

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS****AGENDA ITEM SUMMARY**


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Meeting Date: **October 16, 2018**       **Consent**       **Regular**  
     **Ordinance**       **Public Hearing**

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

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**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 execution of an Amendment to Bond Purchase and Loan Agreement and Bond relating to the County's Industrial Development Revenue Bonds (Young Men's Christian Association of South Palm Beach County, Inc.) Series 2012 and an IRS Form 8038 with respect thereto; and providing an effective date.

**Summary:** In 2012, the County issued the County's Industrial Development Revenue Bonds (Young Men's Christian Association of South Palm Beach County, Inc.) Series 2012 (2012 Bonds) to refinance the County's Economic Development Refunding and Improvement Revenue Bonds (YMCA Project) Series 2003 (2003 Bonds). The 2003 Bonds were issued to refinance earlier bonds issued by the County to finance capital assets for the Young Men's Christian Association of South Palm Beach County, Inc. (Company) facilities at 9600 South Military Trail, Boynton Beach and 6631 Palmetto Circle, Boca Raton. The 2012 Bonds are owned by Branch Banking and Trust Company (Bank) and the Bank and the Company have agreed to reduce the interest rate borne by the 2012 Bonds. A Resolution authorizing an Amendment to Bond Purchase and Loan Agreement and Bond is needed to reduce the 2012 Bonds interest rate. The 2012 Bonds are payable solely from revenues derived from the Company. **Neither the taxing power nor the fair 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 4 (DB)

**Background and Justification:** An effect of the Tax Cuts and Jobs Act of 2017 was to increase the interest rate borne by the 2012 Bonds. The Amendment to the Bonds that would be approved by the Resolution will reduce the interest rate. The reduction in the interest rate may require execution of a new IRS Form 8038 in order to maintain the tax exempt status of the Bonds.

**Attachment(s):**

1. Resolution

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Recommended By: \_\_\_\_\_

*Jonathan Brown*  
Department Director

*9/4/18*  
Date

Approved By: \_\_\_\_\_

*Karen Johnson*  
Assistant County Administrator

*9/12/18*  
Date

**II. FISCAL IMPACT ANALYSIS**

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

| Fiscal Years             | 2019 | 2020 | 2021 | 2022 | 2023 |
|--------------------------|------|------|------|------|------|
| Capital Expenditures     |      |      |      |      |      |
| Operating Costs          |      |      |      |      |      |
| External Revenues        |      |      |      |      |      |
| Program Income           |      |      |      |      |      |
| In-Kind Match (County)   |      |      |      |      |      |
| <b>NET FISCAL IMPACT</b> |      |      |      |      |      |

|   |  |  |  |  |  |
|---|--|--|--|--|--|
| # ADDITIONAL FTE POSITIONS (Cumulative) |  |  |  |  |  |
|---|--|--|--|--|--|

Is Item Included In Current Budget? Yes \_\_\_\_\_ No \_\_\_\_\_  
 Does this Item include the use of Federal Funds? Yes \_\_\_\_\_ No \_\_\_\_\_

Budget Account No.:

Fund \_\_\_\_\_ Dept \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_ Program Code/Period \_\_\_\_\_

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

No fiscal impact

**C. Departmental Fiscal Review:**

  
 Beverley Reid, Fiscal Manager I

**III. REVIEW COMMENTS**

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

 9/10/18  
 OFMB 9/10/18  
 9/11/18  
 Contract Development and Control  
 9/14/18

**B. Legal Sufficiency:**

 9/18/18  
 Assistant County Attorney

**C. Other Department Review:**

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

RESOLUTION NO. 2018-\_\_\_\_\_

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA: AUTHORIZING THE EXECUTION OF AN AMENDMENT TO BOND PURCHASE AND LOAN AGREEMENT AND BOND RELATING TO THE COUNTY'S INDUSTRIAL DEVELOPMENT REVENUE BONDS (YOUNG MEN'S CHRISTIAN ASSOCIATION OF SOUTH PALM BEACH COUNTY, INC.) SERIES 2012 AND AN IRS FORM 8038 WITH RESPECT THERETO; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, Young Men's Christian Association of South Palm Beach County, Inc. (the "Borrower") has requested Palm Beach County, Florida (the "County") to assist the Borrower by entering into an Amendment to Bond Purchase and Loan Agreement relating to the County's Industrial Development Revenue Bonds (Young Men's Christian Association of South Palm Beach County, Inc.) Series 2012 (the "Bonds");

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

**SECTION 1: AMENDMENT TO BOND PURCHASE AND LOAN AGREEMENT AND BOND**

The County is authorized to enter into the Amendment to Bond Purchase and Loan Agreement and Bond (the "Amendment") in substantially the form attached hereto as **Exhibit A**, with such changes 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 County hereby authorizes and directs the Authorized Signatory to execute the Amendment. Notwithstanding any other provision hereof, the Amendment shall not be executed 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 2: GENERAL AUTHORIZATION**

The Authorized Signatory and the other officers and employees of the County are hereby authorized to do all acts and things desirable or consistent with the requirements hereof or of the Amendment, for the full punctual and complete performance of all terms, covenants and agreements contained in Amendment, including but not limited to executing IRS Form 8038 in connection with the Amendment if necessary to maintain the tax-exempt status of the Bonds.

**SECTION 3: EFFECTIVE DATE**

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

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:

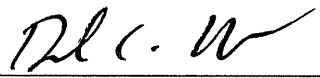
|  |   |       |
|--|---|-------|
| <b>Commissioner Melissa McKinlay, Mayor</b>  | - | _____ |
| <b>Commissioner Mack Bernard, Vice Mayor</b> | - | _____ |
| <b>Commissioner Hal R. Valeche</b>           | - | _____ |
| <b>Commissioner Paulette Burdick</b>         | - | _____ |
| <b>Commissioner Dave Kerner</b>              | - | _____ |
| <b>Commissioner Steven L. Abrams</b>         | - | _____ |
| <b>Commissioner Mary Lou Berger</b>          | - | _____ |

The Mayor thereupon declared the Resolution duly passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**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

**EXHIBIT A**

**AMENDMENT TO BOND PURCHASE AND LOAN AGREEMENT AND BOND**

THIS AMENDMENT TO BOND PURCHASE AND LOAN AGREEMENT AND BOND (this "Amendment"), dated as of September 1, 2018, is made and entered into by and among the PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida (the "Issuer"), BRANCH BANKING AND TRUST COMPANY, a North Carolina banking corporation, as purchaser of the Bond (the "Purchaser"), and YOUNG MEN'S CHRISTIAN ASSOCIATION OF SOUTH PALM BEACH COUNTY, INC., a Florida non-profit corporation (the "Borrower").

**WITNESSETH:**

WHEREAS, the Issuer, the Purchaser and the Borrower previously entered into a Bond Purchase and Loan Agreement dated November 2, 2012 (the "Original BPLA" and, as amended by this Amendment, the "BPLA"), pursuant to which the Issuer issued and sold to the Purchaser the Issuer's Industrial Development Revenue Bond (Young Men's Christian Association of South Palm Beach County, Inc. Project), Series 2012 in the original principal amount of \$8,805,000 (the "Bond"); and

WHEREAS, the proceeds of the sale of the Bond were loaned by the Issuer to the Borrower pursuant to the terms of the Original BPLA and such loan is evidenced by the \$8,805,000 Promissory Note of the Borrower dated November 2, 2012 in favor of the Issuer (the "Note"); and

WHEREAS, all capitalized terms used in this Amendment that are not otherwise defined in this Amendment shall have the meanings assigned to them in the BPLA; and

WHEREAS, the Borrower and the Purchaser wish to amend certain terms of the Bond Documents, including the Original BPLA and the Bond and the Note to change, among other things, the interest rate used in calculating the interest on the Bond and Note as set forth therein and in the Original BPLA; and

WHEREAS, the Issuer consents to the amendments to the Existing BPLA and the Bond and the Note set forth in this Amendment;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Issuer, the Purchaser and the Borrower agree as follows:

1. Amendment to the Original BPLA and Bond.
  - (i) Effective September 1, 2018, the definition of "Adjusted LIBOR Rate" in the Original BPLA and the Bond, and as applied to the Note, is hereby deleted in its entirety and is replaced with the following:

""Adjusted LIBOR Rate" shall mean a rate of interest per annum equal to the sum obtained (rounded upwards, if necessary, to the next higher 1/100<sup>th</sup>

of 1.00%) by adding (i) the product of (x) 68% and (y) One-Month LIBOR and (ii) 1.165% per annum. The Adjusted LIBOR Rate shall be adjusted monthly on the first day of each LIBOR Interest Period. The Adjusted LIBOR Rate shall be also be adjusted for any change in the LIBOR Reserve Percentage so that the Holder shall receive the same yield.”

(ii) Effective September 1, 2018, Section 3.2(e) of the Original BPLA, the sixth paragraph of the Note and the fourth paragraph under the caption Interest Rate Provisions set forth in the Bond are amended to read as follows:

“(e) If at any time after the date hereof (November 2, 2012) there should be any change in the maximum marginal rate of Federal income tax applicable to the taxable income of the Purchaser, its successors or assigns (the “BB&T Tax Rate”), then the Adjusted LIBOR Rate, in effect hereunder from time to time as herein provided, for so long as there shall not have occurred a Determination of Taxability, shall be adjusted (upward or downward, as the case may be) by Purchaser, effective as of the effective date of any such change in the BB&T Tax Rate, by multiplying the Adjusted LIBOR Rate by a fraction, the denominator of which is one hundred percent (100%) minus the BB&T Tax Rate in effect upon the date hereof (November 2, 2012), and the numerator of which is one hundred percent (100%) minus the BB&T Tax Rate after giving effect to such change.”

It is understood and agreed by the parties to this Amendment that (a) pursuant to Section 3.2(e) of the Original BPLA, the sixth paragraph of the Note and the fourth paragraph under the caption Interest Rate Provisions set forth in the Bond and effective January 1, 2018, the Adjusted LIBOR Rate (as defined in the Original BPLA) was adjusted by a factor of 1.23529 due to declines in the combined maximum marginal tax rate of federal and state income tax applicable to the taxable income of the Purchaser (the “Purchaser Tax Rate”) and (b) after the date of this Amendment the foregoing adjustment factor has been reduced from 1.23529 to 1.21538 and, as reduced, will continue to be applied to the Adjusted LIBOR Rate and (c) the adjustment factor is subject to further adjustment from time to time due to changes in the maximum marginal tax rate for federal income tax.

(iii) Effective September 1, 2018, the definition of One Month LIBOR in the Original BPLA and the Bond, and as applied to the Note, is hereby deleted in its entirety and is replaced with the following:

“ “One-Month LIBOR” means the average rate quoted by Bloomberg Finance L.P., or any quoting service or commonly available source utilized by the Purchaser, on the determination date for deposits in U.S. Dollars offered in the London interbank market for one month determined as of 11:00 am London time two (2) Business Days prior to the commencement

of the applicable LIBOR Interest Period; provided that if the above method for determining One-Month LIBOR shall not be available, “ One-Month LIBOR” shall be the rate quoted in The Wall Street Journal, or a rate determined by a substitute method of determination agreed on by the Borrower and the Purchaser; provided, if such agreement is not reached within a reasonable period of time (in the Purchaser’s sole judgment), a rate reasonably determined by the Purchaser in its discretion as a rate being paid, as of the determination date, by first class banking organizations (as determined by the Purchaser) in the London interbank market for U. S. Dollar deposits, and provided further that, for so long as One-Month LIBOR (determined as provided above) would be less than zero percent (0%), then One-Month LIBOR shall be deemed to be zero percent (0%) for such time.”

2. Binding Effect. Notwithstanding any other provision of the Original BPLA, the Bond or the Note, the Original BPLA, the Bond and the Note are not canceled, and, except to the extent that the provisions of the Original BPLA, the Bond and the Note are modified by the provisions of this Amendment, the Original BPLA, the Bond and the Note are in all respects ratified and confirmed and this Amendment shall be read, taken and construed as a part of the Original BPLA, the Bond and the Note so that all of the rights, remedies, terms, conditions, covenants and agreements of the Original BPLA, the Bond and the Note shall apply and remain in full force and effect with respect to the Issuer, the Purchaser and the Borrower. The Issuer, the Purchaser and the Borrower agree that this Amendment shall not be construed as an agreement to extinguish the Borrower’s obligations under the Original BPLA, Bond or Note and shall not constitute a novation as to the obligations of the Borrower under the Original BPLA, Bond or Note.

3. Issuer Liability. No covenant, agreement or obligation contained in this Amendment shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of the Issuer, and neither the directors of the Issuer nor any officer, employee or agent thereof shall be liable personally on this Amendment or be subject to any personal liability or accountability by reason of this Amendment.

4. Further Assurances. The parties agree to execute and deliver such additional documents, amendments to Bond Documents and other further assurances as may reasonably be required to implement the amendments identified in this Amendment.

5. Expenses. The Borrower shall pay all the reasonable attorney’s fees incurred by Purchaser in connection with this Amendment.

6. No Adverse Effect Opinion. The effectiveness of this Amendment is subject to the receipt by Purchaser, the Issuer and the Borrower of an opinion of Mark Raymond, Esquire, bond counsel, confirming that the amendments to Original BPLA, Bond and Note contemplated by this Amendment will not have an adverse effect on the tax-exempt status of interest payable on the Bond

7. Successors and Assigns. This Amendment shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and the subsequent holders of the Bond and their respective successors and assigns.

8. Severability. If any provision of this Amendment shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof.

9. Governing Law. This Amendment will be governed by the applicable laws of the State of Florida.

10. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

[SIGNATURES APPEAR ON FOLLOWING PAGES]



IN WITNESS WHEREOF, the parties have each caused their duly authorized officers to execute and deliver this Amendment as of the date first written above.

Attest:

**PALM BEACH COUNTY, FLORIDA** by its  
**BOARD OF COUNTY COMMISSIONERS**

Sharon R. Bock, Clerk & Comptroller

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

By: \_\_\_\_\_  
Melissa McKinlay  
Mayor

(SEAL)

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

\_\_\_\_\_  
County Attorney

**YOUNG MEN'S CHRISTIAN ASSOCIATION OF  
SOUTH PALM BEACH COUNTY, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**BRANCH BANKING AND TRUST COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_