

**MEMORANDUM**

**TO:** The Honorable Jeffrey Danner, Chair, and Members of City Council

**FROM:** Jacqueline M. Kovilaritch, Assistant City Attorney *JMK*

**DATE:** January 21, 2009

**RE:** Approval of City of St. Petersburg Health Facilities Authority Variable Rate Demand Revenue Bonds (Presbyterian Retirement Communities Project), Series 2009, as required by the TEFRA.

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**Request:** Give final approval for the issuance of not to exceed \$16,000,000 aggregate principal amount of City of St. Petersburg Health Facilities Authority ("Authority") Variable Rate Demand Revenue Bonds (Presbyterian Retirement Communities Project), Series 2009 as required by the federal Tax Exempt Financing Reform Act (TEFRA). The Authority will conduct a properly noticed public hearing on February 3, 2009.

**INFORMATION AND HISTORY OF THE AUTHORITY:** The Authority was created by City Council Resolution No. 81-40 pursuant to Chapter 154, Florida Statutes. In creating the Authority, the City Council found that there was a need for a health facilities authority to perform the functions set forth in the statute to provide a method for tax exempt financing and refinancing for not-for-profit organizations authorized by law to provide hospital, nursing home or other types of health related services. The Authority has always conducted the required TEFRA hearings for health facilities projects. Delegation of that duty to the Authority allows Council to avoid addressing some complex financial transactions and avoids the duplication of hearings, presentations, and information already provided. The City Attorney's Office and Finance Department have provided assistance to the Authority since its creation. The current members of the Authority are Mary Wyatt Allen, Mary Hilton Cross, N. Hadley Heindel, Wayne N. Fraser and John Green.

The purpose of providing tax exempt financing is to decrease the cost of health care to the residents of St. Petersburg. Chapter 154.208 requires the health facilities authority created by the City to be named the "City of St. Petersburg Health Facilities Authority." The Authority has been in existence since 1981 and has issued bonds for the benefit of hospitals, nursing and life care facilities, and other health care facilities during that time. The Authority has issued approximately two dozen bond issues, none of which have ever been in default. All health care facilities for which bonds have been issued by the Authority continue to be open and operate for the benefit of the public.

The Authority has adopted Financing Guidelines which provide much information concerning the procedures of the Authority. Section III sets forth the criteria for obtaining financing and outlines

what the Authority reviews before it authorizes the issuance of any bonds. Those areas deal with the need for the project in the community, financial feasibility of the project, the security for the payment of debt service, the risk and manner of sale and the management of the project.

**CURRENT PROJECT:** Presbyterian Retirement Communities, Inc. filed its application with the Authority on December 11, 2008, and has requested it to issue bonds for not more than \$16,000,000. The application is required to include extensive amounts of information related to the project and the applicant's ability to repay the bonds. The project consists of (i) acquiring and rehabilitating the 14-story, approximately 86,000 square foot building located at 939 Beach Drive, St. Petersburg, Florida and converting such building into a continuing care retirement community to be owned by Presbyterian Retirement Communities, Inc., (ii) funding capital improvements to Westminster Shores, a 197-unit continuing care retirement community located at 125 56th Avenue S., St. Petersburg, Florida owned by Westminster Shores, Inc., Westminster Suncoast, a 318-unit continuing care retirement community located at 6909 Martin Luther King Jr. Street South, St. Petersburg, Florida owned by Suncoast Manor Retirement Community, Inc. and Westminster Palms, a 172-unit continuing care retirement community located at 830 North Shore Drive, NE, St. Petersburg, Florida owned by Palm Shores Retirement Community, Inc., and (iii) paying certain costs to be incurred in connection with issuance of the bonds.

At the Authority's first meeting on the project an oral presentation was given and the Authority had the opportunity to question the applicant to obtain additional information. A second meeting and public hearing will be held on February 3, 2009 to answer any additional questions of the Authority, hold the TEFRA hearing, and to approve the bond documents and the issuance of the bonds. Attached is the current draft of the Bond Resolution which the Authority will be requested to approve after the public hearing required by the TEFRA. I will inform you if there are any substantive changes to the Bond Resolution once it is finalized. Notice of the public hearing in Room 200 of City Hall was published in the St. Petersburg Times on January 20, 2009 and on the Weekly Meeting Schedule. The affidavit of publisher is expected to be received from the St. Petersburg Times within one week and will be included as Exhibit A to the City Council resolution approving the bonds.

**RECOMMENDATION:** Attached is a resolution which you are being asked to approve that gives your final approval for issuance of the bonds as required by the TEFRA.

Attachments

RESOLUTION NO. 2009-\_\_\_\_

RESOLUTION OF THE CITY OF ST. PETERSBURG, FLORIDA APPROVING THE ISSUANCE OF NOT TO EXCEED \$16,000,000 CITY OF ST. PETERSBURG HEALTH FACILITIES AUTHORITY VARIABLE RATE DEMAND REVENUE BONDS (PRESBYTERIAN RETIREMENT COMMUNITIES PROJECT), SERIES 2009, PURSUANT TO SECTION 147(F) OF THE INTERNAL REVENUE CODE OF 1986; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the City Council of the City of St. Petersburg, Florida (the "Council"), as a political subdivision created and existing under the laws of the State of Florida, created the City of St. Petersburg Health Facilities Authority, which is a special district and a body corporate and politic in St. Petersburg, Florida (the "Authority"), and the Authority is authorized pursuant to the Constitution and the laws of the State of Florida, including particularly the Health Facilities Authorities Law (Part III of Chapter 154, Florida Statutes, as amended) and Part II of Chapter 159, Florida Statutes, as amended (collectively, the "Act"), to issue its revenue bonds, the interest on which may or may not be excluded from gross income for federal income tax purposes, for the purpose of constructing and installing any project (as defined in the Act) in furtherance of the public purpose for which it was created; and

**WHEREAS**, Presbyterian Retirement Communities, Inc., Palm Shores Retirement Community, Inc., Suncoast Manor Retirement Community, Inc., Wesley Manor, Inc., Westminster Retirement Communities Foundation, Inc., Westminster Services, Inc., and Westminster Shores, Inc., are each a not-for-profit corporation duly incorporated and validly existing under and by virtue of the laws of the State of Florida (collectively, the "Company") and

**WHEREAS**, the Authority has considered the application of the Company requesting that the Authority issue not to exceed \$16,000,000 aggregate principal amount of its Variable Rate Demand Revenue Bonds (Presbyterian Retirement Communities Project), Series 2009 (the "Bonds") for the purposes of loaning to the Company the proceeds in order to (i) acquire and rehabilitate the 14-story, approximately 86,000 square foot building located at 939 Beach Drive, St. Petersburg, Florida and convert such building into a continuing care retirement community to be owned by Presbyterian Retirement Communities, Inc., (ii) fund capital improvements to Westminster Shores, a 197-unit continuing care retirement community located at 125 56th Avenue S., St. Petersburg, Florida owned by Westminster Shores, Inc., Westminster Suncoast, a 318-unit continuing care retirement community located at 6909 Martin Luther King Jr. Street South, St. Petersburg, Florida owned by Suncoast Manor Retirement Community, Inc. and Westminster Palms, a 172-unit continuing care retirement community located at 830 North Shore Drive, NE, St. Petersburg, Florida owned by Palm Shores Retirement Community, Inc., and (iii) pay certain costs of issuance to be incurred in connection therewith (the "Project"); and

**WHEREAS**, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), requires as a condition of exclusion from gross income for federal income tax purposes of the interest on private activity bonds, that the issuance of private activity bonds, as defined in Section 141(a) of the Code, such as the Bonds be approved, after a public hearing following reasonable public notice, by the governmental unit on behalf of which such obligation is to be issued and the governmental unit having jurisdiction over the area in which the facility is located; and

**WHEREAS**, the Authority issues its revenue bonds on behalf of the City of St. Petersburg, Florida, and the Council constitutes the elected legislative body of the City of St. Petersburg, Florida; and

**WHEREAS**, the Authority has requested the Council, pursuant to Section 147(f) of the Code, to approve the issuance by the Authority of its Bonds; and

**WHEREAS**, the Authority on January 20, 2009, published in The St. Petersburg Times, a newspaper of general circulation in the City of St. Petersburg, Florida, a notice of public hearing to be held at 4:00 p.m. on February 3, 2009, in the City Hall of the City of St. Petersburg, Conference Room 200, 175 Fifth Street, St. Petersburg, Florida to consider the issuance of the Bonds and the nature of the Project to be financed with the proceeds of the Bonds; and

**WHEREAS**, the public hearing so noticed, as indicated by the affidavit of the publisher of The St. Petersburg Times attached hereto as Exhibit A, was duly held by the Authority on February 3, 2009, during which hearing members of the public were afforded the opportunity to express their views on the issuance of the Bonds and the use of the proceeds thereof for the purposes set forth herein.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ST. PETERSBURG, FLORIDA:

**Section 1.** The issuance by the Authority of its not to exceed \$16,000,000 initial aggregate principal amount City of St. Petersburg Health Facilities Authority Variable Rate Demand Revenue Bonds (Presbyterian Retirement Communities Project), Series 2009, for the purpose of providing funds to finance the Project is hereby approved pursuant to and in accordance with Section 147(f) of the Code.

**Section 2.** Such approval by the Council does not constitute an endorsement to a prospective purchaser of the Bonds of the creditworthiness of the Company or the Project, and the Bonds shall not constitute an indebtedness or obligation of the State of Florida or of the City of St. Petersburg, or of any county, municipal corporation or political subdivision thereof, but the Bonds shall be limited obligations of the Authority payable solely from the revenue derived from the Company and pledged to the payment thereof and no owner of any of the Bonds shall ever have the right to compel any exercise of the taxing power of said State, or said City, or of any county,

municipal corporation or political subdivision thereof, nor to enforce the payment thereof against any property of the State, the City or the Authority or of any such county, municipal corporation or political subdivision.

**Section 3.** All acts and doings of the officers and members of the Authority (or any successor thereto) which are in conformity with the purposes and intent of this Resolution shall be, and the same hereby are, in all respects approved and confirmed by the Council.

**Section 4.** This resolution shall take effect immediately upon its adoption.

Adopted at a regular session of the City Council held on the 5<sup>th</sup> day of February, 2009.

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Chair-Councilmember  
Presiding Officer of the City Council

ATTEST:

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City Clerk

**EXHIBIT A**

**AFFIDAVIT OF PUBLICATION**

RESOLUTION

A RESOLUTION OF THE CITY OF ST. PETERSBURG HEALTH FACILITIES AUTHORITY PROVIDING FOR THE ISSUANCE OF NOT EXCEEDING \$16,000,000 OF CITY OF ST. PETERSBURG HEALTH FACILITIES AUTHORITY VARIABLE RATE REVENUE BONDS (PRESBYTERIAN RETIREMENT COMMUNITIES PROJECT), SERIES 2009 (THE "SERIES 2009 BONDS") FOR THE PURPOSE OF PROVIDING FUNDS TO ACQUIRE AND REHABILITATE A CONTINUING CARE RETIREMENT COMMUNITY FOR PRESBYTERIAN RETIREMENT COMMUNITIES, INC. AND FUNDING CERTAIN CAPITAL IMPROVEMENTS TO ITS RELATED COMPANIES, AND FOR CERTAIN OTHER PURPOSES; AUTHORIZING THE EXECUTION OF A BOND TRUST INDENTURE AND LOAN AGREEMENT, FOR THE SERIES 2009 BONDS, AND CERTAIN OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE SERIES 2009 BONDS; AUTHORIZING THE CHAIRPERSON OR THE VICE CHAIRPERSON TO AWARD THE SALE OF THE SERIES 2009 BONDS AT A PRIVATE AND NEGOTIATED SALE TO BB&T CAPITAL MARKETS, A DIVISION OF SCOTT & STRINGFELLOW, LLC. PURSUANT TO THE TERMS OF A PURCHASE AGREEMENT; AUTHORIZING THE CHAIRPERSON OR THE VICE CHAIRPERSON AND THE SECRETARY TO EXECUTE A PURCHASE AGREEMENT; APPROVING THE FORM OF AN OFFICIAL STATEMENT AND THE EXECUTION AND DELIVERY OF A FINAL OFFICIAL STATEMENT FOR THE SERIES 2009 BONDS; PROVIDING FOR THE PAYMENT OF THE SERIES 2009 BONDS; MAKING CERTAIN COVENANTS IN CONNECTION WITH THE ISSUANCE OF THE SERIES 2009 BONDS; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; AND PROVIDING FOR A SEVERABILITY CLAUSE, A REPEALER CLAUSE, AND AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY OF ST. PETERSBURG HEALTH FACILITIES AUTHORITY AS FOLLOWS:

SECTION 1. AUTHORITY. This Resolution (hereinafter called the "Resolution") is adopted pursuant to the provisions of the Constitution of the State of Florida, Part III, Chapter 154, Florida Statutes, as amended, and other applicable provisions of law (the "Act").

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

"Authority" or "Issuer" shall mean the City of St. Petersburg Health Facilities Authority, a public body corporate and politic created by the City Council of the City of St. Petersburg, Florida, pursuant to Florida Statutes, Section 154.201 - 154.246.

"Authorized Officers" shall mean the Chairperson or Vice Chairperson and the Secretary of the Authority.

"Company" shall mean, collectively, Presbyterian Retirement Communities, Inc., Palm Shores Retirement Community, Inc., Suncoast Manor Retirement Community, Inc., Wesley Manor, Inc., Westminster Retirement Communities Foundation, Inc., Westminster Services, Inc., and Westminster Shores, Inc., each a not-for-profit corporation organized and existing under the laws of the State of Florida, its successors and assigns.

"Indenture" shall mean the Bond Trust Indenture relating to the Series 2009 Bonds to be entered into by and between the Authority and the 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 relating to the Series 2009 Bonds to be entered into by and between the Authority and the Company in substantially the form attached hereto as Exhibit B, as amended from time to time.

"Master Indenture" means that certain Master Trust Indenture dated as of August 1, 2004 among the members of the Company and Wells Fargo Bank, National Association, as master trustee, as supplemented.

"Project" shall mean (i) acquiring and rehabilitating the 14-story, approximately 86,000 square foot building located at 939 Beach Drive, St. Petersburg, Florida and converting such building into a continuing care retirement community to be owned by Presbyterian Retirement Communities, Inc., and (ii) funding capital improvements to Westminster Shores, a 197-unit continuing care retirement community located at 125 56th Avenue S., St. Petersburg, Florida owned by Westminster Shores, Inc., Westminster Suncoast, a 318-unit continuing care retirement community located at 6909 Martin Luther King Jr. Street South, St. Petersburg, Florida owned by Suncoast Manor Retirement Community, Inc. and Westminster Palms, a 172-unit continuing care retirement community located at 830 North Shore Drive, NE, St. Petersburg, Florida owned by Palm Shores Retirement Community, Inc.

"Obligation No. 10" shall be as defined in the Indenture.

"Purchase Agreement" shall mean the Contract of Purchase by and between the Authority, the Company and BB&T Capital Markets, A Division of Scott & Stringfellow, LLC, as the initial purchaser of the Series 2009 Bonds.

"Supplemental Indenture" shall mean Supplemental Indenture for Obligation No. 10, dated as of February 1, 2009, by and between the Company and Wells Fargo Bank, National Association, as master trustee

"Trustee" shall mean Branch Banking and Trust Company, Wilson, North Carolina.

"Underwriter" shall mean BB&T Capital Markets, A Division of Scott & Stringfellow, LLC.

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

A. The Authority is authorized by the Act to issue revenue bonds to finance the cost of acquiring, rehabilitating and equipping health care facilities and to pledge or assign as security for the payment of the principal of and interest on such revenue bonds any money or other revenues to be derived or received by the Authority under financing agreements with respect to such project.

B. The Company has requested the Authority exercise its powers to issue revenue bonds pursuant to the Act, for the purpose of financing the costs of the Project.

C. The issuance of such revenue bonds will promote the public health and general welfare of the City of St. Petersburg, Florida and its inhabitants and will improve the health and living conditions of such inhabitants by assisting in the provisions of adequate medical care and health facilities within the City of St. Petersburg, Florida.

E. Adequate provision is made under the terms of the Loan Agreement for the construction, repair and maintenance of the Project at the expense of the Company, and for the payment of the principal of and premium, if any, and interest on the Series 2009 Bonds. Taking into consideration the issuance of the bond insurance policy and the Company's ratio of current assets to current liabilities, net worth, earning trends, coverage of all fixed charges, the investment grade ratings on the Series 2009 Bonds and other factors determinative of the capability of the Company, financially or otherwise, the Authority hereby finds in accordance with the provisions of Chapter 154, Florida Statutes that the Company is financially responsible and fully capable and willing to fulfill its obligations under the hereinafter described Loan Agreement, including the obligations to make payments in the amounts and at the times required and to operate, repair and maintain at its own expense the Company's facilities, including the Project.

F. The Loan Agreement and the Indenture, all as herein described, provide for the payment of the principal of and premium, if any, and interest on the Series 2009 Bonds. The City

of St. Petersburg will be able to cope satisfactorily with the impact of 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 the Project, and on account of any increases in population or other circumstances resulting therefrom.

G. To evidence and secure its payment obligations under the Loan Agreement, the Company will execute and deliver to the Trustee Obligation No. 10, issued under and pursuant to the Master Trust Indenture, as supplemented and amended.

H. Proceeds from the sale of the Series 2009 Bonds will (except for certain amounts relating to the cost of issuance of said Bonds) be used to finance the costs of the Project.

I. The principal of and interest on the Series 2009 Bonds and all payments to be made on behalf of the Authority required under and pursuant to the Loan Agreement and the Indenture shall be payable solely from the proceeds to be derived by the Authority under and pursuant to the Loan Agreement, and the Authority shall never be required to pay the same from any funds of the Authority other than those derived by the Authority under the Loan Agreement. Neither the faith and credit nor the taxing power of the state of Florida, Pinellas County or the City of St. Petersburg or of any other political subdivision thereof, or the Authority is pledged to the payment of the principal of or interest on the Series 2009 Bonds. The Authority has no taxing power and the issuance of the Series 2009 Bonds shall not directly or indirectly or contingently obligate Pinellas County, the City of St. Petersburg, the State of Florida or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

J. The Authority has been advised that the interest on the Series 2009 Bonds will be excluded from gross income of the holders thereof for purposes of federal income taxation under existing laws of the United States.

K. The Authority has conducted a properly noticed public hearing on this date at which members of the public could express their views.

SECTION 4. AUTHORIZATION OF SERIES 2009 BONDS. Bonds of the Authority to be issued in one series and known as "Variable Rate Demand Revenue Bonds (Presbyterian Retirement Communities Project), Series 2009 are hereby authorized to be issued in an aggregate principal amount of not to exceed Sixteen Million Dollars (\$16,000,000), in the form and manner to be described in the Indenture. The Series 2009 Bonds will be dated as of the date of delivery of the Series 2009 Bonds to the Underwriter and interest thereon shall be payable as is provided in the hereinafter described Indenture and as may change from time to time in accordance with such interest rate mode provisions in the Indenture. The initial interest rate mode for the Series 2009 Bonds shall be determined by the Company and set forth in the Purchase Agreement prior to sale to the Underwriter.

SECTION 5. AUTHORIZATION OF CONSTRUCTION OF PROJECT. There is hereby authorized the acquisition, rehabilitation, equipping and erection of the Project, pursuant to the provisions of the Loan Agreement and in accordance with information on file with the Company and the Trustee. The cost of such Project shall include all costs and expenses of every nature incurred in the completion of the Project, as provided in the Loan Agreement.

SECTION 6. NEGOTIATED SALE. Due to the complexity and nature of the financing, and the critical work of the Underwriter in the structuring of the financing, a negotiated sale is in the best interests of the Authority. The Chairperson or the Vice Chairperson are hereby authorized to sell the Series 2009 Bonds to the Underwriter, upon the terms and conditions set forth in the Purchase Agreement attached hereto as Exhibit C and incorporated herein by reference.

SECTION 7. EXECUTION OF PURCHASE AGREEMENT. The Purchase Agreement in substantially the form attached as Exhibit C, with such additional changes, insertions and omissions therein as do not change the substance thereof and as may be approved by the Authorized Officers, such approval to be presumed by their execution thereof, is hereby approved by the Authority, and the Authority hereby authorizes the Authorized Officers to execute and to attest the Purchase Agreement under the corporate seal of the Authority and to deliver the Purchase Agreement to the Underwriter all of the provisions of which, when executed and delivered by the Authority as authorized herein and by the Underwriter duly authorized, shall be deemed to be a part of this instrument as fully and to the same extent as if incorporated verbatim herein. No such Purchase Agreement shall be executed and delivered unless the initial true interest cost on the Series 2009 Bonds is not greater than \_\_%, unless the final maturity of the Series 2009 Bonds shall not exceed \_\_\_\_\_, 20\_\_ and unless the Authority shall have received all disclosure information required by Section 218.385, Florida Statutes.

SECTION 8. AUTHORIZATION OF EXECUTION AND DELIVERY OF THE INDENTURE. As security for the payment of the principal of and premium, if any, and interest on the Series 2009 Bonds, the Indenture, in substantially the form thereof attached hereto as Exhibit A, with such changes, alterations and corrections as may be approved by the Authorized Officers, such approval to be presumed by their execution thereof, is hereby approved by the Authority, and the Authority hereby authorizes the Authorized Officers to execute and to attest the Indenture under the corporate seal of the Authority and to deliver the Indenture to the Trustee all of the provisions of which, when executed and delivered by the Authority as authorized herein and by the Trustee duly authorized, shall be deemed to be a part of this instrument as fully and to the same extent as if incorporated verbatim herein. By incorporation of the Indenture herein, the Authority provides the terms, conditions, covenants, rights, obligations, duties and agreement to and for the benefit of the holders of the Series 2009 Bonds, the Authority, the Company and the Trustee.

SECTION 9. AUTHORIZATION OF EXECUTION AND DELIVERY OF THE LOAN AGREEMENT. The Loan Agreement, in substantially the form thereof attached hereto as Exhibit B, with such changes, alterations and corrections as may be approved by the Authorized Officers, such approval to be presumed by their execution thereof, is hereby approved by the Authority, and the Authority hereby authorizes the Authorized Officers to execute and to attest the Loan Agreement under the corporate seal of the Authority and to deliver the Loan Agreement to the Company all of the provisions of which, when executed and delivered by the Authority as authorized herein and by the Company duly authorized, shall be deemed to be a part of this instrument as fully and to the same extent as if incorporated verbatim herein.

SECTION 10. AUTHORIZATION OF EXECUTION AND DELIVERY OF OBLIGATIONS. To evidence and secure its payment obligations under the Loan Agreement, the Company will execute and deliver to the Trustee Obligation No. 10 issued under and pursuant to the Master Indenture, as supplemented.

SECTION 11. AUTHORIZATION OF EXECUTION AND DELIVERY OF THE OFFICIAL STATEMENT. The distribution by the Underwriter of an Official Statement of the Authority relating to the Series 2009 Bonds is hereby approved, confirmed and ratified, in substantially the form as Exhibit D, hereto, together with such changes thereto as may be authorized by the Chairperson or the Vice Chairperson. The final Official Statement will be executed by the Chairperson or the Vice Chairperson of the Authority, such execution to be conclusive evidence of approval of the final Official Statement in its final form. The Chairperson or the Vice Chairperson is hereby authorized to deem the sections of the Official Statement regarding the Authority "final" for purposes of Rule 15c2-12 of the Securities and Exchange Commission (except for "Permitted Omissions" as defined in such Rule).

SECTION 12. NO PERSONAL LIABILITY. No covenant, stipulation, obligation or agreement herein contained or contained in the Loan Agreement or the Indenture shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the Authority or its governing body in his individual capacity, and neither the Authority nor any official executing the Series 2009 Bonds shall be liable personally thereon or be subject to any personal liability or accountability by reason of the issuance thereof.

SECTION 13. NO THIRD PARTY BENEFICIARIES. Except as herein or in the Loan Agreement or in the Indenture otherwise expressly provided, nothing in this instrument or in the Loan Agreement or in the Indenture, expressed or implied, is intended or shall be construed to confer upon any person or firm or corporation other than the Authority, the Company, the holders of the Series 2009 Bonds and the Trustee any right, remedy or claim, legal or equitable, under and by reason of this instrument or any provision thereof or of the Loan Agreement or of the Indenture; this instrument, the Loan Agreement and the Indenture and all provisions thereof being intended to be and being for the sole and exclusive benefit of the Authority, the Company, the holders from time to time of the Series 2009 Bonds and the Trustee.

SECTION 14. PREREQUISITES PERFORMED. Except for approval by the City Council of the City of St. Petersburg, all acts, conditions and things relating to the passage of this instrument, to the issuance of the Series 2009 Bonds, and to the execution of the Loan Agreement and the Indenture required by the Constitution or laws of the State of Florida to happen, exist and be performed precedent to and in the passage hereof, and precedent to the issuance of the Series 2009 Bonds, and precedent to the execution and delivery of the Loan Agreement and the Indenture have happened, exist and have been performed as so required.

SECTION 15. ASSENTS, ACCEPTANCES AND APPROVALS. The Authorized Officers of the Authority are authorized to execute such assents, acceptances, approvals, certifications and other documents, including a tax return and tax certificate, as the Authority and bond counsel may deem necessary for the Authority to finance the Project and deliver the Series 2009 Bonds in the manner contemplated by the Loan Agreement and the Indenture.

SECTION 16. TAX COVENANTS. The Authority covenants that it will not make and will not direct the Trustee to make any investments or acquiesce in the making of any investments by the Trustee pursuant to or under the Loan Agreement or the Indenture which could cause the Series 2009 Bonds to be "arbitrage bonds" within the meaning of Section 148 of the United States Internal Revenue Code of 1986, as amended, and the applicable regulations issued thereunder.

The Authority and the Trustee shall at all times do and perform all acts and things permitted by law and this Resolution which are necessary or desirable in order to assure that interest paid on the Series 2009 Bonds will be excluded from gross income of the holders thereof for purposes of federal income taxation and shall take no action that would result in such interest not being excluded therefrom. In furtherance thereof the Authorized Officers of the Authority are hereby authorized to execute and deliver a Tax Regulatory Agreement in connection with the issuance and sale of the Series 2009 Bonds in such form and substance as shall be approved by the Authorized Officers of the Authority executing the same.

SECTION 17. LOAN AGREEMENT TO CONSTITUTE CONTRACT. In consideration of the acceptance of the Series 2009 Bonds authorized to be issued under the Loan Agreement by those who shall hold the same from time to time, the Loan Agreement shall be deemed to be and shall constitute a contract between the Authority and such Bondholders. The covenants and agreements herein and in the Loan Agreement and the Indenture to be performed by the Authority shall be for the equal benefit, protection and security of the holders of any and all of the Series 2009 Bonds, all of which shall be of equal rank and without preference, priority or distinction of any of the Series 2009 Bonds over any others thereof, except as expressly provided therein.

SECTION 18. SEVERABILITY OF INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions contained in this Resolution, the Loan Agreement or the Indenture 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 Series 2009 Bonds.

SECTION 19. REPEALING CLAUSE. All resolutions, or parts thereof, of the Authority in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

SECTION 20. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

This Resolution was passed and approved this 3<sup>rd</sup> day of February, 2009.

CITY OF ST. PETERSBURG HEALTH  
FACILITIES AUTHORITY

(SEAL)

By: \_\_\_\_\_  
Chairperson

ATTEST:

By: \_\_\_\_\_  
Secretary

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**EXHIBIT A**

**FORM OF BOND TRUST INDENTURE**

**EXHIBIT B**

**FORM OF LOAN AGREEMENT**

**EXHIBIT C**

**FORM OF CONTRACT OF PURCHASE**

**EXHIBIT D**

**FORM OF OFFICAL STATEMENT**