

RESOLUTION NO. 2813

A RESOLUTION OF THE CITY OF MADISON, SOUTH DAKOTA, AUTHORIZING THE ISSUANCE OF ITS ECONOMIC DEVELOPMENT REVENUE BOND (BETHEL LUTHERAN HOME PROJECT), SERIES 2012, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$1,400,000, FOR THE PURPOSE OF PROVIDING FUNDS TO BE LOANED TO BETHEL LUTHERAN HOME, A SOUTH DAKOTA NONPROFIT CORPORATION, TO REFUND OUTSTANDING BONDS AND OTHER INDEBTEDNESS, AND PAYING A PORTION OF THE COST OF ADDITIONAL IMPROVEMENTS TO THE CORPORATION'S FACILITIES, INCLUDING THE REIMBURSEMENT OF CERTAIN OF SUCH COSTS; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT, PROMISSORY NOTE, MORTGAGE AND SECURITY AGREEMENT, AND BOND PURCHASE AGREEMENT; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE BOND AND CERTAIN RELATED DOCUMENTS; MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE BOND; AND PROVIDING FOR THE SECURITY, RIGHTS, AND REMEDIES OF THE HOLDER OF THE BOND.

WHEREAS, the City of Madison, South Dakota (the "*City*") is authorized by South Dakota Codified Laws, Chapter 9-54, as amended (the "*Act*"), to promote the general economic welfare by the provision of necessary economic development facilities, including nursing homes, other health care facilities, and housing for the elderly; and

WHEREAS, Bethel Lutheran Home, a nonprofit corporation organized and existing under the laws of South Dakota (the "*Corporation*") operates nursing home, assisted living and independent living housing facilities for the elderly at 1001 South Egan Avenue, in Madison, South Dakota; and

WHEREAS, on May 26, 1992, the City issued its \$400,000 Economic Development Revenue Bonds (Bethel Lutheran Home Issue), Series 1992 (the "*Series 1992 Bonds*"). the proceeds of which were loaned by the City to the Corporation for the purpose of paying a portion of costs of acquiring, equipping and constructing an addition to, and remodeling of, the Corporation's then existing nursing home facilities, to include a new activities room and physical therapy room, remodeling of the dining room, office space, general storage area, the front entrance, handicapped public restroom facilities and a new parking area, and paying a portion of the cost of issuance of such bonds (the "*1992 Project*"); and

WHEREAS, on September 26, 1996, the City issued its Economic Development Revenue Bonds, Series 1996 (Bethel Lutheran Home Project) in the amount of \$1,300,000 (the "*Series 1996 Bonds*"), the proceeds of which were loaned by the City to the Corporation for the purpose of paying a portion of costs of constructing, furnishing, and equipping an addition to the Corporation's facilities, including an addition to the north wing of the complex to include 12 assisted living units, dining room, kitchen, lounge, workstation and adult day care area, or reimbursing the costs thereof, and paying a portion of the cost of issuance of such bonds (the "*1996 Project*"); and

WHEREAS, on December 4, 1997, the City issued its Economic Development Revenue Bonds, Series 1997 (Bethel Lutheran Home Project) in the amount of \$1,560,000 (the “*Series 1997 Bonds*”), the proceeds of which were loaned by the City to the Corporation for the purpose of refunding the Series 1996 Bonds, and paying additional costs incurred in connection with the 1996 project, or reimbursing the costs thereof, and paying a portion of the cost of issuance of such bonds (the “*1997 Project*”); and

WHEREAS, on May 29, 2003, the City issued its Economic Development Revenue Bond, Series 2003 (Bethel Lutheran Home Project) in the amount of \$432,687 (the “*Series 2003 Bond*”), the proceeds of which were loaned by the City to the Corporation for the purpose of refunding the Series 1992 Bonds, and paying a portion of costs of further improvements to the Corporation’s facilities, including an addition to the dining hall and replacing the roof, or reimbursing the costs thereof, and paying a portion of the cost of issuance of such bonds (the “*2003 Project*” and together with the 1992 Project, the 1996 Project, and 1997 Project, the “*Prior Projects*”); and

WHEREAS, as of this date only the Series 1997 Bonds and the Series 2003 Bonds remaining outstanding (the “*Prior Bonds*”); and

WHEREAS, on June 29, 2009, the Corporation borrowed the sum of \$275,000 from First Bank and Trust, National Association (the “*Childcare Center Loan*”) for the purpose of paying a portion of the costs of constructing, equipping and furnishing a childcare center owned and operated by the Corporation within its facilities in the City of Madison; and

WHEREAS, the Corporation has proposed to make additional improvements to its facilities, including (a) an addition to the Corporation’s facilities to house a new beauty salon, resident craft room, and records storage room, (b) to remodel the original nursing home, including (1) new resident room lighting and ceiling fans and exhaust fans, (2) sprinkler systems in any remaining portions of the original nursing home not so equipped, (3) replacing the original toilets in each resident bathroom with ADA equipment, (4) replacing the original flooring in the resident bathrooms, resident rooms, and in each neighborhood hallway area, (5) remodeling the original nurse station area to include a redesigned medication room, charting room, resident snack bar area, additional nursing supply storage, and a new nursing conference room, (6) a new wireless nurse call system, (7) replace doors, windows, and handrails, (8) install new electrical service in certain areas, and (9) purchase adjoining property to the west of the Corporation’s current facilities for future expansion to, among other things, expand the facility’s capacity to meet the needs of a growing elderly population, all within the City of Madison, South Dakota (together, the “*2012 Improvements*”); and

WHEREAS, the Corporation has requested that the City issue its Economic Development Revenue Bond (Bethel Lutheran Home Project), Series 2012 (the “*Series 2012 Bond*”) in a principal amount not to exceed \$1,400,000, and loan the proceeds derived from the sale of the Series 2012 Bond (the “*Loan*”) to the Corporation to be used by the Corporation (a) to pay a portion of the cost of the 2012 Improvements, including reimbursement of the Corporation for certain of such costs, (b) to refund and redeem the outstanding Prior Bonds and the Childcare

Center Loan, and (c) to pay the costs of issuance of the Series 2012 Bond (together, the “*Project*”),

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF MADISON, SOUTH DAKOTA THAT:

Section 1. Findings. The City finds that it is appropriate to refund the Prior Bonds, refinance the Prior Projects and finance the Project and that the issuance, sale and delivery of the Series 2012 Bond is consistent with and furthers the purposes of the Act. The governing body hereby finds and declares that the Project will promote the welfare of said City and the State. The Project constitutes properties, real and personal, used or useful in connection with one or more revenue-producing enterprises engaged in nursing homes, health care facilities, and housing for the elderly within the meaning of Section 9-54-2.1 of the South Dakota Codified Laws; that the availability of the financing under the Act and willingness of the City to furnish such financing is a substantial inducement to the Corporation to undertake the Project; that, based upon representations of the Corporation, the Project would not be undertaken but for the availability of revenue bond financing through the City; and that the effect of the Project, if undertaken, will promote the general welfare of the State.

Section 2. The Series 2012 Bond. For the purposes of refunding the Prior Bonds and refinancing the Prior Projects and the Childcare Center Loan, and paying the costs of the 2012 Improvements, including the reimbursement of certain costs, and the costs of issuing the Series 2012 Bond, there is hereby authorized the issuance, sale, and delivery of the Series 2012 Bond in the principal amount not to exceed \$1,400,000, in such form and bearing interest as prescribed in a Loan and Security Agreement to be dated on or after May 10, 2012 (the “*Loan Agreement*”) between the City, the Corporation, and the Purchaser, substantially in the form now on file with the City, subject to such changes not inconsistent with this Resolution and applicable law that are approved by the Mayor or the City Finance Officer, with the advice of the City Attorney.

Section 3. Loan Agreement. The Mayor, City Finance Officer, City Attorney and other officers of the City (the “*City Officials*”), are hereby authorized and directed to enter into, execute, and deliver the Loan Agreement providing for the loan of the proceeds from the sale of the Series 2012 Bond to the Corporation, and it is hereby provided that the Loan Agreement will provide the conditions, covenants, rights, obligations, duties, and agreements of the bondholder, the City, and the Purchaser, and will be in substantially in the form now on file with the City, subject to such changes not inconsistent with this Resolution as are approved by the Mayor or the City Finance Officer, with the advice of the City Attorney.

Section 4. Promissory Note. Pursuant to the Loan Agreement, the Corporation will issue to the City its Promissory Note dated as of the date of the issuance and sale of the Series 2012 Bond (the “*Promissory Note*”) to evidence the Corporation’s obligations under the Loan Agreement. The Promissory Note will be in substantially the form now on file with the City, subject to such changes not inconsistent with this Resolution as are approved by the Mayor or the City Finance Officer, with the advice of the City Attorney. The Promissory Note will be in a principal amount not less than the principal amount of the Series 2012 Bond and have similar prepayment provisions, maturities and interest rates as the Series 2012 Bond. The City hereby

approves the assignment of the Promissory Note by the City to the Purchaser for the benefit and security of the Series 2012 Bond.

Section 5. Mortgage. The City hereby approves the execution and delivery by the Corporation of a Mortgage and Security Agreement—One Hundred and Eighty Day Redemption (the “*Mortgage*”) in favor of the City, and the assignment thereof to the Purchaser, pursuant to which the Corporation will provide a first mortgage lien on, and security interest in, the real and personal property owned by the Corporation and comprising the Project and the Prior Projects, and all funds and proceeds thereof. The Mortgage will be in substantially the form now on file with the City, subject to such changes not inconsistent with this Resolution as are approved by the Mayor or the City Finance Officer, with the advice of the City Attorney.

Section 6. Tax Regulatory Agreement. The City hereby authorizes and approves the execution and delivery of a Tax Regulatory Agreement dated as of the date of the issuance and sale of the Series 2012 Bond (the “*Tax Regulatory Agreement*”) between the Escrow Agent, the Corporation and the City; such Tax Regulatory Agreement to be substantially in the form and content of the draft thereof on file with the City on this date, is hereby approved, with such changes therein as shall be approved by the Mayor or the City Finance Officer, with the advice of the City Attorney.

Section 7. Bond Purchase Agreement. The City Officials are hereby authorized and directed to enter into, execute, and deliver one or more Bond Purchase Agreements, between the City, First Bank & Trust, of Madison, South Dakota (the “*Purchaser*”), and the Corporation (collectively, the “*Bond Purchase Agreement*”), relating to the Series 2012 Bond. The Bond Purchase Agreement shall be substantially in the form and content of the draft thereof on file with the City on this date, is hereby approved, with such changes therein as shall be approved by the Mayor or the City Finance Officer, with the advice of the City Attorney.

Section 8. Execution and Delivery of Documents. The City Officials are hereby authorized to execute and deliver, on behalf of the City, the Series 2012 Bond, the Loan Agreement, the Tax Regulatory Agreement and the Bond Purchase Agreement substantially in the form and content of the draft thereof on file with the City on this date, and such documents are hereby approved, with such changes therein as shall be approved by the Mayor or the City Finance Officer, with the advice of the City Attorney, and the execution thereof shall constitute conclusive evidence of their approval and the City's approval of any changes or revisions therein, and such other certificates, instruments, and other documents as are necessary, customary, or appropriate in connection with the issuance, sale, and delivery of the Series 2012 Bond, or are necessary to establish the validity or enforceability of the Series 2012 Bond, or are required by bond counsel to establish the validity or enforceability of the Series 2012 Bond or the exclusion from gross income of interest on the Series 2012 Bond for purposes of federal income taxation and State of South Dakota taxation (including a certificate as to the status of the Series 2012 Bond as “arbitrage bonds,” an Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038), and UCC-1 financing statements.

Section 9. Bond Opinion. The Finance Officer of the City shall obtain a copy of the proposed approving legal opinion of bond counsel, such opinion to be rendered by Davenport,

Evans, Hurwitz & Smith, L.L.P., Sioux Falls, South Dakota, and shall cause such opinion to be filed in the offices of the City Finance Officer.

Section 10. Limited Obligations. The Series 2012 Bond, together with the interest thereon, shall be limited obligations of the City payable solely out of the payments, revenues and receipts received by the City pursuant to the Loan Agreement, which payments, revenues and receipts are hereby and in the Loan Agreement pledged and assigned for the payment of the Series 2012 Bond and shall be used for no other purpose than to pay the principal of and interest on the Series 2012 Bond, except as may be otherwise expressly authorized in the Loan Agreement. The Series 2012 Bond shall never constitute an indebtedness of the City within the meaning of any provision or limitation of the South Dakota Constitution or statutes, and shall not constitute or give rise to any pecuniary liability of the City or any charge upon its general credit or taxing powers.

All covenants, stipulations, obligations, and agreements of the City contained in this Resolution and the aforementioned certificates, instruments, and documents shall be deemed to be the covenants, stipulations, obligations, and agreements of the City to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations, and agreements shall be binding upon the City. No covenant, stipulation, obligation, or agreement herein contained or contained in the aforementioned certificates, instruments, or documents shall be deemed to be a covenant, stipulation, obligation, or agreement of any member of the Board of Commissioners of the City (the "*City Commission*"), or any officer, agent, or employee of the City in that person's individual capacity, and neither the City Commission nor any officer or employee executing the Series 2012 Bond shall be liable personally on the Series 2012 Bond or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 11. Benefits. Except as herein otherwise expressly provided, nothing in this Resolution or in the aforementioned documents expressed or implied, is intended or shall be construed to confer upon any person or firm or corporation, other than the City or any owner of the Series 2012 Bond issued under the provisions of this Resolution any right, remedy, or claim, legal or equitable, under and by reason of this Resolution or any provision hereof, this Resolution, the aforementioned documents, and all of their provisions being intended to be and being for the sole and exclusive benefit of the City and any owner from time to time of the Series 2012 Bond issued under the provisions of this Resolution.

Section 12. No Continuing Disclosure Undertaking. The City Commission hereby finds that the Series 2012 Bond is exempt from continuing disclosure requirements of Rule 15c2-12 of the Securities and Exchange Commission. Consequently, the City is not covenanting to provide and will not provide annual financial information, notices of certain material events or any other disclosure or information which would otherwise be required by that Rule.

Section 13. Qualified Tax-Exempt Obligations. The City hereby designates the Series 2012 Bond as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Code, and reasonably anticipates that the aggregate of all tax-exempt debt to be issued by the City (and all entities subordinate to, or treated as one issuer with, the City) during calendar year 2012 will not exceed \$10,000,000. The City shall use its best efforts to comply with any federal

procedural requirements which may apply in order to effectuate the designation made by this paragraph.

Section 14. Severability. In case any one or more of the provisions of this Resolution, or of the aforementioned documents, or of the Series 2012 Bond shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Resolution, or of the aforementioned documents, or of the Series 2012 Bond, but this Resolution, the aforementioned documents, and the Series 2012 Bond shall be construed and endorsed as if such illegal or invalid provision had not been contained therein. All other documents herein referred to and made a part of this Resolution shall be maintained on file in the office of the City Finance Officer and is available for inspection by any interested party during normal business hours.

Section 15. Validity. The Series 2012 Bond, when executed and delivered, shall contain a recital that it is issued pursuant to the Act, and such recital shall be conclusive evidence of the validity of the Series 2012 Bond and the regularity of the issuance thereof and that all acts, conditions, and things required by the laws of the State relating to the adoption of this Resolution, to the issuance of the Series 2012 Bond, and to the execution of the aforementioned documents to happen, exist, and be performed precedent to and in the enactment of this Resolution, and precedent to issuance of the Series 2012 Bond, and precedent to the execution of the aforementioned documents have happened, exist, and have been performed as so required by law.

Section 16. Effective Date. The City shall publish this Resolution after its passage. This Resolution will take effect on the 20th day following publication unless suspended by referendum as provided by South Dakota statute.

Section 17. Conflicts. All prior resolutions or Resolutions which conflict with the provisions of this Resolution are hereby repealed to the extent of such conflict.

Date adopted: May 14, 2012.

CITY OF MADISON

/s/Gene Hexom
Mayor

ATTEST: /s/Jeff Heinemeyer
City Finance Officer

Date Adopted: May 14, 2012
Date Published: May 17, 2012
Effective Date: June 7, 2012