

**Lee County Board of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20020790

1. REQUESTED MOTION:

ACTION REQUESTED: Adopt resolution approving the issuance of Lee County Industrial Development Authority Bonds on behalf of Cypress Cove at HealthPark Florida, Inc. in an amount not to exceed \$40,000,000.00 for the primary purpose of financing certain costs incurred or to be incurred by Cypress Cove at HealthPark Florida, Inc. (the "Corporation") in connection with the acquisition, construction and equipping of certain senior care facilities.

WHY ACTION IS NECESSARY: Authorizes Industrial Development Authority to issue industrial development bonds pursuant to Chapter 159, Florida Statutes.

WHAT ACTION ACCOMPLISHES: Provides Board consideration of proposed Industrial Development Authority Bonds as required by Internal Revenue Code and Florida Statutes. Board approval will authorize and adopt approving bond issuance resolution.

2. DEPARTMENTAL CATEGORY: COMMISSION DISTRICT # C12A **3. MEETING DATE:** 08-06-2002

<p>4. AGENDA:</p> <p><input checked="" type="checkbox"/> CONSENT</p> <p><input type="checkbox"/> ADMINISTRATIVE</p> <p><input type="checkbox"/> APPEALS</p> <p><input type="checkbox"/> PUBLIC</p> <p><input type="checkbox"/> WALK ON</p> <p>TIME REQUIRED:</p>	<p>5. REQUIREMENT/PURPOSE: (Specify)</p> <p><input checked="" type="checkbox"/> STATUTE F.S. Ch. 159</p> <p><input type="checkbox"/> ORDINANCE</p> <p><input type="checkbox"/> ADMIN. CODE</p> <p><input checked="" type="checkbox"/> OTHER Sec. 147 IRC</p>	<p>6. REQUESTOR OF INFORMATION:</p> <p>A. COMMISSIONER</p> <p>B. DEPARTMENT County Attorney</p> <p>C. DIVISION</p> <p>BY: James G. Yaeger County Attorney</p>
--	---	---

7. BACKGROUND: The Lee County Industrial Development Authority has entered into an agreement for issuance of private activity revenue bonds with Cypress Cove HealthPark Florida, Inc. On June 21, 2002, the Industrial Development Authority held a noticed public hearing and adopted an inducement resolution for the proposed issuance of Industrial Development Authority private activity revenue bonds in an initial amount not to exceed \$40,000,000.00 for the primary purpose of financing (or providing for reimbursement of) certain costs of acquisition, construction and equipping of certain senior care facilities to be owned and operated by Cypress Cove at HealthPark Florida, Inc.

The Internal Revenue Code and Florida Statutes require an applicable elected body to approve the prospective bond financing for the project. The county resolution approves the issuance of the bonds and the project. Section 3 provides that Board action is a limited approval.

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	<i>[Signature]</i>	OA <i>[Signature]</i>	QM <i>[Signature]</i>	RISK <i>[Signature]</i>	GC <i>[Signature]</i>	<i>[Signature]</i>

10. COMMISSION ACTION:

- _____ APPROVED
- _____ DENIED
- _____ DEFERRED
- _____ OTHER

CO. ATTY.
FORWARDED
TO CO. ADMIN.
6/27/02

RECEIVED BY
COUNTY ADMIN.
6/27/02 *CA*
2:46 pm
COUNTY ADMIN.
FORWARDED TO:
6/27 330

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

DATE: July 5, 2002

To: Libby Walker
Manager, Public Resources

FROM:

James G. Yaeger
James G. Yaeger
County Attorney

**RE: Deferral of Consent Item 12 (b) - July 9, 2002 Meeting
TEFR Approval of IDA Bond Issue**

Per request of IDA Bond Counsel, I am requesting the above as it pertains to Cypress Cove be deferred from the July 9, 2002 Consent Agenda and continued over to your August 6, 2002 Agenda.

If you have any questions, let me know.

JGY/smr

xc: Board of County Commissioners
Donald Stilwell, County Manager
Janet Watermeier, Director, Economic Development

*on recap
07-05-02*

NABORS, GIBLIN & NICKERSON, P.A.

ATTORNEYS AT LAW
THE POINTE, SUITE 1060
2502 ROCKY POINT DRIVE
TAMPA, FLORIDA 33607

TELEPHONE (813) 281-2222
TELECOPY (813) 281-0129

SUITE 200
1500 MAHAN DRIVE
TALLAHASSEE, FLORIDA 32308
(850) 224-4070
TELECOPY (850) 224-4073

CNL CENTER, SUITE 510
450 SOUTH ORANGE AVENUE
ORLANDO, FLORIDA 32801
(407) 426-7595
TELECOPY (407) 426-8022

June 24, 2002

James G. Yaeger, Esq.
Lee County Attorney
2115 Second Street
Fort Myers, Florida 33901

02 JUN 26 AM 10:10
RECEIVED BY
LEE CO. ATTORNEY

Dear Jim:

Enclosed please find ten copies of a proposed resolution for consideration by the Board of County Commissioners at the earliest available meeting. Adoption of the resolution would provide the Board's limited approval to the issuance of not exceeding \$40,000,000 of Lee County Industrial Development Authority Healthcare Facilities Revenue Bonds, Series 2002 for the benefit of Cypress Cove at HealthPark Florida, Inc. The approval of the County is extremely limited and is required by Section 147(f) of the Internal Revenue Code and Section 159.47(1)(i), Florida Statutes. In essence, these provisions provide that an elected public body must give its approval to the issuance of private activity bonds prior to their issuance. The Board's approval is given in accordance with Section 125.01(1)(z), Florida Statutes.

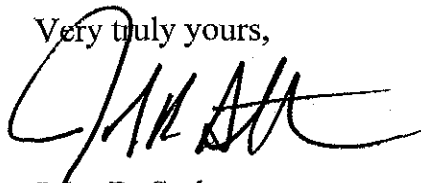
Section 3 of the Board's resolution makes it clear that the approval being given by the Board is limited and, importantly, that the Board is not incurring any liability as a result thereof. Please note that Section 8 of the Authority's resolution adopted by the Authority on June 21, 2002 (after a public hearing on the issue) which is attached as an Exhibit to the Board's resolution, also contains the same provision.

James G. Yaeger, Esq.
June 24, 2002
Page 2

Please let us know whether or not it will be necessary to have any representatives from the Authority, the Company or their counsel present at the meeting. Also, please provide me with a certified copy of the adopted resolution at your convenience.

Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "John R. Stokes", written over a horizontal line.

John R. Stokes

JRS:mbw

Enclosures

cc: James T. Humphrey, Esq.

RESOLUTION NO. _____

A RESOLUTION APPROVING THE ISSUANCE BY THE LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY OF ITS PRIVATE ACTIVITY REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$40,000,000, THE PROCEEDS FROM THE SALE OF WHICH WILL BE USED FOR THE PRINCIPAL PURPOSE OF FINANCING CERTAIN COSTS INCURRED OR TO BE INCURRED BY CYPRESS COVE AT HEALTHPARK FLORIDA, INC. (THE "CORPORATION") IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF CERTAIN SENIOR CARE FACILITIES.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION 1. FINDINGS. It is hereby ascertained, determined and declared as follows:

A. The Lee County Industrial Development Authority (the "Authority") has submitted to the Board of County Commissioners of Lee County, Florida (the "County"), a copy of a resolution of the Authority which was adopted by the Authority on June 21, 2002 (the "Authority Approving Resolution"), granting its preliminary approval for the issuance by the Authority of its private activity health care facilities revenue bonds (the "Bonds"), in an aggregate principal amount not to exceed \$40,000,000 for the primary purpose of financing (or providing for reimbursement of) certain costs of acquisition, construction and equipping of certain senior care facilities to be owned and operated by Cypress Cove at HealthPark Florida, Inc. (the "Corporation") in Lee County, as more particularly described in the Authority Approving Resolution (the "Project"). A copy of the Authority Approving Resolution is attached hereto as Exhibit A.

B. On June 21, 2002, the Authority held a public hearing, which public hearing was duly conducted by the Authority on such date upon reasonable public notice, and at which hearing members of the public were afforded reasonable opportunity to be heard on all matters pertaining to the location and nature of the Project, and the issuance of the Bonds for such purposes.

C. The Authority has requested the County to approve the issuance of the Bonds in order to satisfy the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended and Section 125.01(1)(z), Florida Statutes.

D. The purposes of Part II and III of Chapter 159, Florida Statutes, will be effectively served and it is desirable and in the best interests of the County that the issuance of the Bonds and the use of the proceeds thereof to finance and refinance the costs of the Project be approved by the Board.

SECTION 2. APPROVAL OF ISSUANCE OF BONDS; THE PROJECT.

The issuance of the Bonds and the use of the proceeds thereof to finance and refinance the costs of the Project as contemplated by the Authority Approving Resolution be and hereby are approved.

SECTION 3. LIMITED APPROVAL.

The approval given herein shall not be construed as (A) an endorsement of the creditworthiness of the Corporation or the financial viability of the Project, (B) a recommendation to any prospective purchaser to purchase the Bonds, (C) an evaluation of the likelihood of the repayment of the debt service on the Bonds, or (D) approval of any necessary rezoning applications or approval or acquiescence to the alteration of existing zoning or land use nor approval for any other regulatory permits relating to the Project, and the Board shall not be construed by reason of its adoption of this Resolution to make any such endorsement, finding or recommendation or to have waived any right of the Board or estopping the Board from asserting any rights or responsibilities it may have in such regard. Further, the approval by the Board of the issuance of the Bonds by the Authority shall not be construed to obligate the County to incur any liability, pecuniary or otherwise, in connection with either the issuance of the Bonds or the acquisition and construction of the Project, and the Authority shall so provide in the financing documents setting forth the details of the Bonds.

SECTION 4. EFFECTIVE DATE.

This Resolution shall take effect immediately upon its adoption.

ADOPTED, this ____ day of _____, 2002.

**BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA**

(SEAL)

ATTEST:

By: _____
Chairman

Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

County Attorney

EXHIBIT A

AUTHORITY APPROVING RESOLUTION

NOW, THEREFORE, IT IS DETERMINED AND RESOLVED BY THE LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, THAT:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This resolution, hereinafter called "Resolution" is adopted pursuant to the provisions of the Act and other applicable provisions of law.

SECTION 2. PRELIMINARY STATEMENT. This Resolution is entered into to permit the Corporation to proceed with the financing of all or a portion of the costs of the Project and to provide an expression of intention by the Authority, prior to the issuance of the Bonds, to issue and sell the Bonds and make the proceeds thereof available to finance a portion of the costs of the Project, all in accordance with and subject to the provisions of the Act, the Constitution and other laws of the State of Florida, including the Code and this Resolution, but subject in all respects to the terms of the Memorandum of Agreement hereinafter referred to.

SECTION 3. APPROVAL OF THE FINANCING AND REFINANCING. The financing of all or a portion of the costs of the Project by the Authority through the issuance of the Bonds, pursuant to the Act, will promote the economic development, prosperity, health and welfare of the citizens of Lee County, will promote the general economic structure of Lee County, and will thereby serve the public purposes of the Act and is hereby preliminarily approved, subject, however, in all respects to the Corporation meeting the conditions set forth in the Memorandum of Agreement to the sole satisfaction of the Authority.

SECTION 4. EXECUTION AND DELIVERY OF MEMORANDUM OF AGREEMENT. The Chairman or the Vice-Chairman is hereby authorized and directed to execute, for and on behalf of the Authority, the Memorandum of Agreement attached hereto as Exhibit "B" between the Authority, the Corporation providing understandings relative to the proposed issuance of the Bonds by the Authority to finance all or a portion of the costs of the Project in an aggregate principal amount not to exceed the lesser of (a) \$40,000,000, or (b) the amount determined by the Authority, the Corporation to be necessary to accomplish the foregoing.

SECTION 5. AUTHORIZATION OF THE BONDS. There is hereby authorized to be issued and the Authority hereby determines to issue the Bonds, if so requested by the Corporation and subject in all respects to the conditions set forth in the Memorandum of Agreement attached hereto, in one or more issues or series of such tax-exempt revenue bonds in an aggregate principal amount not to exceed \$40,000,000 for the principal purpose of financing all or a portion of the costs of the Project as described in the

Memorandum of Agreement. The rate of interest payable on the Bonds shall not exceed the maximum rate permitted by law.

SECTION 6. RECOMMENDATION FOR APPROVAL TO BOARD OF COUNTY COMMISSIONERS. The Authority hereby recommends the issuance of the Bonds and the financing of the Project for approval to the Board of County Commissioners of Lee County (the "Board"). The Authority hereby directs the Chairman or Vice-Chairman, either alone or jointly, at the expense of the Corporation, to cooperate in seeking approval for the issuance of the Bonds and the financing of the Project by the Board as the applicable elected representatives of Lee County under and pursuant to the Act and Section 147(f) of the Internal Revenue Code of 1986, as amended.

SECTION 7. GENERAL AUTHORIZATION. The Chairman and the Vice-Chairman are hereby further authorized to proceed, upon execution of the Memorandum of Agreement, with the undertakings provided for therein on the part of the Authority and are further authorized to take such steps and actions as may be required or necessary in order to cause the Authority to issue the Bonds subject in all respects to the terms and conditions set forth in the Memorandum of Agreement authorized hereby.

SECTION 8. AFFIRMATIVE ACTION. This resolution is an affirmative action of the Authority toward the issuance of the Bonds, as contemplated in the Memorandum of Agreement, in accordance with the purposes of the laws of the state of Florida and the applicable United States Treasury Regulations.

SECTION 9. LIMITED OBLIGATIONS. The Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit or taxing power of Lee County, the state of Florida or any political subdivision or agency thereof but shall be payable solely from the revenues pledged therefor pursuant to a loan agreement or other financing agreement entered into by and between the Authority and the Corporation prior to or contemporaneously with the issuance of the Bonds. The Authority has no taxing power.

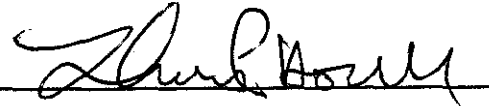
SECTION 10. LIMITED APPROVAL. The approval given herein shall not be construed as an approval of any necessary rezoning applications nor for any other regulatory permits relating to the Project and the Authority shall not be construed by reason of its adoption of this resolution to have waived any right of Lee County or estopping Lee County from asserting any rights or responsibilities it may have in that regard.

SECTION 11. EFFECTIVE DATE. This Resolution shall take effect immediately.

ADOPTED this 21st day of June, 2002.


**LEE COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY, LEE
COUNTY, FLORIDA**

(SEAL)



Chairman

ATTEST:



Executive Secretary

EXHIBIT A

AFFIDAVIT OF PUBLICATION

NEWS-PRESS

Published every morning - Daily and Sunday

Fort Myers, Florida

Affidavit of Publication

STATE OF FLORIDA
COUNTY OF LEE

Before the undersigned authority, personally appeared

Kieanna Henry

who on oath says that he/she is the

Asst. Legal Clerk of the News-Press, a daily newspaper, published at Fort Myers, in Lee County, Florida; that the attached copy of advertisement, being a

Notice of Public Hearing

In the matter of **Public Hearing on 6/21/02 for Lee Co. Ind. (Cypress Cove)**

in the _____ Court
was published in said newspaper in the issues of
June 5, 2002

Affiant further says that the said News-Press is a paper of general circulation daily in Lee, Charlotte, Collier, Glades and Hendry Counties and published at Fort Myers, in said Lee County, Florida and that said newspaper has heretofore been continuously published in said Lee County, Florida, each day, and has been entered as a second class mail matter at the post office in Fort Myers in said Lee County, Florida, for a period of one year next preceding the first publication of the attached copy of the advertisement; and affiant further says that he/she 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.

Sworn to and subscribed before me this

5th day of June 2002 by

Kieanna Henry

personally known to me or who has produced

as identification, and who did or did not take an oath.

Notary Public

Print Name _____

My commission Expires:



Brenda Leighton
MY COMMISSION # CC808905 EXPIRES
February 14, 2003
BONDED THRU TROY FAIN INSURANCE INC.

NOTICE OF PUBLIC HEARING
The Lee County Industrial Development Authority (the "Authority") will hold a public hearing on June 21, 2002, at 1:00 P.M., or as soon thereafter as the matter can be heard, at the Authority's offices located at 2180 West First Street, 3rd Floor Conference Room, Saxon House, Fort Myers, Florida, to consider adoption of a resolution providing for the preliminary approval of the issuance by the Authority of not exceeding \$40,000,000 of its Healthcare Facilities Revenue Bonds (Cypress Cove at Health Park Florida, Inc. Project), Series 2002 (the "Series 2002 Bonds") to be issued in one or more series. The proceeds of the Series 2002 Bonds will be loaned to Cypress Cove at Health Park Florida, Inc. (the "Company") and used for the principal purposes of financing certain costs of acquisition, construction and equipping of a senior care facility (the "Project") to be owned and operated by the Company and to be located in Lee County, Florida, near the intersection of Bass and Summerlin Roads.
The Project consists of the following: approximately 109 independent living units, together with appropriate common and amenity areas and an approximate 100-seat cafe. The Series 2002 Bonds shall be payable solely from the revenues derived by the Authority from a loan agreement, mortgage and security agreement and other financing documents to be entered into by and between the Authority and the Company prior to or contemporaneously with the issuance of the Series 2002 Bonds. Such Series 2002 Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit or taxing power of Lee County, the State of Florida or any political subdivision or agency thereof. Issuance of the Series 2002 Bonds shall be subject to several conditions including satisfactory documentation, the approval by bond counsel as to the tax-exempt status of the interest on all or a portion of the Series 2002 Bonds and receipt of necessary approvals for the financing. The aforementioned meeting shall be a public meeting and all persons who may be interested will be given an opportunity to be heard concerning the same. Written comments may also be submitted to the Lee County Industrial Development Authority prior to the hearing at Fowler White, 2201 2nd Street, 5th Floor, Fort Myers, Florida 33901, Attention: James T. Humphrey, Jr., Esq.

ALL PERSONS FOR OR AGAINST SAID APPROVAL CAN BE HEARD AT SAID TIME AND PLACE IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE AUTHORITY WITH RESPECT TO SUCH HEARING OR MEETING. (S)HE WILL NEED TO ENSURE THAT A VERBATIM RECORD OF SUCH HEARING OR MEETING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS BASED.

In accordance with the Americans with Disabilities Act persons needing a special accommodation to participate in this proceeding should contact the individual or agency publishing this notice no later than seven days prior to the proceeding at the address given in this notice. Telephone: (941) 338-3161.

By order of the Lee County Industrial Development Authority.
LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY
/s/ Thomas Hoolihan
Chairman
Jun 5 No. 30321

EXHIBIT B TO RESOLUTION

MEMORANDUM OF AGREEMENT FOR ISSUANCE OF PRIVATE ACTIVITY REVENUE BONDS

This Memorandum of Agreement (the "Agreement") between the Lee County Industrial Development Authority, a public body corporate and politic (the "Authority"), and Cypress Cove at HealthPark Florida, Inc., a Florida not-for-profit corporation (the "Corporation").

WITNESSETH:

1. Preliminary Statement. Among the matters of mutual understanding and inducement which have resulted in the execution of this Agreement are the following:

(a) Whereas Chapter 159, Parts II and III, Florida Statutes, and other applicable provisions of law (the "Act") provides that the Authority may issue tax-exempt revenue bonds and loan the proceeds thereof to one or more persons, firms or private corporations, or use such proceeds, to defray the cost of acquiring, by purchase or construction, certain qualifying health care and senior care facilities.

(b) The Corporation is considering financing or refinancing a portion of the costs of acquisition, construction and expansion of a senior care facility, which facility is more fully described in Exhibit A attached hereto (the "Project").

(c) The Authority intends this Agreement to constitute its preliminary approval, subject in all respects to the terms hereof, to issue its bonds (the "Bonds") in one or more series of tax-exempt bonds pursuant to the Act in an amount to be agreed upon by the Authority and the Corporation and to loan the proceeds thereof to the Corporation, or to use such proceeds, to finance all or a portion of the costs of the Project and payment of all or a portion of the costs incurred in connection with the issuance of the Bonds by the Authority and the Corporation, up to an amount not to exceed \$40,000,000.

(d) The Authority considers the issuance and sale of the Bonds, for the purposes hereinabove set forth, consistent with the objectives of the Act. This Agreement constitutes the official preliminary action of the Authority toward the issuance of the Bonds as herein contemplated in accordance with the purposes of both the Act and the applicable United States Treasury Regulations.

2. Undertakings on the Part of the Authority. Subject to the terms hereof, the Authority agrees as follows:

(a) Subject to the Corporation providing the Authority with sufficient evidence to enable the Authority to make the findings set forth in Section 159.29 of the Act, the Authority will, subject to Section 4(g) hereof, authorize the issuance of the Bonds, in one or more series, in the aggregate principal amount necessary and sufficient to finance all or a portion of the cost of acquiring, constructing and equipping the Project as the Authority and the Corporation shall agree in writing (including costs of issuance of such Bonds), but in all events, the principal amount of such Bonds shall not exceed the lesser of (i) the amount determined by the Authority and the Corporation necessary to accomplish the foregoing, or (ii) \$40,000,000.

(b) The Authority will cooperate with the Corporation and with the underwriters, placement agents or purchasers of the Bonds and the bond counsel of the Authority with respect to the issuance and sale of the Bonds and will take such further action and authorize the execution of such documents as shall be mutually satisfactory to the Authority and the Corporation for the authorization, issuance and sale of such Bonds and the use of the proceeds thereof to finance a portion of the cost of constructing, acquiring and expanding the Project and pay costs related to the issuance of the Bonds.

(c) Such actions and documents may permit the issuance from time to time in the future of additional bonds on terms which shall be set forth therein, whether pari passu with other series of bonds or otherwise, for the purpose of defraying the cost of completion, enlargements, improvements and expansions of the Project, or any segment thereof, or refunding of the Bonds.

(d) The loan agreement(s), trust indenture, mortgage(s) and other financing documents (collectively, the "Financing Agreements") between the Authority and the Corporation shall, under terms agreed upon by the parties, provide for payments to be made by the Corporation in such sums as shall be necessary to pay the amounts required under the Act, including the principal of and interest and redemption premium, if any, on the Bonds, as and when the same shall become due and payable.

(e) In authorizing any issuance of the Bonds pursuant to this Agreement, the Authority will make no warranty, either expressed or implied, that the proceeds of the Bonds will be sufficient to pay all costs of acquiring, constructing and expanding the Project or that those facilities encompassed by the Project will be suitable for the purposes or needs of the Corporation.

(f) The Bonds shall specifically provide that they are payable solely from the revenues derived from the Financing Agreements between the Authority and the Corporation or other agreements approved by the Authority, except to the extent payable out of amounts attributable to Bond proceeds. The Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit of Lee County, the State of Florida or any political subdivision or agency thereof, and such fact shall be plainly stated on the face of the Bonds.

(g) Issuance of the Bonds by the Authority shall be contingent upon satisfaction of (i) all of the provisions hereof, and (ii) all provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations promulgated thereunder, including the ability of and desirability by the Authority to issue obligations to finance a portion of the costs of the Project and the approval thereof by the Board of County Commissioners of Lee County in accordance with the provisions of Section 147(f) of the Code.

3. Undertakings on the Part of the Corporation. Subject to the terms hereof, the Corporation agrees as follows:

(a) The Corporation will use reasonable efforts to insure that the Bonds in the aggregate principal amount as stated above are sold; provided, however, that the terms of such Bonds and of the sale and delivery thereof shall be mutually satisfactory to the Authority and the Corporation.

(b) Prior to the issuance of the Bonds in the principal amount stated above in one or more Series or issues from time to time as the Authority and the Corporation shall agree in writing, the Corporation will enter into the Financing Agreements with the Authority, the terms of which shall be mutually agreeable to the Authority and the Corporation, providing for the loan or use of the proceeds of the Bonds to finance a portion of the costs of the Project. Such Financing Agreements will provide that the Corporation will be obligated to pay the Authority (or the trustee for holders of the Bonds on behalf of the Authority, as the case may be) sums sufficient in the aggregate to enable the Authority to pay the principal of and interest and redemption premium, if any, on the Bonds, as and when the same shall become due and payable, and all other expenses related to the issuance and delivery of the Bonds.

(c) The Corporation shall, in addition to paying the amounts set forth in the Financing Agreements, pay all applicable costs of operation, maintenance, taxes, governmental and other charges which may be assessed or levied against or with respect to the Project.

(d) To the extent not otherwise paid from Bond proceeds as part of the costs of the Project, the Corporation hereby agrees to pay all of the out of pocket expenses of officials and representatives of the Authority incurred in connection with the issuance of the Bonds and will pay all fees and expenses of the Authority in accordance with its guidelines, of Fowler, White, Boggs, Banker, P.A., Counsel to the Authority, and of Nabors, Giblin & Nickerson, P.A., Bond Counsel.

(e) The Corporation will hold the Authority and Lee County free and harmless from any loss or damage and from any taxes or other charges levied or assessed by reason of any mortgaging or other disposition of the Project.

(f) The Corporation agrees to indemnify and defend the Authority and Lee County and hold the Authority and Lee County harmless against any and all claims, losses, liabilities or damages to property or any injury or death of any person or persons occurring in connection with the Project or the issuance of the Bonds and the Corporation's undertaking thereof, or in any way growing out of or resulting from this Agreement including, without limitation, all costs and expenses of the Authority and reasonable attorneys' fees incurred in the enforcement of any agreement of the Corporation contained herein, but excluding any claims, losses, liabilities or damages resulting from the Authority's or Lee County's gross negligence or willful misconduct. In the event that the Bonds are not issued and delivered, this indemnity shall survive the termination of this Agreement.

(g) The Corporation will take such further action as may be required to implement its aforesaid undertakings and as it may deem appropriate in pursuance thereof.

4. General Provisions. All commitments of the Authority under Section 2 hereof and of the Corporation under Section 3 hereof are subject to the conditions that all of the following events shall have occurred not later than December 31, 2002, or such other date as shall be mutually satisfactory to the Authority and the Corporation.

(a) The Authority shall be lawfully entitled to issue the Bonds as herein contemplated.

(b) The Authority and the Corporation shall have agreed on mutually acceptable terms for the Bonds and the sale and delivery thereof and mutually acceptable terms and conditions of any trust instrument or instruments in respect thereto and any Financing Agreements or other agreements incidental to the financing or referred to in Sections 2 and 3 hereof.

(c) Rulings satisfactory to the Corporation and to the Authority as to such matters with respect to the Bonds, the Project, the Financing Agreements and any other trust instrument or instruments, if specified by the Authority and the Corporation, shall have been obtained from the Internal Revenue Service and/or the United States Treasury Department and shall be in full force and effect at the time of issuance of the Bonds.

(d) Such other rulings, approvals, consents, certificates of compliance, opinions of counsel and other instruments and proceedings satisfactory to the Corporation and to the Authority as to such matters with respect to the Bonds, the Project, the Financing Agreements and any other trust instrument or instruments, as shall be specified by the Corporation or the Authority, shall have been obtained from such governmental, as well as non-governmental, agencies and entities as may have or assert competent jurisdiction over or interest in matters pertinent thereto and shall be in full force and effect at the time of issuance of the Bonds.

(e) Compliance with all applicable provisions of Chapters 159, 189, 215 and 218, Florida Statutes, and the Authority's guidelines and procedures relating to the issuance of the Bonds, the interest rate thereon, the type of purchasers of the Bonds and the terms on which the Bonds may otherwise be issued.

(f) Notwithstanding any other terms hereof, nothing contained herein shall be construed to create a binding commitment by the Authority to issue the Bonds until such time, if ever, as the Authority shall grant its final approval for the issuance of the Bonds and the final terms and provisions of the financing and refinancing. By execution hereof, the Corporation agrees that the Authority may withhold its final approval of the issuance of the Bonds in its sole discretion and shall not incur any liability whatsoever as a result of it not granting any such approval notwithstanding any other provision hereof.

(g) Receipt by the Corporation of all licenses and necessary approvals from any applicable governmental authorities.

(h) Receipt of a favorable feasibility report from KPMG Peat Marwick demonstrating the financial feasibility of the Project.

If the events set forth in this Section 4 do not take place within the time set forth or any extension thereof, the Corporation agrees that it will reimburse the Authority for all the reasonable and necessary direct or indirect expenses which the Authority may incur at the Corporation's request arising from the execution of this Agreement and the performance by the Authority of its obligations hereunder, including reasonable legal fees for counsel to the Authority and the expenses of bond counsel.

5. Binding Effect. All covenants and agreements herein contained by or on behalf of the Authority and the Corporation shall bind and inure to the benefit of the respective successors and assigns of the Authority, the Corporation whether so expressed or not.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement by their officers thereunder duly authorized as of the 21st day of June, 2002.

**LEE COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY, LEE
COUNTY, FLORIDA**

(SEAL)

Chairman

ATTEST:

Executive Secretary

**CYPRESS COVE AT HEALTHPARK
FLORIDA, INC.**

(SEAL)

President

ATTEST:

Secretary

EXHIBIT A TO MEMORANDUM OF UNDERSTANDING

DESCRIPTION OF PROJECT

The Project will consist of, but not be limited to the financing or refinancing of all or a portion of the cost of acquisition of land and the construction and equipping of approximately 109 independent living units located in two four-story wings and related common and amenities areas and an approximately 89 seat café to be owned and operated by the Corporation in Lee County, Florida, near the intersection of Bass and Summerlin Roads.

RESOLUTION NO. _____

A RESOLUTION APPROVING THE ISSUANCE BY THE LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY OF ITS PRIVATE ACTIVITY REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$40,000,000, THE PROCEEDS FROM THE SALE OF WHICH WILL BE USED FOR THE PRINCIPAL PURPOSE OF FINANCING CERTAIN COSTS INCURRED OR TO BE INCURRED BY CYPRESS COVE AT HEALTHPARK FLORIDA, INC. (THE "CORPORATION") IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF CERTAIN SENIOR CARE FACILITIES.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION 1. FINDINGS. It is hereby ascertained, determined and declared as follows:

A. The Lee County Industrial Development Authority (the "Authority") has submitted to the Board of County Commissioners of Lee County, Florida (the "County"), a copy of a resolution of the Authority which was adopted by the Authority on June 21, 2002 (the "Authority Approving Resolution"), granting its preliminary approval for the issuance by the Authority of its private activity health care facilities revenue bonds (the "Bonds"), in an aggregate principal amount not to exceed \$40,000,000 for the primary purpose of financing (or providing for reimbursement of) certain costs of acquisition, construction and equipping of certain senior care facilities to be owned and operated by Cypress Cove at HealthPark Florida, Inc. (the "Corporation") in Lee County, as more particularly described in the Authority Approving Resolution (the "Project"). A copy of the Authority Approving Resolution is attached hereto as Exhibit A.

B. On June 21, 2002, the Authority held a public hearing, which public hearing was duly conducted by the Authority on such date upon reasonable public notice, and at which hearing members of the public were afforded reasonable opportunity to be heard on all matters pertaining to the location and nature of the Project, and the issuance of the Bonds for such purposes.

C. The Authority has requested the County to approve the issuance of the Bonds in order to satisfy the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended and Section 125.01(1)(z), Florida Statutes.

D. The purposes of Part II and III of Chapter 159, Florida Statutes, will be effectively served and it is desirable and in the best interests of the County that the issuance of the Bonds and the use of the proceeds thereof to finance and refinance the costs of the Project be approved by the Board.

SECTION 2. APPROVAL OF ISSUANCE OF BONDS; THE PROJECT.

The issuance of the Bonds and the use of the proceeds thereof to finance and refinance the costs of the Project as contemplated by the Authority Approving Resolution be and hereby are approved.

SECTION 3. LIMITED APPROVAL.

The approval given herein shall not be construed as (A) an endorsement of the creditworthiness of the Corporation or the financial viability of the Project, (B) a recommendation to any prospective purchaser to purchase the Bonds, (C) an evaluation of the likelihood of the repayment of the debt service on the Bonds, or (D) approval of any necessary rezoning applications or approval or acquiescence to the alteration of existing zoning or land use nor approval for any other regulatory permits relating to the Project, and the Board shall not be construed by reason of its adoption of this Resolution to make any such endorsement, finding or recommendation or to have waived any right of the Board or estopping the Board from asserting any rights or responsibilities it may have in such regard. Further, the approval by the Board of the issuance of the Bonds by the Authority shall not be construed to obligate the County to incur any liability, pecuniary or otherwise, in connection with either the issuance of the Bonds or the acquisition and construction of the Project, and the Authority shall so provide in the financing documents setting forth the details of the Bonds.

SECTION 4. EFFECTIVE DATE.

This Resolution shall take effect immediately upon its adoption.

ADOPTED, this ____ day of _____, 2002.

**BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA**

(SEAL)

ATTEST:

By: _____
Chairman

Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

County Attorney

EXHIBIT A

AUTHORITY APPROVING RESOLUTION

RESOLUTION

AN INDUCEMENT RESOLUTION OF THE LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY REGARDING THE OFFICIAL ACTION OF THE AUTHORITY WITH RESPECT TO THE PROPOSED ISSUANCE OF PRIVATE ACTIVITY REVENUE BONDS IN AN INITIAL AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$40,000,000 FOR THE PRINCIPAL PURPOSE OF FINANCING CERTAIN COSTS INCURRED OR TO BE INCURRED BY CYPRESS COVE AT HEALTHPARK FLORIDA, INC. (THE "CORPORATION") IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF CERTAIN SENIOR CARE FACILITIES; AUTHORIZING THE EXECUTION AND DELIVERY OF A MEMORANDUM OF AGREEMENT BY AND BETWEEN THE AUTHORITY AND THE CORPORATION; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, Cypress Cove at HealthPark Florida, Inc., a Florida not-for-profit corporation (the "Corporation"), has applied to the Lee County Industrial Development Authority (the "Authority"), to issue its private activity tax-exempt health care facilities revenue bonds in the initial aggregate principal amount of not to exceed \$40,000,000 in one or more series of bonds (collectively, the "Bonds") for the principal purpose of (1) financing or refinancing all or a portion of the costs of acquisition, construction and equipping of certain senior care facilities (the "Project") to be owned and operated by the Corporation, and (2) paying costs associated with the issuance of the Bonds; and

WHEREAS, the Corporation has requested that the Authority loan the proceeds of the Bonds to the Corporation pursuant to Chapter 159, Parts II and III, Florida Statutes, or such other provision or provisions of Florida law as the Authority may determine advisable (the "Act") in order to accomplish the foregoing; and

WHEREAS, the bond resolution granting the final authority for the issuance of the Bonds has not yet been adopted by the Authority; and

WHEREAS, the issuance of the Bonds under the Act in one or more issues or series in such amounts of tax-exempt bonds not exceeding an aggregate principal amount of

\$40,000,000 and the loaning of the proceeds thereof to the Corporation to finance all or a portion of the costs of the Project under a loan agreement or loan agreements or other financing agreements, and pursuant to the terms thereof which will provide that payments thereunder be at least sufficient to pay the principal of and interest and redemption premium, if any, on such Bonds and such other costs in connection therewith as may be incurred by the Authority, will assist the Corporation and promote the public purposes provided in the Act; and

WHEREAS, the Corporation has submitted the Memorandum of Agreement (the "Memorandum of Agreement") relating to the issuance of the Bonds, attached hereto as Exhibit B; and

WHEREAS, in order to satisfy certain of the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), the Authority did on the date hereof hold a public hearing on the proposed issuance of the Bonds for the purposes herein stated, which date is more than 14 days following the first publication of notice of such public hearing in a newspaper of general circulation in Lee County (a copy of an affidavit of publication of the Fort Myers News Press being attached to this Resolution as Exhibit A) and which public hearing was conducted in a manner that provides a reasonable opportunity for persons with differing views to be heard, both orally and in writing, on the issuance of such Bonds and the location and nature of the Project and was held in a location which, under the facts and circumstances, was convenient for the residents of the County, such notice was reasonably designed to inform residents of the County of the proposed issue, stated that the Authority would be the issuer of the Bonds, stated the time and place of the hearing and generally contained the information required by Section 147(f) of the Code and applicable regulations thereunder; and such 14 days were adequate for notice to be brought to the attention of all interested persons, exceeds the normal periods for notice of public hearings conducted by the Authority and provided sufficient time for interested persons to prepare for and to express their views at such hearing; and

WHEREAS, it is intended that this Resolution shall constitute official action and intent toward the issuance of the Bonds within the meaning of the applicable United States Treasury Regulations in addition to any other action that may have heretofore been taken by the Corporation;

NOW, THEREFORE, IT IS DETERMINED AND RESOLVED BY THE LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, THAT:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This resolution, hereinafter called "Resolution" is adopted pursuant to the provisions of the Act and other applicable provisions of law.

SECTION 2. PRELIMINARY STATEMENT. This Resolution is entered into to permit the Corporation to proceed with the financing of all or a portion of the costs of the Project and to provide an expression of intention by the Authority, prior to the issuance of the Bonds, to issue and sell the Bonds and make the proceeds thereof available to finance a portion of the costs of the Project, all in accordance with and subject to the provisions of the Act, the Constitution and other laws of the State of Florida, including the Code and this Resolution, but subject in all respects to the terms of the Memorandum of Agreement hereinafter referred to.

SECTION 3. APPROVAL OF THE FINANCING AND REFINANCING. The financing of all or a portion of the costs of the Project by the Authority through the issuance of the Bonds, pursuant to the Act, will promote the economic development, prosperity, health and welfare of the citizens of Lee County, will promote the general economic structure of Lee County, and will thereby serve the public purposes of the Act and is hereby preliminarily approved, subject, however, in all respects to the Corporation meeting the conditions set forth in the Memorandum of Agreement to the sole satisfaction of the Authority.

SECTION 4. EXECUTION AND DELIVERY OF MEMORANDUM OF AGREEMENT. The Chairman or the Vice-Chairman is hereby authorized and directed to execute, for and on behalf of the Authority, the Memorandum of Agreement attached hereto as Exhibit "B" between the Authority, the Corporation providing understandings relative to the proposed issuance of the Bonds by the Authority to finance all or a portion of the costs of the Project in an aggregate principal amount not to exceed the lesser of (a) \$40,000,000, or (b) the amount determined by the Authority, the Corporation to be necessary to accomplish the foregoing.

SECTION 5. AUTHORIZATION OF THE BONDS. There is hereby authorized to be issued and the Authority hereby determines to issue the Bonds, if so requested by the Corporation and subject in all respects to the conditions set forth in the Memorandum of Agreement attached hereto, in one or more issues or series of such tax-exempt revenue bonds in an aggregate principal amount not to exceed \$40,000,000 for the principal purpose of financing all or a portion of the costs of the Project as described in the

Memorandum of Agreement. The rate of interest payable on the Bonds shall not exceed the maximum rate permitted by law.

SECTION 6. RECOMMENDATION FOR APPROVAL TO BOARD OF COUNTY COMMISSIONERS. The Authority hereby recommends the issuance of the Bonds and the financing of the Project for approval to the Board of County Commissioners of Lee County (the "Board"). The Authority hereby directs the Chairman or Vice-Chairman, either alone or jointly, at the expense of the Corporation, to cooperate in seeking approval for the issuance of the Bonds and the financing of the Project by the Board as the applicable elected representatives of Lee County under and pursuant to the Act and Section 147(f) of the Internal Revenue Code of 1986, as amended.

SECTION 7. GENERAL AUTHORIZATION. The Chairman and the Vice-Chairman are hereby further authorized to proceed, upon execution of the Memorandum of Agreement, with the undertakings provided for therein on the part of the Authority and are further authorized to take such steps and actions as may be required or necessary in order to cause the Authority to issue the Bonds subject in all respects to the terms and conditions set forth in the Memorandum of Agreement authorized hereby.

SECTION 8. AFFIRMATIVE ACTION. This resolution is an affirmative action of the Authority toward the issuance of the Bonds, as contemplated in the Memorandum of Agreement, in accordance with the purposes of the laws of the state of Florida and the applicable United States Treasury Regulations.

SECTION 9. LIMITED OBLIGATIONS. The Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit or taxing power of Lee County, the state of Florida or any political subdivision or agency thereof but shall be payable solely from the revenues pledged therefor pursuant to a loan agreement or other financing agreement entered into by and between the Authority and the Corporation prior to or contemporaneously with the issuance of the Bonds. The Authority has no taxing power.


SECTION 10. LIMITED APPROVAL. The approval given herein shall not be construed as an approval of any necessary rezoning applications nor for any other regulatory permits relating to the Project and the Authority shall not be construed by reason of its adoption of this resolution to have waived any right of Lee County or estopping Lee County from asserting any rights or responsibilities it may have in that regard.

SECTION 11. EFFECTIVE DATE. This Resolution shall take effect immediately.

ADOPTED this 21st day of June, 2002.


**LEE COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY, LEE
COUNTY, FLORIDA**

(SEAL)



Chairman

ATTEST:



Executive Secretary

EXHIBIT A

AFFIDAVIT OF PUBLICATION

NEWS-PRESS

Published every morning - Daily and Sunday

Fort Myers, Florida

Affidavit of Publication

STATE OF FLORIDA
COUNTY OF LEE

Before the undersigned authority, personally appeared

Kieanna Henry

who on oath says that he/she is the

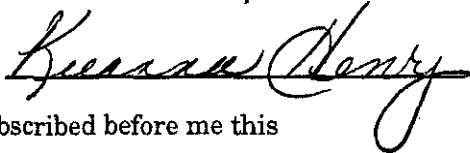
Asst. Legal Clerk of the News-Press, a daily newspaper, published at Fort Myers, in Lee County, Florida; that the attached copy of advertisement, being a

Notice of Public Hearing

In the matter of **Public Hearing on 6/21/02 for Lee Co. Ind. (Cypress Cove)**

in the _____ Court
was published in said newspaper in the issues of
June 5, 2002

Affiant further says that the said News-Press is a paper of general circulation daily in Lee, Charlotte, Collier, Glades and Hendry Counties and published at Fort Myers, in said Lee County, Florida and that said newspaper has heretofore been continuously published in said Lee County, Florida, each day, and has been entered as a second class mail matter at the post office in Fort Myers in said Lee County, Florida, for a period of one year next preceding the first publication of the attached copy of the advertisement; and affiant further says that he/she 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.



Sworn to and subscribed before me this

5th day of June 2002 by

Kieanna Henry

personally known to me or who has produced

_____ as identification, and who did or did not take an oath.

Notary Public 

Print Name _____

My commission Expires:



Brenda Leighton
MY COMMISSION # CC808905 EXPIRES
February 14, 2003
BONDED THRU TROY FAIN INSURANCE INC.

NOTICE OF PUBLIC HEARING
The Lee County Industrial Development Authority (the "Authority") will hold a public hearing on June 21, 2002, at 1:00 P.M., or as soon thereafter as the matter can be heard, at the Authority's offices located at 2180 West First Street, 3rd Floor Conference Room, Saxon House, Fort Myers, Florida, to consider adoption of a resolution providing for the preliminary approval of the issuance by the Authority of not exceeding \$40,000,000 of its Healthcare Facilities Revenue Bonds (Cypress Cove at Health Park Florida, Inc. Project), Series 2002 (the "Series 2002 Bonds") to be issued in one or more series. The proceeds of the Series 2002 Bonds will be loaned to Cypress Cove at Health Park Florida, Inc. (the "Company") and used for the principal purposes of financing certain costs of acquisition, construction and equipping of a senior care facility (the "Project") to be owned and operated by the Company and to be located in Lee County, Florida, near the intersection of Bass and Summerlin Roads. The Project consists of the following: approximately 109 independent living units, together with appropriate common and amenity areas and an approximate 100-seat cafeteria. The Series 2002 Bonds shall be payable solely from the revenues derived by the Authority from a loan agreement, mortgage and security agreement and other financing documents to be entered into by and between the Authority and the Company prior to or contemporaneously with the issuance of the Series 2002 Bonds. Such Series 2002 Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit or taxing power of Lee County, the State of Florida or any political subdivision or agency thereof. Issuance of the Series 2002 Bonds shall be subject to several conditions including satisfactory documentation, the approval by bond counsel as to the tax-exempt status of the interest on all or a portion of the Series 2002 Bonds and receipt of necessary approvals for the financing. The aforementioned meeting shall be a public meeting and all persons who may be interested will be given an opportunity to be heard concerning the same. Written comments may also be submitted to the Lee County Industrial Development Authority prior to the hearing at Fowler White, 2201 2nd Street, 5th Floor, Fort Myers, Florida 33901, Attention: James T. Humphrey, Jr., Esq.

ALL PERSONS FOR OR AGAINST SAID APPROVAL CAN BE HEARD AT SAID TIME AND PLACE. IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE AUTHORITY WITH RESPECT TO SUCH HEARING OR MEETING, (S)HE WILL NEED TO ENSURE THAT A VERBATIM RECORD OF SUCH HEARING OR MEETING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS BASED.

In accordance with the Americans with Disabilities Act persons needing a special accommodation to participate in this proceeding should contact the individual or agency publishing this notice no later than seven days prior to the proceeding at the address given in this notice. Telephone: (941) 338-3161.

By order of the Lee County Industrial Development Authority.
LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY
/s/Thomas Hoolihan
Chairman
Jun 5 No. 30321

EXHIBIT B TO RESOLUTION

MEMORANDUM OF AGREEMENT FOR ISSUANCE OF PRIVATE ACTIVITY REVENUE BONDS

This Memorandum of Agreement (the "Agreement") between the Lee County Industrial Development Authority, a public body corporate and politic (the "Authority"), and Cypress Cove at HealthPark Florida, Inc., a Florida not-for-profit corporation (the "Corporation").

WITNESSETH:

1. Preliminary Statement. Among the matters of mutual understanding and inducement which have resulted in the execution of this Agreement are the following:

(a) Whereas Chapter 159, Parts II and III, Florida Statutes, and other applicable provisions of law (the "Act") provides that the Authority may issue tax-exempt revenue bonds and loan the proceeds thereof to one or more persons, firms or private corporations, or use such proceeds, to defray the cost of acquiring, by purchase or construction, certain qualifying health care and senior care facilities.

(b) The Corporation is considering financing or refinancing a portion of the costs of acquisition, construction and expansion of a senior care facility, which facility is more fully described in Exhibit A attached hereto (the "Project").

(c) The Authority intends this Agreement to constitute its preliminary approval, subject in all respects to the terms hereof, to issue its bonds (the "Bonds") in one or more series of tax-exempt bonds pursuant to the Act in an amount to be agreed upon by the Authority and the Corporation and to loan the proceeds thereof to the Corporation, or to use such proceeds, to finance all or a portion of the costs of the Project and payment of all or a portion of the costs incurred in connection with the issuance of the Bonds by the Authority and the Corporation, up to an amount not to exceed \$40,000,000.

(d) The Authority considers the issuance and sale of the Bonds, for the purposes hereinabove set forth, consistent with the objectives of the Act. This Agreement constitutes the official preliminary action of the Authority toward the issuance of the Bonds as herein contemplated in accordance with the purposes of both the Act and the applicable United States Treasury Regulations.

2. Undertakings on the Part of the Authority. Subject to the terms hereof, the Authority agrees as follows:

(a) Subject to the Corporation providing the Authority with sufficient evidence to enable the Authority to make the findings set forth in Section 159.29 of the Act, the Authority will, subject to Section 4(g) hereof, authorize the issuance of the Bonds, in one or more series, in the aggregate principal amount necessary and sufficient to finance all or a portion of the cost of acquiring, constructing and equipping the Project as the Authority and the Corporation shall agree in writing (including costs of issuance of such Bonds), but in all events, the principal amount of such Bonds shall not exceed the lesser of (i) the amount determined by the Authority and the Corporation necessary to accomplish the foregoing, or (ii) \$40,000,000.

(b) The Authority will cooperate with the Corporation and with the underwriters, placement agents or purchasers of the Bonds and the bond counsel of the Authority with respect to the issuance and sale of the Bonds and will take such further action and authorize the execution of such documents as shall be mutually satisfactory to the Authority and the Corporation for the authorization, issuance and sale of such Bonds and the use of the proceeds thereof to finance a portion of the cost of constructing, acquiring and expanding the Project and pay costs related to the issuance of the Bonds.

(c) Such actions and documents may permit the issuance from time to time in the future of additional bonds on terms which shall be set forth therein, whether *pari passu* with other series of bonds or otherwise, for the purpose of defraying the cost of completion, enlargements, improvements and expansions of the Project, or any segment thereof, or refunding of the Bonds.

(d) The loan agreement(s), trust indenture, mortgage(s) and other financing documents (collectively, the "Financing Agreements") between the Authority and the Corporation shall, under terms agreed upon by the parties, provide for payments to be made by the Corporation in such sums as shall be necessary to pay the amounts required under the Act, including the principal of and interest and redemption premium, if any, on the Bonds, as and when the same shall become due and payable.

(e) In authorizing any issuance of the Bonds pursuant to this Agreement, the Authority will make no warranty, either expressed or implied, that the proceeds of the Bonds will be sufficient to pay all costs of acquiring, constructing and expanding the Project or that those facilities encompassed by the Project will be suitable for the purposes or needs of the Corporation.

(f) The Bonds shall specifically provide that they are payable solely from the revenues derived from the Financing Agreements between the Authority and the Corporation or other agreements approved by the Authority, except to the extent payable out of amounts attributable to Bond proceeds. The Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit of Lee County, the State of Florida or any political subdivision or agency thereof, and such fact shall be plainly stated on the face of the Bonds.

(g) Issuance of the Bonds by the Authority shall be contingent upon satisfaction of (i) all of the provisions hereof, and (ii) all provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations promulgated thereunder, including the ability of and desirability by the Authority to issue obligations to finance a portion of the costs of the Project and the approval thereof by the Board of County Commissioners of Lee County in accordance with the provisions of Section 147(f) of the Code.

3. Undertakings on the Part of the Corporation. Subject to the terms hereof, the Corporation agrees as follows:

(a) The Corporation will use reasonable efforts to insure that the Bonds in the aggregate principal amount as stated above are sold; provided, however, that the terms of such Bonds and of the sale and delivery thereof shall be mutually satisfactory to the Authority and the Corporation.

(b) Prior to the issuance of the Bonds in the principal amount stated above in one or more Series or issues from time to time as the Authority and the Corporation shall agree in writing, the Corporation will enter into the Financing Agreements with the Authority, the terms of which shall be mutually agreeable to the Authority and the Corporation, providing for the loan or use of the proceeds of the Bonds to finance a portion of the costs of the Project. Such Financing Agreements will provide that the Corporation will be obligated to pay the Authority (or the trustee for holders of the Bonds on behalf of the Authority, as the case may be) sums sufficient in the aggregate to enable the Authority to pay the principal of and interest and redemption premium, if any, on the Bonds, as and when the same shall become due and payable, and all other expenses related to the issuance and delivery of the Bonds.

(c) The Corporation shall, in addition to paying the amounts set forth in the Financing Agreements, pay all applicable costs of operation, maintenance, taxes, governmental and other charges which may be assessed or levied against or with respect to the Project.

(d) To the extent not otherwise paid from Bond proceeds as part of the costs of the Project, the Corporation hereby agrees to pay all of the out of pocket expenses of officials and representatives of the Authority incurred in connection with the issuance of the Bonds and will pay all fees and expenses of the Authority in accordance with its guidelines, of Fowler, White, Boggs, Banker, P.A., Counsel to the Authority, and of Nabors, Giblin & Nickerson, P.A., Bond Counsel.

(e) The Corporation will hold the Authority and Lee County free and harmless from any loss or damage and from any taxes or other charges levied or assessed by reason of any mortgaging or other disposition of the Project.

(f) The Corporation agrees to indemnify and defend the Authority and Lee County and hold the Authority and Lee County harmless against any and all claims, losses, liabilities or damages to property or any injury or death of any person or persons occurring in connection with the Project or the issuance of the Bonds and the Corporation's undertaking thereof, or in any way growing out of or resulting from this Agreement including, without limitation, all costs and expenses of the Authority and reasonable attorneys' fees incurred in the enforcement of any agreement of the Corporation contained herein, but excluding any claims, losses, liabilities or damages resulting from the Authority's or Lee County's gross negligence or willful misconduct. In the event that the Bonds are not issued and delivered, this indemnity shall survive the termination of this Agreement.

(g) The Corporation will take such further action as may be required to implement its aforesaid undertakings and as it may deem appropriate in pursuance thereof.

4. General Provisions. All commitments of the Authority under Section 2 hereof and of the Corporation under Section 3 hereof are subject to the conditions that all of the following events shall have occurred not later than December 31, 2002, or such other date as shall be mutually satisfactory to the Authority and the Corporation.

(a) The Authority shall be lawfully entitled to issue the Bonds as herein contemplated.

(b) The Authority and the Corporation shall have agreed on mutually acceptable terms for the Bonds and the sale and delivery thereof and mutually acceptable terms and conditions of any trust instrument or instruments in respect thereto and any Financing Agreements or other agreements incidental to the financing or referred to in Sections 2 and 3 hereof.

(c) Rulings satisfactory to the Corporation and to the Authority as to such matters with respect to the Bonds, the Project, the Financing Agreements and any other trust instrument or instruments, if specified by the Authority and the Corporation, shall have been obtained from the Internal Revenue Service and/or the United States Treasury Department and shall be in full force and effect at the time of issuance of the Bonds.

(d) Such other rulings, approvals, consents, certificates of compliance, opinions of counsel and other instruments and proceedings satisfactory to the Corporation and to the Authority as to such matters with respect to the Bonds, the Project, the Financing Agreements and any other trust instrument or instruments, as shall be specified by the Corporation or the Authority, shall have been obtained from such governmental, as well as non-governmental, agencies and entities as may have or assert competent jurisdiction over or interest in matters pertinent thereto and shall be in full force and effect at the time of issuance of the Bonds.

(e) Compliance with all applicable provisions of Chapters 159, 189, 215 and 218, Florida Statutes, and the Authority's guidelines and procedures relating to the issuance of the Bonds, the interest rate thereon, the type of purchasers of the Bonds and the terms on which the Bonds may otherwise be issued.

(f) Notwithstanding any other terms hereof, nothing contained herein shall be construed to create a binding commitment by the Authority to issue the Bonds until such time, if ever, as the Authority shall grant its final approval for the issuance of the Bonds and the final terms and provisions of the financing and refinancing. By execution hereof, the Corporation agrees that the Authority may withhold its final approval of the issuance of the Bonds in its sole discretion and shall not incur any liability whatsoever as a result of it not granting any such approval notwithstanding any other provision hereof.

(g) Receipt by the Corporation of all licenses and necessary approvals from any applicable governmental authorities.

(h) Receipt of a favorable feasibility report from KPMG Peat Marwick demonstrating the financial feasibility of the Project.

If the events set forth in this Section 4 do not take place within the time set forth or any extension thereof, the Corporation agrees that it will reimburse the Authority for all the reasonable and necessary direct or indirect expenses which the Authority may incur at the Corporation's request arising from the execution of this Agreement and the performance by the Authority of its obligations hereunder, including reasonable legal fees for counsel to the Authority and the expenses of bond counsel.

5. Binding Effect. All covenants and agreements herein contained by or on behalf of the Authority and the Corporation shall bind and inure to the benefit of the respective successors and assigns of the Authority, the Corporation whether so expressed or not.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement by their officers thereunder duly authorized as of the 21st day of June, 2002.

**LEE COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY, LEE
COUNTY, FLORIDA**

(SEAL)

Chairman

ATTEST:

Executive Secretary

**CYPRESS COVE AT HEALTHPARK
FLORIDA, INC.**

(SEAL)

President

ATTEST:

Secretary

EXHIBIT A TO MEMORANDUM OF UNDERSTANDING

DESCRIPTION OF PROJECT

The Project will consist of, but not be limited to the financing or refinancing of all or a portion of the cost of acquisition of land and the construction and equipping of approximately 109 independent living units located in two four-story wings and related common and amenities areas and an approximately 89 seat café to be owned and operated by the Corporation in Lee County, Florida, near the intersection of Bass and Summerlin Roads.