

County Council of Cuyahoga County, Ohio

Resolution No. R2012-0113

Sponsored by: County Executive
FitzGerald/Department of
Development

A RESOLUTION AUTHORIZING THE ISSUANCE OF NOT-TO-EXCEED \$21,000,000.00 COUNTY OF CUYAHOGA, OHIO, HEALTH CARE FACILITIES MORTGAGE REVENUE BONDS, SERIES 2012 (MENORAH PARK CENTER FOR SENIOR LIVING - WIGGINS PLACE PROJECT), FOR THE PURPOSE OF (1) REFUNDING THE OUTSTANDING PRINCIPAL AMOUNT OF SERIES 2003 REVENUE BONDS THAT WERE ISSUED TO PROVIDE FUNDS TO ASSIST MENORAH PARK CENTER FOR SENIOR LIVING IN FINANCING COSTS OF WIGGINS PLACE AND (2) PROVIDING FUNDS TO MAKE IMPROVEMENTS AND EXPANSIONS TO WIGGINS PLACE; AUTHORIZING THE EXECUTION AND DELIVERY OF A BASE LEASE, A LEASE, A TRUST INDENTURE AND AN ASSIGNMENT TO SECURE AND PROVIDE FOR THE PAYMENT OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS.

WHEREAS, the County of Cuyahoga, Ohio (the "*County*"), a county and political subdivision duly organized and validly existing under the laws of the State of Ohio and its Charter, is authorized and empowered, by virtue of the laws of the State of Ohio, including without limitation, Chapter 140, Ohio Revised Code (the "*Act*"), to (i) acquire, construct, improve and equip "hospital facilities" (as such term is defined in the Act), and to acquire by lease real estate within the boundaries of the Issuer and interests therein, including without limitation, improvements situated thereon comprising hospital facilities; (ii) issue its revenue bonds for the purpose of paying the "costs of hospital

facilities" (as such terms are defined in the Act), within the boundaries of the Issuer, including refunding obligations previously issued for that purpose; (iii) enter into lease agreements and supplemental lease agreements to provide for revenues to pay the principal of and interest and any premium on those revenue bonds; (iv) secure those revenue bonds by a trust indenture and supplemental trust indentures, by the pledge and assignment of its rights under a lease agreement and supplemental lease agreements, by a pledge of and lien on the hospital receipts and by an absolute and irrevocable assignment of certain funds to be held by the trustee under that trust indenture and those supplemental trust indentures; and (v) enact this Resolution and to sign and deliver necessary documents in connection therewith upon the terms and conditions provided herein; and

WHEREAS, this Council of the County of Cuyahoga, Ohio (the "*Council*"), pursuant to the foregoing authority and at the request of, and based upon the representations of, Menorah Park Center for Senior Living Bet Moshav Zekenim Hadati (the "*Lessee*") has requested that the County issue revenue bonds (the "*Series 2012 Bonds*") pursuant to the Act to assist it in financing and refinancing the costs of acquiring, constructing, equipping and improving "hospital facilities" by (i) refunding the outstanding principal amount of the County's \$10,555,000 Health Care Facilities Mortgage Revenue Bonds, Series 2003 (Menorah Park Center for the Aging – Wiggins Place Project (the "*Outstanding Bonds*"), which were issued pursuant to a Trust Indenture dated as of February 15, 2003 (the "*Original Indenture*"), by and between the County and The Huntington National Bank, as trustee (the "*Trustee*"), and the proceeds of which were used to construct Lessee's Wiggins Place facility (the "*Original Project*"); (ii) providing funds for (A) the renovation of approximately five existing suites in the Original Project; (B) constructing approximately 31 new units at Wiggins Place; (C) constructing connections on each floor to connect the expansion to the existing Wiggins Place facility; (D) constructing approximately 30 new indoor parking spaces; and (E) constructing, improving and equipping certain additional common elements for the facility (collectively, the "*Series 2012 Project*" and together with the Original Project, the "*Project*") and (iii) paying costs of issuing the Series 2012 Bonds; and

WHEREAS, the Series 2012 Bonds will be issued pursuant to the provisions of the Act and the Original Trust Indenture, as amended by a First Supplemental Trust Indenture between the County and the Trustee (the "*First Supplemental Indenture*", and together with the Original Indenture, the "*Indenture*"); and

WHEREAS, the Series 2012 Bonds shall not represent or constitute a general obligation, debt or bonded indebtedness, or a pledge of moneys raised by taxation or the faith and credit of the County, the State or any political subdivision thereof, and the holders of the Series 2012 Bonds shall not be given and shall not have any right to have excises or taxes levied by this Council or the County, or the State or the taxing authority of any political subdivision thereof, for the payment of bond service charges or any other costs of the Project, and the Series 2012 Bonds will be payable solely from revenues of the Project and other monies available to the Lessee;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:

SECTION 1. Definitions and Interpretations. All words and terms used herein as defined words and terms but not otherwise defined herein shall have the respective meanings given to them in the First Supplemental Indenture, the substantially final form of which is on file with this Council.

Any reference herein to the County or this Council or to any officers, employees or members thereof, shall include those which succeed to their functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing their functions.

SECTION 2. Authorization of the Series 2012 Bonds. This Council determines, based on the representations of the Lessee, that:

(a) it is necessary to, and the County shall, issue, sell and deliver, as provided and authorized herein and in accordance with the Indenture and pursuant to the authority of the Act, the Series 2012 Bonds in the aggregate principal amount that shall be determined in the Bond Purchase Agreement, but in any event not to exceed \$21,000,000, for the purposes of paying a portion of the costs of the Series 2012 Project, refinancing a portion of the costs of the Original Project by refunding the Outstanding Bonds, and paying certain costs of issuing the Series 2012 Bonds;

(b) the Lessee is a "nonprofit hospital agency" under the Act, and the facilities to be refinanced with proceeds of the Series 2012 Bonds are hospital facilities, available to or for the service of the general public without discrimination by reason of race, creed, color or national origin; and

(c) by the issuance of the Series 2012 Bonds to finance a portion of the cost of the Series 2012 Project, refinance a portion of the costs of the Original Project and to pay certain costs of issuing the Series 2012 Bonds, better provision will be made for the health and welfare of the people of the State and the County by enhancing the availability, efficiency and economy of hospital facilities and the services rendered thereby.

SECTION 3. Terms and Provisions of the Series 2012 Bonds

(a) Bond Terms. The Series 2012 Bonds shall (i) be issuable only in fully registered form and substantially as set forth in the Indenture; (ii) be exchangeable only for Bonds of the same series in Authorized Denominations, as provided in the Indenture; (iii) be numbered in a manner determined by the Trustee which will distinguish each Bond of a series from each other Bond of that series; (iv) be dated as set forth in the Indenture, provided that such date shall not be later than December 31, 2012; (v) bear interest from the most recent date to which interest has been paid or duly provided for, or if no interest has been paid or duly provided for, from their date of delivery, at the rates set forth in the Indenture, provided that the rates for the Series 2012 Bonds shall not

exceed 15% per year; (vi) payable on the interest payment dates set forth in the Indenture; (vii) be subject to optional redemption, extraordinary optional redemption, mandatory redemption and optional and mandatory tender for purchase in accordance with the Indenture; and (viii) mature, subject to prior redemption as set forth above, on the dates set forth in the Indenture, the final maturity date of which shall not exceed 35 years from their date of delivery.

The Series 2012 Bonds shall bear interest for a particular Rate Period (being a Bank Rate Period, Term Rate Period, Flexible Rate Period or Weekly Rate Period, all as defined and provided for in the Indenture). The initial Rate Period pertaining to the Series 2012 Bonds shall be a Bank Rate Period, unless otherwise specified in the Bond Purchase Agreement, until such Rate Period is converted to another Rate Period, all as provided for and in accordance with the Indenture, with the interest rate or rates for each applicable Rate Period being the rate or rates determined from time to time pursuant to and in accordance with the Indenture.

(b) Method of Payment; Paying Agents. The principal of and any premium and interest on the Series 2012 Bonds (the "*Bond Service Charges*") shall be payable as provided in the Indenture without deduction for the services of any paying agent. The Trustee initially shall be paying agent for the Series 2012 Bonds and may designate additional paying agents as provided in the Indenture.

(c) Execution. The Series 2012 Bonds shall be signed by the County Executive or his designee. Neither the County Executive, the members of this Council nor any person executing the Series 2012 Bonds shall be liable personally on the Series 2012 Bonds by reason of issuance thereof. In case the County Executive shall cease to be in office before the issuance or delivery of the Series 2012 Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in office until after that time.

(d) Book-Entry System. The Series 2012 Bonds are permitted, but not required, to be issued to the Depository for holding in a book-entry system as provided in the Indenture, as the official(s) or member(s) executing and delivering the Indenture shall approve in the manner described in and under authority of Section 8 hereof.

SECTION 4. Sale of the Series 2012 Bonds.

The Series 2012 Bonds are hereby sold and awarded to The Huntington National Bank or its designee (the "*Original Purchaser*") in accordance with the terms of this Resolution and the Bond Purchase Agreement, at a purchase price equal to the aggregate principal amount of the Series 2012 Bonds to be issued. The sale of the Series 2012 Bonds to the Original Purchaser shall be conditioned upon the Original Purchaser's delivery of an investor acknowledgement letter to the County, or the inclusion of investor acknowledgement provisions in the Bond Purchase Agreement, in a form acceptable to the County and its legal counsel. It is hereby determined, based upon the advice of Bond Counsel and the representations of the Original Purchaser that the purchase price and the manner of sale and the terms of the Series 2012 Bonds, as provided in this Resolution and

the Indenture, are consistent with all legal requirements and will carry out the public purposes of the Act.

The County Executive, the Clerk of this Council and the Fiscal Officer are authorized and directed, alone or together, to make the necessary arrangements, as directed by the Trustee and upon the advice of Bond Counsel, with the Original Purchaser to establish the date, location, procedure and conditions for the delivery of the Series 2012 Bonds to the Original Purchaser. The County Executive is further authorized and directed, upon the advice of Bond Counsel, to make the necessary arrangements for the execution, authentication and delivery of the Series 2012 Bonds to the Original Purchaser under the terms of this Resolution, the Indenture and the Bond Purchase Agreement.

SECTION 5. Lease of Series 2012 Project. This Council authorizes and approves the lease of the Series 2012 Project by the Lessee to the County under and as defined in the First Supplemental Base Lease, and the leaseback of the Series 2012 Project to the Lessee by the County under the First Supplemental Lease. This Council finds and determines that the lease of the Series 2012 Project to the Lessee under the terms and conditions of the Lease will further the public purpose of better providing for the health and welfare of the residents of the County and the State by enhancing the availability, efficiency and economy of facilities such as the Series 2012 Project and the services rendered thereby so that those facilities and the services rendered thereby are available to or for the service of the general public without discrimination by reason of race, creed, color or national origin.

SECTION 6. Security for the Series 2012 Bonds. The Series 2012 Bonds shall be special obligations of the County and, except as otherwise provided under the Indenture, the principal of and interest and any premium on, and any other obligations relating to, the Series 2012 Bonds shall be equally and ratably payable solely from the funds and accounts established under the Indenture and other sources permitted by the Indenture. The Series 2012 Bonds shall be equally and ratably secured by a pledge of and lien on the Special Funds for which provision is made under the Indenture, by the hospital receipts assigned, transferred and pledged under the Indenture and by such other security as the County may from time to time accept.

To provide for such security and for the payment directly to the Trustee of the portion of the rental payments to be paid under the Lease by Lessee in respect of the principal of and interest and any premium on, and payment under the Lease to be made by Lessee in respect of certain other obligations relating to, the Series 2012 Bonds, this Council authorizes, confirms, and approves the assignment to the Trustee of all of the County's rights under the Base Lease and the Lease, except for the Unassigned Rights (as defined in the Lease), including its rights in the hospital receipts, including the rental payments and the Special Funds, all as provided in the Lease, the Indenture and the Assignment.

Anything in this Resolution, the Series 2012 Bonds or the Indenture to the contrary notwithstanding, the Series 2012 Bonds do not and shall not represent or constitute

general obligations, debt, bonded indebtedness or a pledge of the faith and credit of the County, the State or any other political subdivision thereof and further, nothing herein or therein gives the holders or owners of the Series 2012 Bonds, and they do not have, the right to have excises, ad valorem or other taxes levied by the County, or by the State or the taxing authority of any other political subdivision, for the payment of the principal of and interest and any premium on, or any other obligations relating to, the Series 2012 Bonds. The Series 2012 Bonds shall contain a statement to that effect and to the effect that the Series 2012 Bonds are payable solely from the Special Funds established under and other sources permitted by the Indenture and from any other money paid by Lessee or obtained by the Trustee upon the exercise of rights and remedies under the Indenture and the Lease. Nothing in the Series 2012 Bonds or the documents securing them, however, shall be deemed to prohibit the County from using, of its own volition, to the extent that it is authorized by law to do so, any other resources for the fulfillment of any of the terms or conditions of, or its obligations under, the Indenture or the Series 2012 Bonds.

SECTION 7. Covenants and Agreement of County. In addition to the other covenants of the County set forth in this Resolution and the Issuer Documents, the County further covenants and agrees as follows:

(a) Authority and Actions. The County is, and upon delivery of the Series 2012 Bonds will be, duly authorized by the laws of the State, particularly and without limitation the Act, to issue the Series 2012 Bonds, to execute and deliver the Issuer Documents and other instruments and documents to which it is a party, to provide the security for payment of the principal of and any premium or interest on the Series 2012 Bonds solely in the manner and from the sources and to the extent set forth herein, all as authorized by this Council and upon the advice of Bond Counsel. All actions on the part of the County for the issuance of the Series 2012 Bonds and the execution and delivery of the Issuer Documents and such other instruments and documents have been or will be duly and effectively taken. The Series 2012 Bonds will be valid and enforceable special obligations of the County according to the terms thereof. Each duty of the County and of its officers and employees undertaken pursuant to the Series 2012 Bonds and the Issuer Documents, is a duty specifically enjoined by law upon the County and each of those officers and employees having authority thereunder or by provision of law to perform the duty, resulting from an office, trust or station, within the meaning of Section 2731.01, Ohio Revised Code, providing for enforcement by writ of mandamus.

(b) Arbitrage and Tax Compliance Provisions; Transcript. Upon the advice of Bond Counsel and to the extent within its authority and control, the County will restrict the use of the proceeds of the Series 2012 Bonds in such manner and to such extent as is necessary so that the Series 2012 Bonds will not constitute arbitrage bonds under Section 148 of the Code. The members of this Council, the County Executive, the Fiscal Officer or the Clerk of this Council or any other officer of the County having responsibility for the issuance of the Series 2012 Bonds, alone or in conjunction with the Lessee or any officer, employee or agent of or consultant to the Lessee, shall give an appropriate certificate of the County for inclusion in the transcript of proceedings for the Series 2012 Bonds setting forth the reasonable expectations of the County regarding the amount and

use of all of the proceeds of the Series 2012 Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on the Series 2012 Bonds.

Upon the advice of Bond Counsel, and to the extent within its authority and control, the County (i) will take, or require to be taken, all actions that are required of it for the interest on the Series 2012 Bonds to be and remain excluded from gross income for federal income tax purposes, and (ii) will not knowingly take or authorize to be taken any actions that would adversely affect that exclusion under the provisions of the Code. The members of this Council, the County Executive, the Fiscal Officer and the Clerk of this Council and any other appropriate officers are hereby authorized and directed to take any and all actions and make or give such reports and certifications, as may be appropriate to assure such exclusions of that interest.

In its performance of these covenants, and other covenants of the County pertaining to the Series 2012 Bonds and federal income tax laws, the County may rely upon the advice of Bond Counsel.

The Clerk of this Council shall furnish to the Original Purchaser a true transcript of proceedings, certified by the Clerk, of all proceedings had with reference to the issuance of the Series 2012 Bonds together with such information from the records as is necessary to determine the regularity and validity of the issuance of the Series 2012 Bonds.

(c) Further Assurances. To the extent within its authority and control, the County shall do all things and take all actions on its part necessary to comply with the obligations, duties and responsibilities on its part under the Issuer Documents. Nothing herein or in the Issuer Documents shall be construed as requiring the County to operate the Project or to use any moneys from any source other than those provided in the Indenture and the Lease.

SECTION 8. Issuer Documents. To provide for the issuance and sale of the Series 2012 Bonds and the consummation of the transactions contemplated herein, the County Executive (or his designee) and the Fiscal Officer at the direction of the County Executive, alone or in conjunction with any of the foregoing, are authorized and directed to execute, acknowledge and deliver, for and in the name and on behalf of the County, the First Supplemental Indenture, the First Supplemental Lease, the First Supplemental Base Lease, the First Supplemental Assignment, the Bond Purchaser Agreement and each other document to which the County is party in connection with the issuance and delivery of the Series 2012 Bonds (collectively, the "*Issuer Documents*"), in substantially the respective forms thereof submitted to and approved by the County's legal officer. The Issuer Documents are approved with any changes therein which are not inconsistent with this Resolution, are not adverse to the County, are permitted by the Act, and are approved by the member or members or officer or officers executing the respective Issuer Documents and by Bond Counsel and the County's legal officer. The approval of those changes by such member or members or officer or officers, and the character of those changes as not being adverse to the County, shall be evidenced conclusively by the execution and delivery of the respective Issuer Documents by such member or members

or officer or officers. The Fiscal Officer is authorized to give any certifications that may be required under Ohio Revised Code Sections 5705.41 and 5705.44 with respect to any of the Issuer Documents.

SECTION 9. Other Documents. The County Executive (or his designee), the President of the Council, the Fiscal Officer, the Clerk of the Council or any other officer of the County, alone or in conjunction with any of the foregoing, are authorized and directed to execute, deliver and, if applicable, file, for and in the name and on behalf of the County, any certifications, financing statements, assignments and other instruments and documents which are, in the opinion of the County's legal officer and Bond Counsel to the County, necessary or appropriate to perfect the assignments contemplated in the Indenture and to consummate the transactions contemplated in the Issuer Documents, including the issuance of the Series 2012 Bonds. Those certifications and other instruments and documents include, without limitation, one or more reports on IRS Form 8038 (including Forms 8038-R and 8038-T), any other certifications and forms necessary or advisable under the Code and a certification by the Clerk of this Council of the transcript of proceedings relating to the issuance of the Series 2012 Bonds. The Lessee is hereby authorized and directed, upon the request or direction of the County, to file any such certifications or instruments that require filing.

SECTION 10. Acknowledgement of Assignment. The County acknowledges that pursuant to the First Supplemental Assignment, the County will assign without recourse its rights under the Indenture and Lease to the Trustee, except for Unassigned Issuer's Rights.

SECTION 11. Lien of Pledge under the Indenture. As provided in Section 140.06(D) of the Act, the Special Funds established under the Indenture are subject to the lien of the pledge under the Indenture without any physical delivery of the Special Funds or further act, and the lien of that pledge is valid and binding against all parties having claims of any kind against the County or the Lessee (irrespective of whether those parties have notice of such pledge), and creates a perfected security interest for all purposes of Chapter 1309, Ohio Revised Code, without the necessity for separation or delivery of such Special Funds or for the filing or recording of the Indenture or any other instrument by which that pledge is created or any certificate, statement or other document with respect to that pledge. The pledge of and lien on the Special Funds under the Indenture shall be effective and the money therefrom and therein may be applied to the purposes for which pledged without necessity for any further act of appropriation.

SECTION 12. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Resolution, or in the Series 2012 Bonds, or in the Issuer Documents, or under any judgment obtained against the County or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be had against any officer or employee as such, past, present, or future, of the County, including any member of the Council, either directly or through the County, or otherwise, for the payment for or to the County or any receiver thereof, or for or to the Holder, or otherwise, of any sum that may be due and unpaid by the County upon any of the Series

2012 Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer or employee, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to the County or any receiver thereof, or for or to the Lessee or the Holder, or otherwise, of any sum that may remain due and unpaid upon any Bond, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of the Issuer Documents and the issuance of the Series 2012 Bonds.

SECTION 13. Public Hearing. A public hearing of this Council shall be held at the Chambers of the Council of Cuyahoga County, 1274 W. 3rd Street, Cleveland, Ohio 44113, for the purpose of hearing objections and/or public comment on the issuance of the Series 2012 Bonds.

SECTION 14. Open Meeting. This Council hereby finds and determines that all formal actions of this Council and its committees concerning and relating to the adoption of this resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including Section 121.22, Ohio Revised Code.

SECTION 15. Effective Date. This Resolution shall be in full force and effect immediately upon the signature of the County Executive, provided this Resolution receives the affirmative vote of eight members elected to Council. It is hereby determined to be necessary that this Resolution become immediately effective in order that the project may proceed in a timely manner.

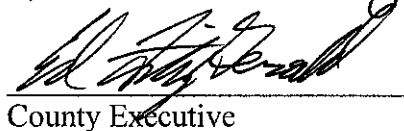
On a motion by Mr. Schron, seconded by Ms. Conwell, the foregoing Resolution was duly adopted.

Yeas: Conwell, Jones, Rogers, Simon, Greenspan, Miller, Brady, Germana, Gallagher, Schron and Connally

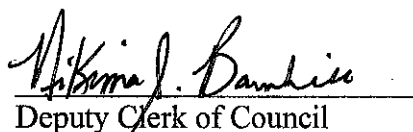
Nays: None


County Council President

7-10-12
Date


County Executive

7/12/12
Date


Deputy Clerk of Council

7/10/2012
Date

First Reading/Referred to Committee: June 12, 2012
Committee(s) Assigned: Economic Development & Planning

Journal CC007
July 10, 2012