanding, the performance by the County of all duties and obligations imposed upon it hereby, the exercise by it of all powers granted to it hereunder, the carrying out of all covenants, agreements and promises made by it hereunder, and the liability of the County for all warranties and other covenants hereunder, shall be limited solely to the loan payments made by the Borrower and other revenues and receipts derived from the Borrower under the Agreement, and the County shall not be required to effectuate any of its duties, obligations, powers or covenants hereunder except to the extent of such loan payments and other revenues and receipts.

**SECTION 6: NO PERSONAL LIABILITY**

No recourse under or upon any obligation, covenant or agreement contained in this Resolution, the Agreement, the Trust Indenture, the Bonds, any other bond document or under any judgment, or by the enforcement of any assessment or by legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, under or independent of this Resolution, shall be had against any member, agent, employee or officer, as such, past, present or future, of the County, either directly or through the County, or otherwise, for the payment for or to the County or any receiver thereof, or for or to the holder of the Bonds or otherwise of any sum that may be due and unpaid by the County upon the Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any member or officer, as such, to respond by reason of any act or omission on his part or otherwise, for the payment for or to the County or any receiver thereof, or for or to the holder of the Bonds or otherwise, of any sum that may remain due and unpaid upon the Bonds is hereby expressly waived and released as a condition of and in consideration for the execution of this Resolution and the issuance of the Bonds.

**SECTION 7: BONDS NOT A DEBT OF STATE OR ISSUER**

None of the State of Florida, the County or any political subdivision thereof shall in any event be liable for the payment of the principal of or interest on the Bonds, except that the County has provided for payment from the special and limited sources as provided herein. The Bonds issued hereunder shall never constitute an indebtedness of the State of Florida or of any political subdivision of the State of Florida or of the County within the meaning of any state constitutional provisions or statutory limitation and shall never constitute or give rise to the pecuniary liability of the State of Florida or any political subdivision thereof, or of the County or a charge against their general credit. The holder of the Bonds shall not have the right to compel any exercise of the ad valorem taxing power of the State of Florida or of any political subdivision of said State to pay the Bonds or the interest thereon.

**SECTION 8: LAWS GOVERNING**

This Resolution shall be governed exclusively by the provisions hereof and by the applicable laws of the State of Florida.

**SECTION 9: THE BOND DOCUMENTS.**

As used herein, the term "Bond Documents" means any and all documents necessary or desirable to complete the transaction described herein, including but not limited to (i) the Agreement, (ii) the Trust Indenture, and (iii) the Bonds, all in such form and content as may be approved by the Authorized Signatory, such approval to be conclusively presumed by the execution of such documents by the Authorized Signatory. The County hereby authorizes and directs the Authorized Signatory to execute the Bond Documents. It is not necessary for the seal of the County to be impressed upon any Bond Document. Notwithstanding any other provision hereof, no Bond Document shall be issued unless and until the same shall have been approved as to form and legal sufficiency on behalf of the County by the Office of the County Attorney.

**SECTION 10: NEGOTIATED SALE OF BOND**

A negotiated sale of the Bond to the Underwriter is hereby authorized. Prior to the execution of the Agreement the Underwriter shall file with the County the disclosure and truth-in-bonding statements required by Section 218.385, Florida Statutes, and competitive bidding for the Bond is hereby waived.

**SECTION 11: NO THIRD PARTY BENEFICIARIES**

Except as herein or in the documents herein mentioned otherwise expressly provided, nothing in this Resolution or in such documents, express or implied, is intended or shall be construed to confer upon any person other than the County, the Underwriter and the Borrower any right, remedy or claim, legal or equitable, under and by reason of this Resolution or any provision hereof or of such documents; this Resolution and such documents being intended to be and being for the sole and exclusive benefit of such parties.

**SECTION 12: GENERAL AUTHORIZATION**

The Authorized Signatory and the other officers and employees of the County are hereby authorized to do all acts and things required of them by this Resolution and the other Bond Documents or desirable or consistent with the requirements hereof or thereof, for the full punctual and complete performance of all terms, covenants and agreements contained in the Bonds, this Resolution, the Agreement, and the Trust Indenture.

**SECTION 13: EFFECTIVE DATE**

This Resolution shall take effect immediately upon its passage and adoption.

**SECTION 14: LIMITED APPROVAL**

The approval given herein shall not be construed as (i) an endorsement of the creditworthiness of the Borrower or the financial viability of the Project, (ii) a recommendation to any prospective purchaser of the Bonds, (iii) an evaluation of the likelihood of the repayment of the debt service on the Bonds, or (iv) any necessary governmental approval relating to the Project, and the County shall not be construed by reason of its adoption of this resolution to have made any such endorsement, finding or recommendation or to have waived any of the County's rights or estopping the County from asserting any rights or responsibilities it may have in that regard.

The foregoing Resolution was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_, and being put to a vote, the vote was as follows:

- Commissioner Hal R. Valeche - District 1 - \_\_\_\_\_
- Commissioner Paulette Burdick - District 2 - \_\_\_\_\_
- Commissioner Dave Kerner - District 3 - \_\_\_\_\_
- Commissioner Steven L. Abrams - District 4 - \_\_\_\_\_
- Commissioner Mary Lou Berger - District 5 - \_\_\_\_\_
- Commissioner Melissa McKinlay - District 6 - \_\_\_\_\_
- Commissioner Mack Bernard - District 7 - \_\_\_\_\_

The Mayor thereupon declared the Resolution duly passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS**

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY**

**ATTEST: SHARON R. BOCK  
CLERK & COMPTROLLER**

By:   
David Behar  
Assistant County Attorney

By: \_\_\_\_\_  
Deputy Clerk