

**Community Benefits/Charity Care Agreement and Program Description for CCRC's –**

Robert F. Burgin & Dean Pope

**Commission Action:** Motion made by Mr. Unger, seconded by Mr. Binder and unanimously approved with changes discussed. A second motion was made by Mr. Burgin to approve the CCRC Proposal unanimously.

**Resolution:** The Commission adopts the form of a Community Benefits Agreement and Program Description for Community Benefits/Charity Care for CCRC's as recommended by the Commission members of the Subcommittee and as attached as CCRC Exhibits A and B. The form of the Agreement may be amended from time to time as the Commission determines to be prudent to deal with such items as the difference between startup facilities and existing facilities and other such items as may arise during the administration of the program. The Resolution and Exhibits attached hereto are effective for Borrowers with bond issues coming before the Commission for preliminary approval on or after the date of adoption of this resolution (November 9, 2007).

## Exhibit A

### COMMUNITY BENEFITS AGREEMENT

This Community Benefits Agreement, dated \_\_\_\_\_, 20\_\_, is between the North Carolina Medical Care Commission (the “Commission”), a commission of the Department of Health and Human Services of the State of North Carolina, and \_\_\_\_\_ (the “Borrower”), a nonprofit corporation duly incorporated and validly existing under the laws of the State of North Carolina.

#### **RECITALS**

1. The Commission is authorized by the Health Care Facilities Finance Act, Chapter 131A, General Statutes of North Carolina, as amended (the “Act”), to issue bonds to finance and refinance health care facilities, including, without limitation, skilled nursing facilities and intermediate care facilities and facilities for continuing care of the elderly and infirm for the benefit of non-profit agencies.

2. The Commission has issued or is issuing bonds to finance or refinance facilities of the Borrower. Such bonds are described in Appendix A hereto.

3. The Commission has determined to require an agreement with nonprofit agencies that (a) operate continuing care or similar facilities for the residence and care of the elderly and (b) seek the issuance of bonds by the Commission for their benefit (“CCRC Borrowers”). In particular, the Commission has determined that CCRC Borrowers that are not Qualified Taxpayers, as defined herein must agree to provide substantial amounts of qualifying Community Benefits consistent with the Community Benefits program for CCRC Borrowers established by the Commission.

4. The Borrower is a CCRC Borrower that is not a Qualified Taxpayer and is therefore entering into this Agreement to comply with the Commission’s policy.

5. The Borrower has provided to the Commission information regarding the Borrower’s current Community Benefits plan.

#### CONSIDERATION AND AGREEMENT

In consideration of the Commission’s issuance of Bonds, as defined below, and the undertakings of the Commission and of the Borrower hereunder, the Commission and the Borrower agree as follows.

**Section 1. Definitions.** Unless otherwise required by the context, as used in this Agreement the following terms shall have the following meanings:

“Annual Report” shall mean the Annual Report required to be delivered by the Borrower pursuant to Section 3.

“Bonds” shall mean the bonds described in Appendix A.

“CCRC Exemption” shall mean the exclusion from property tax granted by Section 105-278.6A of the North Carolina General Statutes, as amended, or any successor provision of law.

“Community Benefits” shall mean all Statutory Community Benefits and any Other Community Benefits.

“Community Benefits Deficit” shall have the meaning set forth in Section 7(a).

“Fiscal Year” shall mean the fiscal year of the Borrower.

“Other Community Benefits” shall mean any type of Community Benefits other than Statutory Community Benefits specifically approved by the Commission for the Borrower as Community Benefits hereunder, subject to any limits with respect to time or amount as provided for by the Commission. A description of Other Community Benefits approved by the Commission for the Borrower as of the date of this Agreement is attached hereto as Exhibit B. Other Community Benefits may be approved as provided in Section 4.

“Qualified Community Benefits Operating Reserve Fund” shall mean any fund approved by the Commission as a Qualified Community Benefits Operating Reserve Fund for the Borrower.

“Qualified Banking Institution” shall mean a bank or trust company qualified to provide banking and/or trust services in the State of North Carolina and acceptable to the Commission, which may be a bank or trust company serving as bond trustee for one or more Commission bond issues for the Borrower

“Qualified Taxpayer” shall mean a CCRC Borrower that does not rely in whole or in part on Section 131A-21 of the North Carolina General Statutes, as amended, for any exemption of its facilities from ad valorem property taxation.

“Required Community Benefits Amount” shall mean, for any Fiscal Year, the amount set forth in Section 2 as such may be amended from time to time in writing by the Commission as provided in Section 4.

“Statutory Community Benefits” means “charity care” and “Community Benefits” as defined in Section 105-278.6A of the North Carolina General Statutes, as amended, or any successor provision of law.

“Trigger Events” shall have the meaning set forth in Section 5.

**Section 2. Agreement To Provide Community Benefits.**

(a) The Borrower agrees to provide Community Benefits in each Fiscal Year in an amount equal to at least \_\_\_\_% of its “resident revenue” as defined in Section 105-278.6A of the North Carolina General Statutes, as amended, or any successor provision of law (“Resident Revenue”), as shown on its audited financial statements for the previous Fiscal Year, except that the percentage shall be the following amounts for the Fiscal Years set forth below:

Fiscal Year ended \_\_\_\_\_, 2008\*: \_\_\_\_%

Fiscal Year ended \_\_\_\_\_, 2009:\* \_\_\_\_%

Fiscal Year ended \_\_\_\_\_, 2010:\* \_\_\_\_%

(\*the fiscal year ending will depend upon when the Agreement is executed)

(b) The Borrower's Community Benefits shall include all Community Benefits provided (i) directly by the Borrower, (ii) through a related foundation or other related entity, or (iii) through a joint venture or similar undertaking with any governmental or charitable entity. Upon request of the Commission, the Borrower shall provide reasonable evidence of the value of such Community Benefits provided by it, directly or indirectly, including the cost of labor and overhead, provided that no value shall be assigned to volunteer work undertaken by residents of the Borrower's facilities.

**Section 3. Annual Report.** Within [120] days after the end of each Fiscal Year beginning with the Fiscal Year ending \_\_\_\_\_, 20\_\_, the Borrower shall provide to the Commission an annual report on the Community Benefits it provided (the "Annual Report") in form reasonably acceptable to the Commission. The Annual Report shall set forth (i) the dollar value of the Community Benefits provided by the Borrower in such Fiscal Year, (ii) the percent of Resident Revenue for such Fiscal Year represented thereby and (iii) the breakdown of Community Benefits in reasonable detail in terms of the type of benefits provided, such as financial assistance to residents, contributions to specified charitable activities and contributions to specified governmental activities. If the amount of Community Benefits for such Fiscal Year is less than that required by Section 2 above, the Annual Report shall set forth the Borrower's explanations of the reasons therefor.

**Section 4. Amendment of Community Benefits Plan.**

(a) If in any Fiscal Year, the Borrower fails to provide [at least 90%] of the Required Community Benefits Amount, the Borrower shall submit to the Commission within [six months] of the end of such Fiscal Year an amended Community Benefits Plan for consideration by the Commission, together with such explanations and other information as the Borrower considers appropriate to assist the Commission in understanding the plan's scope, proposed implementation and relationship to the financial condition and contractual obligations of the CCRC Borrower. Such plan may include one or more forms of Special Community Benefits not constituting Community Benefits under the original Community Benefits Plan to be included, either permanently or on a temporary basis, in the calculation of Community Benefits.

(b) The Commission shall consider such amended Community Benefits Plan. The Commission may request additional information relevant thereto, which the Borrower will provide in reasonable detail and on a reasonable schedule. The Commission may propose amendments to the Borrower are proposed amended Community Benefits Plan.

(c) If the Borrower has submitted an amended Community Benefits Plan pursuant to subsection (b), the Commission and the Borrower shall cooperate in an effort to produce an amended Community Benefits Plan acceptable to both parties, which Community Benefits Plan may include, without limitation, (i) a reduction in the Required Community Benefits Amount for a specified period, (ii) an increase in the Required Community Benefits Amount for a specified period, (iii) additional reporting

requirements, and (iv) provisions including as Community Benefits Special Community Benefits, subject to limitation as to both amount and the time period during which the same qualify as Community Benefits.

(d) At the request of the Borrower, the Commission shall within 120 days of submission to the Commission of any amended Community Benefits Plan, evidence its approval or disapproval thereof. Any such amended Community Benefits Plan approved by the Commission shall constitute the Community Benefits Plan under this Agreement unless further modified pursuant to this Section.

**Section 5.** Trigger Events. The following shall constitute Trigger Events hereunder:

(a) Failure of the Borrower to provide the Required Community Benefits Amount for any [two] consecutive Fiscal Years.

(b) Failure of the Borrower to file the Annual Report as required by Section 3 above or to provide other information reasonably requested by the Commission.

**Section 6.** Remedies. Upon the occurrence of any Trigger Event, the Commission may undertake any of the following actions:

(a) The Commission may require the Borrower to provide additional information, reasonably requested, regarding the then current Community Benefits Plan and its relationship to the financial condition and contractual obligations of the Borrower.

(b) The Commission may (i) decline to issue any bonds for the benefit of the Borrower or any related organization or (ii) impose any conditions in connection with the issuance of bonds for the benefit of the Borrower.

(c) The Commission may require the Borrower to pay to the Commission or to others, as provided in Section 7 below, all or part of the amount of Community Benefits Deficit.

**Section 7.** Payment of Community Benefits Deficit.

(a) If in any Fiscal Year, the Borrower shall fail to provide [at least 90% of] the Required Community Benefits Amount, the difference between such required amount [90 vs. 100%] and the amount actually provided shall be the "Community Benefits Deficit" for such Fiscal Year. The Borrower shall calculate and provide the amount of the Community Benefits Deficit for each Fiscal Year as part of the Annual Report, with such detail and verification as may be reasonably required by the Commission.

(b) If at any time there has been a Trigger Event under this Agreement and the Commission has not within 120 days (or such later date approved by the Commission) approved a revised Community Benefits Plan as provided in Section 4, the Commission may require the Borrower to pay the full amount of all outstanding Community Benefits Deficits not previously paid or otherwise waived by the Commission. The Borrower shall deposit into an account with a Qualified Banking Institution the amount of such Community Benefits Deficit(s); provided that no such deposit shall be required in any amount or to any party that would adversely affect the status of the Borrower as an organization described in Section 501(c) (3) of the Internal Revenue Code of 1986, as amended, or cause the Borrower to be in default under a Master

Trust Indenture, Loan Agreement or other agreement related to Commission Bonds. If deposit of the full amount of the Community Benefits Deficit(s) would result in a default or reduce the Borrower's days' cash on hand, calculated according to then current industry standards, below the number of days the Commission believes to be prudent for the Borrower or would adversely affect the 501(c)(3) status of the Borrower, the Borrower shall deposit the maximum amount of the Community Benefits Deficit(s) that would not result in a default or reduce the Borrower's days' cash on hand, calculated according to then current industry standards, below the number of days the Commission believes to be prudent for the Borrower or adversely affect its 501(c)(3) status. The Commission and the Borrower agree that all amounts deposited under this Section 7 shall be disbursed only for uses constituting Community Benefits as directed by the Borrower, however, with prior notice to the Commission, funds may be disbursed to pay debt service on Commission Bonds or other indebtedness of the Borrower if necessary to prevent a default on the Bonds.

(c) Unless the Commission and the Borrower agree otherwise in writing, the Borrower may apply any amount of Community Benefits provided in a prior Fiscal Year ending after the execution of this Agreement to the calculation of the total amount of Community Benefits provided for any subsequent year, so long as the Borrower clearly describes such crediting in its Annual Report for the year receiving the credit and such amount has not previously been credited to the calculation of Community Benefits in a prior Fiscal Year.

**Section 8.** If at any time the Commission and the Borrower execute an agreement evidencing the creation of a Qualified Community Benefits Operating Reserve Fund, unless otherwise provided in such agreement, all payments made to such Fund shall constitute payments of Community Benefits and this Agreement shall be interpreted in a manner consistent with the terms of such agreement.

**Section 9.** Waivers. The Commission may, at the request of the Borrower, modify or waive any requirement to provide Community Benefits hereunder, and there shall be no Trigger Event hereunder if the Borrower has complied with all requirements hereunder other than those specifically waived by the Commission. The Commission also may waive all or part of any Trigger Event either permanently or for a temporary period. Any waiver of a Trigger Event hereunder shall not constitute a waiver of any future Trigger Events.

**Section 10.** Amendments. This document may be amended only with the consent to the parties hereto. This section shall not limit the ability of the Commission to expand the definition of Community Benefits.

**Section 11.** Applicable Law. This agreement shall be governed by the laws of North Carolina.

**Section 12.** Notices. All notices, demands and requests between the parties hereto shall be given or made in writing, shall be deemed to be properly given if sent by U.S. registered mail, return receipt requested, postage prepaid, addressed as follows:

(a) If to the Commission:

North Carolina Medical Care Commission  
701 Barbour Drive  
Raleigh, NC 27603  
Attn: Secretary

(b) If to the Borrower:

\_\_\_\_\_

**Section 13. Severability.** If any one or more of the covenants, agreements and provisions of this Agreement shall be determined by a court of competent jurisdiction to be invalid, the invalidity thereof shall no way affect the validity or effectiveness of the remainder of this agreement and this agreement shall continue in force to the fullest extent permitted by law.

**Section 14. Termination.**

(a) This Agreement and all obligations hereunder shall terminate upon payment or defeasance in full of all Bonds issued on behalf of the Borrower.

(b) If at any time the Borrower provides reasonable evidence to the Commission that the Borrower is then a Qualified Taxpayer, the provisions of this Agreement shall be suspended; provided, however, if at any time thereafter prior to the payment or defeasance of all Bonds, the Borrower shall cease to be a Qualified Taxpayer, the provisions of this Agreement shall be reinstated, and it shall become fully operational and effective beginning with the Fiscal Year during which the Borrower ceases to be a Qualified Taxpayer.

IN WITNESS HEREOF, the North Carolina Medical Care Commission and \_\_\_\_\_ have caused this Agreement to be executed in their respective names and on their behalf by an authorized officer.

NORTH CAROLINA MEDICAL CARE  
COMMISSION

By: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

DESCRIPTION OF BONDS



DESCRIPTION OF OTHER COMMUNITY BENEFITS

## Exhibit B

### NORTH CAROLINA MEDICAL CARE COMMISSION COMMUNITY BENEFIT PROGRAM FOR NONPROFIT RETIREMENT FACILITIES

The North Carolina Medical Care Commission has adopted a Community Benefits Program that applies to all nonprofit corporations that (1) own and operate retirement facilities and (2) seek the issuance of bonds for their benefit by the Commission. In particular, the program reflects the Commission's decision that nonprofit retirement communities (CCRC Borrowers) that obtain a property tax exemption solely as a result of the issuance of bonds for their benefit by the Commission should be required to provide qualifying Community Benefits each year much in the way CCRC Borrowers are required to do in order to qualify for the tax exemption under North Carolina General Statutes Section 105-278.6A.

**Affected Parties.** A CCRC Borrower has three options — it can pay normal property taxes, it can qualify for an exemption under Section 105-278.6A or it can sign a Community Benefits Agreement. The Community Benefits Agreement will generally require the CCRC Borrower to provide annually a stated amount of qualifying Community Benefits under a Community Benefit Program (“CBP”).

**What Are Community Benefits?** The program permits the CCRC Borrower to count as Community Benefits the types of “charity care” and “community benefits” as defined in North Carolina General Statutes Sections 105.278-6A, as well as other forms of benefits approved by the Commission.

**Form Agreement.** Attached is a standard form of a Community Benefits Agreement (the “CB Agreement”). It requires the CCRC Borrower to provide Community Benefits in a specified amount pursuant to an approved CBP. It sets forth the procedures that will be followed if, in any year, the CCRC Borrower fails to provide the required level of Community Benefits. In particular, it contemplates a procedure in which the Commission and the CCRC Borrower will work together to develop a practical and realistic alternative CBP if the CCRC Borrower is unable to meet the original targets. The Commission is sensitive to the operating and financial restrictions that affect CCRC Borrowers and is committed to a program that does not threaten the financial stability of CCRC Borrowers, weaken their position in the credit markets or undermine their ability to obtain bond financing on attractive terms. The Commission is committed to finding the best methods by which CCRC Borrowers can commit to meaningful CBPs reflecting both economic reality and the fact that financial circumstances can change. Thus, the program contemplates amendments to a CBP at any time circumstances warrant such change. The CB Agreement

does provide, however, that if after these procedures are exhausted and the CCRC Borrower has not produced an alternative CBP acceptable to the Commission, the Commission can require the CCRC Borrower to make payments for Community Benefits consistent with the CB Agreement.

**Suspension and Termination.** The CB Agreement generally remains in place as long as Commission bonds are outstanding for the benefit of the CCRC Borrower. If, however, the CCRC Borrower ceases to claim a tax exemption solely as a result of the Commission's bonds, the provisions of the CB Agreement would be suspended. They would be reinstated, however, if the CCRC Borrower once again became entitled to a tax exemption solely because of the existence of the bonds issued by the Commission.

**Qualified Community Benefits Operating Reserve Fund.** The Commission recognizes that many CCRC Borrowers, especially new facilities, may face difficulties in being able to spend substantial amounts for Community Benefits in certain years, given the demands that the financial markets impose on them for the maintenance of substantial reserves. Thus, the Commission has approved the concept of a "Qualifying Community Benefits Operating Reserve Fund" (a "Special Fund"). Under appropriate circumstances the CCRC Borrower will be permitted to treat as current Community Benefits payments all amounts paid in a given year into the Special Fund. The amounts in the Special Fund will be available, if necessary, to pay debt service on bonds and meet other emergency needs in a manner that will reassure financial markets and enhance the ability of the CCRC Borrower to meet financial covenants and to improve its credit rating. The CCRC Borrower, however, must commit in such case to ensuring that, at some point in the future, the total required amounts will be spent for Community Benefits. The Commission will work with CCRC Borrowers and their financing teams to develop appropriate provisions for such Special Funds.

November \_\_, 2007