

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

Blue Sheet No. 20040177

1. REQUESTED MOTION:

ACTION REQUESTED: Adopt resolution approving the issuance of Lee County Industrial Development Authority Health Care Facilities Refunding Revenue Bonds (Hope Hospice Project), Series 2004 for the benefit of HOPE of Southwest Florida, Inc. in an amount not to exceed \$18,900,000.00 for the primary purpose of (1) financing the costs of acquisition, construction and equipping of certain hospice facilities to be owned and operated by HOPE of Southwest Florida, Inc. and (2) refinancing certain outstanding indebtedness.

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:

02-24-2004

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

**5. REQUIREMENT/PURPOSE:
(Specify)**

- STATUTE F.S. Ch. 159
- ORDINANCE
- ADMIN. CODE
- OTHER Sec. 147 IRC

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER _____
- B. DEPARTMENT County Attorney
- C. DIVISION _____
- BY: James G. Yaeger
County Attorney

7. BACKGROUND: The Lee County Industrial Development Authority has entered into an agreement for issuance of private activity revenue bonds with HOPE of Southwest Florida, Inc. On February 20, 2004, the Industrial Development Authority held noticed public hearings and has adopted an inducement resolution for the proposed issuance of Industrial Development Authority private activity revenue bonds in an initial amount not to exceed \$18,900,000.00 for the primary purpose of (1) financing the costs of acquisition, construction and equipping of certain hospice facilities to be owned and operated by HOPE of Southwest Florida, Inc. and (2) refinancing certain outstanding indebtedness.

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>	<i>App 2/11/04</i>	OA <i>[Signature]</i> 2/11/04	OM <i>[Signature]</i> 2/11/04	RISK <i>[Signature]</i> 2/11/04	GC <i>[Signature]</i> 2/11/04	<i>[Signature]</i>

10. COMMISSION ACTION:

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

CO. ATTY.
FORWARDED
TO CO. ADMIN.
2-12-04

RECEIVED BY
COUNTY ADMIN: *TD*
2/12/04
3:10 pm sct
COUNTY ADMIN
FORWARDED TO: *PL*
2-12-04
[Signature]

RESOLUTION NO. ____

A RESOLUTION APPROVING THE ISSUANCE BY THE LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY OF ITS HEALTH CARE FACILITIES REFUNDING AND IMPROVEMENT REVENUE BONDS (HOPE HOSPICE PROJECT), SERIES 2004 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$18,900,000, THE PROCEEDS FROM THE SALE OF WHICH WILL BE USED PRINCIPALLY TO FINANCE CERTAIN HEALTH CARE RELATED CAPITAL IMPROVEMENTS FOR HOPE OF SOUTHWEST FLORIDA, INC. AND REFINANCING CERTAIN OUTSTANDING INDEBTEDNESS OF THE AUTHORITY AND SAID COMPANY; AND PROVIDING AN EFFECTIVE DATE.

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 adopted by the Authority on February 20, 2004 (the "Resolution"), granting its approval for the issuance by the Authority of its Health Care Facilities Refunding and Improvement Revenue Bonds (Hope Hospice Project), Series 2004 (the "Bonds"), in an aggregate principal amount not to exceed \$18,900,000 for the primary purposes of (1) financing the costs of acquisition, construction and equipping of certain hospice facilities to be owned and operated by HOPE of Southwest Florida, Inc. (the "Borrower"), as more particularly described in the Resolution (the "Project"), and (2) refinancing certain outstanding indebtedness (the "Refunded Bonds"). A copy of the Resolution is attached hereto as Exhibit A.

B. On February 20, 2004, 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 (1) the location and nature of the Project, and (2) the issuance of the Bonds for the purposes described herein and in the Resolution.

C. Pursuant to the Resolution, 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(Z), Florida Statutes.

D. The purposes of Parts 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 refund the Refunded Bonds and to finance the costs of the Project be approved by the Board of County Commissioners of the County (the "Board").

SECTION 2. APPROVAL OF ISSUANCE OF BONDS AND THE PROJECT. The issuance of the Bonds and the use of the proceeds thereof to refund the Refunded Bonds and finance the costs of the Project as contemplated by the Resolution be and hereby are approved.

SECTION 3. LIMITED APPROVAL. The approval given herein shall not be construed as an (i) an endorsement of the creditworthiness of the Borrower or the financial viability of the Project, (ii) a recommendation to any prospective purchaser to purchase the Bonds, (iii) an evaluation of the likelihood of the repayment of the debt service on the Bonds, or (iv) 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.

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SECTION 4. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

ADOPTED THIS 24th DAY OF FEBRUARY, 2004.

(SEAL)

LEE COUNTY, FLORIDA

ATTEST:

By: _____
Chairman

By: _____
Clerk of the Circuit Court of Lee
County and ex-officio Clerk of the
Board of County Commissioners of
Lee County, Florida

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

County Attorney

EXHIBIT A

AUTHORITY APPROVING RESOLUTION

RESOLUTION

A RESOLUTION BY THE LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, PROVIDING FOR THE ISSUANCE BY THE AUTHORITY OF NOT EXCEEDING \$18,900,000 INITIAL AGGREGATE PRINCIPAL AMOUNT OF HEALTH CARE FACILITIES REFUNDING AND IMPROVEMENT REVENUE BONDS (HOPE HOSPICE PROJECT), SERIES 2004 AND FOR A LOAN BY THE AUTHORITY TO HOPE OF SOUTHWEST FLORIDA, INC. IN AN AMOUNT EQUAL TO THE PRINCIPAL AMOUNT OF SUCH BONDS TO FINANCE THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A 16-BED FREESTANDING INPATIENT HOSPICE FACILITY, AN 8-BED HOSPICE RESIDENTIAL FACILITY AND A BRANCH ADMINISTRATIVE OFFICE, ALL TO BE LOCATED IN THE CITY OF BONITA SPRINGS IN LEE COUNTY, FLORIDA AND TO REFINANCE CERTAIN OUTSTANDING INDEBTEDNESS; PROVIDING FOR THE RIGHTS OF THE OWNERS OF SUCH BONDS AND FOR THE PAYMENT THEREOF; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS; DELEGATING TO THE CHAIRMAN AND VICE-CHAIRMAN OF THE AUTHORITY THE RIGHT TO APPROVE A NEGOTIATED SALE OF SUCH BONDS UPON SATISFACTION OF THE CONDITIONS TO SUCH SALE SET FORTH HEREIN; AUTHORIZING AND APPROVING THE USE OF A PRELIMINARY OFFICIAL STATEMENT AND AN OFFICIAL STATEMENT WITH RESPECT THERETO; AUTHORIZING THE EXECUTION AND DELIVERY OF A MEMORANDUM OF AGREEMENT, BOND PURCHASE AGREEMENT, TRUST INDENTURE, AND LOAN AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF THE BONDS AND ALL OTHER RELATED INSTRUMENTS AND CERTIFICATES; PROVIDING FOR OTHER MISCELLANEOUS MATTERS IN CONNECTION THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, HOPE of Southwest Florida, Inc. (formerly known as H.O.P.E. of Lee County, Inc.), a Florida not-for-profit corporation (the "Company"), has applied to the Lee County Industrial Development Authority (the "Authority"), to issue its private activity tax-exempt revenue bonds in an initial aggregate principal amount not to exceed \$18,900,000 (the "Series 2004 Bonds"), as more particularly described herein, for the principal purposes of (i) financing certain costs of acquisition, construction and equipping of a 16-bed freestanding inpatient hospice facility, an 8-bed hospice residential facility and a branch administrative office all to be located in the City of Bonita Springs in Lee County, Florida (the "Project"); (ii) refinancing certain outstanding indebtedness; and (iii) paying costs and expenses associated with the issuance of the Series 2004 Bonds; and

WHEREAS, the Company has requested that the Authority loan the proceeds of the Series 2004 Bonds to said Company pursuant to Chapter 159, Parts II and III, Florida Statutes and other applicable provisions of law (collectively, the "Act") in order to accomplish the foregoing; and

WHEREAS, the issuance of the Bonds under the Act in an aggregate principal amount of not exceeding \$18,900,000 and the loaning of the proceeds thereof to the Company for the purposes stated herein under the hereinafter defined Loan Agreement, and pursuant to the terms thereof which will provide that payments thereunder be at least sufficient to fully pay the principal of and interest and redemption premium, if any, on such Series 2004 Bonds and such other costs in connection therewith as may be incurred by the Authority, will assist the Company and promote the public purposes provided in the Act; and

WHEREAS, the Company has submitted the Memorandum of Agreement (the "Memorandum of Agreement") relating to the issuance of the Bonds, attached hereto as Exhibit A; 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 held a public hearing on the date hereof prior to the adoption of this resolution on the proposed issuance of the Series 2004 Bonds for the purposes herein stated, which date was more than 14 days following the first publication of notice of such public hearing in a newspaper of general circulation in Lee County, Florida (a true and accurate copy of the proof of publication of such notice is attached hereto as Exhibit F), which public hearing was conducted in a manner that provided a reasonable opportunity for persons with differing views to be heard, both orally and in writing, on the issuance of such Series 2004 Bonds and the location and nature of the Project; and

WHEREAS, the Company has finalized the structure of its proposed financing and has requested the Authority's approval for the issuance of the Series 2004 Bonds, including the terms thereof, upon full satisfaction of the terms hereof; and

WHEREAS, it is intended that this Resolution shall constitute official action toward the issuance of the Series 2004 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 Company;

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

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to the provisions of the Act.

SECTION 2. DEFINITIONS. Unless the context otherwise requires, the terms used in this Resolution shall have the meanings specified in this section. Words importing the singular shall include the plural, words importing the plural shall include the singular, and words importing persons shall include corporations and other entities or associations.

"Act" means the Florida Industrial Development Financing Act, Parts II and III, Chapter 159, Florida Statutes, and other applicable provisions of law.

"Authority" means the Lee County Industrial Development Authority, a public body corporate and politic and an industrial development authority organized and existing under the Constitution and laws of the State including, particularly, the Act, its successors and assigns.

"Bond Counsel" means the law firm of Nabors, Giblin & Nickerson, P.A., Tampa, Florida.

"Bond Purchase Agreement" means the Bond Purchase Agreement among the Authority, the Company and the Underwriter substantially in the form attached hereto as Exhibit B and incorporated herein by reference.

"Company" means HOPE of Southwest Florida, Inc. (formerly known as H.O.P.E. of Lee County, Inc.), a Florida not-for-profit corporation, and any successor, surviving, resulting or transferee entity as provided in the Loan Agreement.

"County" means Lee County, Florida, a political subdivision of the State.

"Indenture" means the Indenture of Trust, to be executed by the Authority and the Trustee, substantially in the form attached hereto as Exhibit C and incorporated herein by reference.

"Loan Agreement" means the Loan Agreement, to be executed by and between the Authority and the Company substantially in the form attached hereto as Exhibit D and incorporated herein by reference.

"Preliminary Official Statement" means the Preliminary Official Statement substantially in the form attached hereto as Exhibit E.

"Project" means the project of the Corporation described in subsection D(1) of Section 3 of this Resolution and in the Loan Agreement which shall be acquired, constructed and equipped in the County and which shall be financed with a portion of the proceeds of the Series 2004 Bonds.

"Refunded Bonds" means the Lee County Industrial Development Authority Health Care Facilities Refunding and Improvement Revenue Bonds (Hope Hospice Project), Series 2000.

"Series 2004 Bonds" means the Authority's Health Care Facilities Refunding and Improvement Revenue Bonds (Hope Hospice Project), Series 2004, to be issued under the Indenture in accordance with the terms hereof and thereof in an aggregate initial principal amount of not exceeding \$18,900,000.

"State" means the State of Florida.

"Trustee" means SunTrust Bank, Miami, Florida, in its capacity as Trustee.

"Underwriter" means SunTrust Capital Markets, Inc., the Underwriter for the Series 2004 Bonds.

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

A. The Authority is a public body corporate and politic, a public instrumentality and an industrial development authority, and is duly authorized and empowered by the Act to finance or refinance the acquisition, construction, reconstruction, improvement, rehabilitation, renovation, expansion and enlargement, or additions to, furnishing and equipping of any capital project, including any "project" for any "health care facility" (as the quoted terms are described in the Act), including land, rights in land, buildings and other structures, machinery, equipment, appurtenances and facilities incidental thereto, and other improvements necessary or convenient therefor.

B. The Authority previously issued the Refunded Bonds, the proceeds of which were loaned to the Company and applied to the financing and refinancing of certain health care related capital improvements for the Company. The Company has requested that the Authority cause the current refunding the Refunded Bonds in order to allow it to restructure a portion of its debt.

C. The refunding of the Refunded Bonds and the financing of the Project by the Authority through the issuance of the Series 2004 Bonds, pursuant to the Act, will promote the economic development and health and welfare of the citizens of Lee County, will provide the residents of the County with new jobs, will promote the general economic structure of the County and will thereby serve the public purposes of the Act.

D. Upon consideration of the documents described herein and the information presented to the Authority at or prior to the adoption of this Resolution, the Authority has made and does hereby make the following findings and determinations:

(1) The Project consists of a 16-bed freestanding inpatient hospice facility, an 8-bed hospice residential facility and a branch administrative office to be located in the City of Bonita Springs, Florida (the "Project"), said Project to be located in the County and owned and operated by the Company in its business of operating hospice facilities and providing health care services in the County.

(2) The Company has shown that the Project will assist in alleviating unemployment in the County by creating new jobs in the County, it will foster the economic growth and development and the industrial and business development of the County and the State, it will improve health care in the County, and it will serve other predominantly public purposes as set forth in the Act. It is desirable and will further the public purposes of the Act, and it will most effectively serve the purposes of the Act, for the Authority to refund the Refunded Bonds and finance the acquisition, construction and equipping of the Project and to issue and sell the Series 2004 Bonds under the Indenture for the purpose of providing funds to refund the Refunded Bonds and finance the Project, all as provided in the Loan Agreement, which contains such provisions as are necessary or convenient to effectuate the purposes of the Act.

(3) The Project is appropriate to the needs and circumstances of, and will make a significant contribution to, the economic growth of the County; shall provide or preserve gainful employment; shall protect the environment; and shall serve a public purpose by advancing the economic prosperity, the public health, and the general welfare of the State and its people as stated in Section 159.26, Florida Statutes.

(4) Based solely on the information provided to this Authority by the Company in compliance with the criteria established by the Act, the Company is fully capable and willing (a) to fulfill its obligations under the Loan Agreement and any other agreements to be made in connection with the issuance of the Series 2004 Bonds and the use of the Series 2004 Bond proceeds for refunding the Refunded Bonds and financing all or a portion of the costs of the Project, including the obligation to make loan payments or other payments in an amount sufficient in the aggregate to pay all of the interest, principal, and redemption premiums, if any, on the Series 2004 Bonds, in the amounts and at the times required, (b) to operate, repair and maintain at its own expense the Project and all other health care facilities of the Company, including but not limited to those financed and refinanced with proceeds of the Refunded Bonds, and (c) to serve the purposes of the Act and such other responsibilities as may be imposed under such agreements.

(5) The County and other local agencies 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 increase in population or other circumstances resulting therefrom.

(6) Adequate provision is made under the Loan Agreement for the operation, repair and maintenance of the Project at the expense of the Company, for the payment of the principal of, premium, if any, and interest on the Series 2004 Bonds when and as the same become due, and payment by the Company of all other costs in connection with the financing, or the operation, maintenance and administration of the Project which are not paid out of the proceeds from the sale of the Series 2004 Bonds or otherwise.

(7) The Costs of the Project to be financed from the proceeds of the Series 2004 Bonds shall be "costs" of a "project" within the meaning of the Act.

(8) The principal of, premium, if any, and interest on the Series 2004 Bonds and all other pecuniary obligations under the Loan Agreement, the Indenture or otherwise, in connection with the issuance of the Series 2004 Bonds, shall be payable solely from the loan payments and other revenues and proceeds received under the Loan Agreement or otherwise from the operation, sale, lease or other disposition of the Project, including proceeds from insurance condemnation awards and proceeds of any foreclosure or other realization upon the liens or security interests under the Loan Agreement, the Indenture and all other related security documents, the proceeds of the Series 2004 Bonds and income from the

temporary investment of the proceeds of the Series 2004 Bonds or of such other revenues and proceeds, as pledged for such payment to the Trustee under and as provided in the Indenture, neither the faith and credit nor the taxing power of the County, the State, the Authority or of any political subdivision or agency thereof is pledged to the payment of the Series 2004 Bonds or of such other pecuniary obligations and neither the County, the State, the Authority nor any political subdivision or agency thereof shall ever be required or obligated to levy ad valorem taxes on any property within their territorial limits to pay the principal of, premium, if any, or interest on such Series 2004 Bonds or other pecuniary obligations or to pay the same from any funds thereof other than such revenues, receipts and proceeds so pledged, and the Series 2004 Bonds shall not constitute a lien upon any property owned by the County, the Authority or the State or any political subdivision or agency thereof, other than the Authority's interest in the Loan Agreement and the property rights, receipts, revenues and proceeds pledged therefor under and as provided in the Indenture and any other agreements securing the Series 2004 Bonds.

(9) A delegated negotiated sale of the Series 2004 Bonds is desirable, and is in the best interest of the Authority and the Company, for the following reasons: the Series 2004 Bonds will be special and limited obligations of the Authority payable solely out of revenues and proceeds derived by the Authority or the Trustee pursuant to the Loan Agreement and the other related security documents, and the Company will be obligated for the payment of all costs of the Authority in connection with the refunding of the Refunded Bonds and the financing of the Project which are not paid out of the Series 2004 Bond proceeds or otherwise; the cost of issuance of the Series 2004 Bonds, which will be borne directly or indirectly by the Company could be greater if the Series 2004 Bonds are sold at a public sale by competitive bids than if the Series 2004 Bonds are sold on a negotiated basis, and a public sale by competitive bids would cause undue delay in the financing of the Project; private activity revenue bonds having the characteristics of the Series 2004 Bonds are typically and usually sold at negotiated sale or privately placed; and authorization of a delegated negotiated sale of the Series 2004 Bonds is necessary in order to serve the purposes of the Act.

(10) The Company has, after consulting with the Underwriter, determined that market and other conditions are now conducive to proceed with the refunding of the Refunded Bonds and the financing of the Project with the proceeds of the Series 2004 Bonds.

(11) All requirements precedent to the adoption of this Resolution, of the Constitution and other laws of the State of Florida, including the Act, have been complied with.

SECTION 4. DELEGATED NEGOTIATED SALE OF SERIES 2004 BONDS AUTHORIZED AND DESCRIPTION OF THE SERIES 2004 BONDS. (A)

Subject to prior satisfaction of the conditions set forth in Section 4(C) hereof, the Authority hereby authorizes the issuance of a Series of Bonds to be known as the "Lee County Industrial Development Authority Health Care Facilities Refunding and Improvement Revenue Bonds (Hope Hospice Project), Series 2004" in the initial aggregate principal amount of not exceeding \$18,900,000 for the principal purpose of providing moneys to the Company to current refund the Refunded Bonds and to finance the costs of the Project. The Series 2004 Bonds shall be issued only in accordance with the provisions hereof and of the Indenture and all the provisions hereof and of the Indenture shall be applicable thereto.

(B) The Series 2004 Bonds shall be dated the date of issuance, shall be issued in the form of fully registered Bonds without coupons in the initial denominations of \$100,000 and integral multiples of \$5,000 in excess thereof, shall bear interest from their dated date payable on the dates and at the rates and at the times and subject to redemption and purchase as set forth in the Bond Purchase Agreement and the Indenture.

(C) Subject to full satisfaction of the conditions set forth below, the Authority hereby finds and determines that the sale of the Series 2004 Bonds on the basis of a negotiated sale rather than a public sale by competitive bid, pursuant to the terms and provisions of the Bond Purchase Agreement, is in the best interest of the Authority and the Company; and the Authority hereby further finds and determines that the reasons set forth in Section 3(D)(9) hereof necessitate the sale of the Series 2004 Bonds through a negotiated sale. A negotiated sale of the Series 2004 Bonds to the Underwriter in accordance with the terms hereof and of the Bond Purchase Agreement is hereby in all respects authorized, approved, ratified and confirmed, and there shall be executed on behalf of the Authority and in furtherance thereof the Bond Purchase Agreement with the Underwriter. The Bond Purchase Agreement shall be executed on behalf of the Authority by its Chairman or Vice-Chairman in the form attached hereto as Exhibit B upon satisfaction of all of the following conditions:

(1) Receipt by the Chairman or Vice-Chairman of a written offer to purchase the Series 2004 Bonds by the Underwriter substantially in the form of the Bond Purchase Agreement, said offer to provide for, among other things, (i) the issuance of not exceeding \$18,900,000 initial aggregate principal amount of Series 2004 Bonds, (ii) an underwriting discount or fee (including management fee and all expenses) not in excess of 0.50% of the initial par amount of the Series 2004

Bonds, (iii) an initial interest rate of not more than 1.50% per annum, and (iv) the maturities of the Series 2004 Bonds with the final maturity no later than October 1, 2023.

(2) Receipt by the Chairman or Vice Chairman from the Underwriter of a disclosure statement and truth-in-bonding information complying with Section 218.385, Florida Statutes and substantially in the form of Exhibit A to the Bond Purchase Agreement.

SECTION 5. AUTHORIZATION OF EXECUTION AND DELIVERY OF THE LOAN AGREEMENT. The Loan Agreement, substantially in the form attached hereto as Exhibit D with such corrections, insertions and deletions as may be approved by the Chairman or Vice Chairman of the Authority, such approval to be evidenced conclusively by his or her execution thereof, is, subject to the prior satisfaction of the conditions set forth in Section 4(C) hereof, hereby approved and authorized; the Authority hereby authorizes and directs the Chairman or Vice Chairman of the Authority to date and execute and the Secretary or an Assistant Secretary or Executive Secretary of the Authority to attest, under the official seal of the Authority, the Loan Agreement, and to deliver the Loan Agreement to the Company; and all of the provisions of the Loan Agreement, when executed and delivered by the Authority as authorized herein and by the Company, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

SECTION 6. AUTHORIZATION OF EXECUTION AND DELIVERY OF THE INDENTURE. The Indenture, substantially in the form attached hereto as Exhibit C with such changes, corrections, insertions and deletions as may be approved by the Chairman or Vice Chairman of the Authority, such approval to be evidenced conclusively by his execution thereof, is, subject to the prior satisfaction of the conditions set forth in Section 4(C) hereof, hereby approved and authorized; the Authority hereby authorizes and directs the Chairman or Vice Chairman of the Authority to date and execute and the Secretary or an Assistant Secretary or Executive Secretary of the Authority to attest, under the official seal of the Authority, the Indenture, and deliver the Indenture to the Trustee; and all of the provisions of the Indenture, when executed and delivered by the Authority as authorized herein, and by the Trustee, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

SECTION 7. APPOINTMENT OF TRUSTEE; PAYMENT OF THE SERIES 2004 BONDS. The Series 2004 Bonds shall be payable as to principal and interest in lawful money of the United States of America at the designated office of SunTrust Bank; Miami, Florida, as Trustee under the Indenture.

SECTION 8. APPROVAL OF DISTRIBUTION OF PRELIMINARY OFFICIAL STATEMENT AND OFFICIAL STATEMENT. (A) The Authority hereby authorizes the distribution and use of the Preliminary Official Statement in substantially the form attached hereto as Exhibit E in connection with offering the Series 2004 Bonds for sale. If between the date hereof and the mailing of the Preliminary Official Statement it is necessary to make insertions, modifications or changes in the Preliminary Official Statement, the Chairman is hereby authorized to approve such insertions, changes and modifications.

(B) The Chairman is hereby authorized and directed to execute and deliver a final Official Statement, dated the date of the execution of the Bond Purchase Agreement, which shall be in substantially the form of the Preliminary Official Statement, in the name and on behalf of the Issuer, and thereupon to cause such Official Statement to be delivered to the Underwriter with such changes, amendments, modifications, omissions and additions as may be approved by the Chairman.

SECTION 9. AUTHORIZATION OF EXECUTION OF OTHER CERTIFICATES AND OTHER INSTRUMENTS. The Chairman or Vice Chairman and the Secretary or any Assistant Secretary and the Executive Director of the Authority are hereby authorized and directed, either alone or jointly, under the official seal of the Authority, to execute and deliver certificates of the Authority certifying such facts as the County Attorney or Bond Counsel shall require in connection with the issuance, sale and delivery of the Series 2004 Bonds, and to execute and deliver such other instruments, including but not limited to, deeds, assignments, bills of sale, tax agreements and financing statements, as shall be necessary or desirable to perform the Authority's obligations under the Loan Agreement and the Indenture and to consummate the transactions hereby authorized.

SECTION 10. NO PERSONAL LIABILITY. No representation, statement, covenant, warranty, stipulation, obligation or agreement herein contained, or contained in the Series 2004 Bonds, the Loan Agreement, the Indenture or any assignment thereof, or any certificate or other instrument to be executed on behalf of the Authority in connection with the issuance of the Series 2004 Bonds, shall be deemed to be a representation, statement, covenant, warranty, stipulation, obligation or agreement of any elected official, officer, employee or agent of the Authority in his or her individual capacity, and none of the foregoing persons nor any elected or appointed official of the Authority executing the Series 2004 Bonds, the Loan Agreement, the Indenture or any certificate or other instrument to be executed in connection with the issuance of the Series 2004 Bonds shall be liable personally thereon or be subject to any personal liability of or accountability by reason of the execution or delivery thereof.

SECTION 11. NO THIRD PARTY BENEFICIARIES. Except as otherwise expressly provided herein or in the Series 2004 Bonds, the Loan Agreement and the Indenture, nothing in this Resolution, or in the Series 2004 Bonds, the Loan Agreement or the Indenture, express or implied, is intended or shall be construed to confer upon any person, firm, corporation or other organization, other than the Authority, the Company, the Trustee, the Underwriter and the owners from time to time of the Series 2004 Bonds any right, remedy or claim, legal or equitable, under and by reason of this Resolution or any provision hereof, or of the Series 2004 Bonds, the Loan Agreement and the Indenture, all provisions hereof and thereof being intended to be and being for the sole and exclusive benefit of the Authority, the Company, the Trustee and the owners from time to time of the Series 2004 Bonds.

SECTION 12. PREREQUISITES PERFORMED. Subject to all of the conditions set forth in Section 4(C) hereof prior to the issuance of the Series 2004 Bonds, all acts, conditions and things relating to the passage of this Resolution, to the issuance, sale and delivery of the Series 2004 Bonds, to the execution and delivery of the Loan Agreement and the Indenture, required by the Constitution or other laws of the State, to happen, exist and be performed precedent to the passage hereof, and precedent to the issuance, sale and delivery of the Series 2004 Bonds, to the execution and delivery of the Loan Agreement and the Indenture, have either happened, exist and have been performed as so required or will have happened, will exist and will have been performed prior to such execution and delivery thereof.

SECTION 13. COMPLIANCE WITH CHAPTER 218, PART III, FLORIDA STATUTES. The Authority hereby approves and authorizes the completion, execution and filing with the Division of Bond Finance, Department of General Services of the State of Florida, at the expense of the Company, Bond Information Form BF2003, and any other acts as may be necessary to comply with Chapter 218, Part III, Florida Statutes.

SECTION 14. RECOMMENDATION FOR APPROVAL TO BOARD OF COUNTY COMMISSIONERS. The Authority hereby recommends the issuance of the Series 2004 Bonds and the financing of the Project for approval to the Board of County Commissioners of Lee County, Florida (the "Board"). The Authority hereby directs the Chairman or Vice Chairman, either alone or jointly, at the expense of the Company, to cooperate in seeking approval for the issuance of the Series 2004 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 15. GENERAL AUTHORITY. The members of the Authority and its directors, officers, attorneys, engineers or other agents or employees are hereby

authorized to do all acts and things required of them by this Resolution, the Series 2004 Bonds, the Loan Agreement and the Indenture, and to do all acts and things which are desirable and consistent with the requirements hereof or of the Series 2004 Bonds, the Loan Agreement and the Indenture, for the full, punctual and complete performance of all the terms, covenants and agreements contained herein and in the Series 2004 Bonds, the Loan Agreement and the Indenture.

SECTION 16. THIS RESOLUTION CONSTITUTES A CONTRACT. The Authority covenants and agrees that this Resolution shall constitute a contract between the Authority and the owners from time to time of the Series 2004 Bonds then outstanding and that all covenants and agreements set forth herein and in the Series 2004 Bonds, the Loan Agreement and the Indenture, to be performed by the Authority shall be for the equal and ratable benefit and security of all owners of outstanding Series 2004 Bonds, and all subsequent owners from time to time of the Series 2004 Bonds, without privilege, priority or distinction as to lien or otherwise of any of the Series 2004 Bonds over any other of the Series 2004 Bonds.

SECTION 17. SEVERABILITY OF INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions herein contained 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 2004 Bonds issued under the Indenture.

SECTION 18. REPEALING CLAUSE. All resolutions or parts thereof in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

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SECTION 19. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this 20th day of February, 2004.

**LEE COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY**

(SEAL)

Chairman

ATTEST:

Secretary

EXHIBIT A

MEMORANDUM OF AGREEMENT

EXHIBIT B

FORM OF BOND PURCHASE AGREEMENT

EXHIBIT C

FORM OF INDENTURE OF TRUST

EXHIBIT D

FORM OF LOAN AGREEMENT

EXHIBIT E

FORM OF PRELIMINARY OFFICIAL STATEMENT

EXHIBIT F

AFFIDAVIT OF PUBLICATION OF PUBLIC HEARING