

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: October 5, 2021 [] Consent [x] Regular
 [] Ordinance [] Public Hearing

Department: Housing and Economic Development

I. EXECUTIVE BRIEF


Motion and Title: Staff recommends motion to:

- A) Approve a request for an amendment to the Bond Trust Indenture dated November 1, 2018 by and between the County and UMB Bank, as successor trustee related to the restructure for the County's outstanding tax-exempt and/or taxable Revenue Bonds, Series 2018 (the "Bonds"); for the Tuscan Gardens of Delray Beach project; and
- B) Adopt a resolution of the Board of County Commissioners of Palm Beach County, Florida, authorizing the amendment to the Bond Trust Indenture providing for the optional redemption of the Bonds to permit the restructure of the Bonds.

Summary: The funds provided through the sale of the Bonds in 2018 were loaned to Tuscan Gardens of Delray Beach Properties, LLC to finance, refinance, or reimburse all or a portion of the costs of: (I) developing approximately 7.57 acres of land in unincorporated Palm Beach County, Florida near Delray Beach, Florida to serve as an assisted living and memory care rental community for seniors known as Tuscan Gardens of Delray, consisting of approximately 130 total units of senior housing, including 80 assisted living units and 50 memory support units (the "Project"); (II) funding capitalized interest on the Bonds; (III) funding certain pre-development costs of the Project; (IV) funding debt service reserve; (V) refunding the County's taxable revenue bonds (Tuscan Gardens of Delray Beach Project) Series 2017; and (VI) funding the cost of issuance for the Bonds. The Borrower seeks to restructure the Bonds but an amendment is necessary to permit the optional redemption of the Bonds at this time. The County will be asked to consider the issuance of one or more series of bonds to refund the Bonds at a future date. **Neither the taxing power nor the faith and credit of the County, nor any County funds, are pledged to pay the principal, premium, if any, or interest on the Bonds.** District 5 (DB)

Attachment(s):

- 1 Resolution authoring amendment with a form of the First Amendment to Bond Trust Indenture

Recommended By:  Department Director 9/7/2021 Date

Approved By:  Assistant County Administrator 9/20/2021 Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact: None

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT					

# ADDITIONAL FTE POSITIONS (Cumulative)					
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Is Item included In Current Budget? Yes _____ No _____
 Does this Item include the use of Federal Funds? Yes _____ No _____

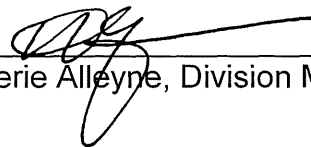
Budget Account No.:

Fund _____ Dept. _____ Unit _____ RSRC _____ Program Code/Period _____

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

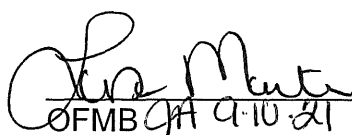
No fiscal impact associated with this item.

C. Departmental Fiscal Review:


 Valerie Alleyne, Division Manager

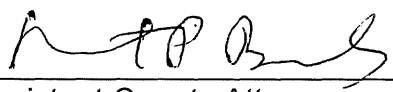
III. REVIEW COMMENTS

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

 9/13/21
 OFMB CA 9-10-21 (21) 9/13/21

 9/17/21
 Contract Development and Control

B. Legal Sufficiency:


 Assistant County Attorney

C. Other Department Review:

 Department Director

RESOLUTION No. R2021_____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA PROVIDING FOR CERTAIN AMENDMENTS TO THE PALM BEACH COUNTY, FLORIDA FIRST MORTGAGE REVENUE BONDS (TUSCAN GARDENS OF DELRAY BEACH PROJECT), SERIES 2018A, PALM BEACH COUNTY, FLORIDA TAXABLE FIRST MORTGAGE REVENUE BONDS (TUSCAN GARDENS OF DELRAY BEACH PROJECT), SERIES 2018B, AND PALM BEACH COUNTY, FLORIDA SUBORDINATE MORTGAGE REVENUE BONDS (TUSCAN GARDENS OF DELRAY BEACH PROJECT), SERIES 2018C, FOR THE PURPOSE OF PROVIDING FOR MATTERS RELATING THE REDEMPTION OF SUCH BONDS FOR THE BORROWER, TUSCAN GARDENS OF DELRAY BEACH PROPERTIES, LLC, THE PARTY RESPONSIBLE FOR PAYMENTS OF SUCH BONDS; AUTHORIZING AMENDMENT TO THE UNDERLYING BOND TRUST INDENTURE IN CONNECTION WITH THE RESTRUCTURING OF THE BONDS; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; AND PROVIDING FOR A SEVERABILITY CLAUSE, A REPEALER CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, Pursuant to the Constitution of the State of Florida and Part II of Chapter 159, Florida Statutes, and any other applicable provisions of Florida law (collectively, the "Act"), the County previously issued the Palm Beach County, Florida First Mortgage Revenue Bonds (Tuscan Gardens of Delray Beach Project), Series 2018A, Palm Beach County, Florida Taxable First Mortgage Revenue Bonds (Tuscan Gardens of Delray Beach Project), Series 2018B, and Palm Beach County, Florida Subordinate Mortgage Revenue Bonds (Tuscan Gardens of Delray Beach Project), Series 2018C (collectively, the "Bonds") on November 30, 2018; and

WHEREAS, the County has been requested by Tuscan Gardens of Delray Beach Properties, LLC, a limited liability company (the "Borrower") to amend the Bond Trust Indenture securing the Bonds the proceeds of which were used to finance an assisted living and memory care facility owned and operated by the Borrower, which is responsible for the repayment of the Bonds under the terms of a certain Loan Agreement (and certain other security documents) between the County and the Borrower; and

WHEREAS, the requested amendments will permit the Bonds to be refinanced and restructured.

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

SECTION 1. AUTHORITY. This Resolution (hereinafter called the "Resolution") is adopted pursuant to the provisions of the Act.

SECTION 2. DEFINITIONS. Unless the context otherwise requires, when used in this Resolution the capitalized terms defined in this section and the preamble of this Resolution shall have the meanings specified in this section and in the preamble. Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

"Authorized Officers" shall mean the Mayor, Vice Mayor or Commissioner, and any other officer or employee of the County designated by certificate of any of the foregoing as authorized by the County perform a specified act, sign a specified document or otherwise take action with respect to the Bonds.

"Bond Trustee" shall mean UMB Bank, National Association, as successor bond trustee under the Bond Indenture relating to the Bonds.

"Bond Indenture" shall mean the Bond Trust Indenture dated as of November 1, 2018 by and between the County and the Bond Trustee.

"Bondholder" shall mean the registered owner of any Bond.

"Clerk" shall mean the County Clerk, any acting County Clerk, or any interim County Clerk.

"County" shall mean Palm Beach County, Florida.

"First Amendment to Bond Indenture" shall mean the First Amendment to Bond Trust Indenture to be entered into by and between the County and the Bond Trustee in substantially the form attached hereto as Exhibit A, as amended or supplemented from time to time.

"Loan Agreement" shall mean the Loan Agreement dated as of November 1, 2018, previously entered into by and between the County and the Borrower with respect to the Bonds, as amended from time to time.

"Project" shall mean Tuscan Gardens of Delray Beach, located at 14535 Sims Road, Delray Beach, Florida, which was financed and refinanced with the proceeds of the Bonds.

SECTION 3. FINDINGS. It is hereby ascertained, determined, and declared as follows:

A. The County was authorized by the Act and has previously issued the Bonds and made a loan to the Borrower pursuant to the Loan Agreement and the County has pledged or assigned as security for the payment of the principal of and interest on the

Bonds any money or other revenues to be derived or received by the County under the Loan Agreement.

B. The previous issuance of the Bonds has promoted the public health and general welfare of the County and its residents and the amendments will permit a current refunding and restructuring of the Bonds to assist the Borrower in providing economical, safe housing and care for seniors in a retirement community and related health facilities within the County.

C. The principal of, premium, if any, and interest on the Bonds and all payments to be made on behalf of the County required under and pursuant to the Loan Agreement and the Bond Indenture, as amended, shall be payable solely from the proceeds to be derived by the County under and pursuant to the Loan Agreement, and the County shall never be required to pay the same from any funds of the County other than those derived by the County under the Loan Agreement. Neither the faith and credit nor the taxing power of the State, or the County or of any other political subdivision thereof, is pledged to the payment of the principal of or interest on the Bonds. The issuance of the Bonds shall not directly or indirectly or contingently obligate the County, the State, or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

SECTION 4. AUTHORIZATION OF EXECUTION AND DELIVERY OF THE FIRST AMENDMENT TO BOND INDENTURE. As continued security for the payment of the principal of and premium, if any, and interest on the Bonds and in order to modify, amend and restructure the redemption terms of the Bonds, the First Amendment to the Bond Indenture, in substantially the form thereof attached hereto as Exhibit A is hereby approved by the County, with such changes, alterations and corrections as may be approved by the Authorized Officers, such approval to be presumed by their execution thereof and the County hereby authorizes the Authorized Officers to execute and to attest the First Amendment to Bond Indenture and to deliver the First Amendment to the Bond Indenture to the Bond Trustee.

SECTION 5. NO PERSONAL LIABILITY. No covenant, stipulation, obligation or agreement herein contained or contained in the Loan Agreement, the Bond Indenture, or the First Amendment to Bond Indenture shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, member, attorney, agent or employee of the County or its governing body in his individual capacity, and neither the County nor any official executing the Bonds shall be liable personally thereon or be subject to any personal liability or accountability by reason of the issuance thereof.

SECTION 6. PREREQUISITES PERFORMED. All acts, conditions and things relating to the passage of this Resolution and to the execution of the First Amendment to Bond Indenture required by the Constitution or laws of the State to happen, exist and be performed precedent to and in the passage hereof, and precedent to the execution and delivery of the First Amendment to Bond Indenture have happened, exist and have been performed as so required.

SECTION 7. SEVERABILITY OF INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions contained in this Resolution shall be held contrary to any express provisions 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.

SECTION 8. REPEALING CLAUSE. All resolutions, or parts thereof, of the County in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

SECTION 9. EFFECTIVE DATE. This Resolution shall become effective immediately upon its passage and adoption by the Board.

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

- Commissioner Dave Kerner, Mayor _____
- Commissioner Robert S. Weinroth, Vice Mayor _____
- Commissioner Maria G. Marino _____
- Commissioner Gregg K. Weiss _____
- Commissioner Maria Sacha _____
- Commissioner Melissa McKinlay _____
- Commissioner Mack Bernard _____

The Mayor thereupon declared the Resolution duly passed and adopted this _____ day of October 2021.

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

**ATTEST JOSEPH ABRUZZO
CLERK & COMPTROLLER**

By: _____
Deputy Clerk

APPROVED AS TO LEGAL SUFFICIENCY

By: _____
County Attorney

**EXHIBIT A TO THE AUTHORIZING RESOLUTION
FORM OF FIRST AMENDMENT TO BOND INDENTURE**

**FIRST AMENDMENT TO
BOND TRUST INDENTURE**

THIS FIRST AMENDMENT TO BOND TRUST INDENTURE dated as of _____, 2021 (this "Amendment"), between **PALM BEACH COUNTY, FLORIDA** (the "Issuer"), a political subdivision of the State of Florida, and **UMB BANK NATIONAL ASSOCIATION**, a national banking association and having a corporate trust office in Minneapolis, MN, as successor trustee (in such capacity, the "Bond Trustee") amends that certain Bond Trust Indenture dated as of November 1, 2018 (the "Original Trust Indenture") by the between the Issuer and the prior Bond trustee;

WITNESSETH:

WHEREAS, pursuant to the Constitution of the State of Florida and Part II of Chapter 159, Florida Statutes, and any other applicable provisions of Florida law (collectively, the "Act"), the Issuer previously issued the Palm Beach County, Florida First Mortgage Revenue Bonds (Tuscan Gardens of Delray Beach Project), Series 2018A (the "Series 2018A Bonds"), the Palm Beach County, Florida Taxable First Mortgage Revenue Bonds (Tuscan Gardens of Delray Beach Project), Series 2018B (the "Series 2018B Bonds" which together with the Series 2018A Bonds, the "Senior Bonds") and the Palm Beach County, Florida Subordinate Mortgage Revenue Bonds (Tuscan Gardens of Delray Beach Project), Series 2018C (collectively, the "Bonds") on November 30, 2018 the proceeds of which were loaned to Tuscan Gardens of Delray Beach Properties, LLC, a limited liability company (the "Borrower"); and

WHEREAS, pursuant to the terms of the Loan Agreement dated as of November 1, 2018 (the "Loan Agreement") by and between the Issuer and the Borrower the proceeds of the Bonds were used by the Borrower to provide funds to finance, refinance or reimburse all or a portion of the costs to: (i) develop approximately 7.57 acres of land in Palm Beach County, Florida, near Delray Beach, Florida to be an assisted living and memory care rental community for seniors to be known as Tuscan Gardens of Delray Beach, consisting of 138 total units of senior housing, including 88 assisted living units and 50 memory support units (the "Series 2018 Project"); (ii) fund capitalized interest on the Bonds; (iii) fund working capital; (iv) make a deposit to a debt service reserve fund for the Series 2018A Bonds maturing on October 1, 2047; and (v) fund the costs of issuance of the Bonds; and

WHEREAS, the County and the Bond Trustee have been requested by the Borrower to amend the Original Trust Indenture securing the Bonds to provide for the optional redemption of the Bonds on or after October 1, 2021 in order to permit the restructuring and refinancing of the Bonds; and

WHEREAS, at least 67% of the holders of the aggregate principal amount of the Senior Bonds Outstanding and the holders of at least seventy percent (70%) of each series of Bonds have consented to this amendment as required by Section 1102 (a) thereof .

Exhibit A

NOW, THEREFORE, THIS FIRST AMENDMENT TO BOND TRUST INDENTURE PROVIDES:

**ARTICLE I
DEFINITIONS**

In this Amendment capitalized terms used herein without definition shall have the meanings ascribed thereto in the Original Trust Indenture.

**ARTICLE II
AMENDMENT TO ARTICLE IV**

SECTION 2.01 **Amendment to Section 301(b)**. A new paragraph is hereby added at the end of Section 301 (b) of the Original Trust Indenture which provides as follows:

The Series 2018 Bonds are subject to redemption prior to maturity in whole on any date on or after [October 1, 2021] to and including [_____] from an optional prepayment in the event the Obligated Group exercises its option to prepay all of the amounts available under Obligation No. 1, Obligation No. 2 and Obligation No. 3 pursuant to Section 702 of the Loan Agreement at a redemption price equal to [the original issue price of the Series 2018A Bonds and the principal amount outstanding of the Series 2018B Bonds and the Series 2018C Bonds] plus accrued interest to the date of redemption without premium.

**ARTICLE III
MISCELLANEOUS PROVISIONS**

SECTION 3.01 **Confirmation of Original Trust Indenture; Interpretation of First Amendment**. As supplemented and amended by this Amendment, the Original Trust Indenture, is in all respects ratified and confirmed, and this Amendment shall be read, taken and construed as a part of the Original Trust Indenture so that all of the rights, remedies, terms, conditions, covenants and agreements of the Original Trust Indenture, except insofar as modified herein, shall apply and remain in full force and effect with respect to the Original Trust Indenture and to the 2018 Bonds issued thereunder.

SECTION 3.02 **Counterparts**. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be an original; but such counterparts shall together constitute but one and the same instrument.

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IN WITNESS WHEREOF, the Issuer has this Amendment to be executed as of the date first written above.

PALM BEACH COUNTY, FLORIDA

By: Dave Kerner
Mayor, Board of County Commissioners

(SEAL)

Attest:

By: _____
Joseph Abruzzo,
Clerk of the Circuit Court and Comptroller

APPROVED AS TO
LEGALFORM:



County Attorney

IN WITNESS WHEREOF the Bond Trustee has caused this Amendment to be executed as of the date first written above.

UMB Bank, National Association,
As Bond Trustee

By: _____
Name:
Title: