

RESOLUTION NO. 180449

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE FINANCING AGREEMENT ORIGINALLY ENTERED INTO IN CONNECTION WITH THE ISSUANCE OF THE CITY OF GAINESVILLE, FLORIDA CONTINUING CARE RETIREMENT COMMUNITY REVENUE REFUNDING NOTE (OAK HAMMOCK AT THE UNIVERSITY OF FLORIDA, INC. PROJECT), SERIES 2017A (THE "2017A NOTE") AND THE CITY OF GAINESVILLE, FLORIDA CONTINUING CARE RETIREMENT COMMUNITY REVENUE REFUNDING NOTE (OAK HAMMOCK AT THE UNIVERSITY OF FLORIDA, INC. PROJECT), SERIES 2017B (THE "2017B NOTE") FOR THE PURPOSE OF PROVIDING FUNDS TO MAKE A LOAN TO OAK HAMMOCK AT THE UNIVERSITY OF FLORIDA, INC. (THE "BORROWER") TO PROVIDE FUNDS TO FINANCE THE COST OF REFINANCING OBLIGATIONS OF THE BORROWER; AUTHORIZING CERTAIN OFFICIALS OF THE CITY OF GAINESVILLE, FLORIDA TO TAKE CERTAIN ACTION IN CONNECTION WITH THE AMENDMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Gainesville, Florida (the "Issuer") previously authorized the issuance for the benefit of Oak Hammock at the University of Florida, Inc., a Florida not-for-profit corporation (the "Borrower") of its Continuing Care Retirement Community Revenue Refunding Note (Oak Hammock at the University of Florida, Inc. Project), Series 2017A (the "2017A Note") and its Continuing Care Retirement Community Revenue Refunding Note (Oak Hammock at the University of Florida, Inc. Project), Series 2017B (the "2017B Note" and, together with the 2017A Note, the "Notes") and the loan of the proceeds of the Notes to the Borrower to refinance the obligations of the Borrower; and

WHEREAS, the loan was funded from the proceeds of the sale of the Notes to TD Bank, N.A., a national banking association, as Initial Purchaser (the "Initial Purchaser"), pursuant to a Financing Agreement dated as of September 1, 2017 (the "Original Financing Agreement"), among the Initial Purchaser, the Issuer and the Borrower;

WHEREAS, the Borrower and the Initial Purchaser now desire to amend the Original Financing Agreement to modify the interest rate formula applicable to the Notes (the "Amendments"), which, as of the date hereof, will result in a lower interest rate on the Notes;

WHEREAS, the Borrower and the Initial Purchaser have requested that the Issuer assist the Borrower in order to undertake the necessary actions; and

WHEREAS, it is necessary and desirable to approve the form of and authorize the execution and delivery of a First Amendment to Financing Agreement (the "First Amendment", together with Original Financing Agreement, the "Financing Agreement") in substantially the form attached hereto as Exhibit A and incorporated herein by reference to, inter alia, specify the new formula for the interest rates applicable to the Notes.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA THAT:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This resolution, hereinafter called the "Resolution," is adopted pursuant to the Constitution of the State of Florida, Chapter 166, Florida Statutes, Chapter 159, Part II, Florida Statutes, the Charter of the Issuer and other applicable provisions of law (the "Act").

SECTION 2. DEFINITIONS. Unless the context otherwise requires, the terms used in this Resolution in capitalized form and not otherwise defined herein shall have the meanings specified in the Financing Agreement among the Issuer, the Borrower and the Initial Purchaser (the "Financing Agreement"). Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

SECTION 3. INTERPRETATION. Unless the context shall clearly indicate otherwise in this Resolution: (i) references to sections and other subdivisions, whether by number or letter or otherwise, are to the respective or corresponding sections and subdivisions of this Resolution; (ii) the terms "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms, refer to this Resolution only and to this Resolution as a whole and not to any particular section or subdivision hereof; and (iii) the term "heretofore" means before the date of adoption of this Resolution; the word "now" means at the time of enactment of this Resolution; and the term "hereafter" means after the date of adoption of this Resolution.

SECTION 4. FINDINGS. It is hereby ascertained, determined and declared that the Notes shall not be deemed to constitute a debt, liability or obligation, or a pledge of the faith and credit or taxing power, of the Issuer or of the State of Florida (the "State") or of any political subdivision thereof, but the Notes shall be payable solely from the revenues and proceeds to be derived by the Issuer from payments received under the Financing Agreement and the Issuer shall be obligated to pay the Notes only from the revenues and proceeds derived by the Issuer from such payments.

SECTION 5. AUTHORIZATION OF AMENDMENT TO FINANCING AGREEMENT. The form of the First Amendment in substantially the form attached hereto as Exhibit "A" is hereby approved, subject to such changes, insertions and omissions and such filling of blanks therein, as may be approved and made in the form of the First Amendment by the Mayor, subject to the approval of the City Attorney as to form and legality, who are hereby authorized to execute, deliver and perform the Original Financing Agreement, as amended by the First Amendment on behalf of the Issuer, and by the Borrower, in a manner consistent with the provisions of this Resolution, such execution by the Mayor and the attestation of signatures by the Clerk, to the extent required in the Financing Agreement, to be conclusive evidence of any such approval by the Issuer.

SECTION 6. FURTHER INSTRUMENTS AND ACTIONS; REPLACEMENT NOTES. At the request of the Borrower or the Lender, the Issuer shall, at the expense of the Borrower, execute and deliver such further instruments or take such further actions as may be reasonably required to carry out the purposes of this Resolution, including, without limitation, delivery of any replacement Series 2017A Note or Series 2017B Note, as the Borrower and Lender may deem necessary or appropriate, not inconsistent with the terms hereof.

SECTION 7. AMENDMENTS. No amendment to this Resolution shall become effective unless and until the Borrower and the Lender shall have consented thereto in writing.

SECTION 8. LIMITED LIABILITY OF ISSUER. Anything in this Resolution or the Financing Documents to the contrary notwithstanding, the performance by the Issuer of all duties and obligations imposed upon it hereby, the exercise by it of all powers granted to it hereunder, the carrying out of all covenants, agreements and promises made by it hereunder, and the liability of the Issuer for all warranties and other covenants hereunder, shall be limited solely to the revenues and receipts derived from the Financing Documents, and the Issuer shall not be required to effectuate any of its duties, obligations, powers or covenants hereunder except to the extent of such revenues and receipts.

SECTION 9. NO PERSONAL LIABILITY. No recourse under or upon any obligation, covenant or agreement contained in this Resolution, the Notes, any other Financing Document or under any judgment obtained against the Issuer, or by the enforcement of any assessment or by legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, under or independent of this Resolution, shall be had against any member of the City Commission, agent, employee or officer, as such, past, present or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the holder of the Notes or otherwise of any sum that may be due and unpaid by the Issuer upon the Notes. 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 member or officer, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the holder of the Notes or otherwise, of any sum that may remain due and unpaid upon the Notes is hereby expressly waived and released as a condition of and in consideration for the execution of this Resolution and the Amendments.

SECTION 10. NOTES TO BE LIMITED OBLIGATIONS. Neither the State nor any political subdivision thereof (including the Issuer) shall in any event be liable for the payment of the principal of or interest on or late charges with respect to the Notes, except that the Issuer shall be liable to pay the Notes from the special sources as herein and in the Financing Documents established and provided. The Notes issued hereunder shall never constitute an indebtedness of the State or of any political subdivision of the State (including the Issuer) within the meaning of any state constitutional provisions or statutory limitation and shall never constitute or give rise to the pecuniary liability of the State or any political subdivision thereof or of the Issuer or a charge against their general credit. The holder of the Notes shall not have the right to compel any exercise of the ad valorem taxing power of the State or of any political subdivision of said State (including the Issuer) to pay the Notes or the interest thereon or any late charges with respect thereto.

SECTION 11. LAWS GOVERNING. This Resolution shall be governed exclusively by the provisions hereof and by the applicable laws of the State.

SECTION 12. NO THIRD PARTY BENEFICIARIES. Except as herein or in the documents herein mentioned otherwise expressly provided, nothing in this Resolution or in such documents, express or implied, is intended or shall be construed to confer upon any Person other than the Issuer, the Lender and the Borrower any right, remedy or claim, legal or equitable, under and by reason of this Resolution or any provision hereof or of such documents; this Resolution

and such documents being intended to be and being for the sole and exclusive benefit of such parties.

SECTION 13. PREREQUISITES PERFORMED. All acts, conditions and prerequisites relating to the passage of this Resolution and required by the Constitution or laws of the State to happen, exist and be performed precedent to and in the passage hereof have happened, exist and have been performed as so required. Any actions by officials of the Issuer with respect to the Notes, this Resolution and the other Financing Documents, and the transactions contemplated hereby and thereby, that may have occurred prior to the date of this Resolution are hereby ratified.

SECTION 14. GENERAL AUTHORITY. The Mayor, the Clerk (or Deputy Clerk), the City Attorney (or assistant City Attorney) and the other officers and employees of the Issuer are hereby authorized to execute and deliver such documents, instruments and certificates as deemed necessary or appropriate to carry out the intent of this Resolution and do all acts and things required of them by this Resolution and the other Financing Documents or desirable or consistent with the requirements hereof or thereof, for the full punctual and complete performance of all terms, covenants and agreements contained in the Notes, this Resolution and the other Financing Documents, including, without limitation, amending or issuing replacement Notes in a manner not inconsistent herewith.

SECTION 15. RESOLUTION CONSTITUTES A CONTRACT. The Issuer covenants and agrees that this Resolution shall constitute a contract between the Issuer and the holders from time to time of the Notes and that all covenants and agreements set forth herein and in the Financing Documents and to be performed by the Issuer shall be for the benefit and security of the holder of the Notes.

SECTION 16. SEVERABILITY. If any one or more of the covenants, agreements, or provisions contained herein or in the Notes 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 hereof and thereof and shall in no way affect the validity of any of the other provisions of this Resolution or of the Notes.

SECTION 17. REPEALER. All resolutions or ordinances or parts thereof of the Issuer in conflict with the provisions herein contained are, to the extent of any such conflict, hereby superseded and repealed.

SECTION 18. EFFECTIVE DATE. This Resolution shall take effect immediately upon its passage and adoption.

SECTION 19. LIMITED APPROVAL. The approval given herein shall not be construed as (i) an endorsement of the creditworthiness of the Borrower or the financial viability of the Project, (ii) a recommendation to any current or prospective purchaser of the Notes, (iii) an evaluation of the likelihood of the repayment of the debt service on the Notes, or (iv) any necessary governmental approval relating to the Project, and the Issuer shall not be construed by reason of its adoption of this resolution to have made any such endorsement, finding or

recommendation or to have waived any of the Issuer's rights or estopping the Issuer from asserting any rights or responsibilities it may have in that regard.

Passed and duly adopted in public session of the City Commission of the City of Gainesville, Florida on the 18th day of October, 2018.

CITY COMMISSION OF THE CITY OF
GAINESVILLE, FLORIDA

By: 
Mayor

ATTESTED:

By: 
Clerk of the Commission

APPROVED AS TO FORM AND
LEGALITY:

By: 
City Attorney

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EXHIBIT A

FORM OF FIRST AMENDMENT TO FINANCING AGREEMENT

FIRST AMENDMENT TO FINANCING AGREEMENT

This FIRST AMENDMENT TO FINANCING AGREEMENT (this "*Amendment*") is dated October __, 2018 (the "*Amendment Date*"), and is among the CITY OF GAINESVILLE, FLORIDA, a municipal corporation duly created and existing under the laws of the State of Florida (the "Issuer"), OAK HAMMOCK AT THE UNIVERSITY OF FLORIDA, INC., a Florida not-for-profit corporation (the "*Borrower*") and TD BANK, N.A., and its permitted successors and assigns (as "*Noteholder*"). All capitalized terms used herein and not defined herein shall have the meanings set forth in the hereinafter defined Agreement.

WITNESSETH

WHEREAS, the City of Gainesville, Florida, a municipal corporation duly created and existing under the laws of the State of Florida (the "*Issuer*"), the Borrower and the Noteholder have previously entered into that certain Financing Agreement dated as of September 1, 2017 (the "*Agreement*");

WHEREAS, pursuant to Section 9.05 of the Agreement, (i) the Agreement may be amended by a written amendment thereto executed by the Borrower and the Noteholder and (ii) the Issuer is not required to be a party to, or consent to, this Amendment, but shall be, and has been, provided with a copy of the proposed Amendment prior to the Amendment Date; and

WHEREAS, the Borrower has requested that certain amendments be made to the Agreement, and the Noteholder has agreed to make such amendments to the Agreement subject to the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the premises, the parties hereto hereby agree as follows:

1. AMENDMENTS.

Upon the satisfaction of the conditions precedent set forth in Section 2 hereof, the Agreement is hereby amended as follows:

1.01. Section 1.01 of the Agreement shall be amended by amending and restating the following defined terms therein in their entirety, each to read as follows:

"Applicable Percentage" means (i) during the Initial Interest Period, (A) to but not including October __, 2018, 69.50% and (B) from and including October __, 2018, and thereafter, 81.50%, and (ii) during any Interest Period after the Initial Interest Period, such percentage as is determined by the Market Agent as the "Applicable Percentage," pursuant to Section 2.03(e).

“**Fixed Rate**” means, with respect to the Series 2017B Note, (a) to but not including October __, 2018, the product of (i) 2.75% and (ii) the Margin Rate Factor and (b) from and after October __, 2018, the product of (i) 3.23% and (ii) the Margin Rate Factor, and subject to adjustment in accordance with Section 2.03 hereof.

“**Margin Rate Factor**” means, (i) to but not including October __, 2018, the product of (A) one minus the Maximum Federal Corporate Tax Rate and (B) 1.53846, and (ii) from and including October __, 2018, and thereafter, the product of (A) Tax-Exempt Factor and (B) 1.22699, rounded upward to the second decimal place. The effective date of any change in the Margin Rate Factor shall be the effective date of the decrease or increase (as applicable) in the Maximum Federal Corporate Tax Rate from that in effect on October __, 2018 resulting in such change. Notwithstanding the foregoing (i) at no time will an increase in the Maximum Federal Corporate Tax Rate from that in effect on October __, 2018, result in an increase in the Interest Rate on the Notes and (ii) at no time will the Interest Rate on the Notes increase from 3.23% if there has been no change to the Maximum Federal Corporate Tax Rate from that in effect October __, 2018.

1.02. Section 1.01 of the Agreement shall be amended by the addition of the following defined term in the appropriate alphabetical order:

“**Tax-Exempt Factor**” means the sum of (i) one minus the Maximum Federal Corporate Tax Rate and (ii) the Adjustment Spread. For the purposes of this defined term, “Adjustment Spread” shall mean (i) three percent (3.0%), if the Maximum Federal Corporate Tax Rate is equal to or less than thirty percent (30%), and (ii) four and one-half percent (4.5%) if the Maximum Federal Corporate Tax Rate is greater than thirty percent (30%).

2. CONDITIONS PRECEDENT.

This Amendment shall be effective as of the Amendment Date subject to the satisfaction of, or waiver by, the Noteholder of all of the following conditions precedent:

2.01. Delivery to the Noteholder of an executed (a) counterpart of this Amendment from the Borrower, (b) Opinion of Bond Counsel, on which the Noteholder is entitled to rely, including such other customary matters as the Noteholder may reasonable request, in form and substance satisfactory to the Noteholder and (c) a replacement Series 2017B Note, which reflects the new Fixed Rate.

2.02. The Noteholder shall have received, in each case in form and substance satisfactory to it, (a) an incumbency certificate certifying the names and signatures of the persons authorized to sign, on behalf of the Borrower, this Amendment and any other

documents in connection herewith and (b) evidence that the governing body of the Borrower has duly authorized the transactions contemplated hereby.

2.03. Payment to counsel of the Noteholder of the reasonable legal fees and expenses incurred in connection herewith.

2.04. All other legal matters pertaining to the execution and delivery of this Amendment shall be reasonably satisfactory to each of the Noteholder, and their counsel.

3. REPRESENTATIONS AND WARRANTIES OF THE BORROWER.

3.01. The Borrower hereby represents and warrants that the following statements are true and correct as of the Amendment Date:

(a) the representations and warranties of the Borrower contained in Article V of Exhibit C of the Agreement and in each of the Related Documents are true and correct on and as of the Amendment Date as though made on and as of such date (except to the extent the same expressly relate to an earlier date);

(b) no Default or Event of Default has occurred and is continuing or would result from the execution of this Amendment; and

(c) no petition by or against either of the Borrower has at any time been filed under the United States Bankruptcy Code or under any similar law.

3.02. In addition to the representations given in Article V of Exhibit C of the Agreement, the Borrower hereby represents and warrants as follows:

(a) The execution, delivery and performance by the Borrower of this Amendment and the Agreement, as amended hereby, are within its powers, have been duly authorized by all necessary action and do not contravene any law, rule or regulation, any judgment, order or decree or any contractual restriction binding on or affecting the Borrower;

(b) no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the Borrower of this Amendment or the Agreement, as amended hereby; and

(c) this Amendment and the Agreement, as amended hereby, constitute legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with its respective terms, except that (i) the enforcement thereof may be limited by bankruptcy, reorganization, insolvency, liquidation, moratorium and other laws relating to or affecting the enforcement of creditors' rights and remedies generally, as the same may be applied in the event of the bankruptcy, reorganization, insolvency,

liquidation or similar situation of the Borrower, and (ii) no representation or warranty is expressed as to the availability of equitable remedies.

4. MISCELLANEOUS.

4.01. Except as specifically amended herein, the Agreement shall continue in full force and effect in accordance with its terms. Reference to this Amendment need not be made in any note, document, agreement, letter, certificate, the Agreement or any communication issued or made subsequent to or with respect to the Agreement, it being hereby agreed that any reference to the Agreement shall be sufficient to refer to, and shall mean and be a reference to, the Agreement, as hereby amended. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired hereby. THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA.

4.02. This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Amendment may be delivered by the exchange of signed signature pages by facsimile transmission or by e-mail with a pdf copy or other replicating image attached, and any printed or copied version of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the Amendment Date.

CITY OF GAINESVILLE, FLORIDA

Attest:

Clerk

Mayor

APPROVED AS TO FORM AND LEGALITY:

By: _____
City Attorney

TD BANK, N.A.

By _____
Name:
Title:

OAK HAMMOCK AT THE UNIVERSITY OF
FLORIDA, INC.

By _____
Chairman of the Board

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