

Item Title: Public Hearing to Consider Approval, for Purposes of Meeting the Requirements of the Internal Revenue Code, of up to \$70,000,000 in Retirement Facilities Revenue Bonds to be Issued by the Public Finance Authority for the Benefit of The Givens Estates, Inc. and Givens Highland Farms (the “Borrowers”)

Specific Action Requested:

1. That the Board of Commissioners (the “Board”) hold a public hearing on the proposed issuance of not to exceed \$70,000,000 of the Bonds to be issued by the Public Finance Authority; and
2. At the conclusion of a public hearing, the Board adopt the attached resolution which finds:
 - a. That the \$70,000,000 in Retirement Facilities Revenue Bonds do not constitute a debt of the County; nor require a tax levy or a pledge of the faith and credit of the County; nor will affect the County’s debt ratios or legal debt limit;
 - b. That the County has made no financial analysis of the Bonds, of the Borrowers or of the projects financed and refinanced;
 - c. Approve the issuance of not to exceed \$70,000,000 in Retirement Facilities Revenue Bonds to be issued by the Public Finance Authority for the benefit of the Borrowers; and
 - d. Reserving all rights with respect to zoning, planning, plans, specifications, inspections, etc. that the County would otherwise require.

Item Summary:

The Public Finance Authority (PFA) is a governmental unit of the State of Wisconsin created for the purpose of issuing tax-exempt and taxable conduit bonds for public and private entities nationwide. PFA is sponsored by the National Association of Counties, the National League of Cities, the Wisconsin Counties Association and the League of Wisconsin Municipalities. Any debt issued is not debt of the County or PFA, but rather is payable solely from debt service payments received from the entity involved (in this case, the Borrowers). Approximately 175 North Carolina projects have been financed by PFA.

PFA has been requested to issue the Bonds pursuant to Section 66.0304 of the Wisconsin Statutes, as amended, in the principal amount of up to \$70,000,000. The proceeds of the Bonds will be loaned to the Borrowers to be used to (1) finance (a) routine capital improvements to a continuing care retirement community located at 2360 Sweeten Creek Road Asheville, North Carolina 28803 and known as “Givens Estates” (such improvements, the “Givens Project”) and (b) the acquisition, construction and equipping of 66 new apartments, multipurpose facilities (including new dining venues), and other additional capital improvements and renovations to a continuing care retirement community located at 200 Tabernacle Road, Black Mountain, North Carolina 28711 and known as “Highland Farms” (such improvements, the “Highland Project,” and together with the Givens Project, the “Projects”), (2) finance interest on the Bonds during the construction of the Projects, and (3) pay certain costs related to the issuance of the Bonds. The Bonds will constitute “qualified 501(c)(3) bonds” within the meaning of Section 145(a) of the Code.

The Projects will be owned and operated by the Borrowers.

Wisconsin law and Federal tax law requires that tax exempt bonds issued to finance or, in certain circumstances, refinance, facilities owned by nonprofit organizations be approved by the elected legislative

body (or highest elected representative) of the governmental unit that has jurisdiction over the area in which the facility is to be located. Prior to this approval, Internal Revenue Code Section 147(f) requires that a public hearing be held, at which hearing the public is given the opportunity to comment on the Projects.

Because the proceeds of the Bonds will be used to refinance and finance the Projects, which are located in the County, the Board is one of the appropriate governing bodies to approve the use of tax-exempt bonds to refinance and finance the Projects for the purposes of Section 147(f) of the Code (otherwise we'd have to have public hearings in both Asheville and Black Mountain).

The Borrowers will promise to repay the principal, premium, if any, and interest on the Bonds. Neither PFA nor the County would have any liability whatsoever for the payment of principal or interest on the Bonds. The Bonds will be special limited obligations of PFA payable solely from the loan repayments to be made by the Borrowers to the PFA.

The Bonds shall not be deemed to constitute a debt of the County or a pledge of the faith and credit of the County, but shall be payable solely from the revenues and other funds provided therefor.

The County will have no responsibility whatsoever for the Bonds. The Bonds will not affect the County's debt ratios or legal debt limit. Because no taxes or other revenues of the County will be pledged to pay these Bonds, the staff of the County has made no financial analysis of the Bonds, the Borrower or the Project.

The notice of public hearing (attached) was published in the *Citizen-Times* as required by law. The form of the resolution to be adopted by the Board is also attached.

A regular meeting of the Board of Commissioners of the County of Buncombe, North Carolina, was duly held on September 7, 2021 at 5:00 p.m. at 200 College Street, Room 326, Asheville, North Carolina 28801.

The following members were present:

The following members were absent:

* * * * *

At approximately _____ p.m., the Chair announced that the Board would proceed to hold a public hearing and would hear anyone who wished to be heard on the proposed issuance by the Public Finance Authority, a joint powers commission and governmental unit organized under Wisconsin law (the “*Authority*”), of its retirement facilities revenue bonds (the “*2021 Bonds*”) in one or more series aggregating a principal amount not to exceed \$70,000,000. The proceeds from the sale of the 2021 Bonds will be loaned to The Givens Estates, Inc. and Givens Highland Farms, LLC, each a North Carolina nonprofit corporation and organization described in Section 501(c)(3) of the Code and one or more of their related or affiliated entities (the “*Borrowers*”), and used to (1) finance (a) routine capital improvements to a continuing care retirement community located at 2360 Sweeten Creek Road Asheville, North Carolina 28803 and known as “*Givens Estates*” (such improvements, the “*Givens Project*”) and (b) the acquisition, construction and equipping of 66 new apartments, multipurpose facilities (including new dining venues), and other additional capital improvements and renovations to a continuing care retirement community located at 200 Tabernacle Road, Black Mountain, North Carolina 28711 and known as “*Highland Farms*” (such improvements, the “*Highland Project*,” and together with the Givens Project, the “*Projects*”), (2) finance interest on the 2021 Bonds during the construction of the Projects, and (3) pay certain costs related to the issuance of the 2021 Bonds. The 2021 Bonds will constitute “qualified 501(c)(3) bonds” within the meaning of Section 145(a) of the Code.

The Projects will be owned and operated by the Borrowers.

The 2021 Bonds will be special limited obligations of the Authority payable solely from the loan repayments to be made by the Borrower to the Authority, and certain funds and accounts established by the bond agreement for the 2021 Bonds.

NEITHER THE COUNTY OF BUNCOMBE, NORTH CAROLINA, NOR THE STATE OF NORTH CAROLINA HAS ANY RESPONSIBILITY FOR THE PAYMENT OF THE PRINCIPAL OF, OR INTEREST ON, THE 2021 BONDS OR FOR ANY COSTS INCURRED BY THE BORROWERS WITH RESPECT TO THE 2021 BOND OR THE PROJECTS TO BE FINANCED OR REFINANCED. NEITHER THE COUNTY OF BUNCOMBE, NORTH CAROLINA, NOR THE STATE OF NORTH CAROLINA PLEDGES THEIR TAXING POWER OR REVENUES FOR THE 2021 BONDS. THE COUNTY OF BUNCOMBE, NORTH CAROLINA WILL HAVE NO RESPONSIBILITY WHATSOEVER FOR THE 2021 BONDS.

The Clerk to the Board presented an affidavit of an officer of *Citizen-Times*, showing publication on August 27, 2021, a date at least 7 days prior hereto, of notice of the public hearing. It was directed that the affidavit of publication be attached to this extract of minutes as **Exhibit A**.

The Chair inquired whether there were any persons who wished to speak at the public hearing. The names and addresses of the persons who were present and who offered comments on the proposed issuance of the 2021 Bonds to finance the projects financed and refinanced and a summary of their comments are listed on **Exhibit B**.

Commissioner _____ moved that the following resolution, copies of which having been made available to the Board, be adopted:

RESOLUTION NO. _____

RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF BUNCOMBE, NORTH CAROLINA, APPROVING THE ISSUANCE BY THE PUBLIC FINANCE AUTHORITY (WISCONSIN) OF UP TO \$70,000,000 AGGREGATE PRINCIPAL AMOUNT OF ITS RETIREMENT FACILITIES REVENUE BONDS FOR THE PURPOSE OF FINANCING AND REFINANCING CERTAIN FACILITIES IN THE COUNTY OF BUNCOMBE, NORTH CAROLINA

WHEREAS, this Board of Commissioners today held a public hearing with respect to the proposed Retirement Facilities Revenue Bonds (the “*2021 Bonds*”) to be issued by the Public Finance Authority in an amount not to exceed \$70,000,000 on behalf of The Givens Estates, Inc. and Givens Highland Farms, LLC, each a North Carolina nonprofit corporation and organization described in Section 501(c)(3) of the Code (defined below) and one or more of their related or affiliated entities (the “*Borrowers*”), and used to (1) finance (a) routine capital improvements to a continuing care retirement community located at 2360 Sweeten Creek Road Asheville, North Carolina 28803 and known as “Givens Estates” (such improvements, the “*Givens Project*”) and (b) the acquisition, construction and equipping of 66 new apartments, multipurpose facilities (including new dining venues), and other additional capital improvements and renovations to a continuing care retirement community located at 200 Tabernacle Road, Black Mountain, North Carolina 28711 and known as “Highland Farms” (such improvements, the “*Highland Project*,” and together with the Givens Project, the “*Projects*”), (2) finance interest on the 2021 Bonds during the construction of the Projects, and (3) pay certain costs related to the issuance of the 2021 Bonds. The 2021 Bonds will constitute “qualified 501(c)(3) bonds” within the meaning of Section 145(a) of the Code (defined below);

WHEREAS, in order for the 2021 Bonds to be tax-exempt, Federal tax law (specifically, Section 147(f) of the Internal Revenue Code, as amended (the “*Code*”)) requires the governing body of the governmental unity having jurisdiction of the area in which a bond financed project is located to approve the issuance of the 2021 Bonds after a public hearing;

WHEREAS, pursuant to Section 66.0304(11)(a) of the Wisconsin Statutes, prior to their issuance, bonds issued by the Authority must be approved by the governing body or highest ranking executive or administrator of a political subdivision within whose boundaries the project is to be located;

WHEREAS, the Borrower has requested that the Board of Commissioners of the County of Buncombe, North Carolina approve the refinancing and financing of the Projects and the issuance of the 2021 Bonds in order to satisfy the requirements the Code and of Section 4 of the Amended and Restated

Joint Exercise of Powers Agreement Relating to the Public Finance Authority, dated as of September 28, 2010 (the "Joint Exercise Agreement"), and Section 66.0304(11)(a) of the Wisconsin Statutes; and

WHEREAS, County of Buncombe taxpayers will have no responsibility for payment of the 2021 Bonds;

NOW, THEREFORE, the Board of Commissioners of the County of Buncombe, North Carolina, resolves as follows:

Section 1. The Board of Commissioners of the County of Buncombe, North Carolina, hereby approves approve the refinancing and financing of the Projects and the issuance of the 2021 Bonds, all in the principal amount of not to exceed \$70,000,000. It is the purpose and intent of the Board of Commissioners that this resolution constitute approval of the issuance of the 2021 Bonds by the County of Buncombe, North Carolina, which is one of the governmental units having jurisdiction over the areas in which the respective projects located, in accordance with the Code and with Section 66.0304(11)(a) of the Wisconsin Statutes and Section 4 of the Joint Exercise Agreement.

Section 2. THE COUNTY OF BUNCOMBE HAS NO RESPONSIBILITY FOR THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE 2021 BONDS OR FOR ANY COSTS INCURRED BY THE BORROWERS WITH RESPECT TO THE 2021 BONDS OR THE PROJECTS FINANCED OR REFINANCED THEREWITH. THE COUNTY PLEDGES NEITHER ITS TAXING POWER NOR REVENUES FOR THE 2021 BONDS.

STATE OF NORTH CAROLINA)
)
COUNTY OF BUNCOMBE) SS:

I, LAMAR JOYNER, Clerk to the Board of Commissioners of the County of Buncombe, North Carolina, **DO HEREBY CERTIFY** that the foregoing is a true and exact copy of a resolution entitled “**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF BUNCOMBE, NORTH CAROLINA, APPROVING THE ISSUANCE BY THE PUBLIC FINANCE AUTHORITY (WISCONSIN) OF UP TO \$70,000,000 AGGREGATE PRINCIPAL AMOUNT OF ITS RETIREMENT FACILITIES REVENUE BONDS FOR THE PURPOSE OF FINANCING AND REFINANCING CERTAIN FACILITIES IN THE COUNTY OF BUNCOMBE, NORTH CAROLINA**” adopted by the Board of Commissioners of the County of Buncombe, North Carolina at a meeting held on September 7, 2021.

Lamar Joyner
Clerk to the Board of Commissioners
County of Buncombe, North Carolina

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE OF PUBLIC HEARING WITH RESPECT TO NOT TO EXCEED \$70,000,000 RETIREMENT FACILITIES REVENUE BONDS

Notice is hereby given that on September 7, 2021, a public hearing as required by Section 147(f) of the Internal Revenue Code of 1986, as amended (the “*Code*”), will be held by the Board of Commissioners of the County of Buncombe, North Carolina with respect to the proposed issuance of retirement facilities revenue bonds (the “*Bonds*”), in an aggregate principal amount not to exceed \$70,000,000.00 by the Public Finance Authority (the “*Authority*”). The hearing will commence at 5:00 p.m. or as soon thereafter as the matter can be heard, and will be held at 200 College Street, Room 326, Asheville, North Carolina 28801.

The Bonds are expected to be issued pursuant to Section 66.0304 of the Wisconsin Statutes, as amended, by the Authority, a commission organized under and pursuant to the provisions of Sections 66.0301, 66.0303 and 66.0304 of the Wisconsin Statutes, as amended. The proceeds from the sale of the Bonds will be loaned to The Givens Estates, Inc. and Givens Highland Farms, LLC, each a North Carolina nonprofit corporation and organization described in Section 501(c)(3) of the Code and one or more of their related or affiliated entities (the “*Borrowers*”), and used to (1) finance (a) routine capital improvements to a continuing care retirement community located at 2360 Sweeten Creek Road Asheville, North Carolina 28803 and known as “Givens Estates” (such improvements, the “*Givens Project*”) and (b) the acquisition, construction and equipping of 66 new apartments, multipurpose facilities (including new dining venues), and other additional capital improvements and renovations to a continuing care retirement community located at 200 Tabernacle Road, Black Mountain, North Carolina 28711 and known as “Highland Farms” (such improvements, the “*Highland Project*,” and together with the Givens Project, the “*Projects*”), (2) finance interest on the Bonds during the construction of the Projects, and (3) pay certain costs related to the issuance of the Bonds. The Bonds will constitute “qualified 501(c)(3) bonds” within the meaning of Section 145(a) of the Code.

The Projects will be owned and operated by the Borrowers. The maximum principal amount of Bonds to be issued to finance the Givens Project will not exceed \$25,000,000. The maximum principal amount of Bonds to be issued to finance the Highland Project will not exceed \$55,000,000.

The Bonds will be special limited obligations of the Authority payable solely from the loan repayments to be made by the Borrowers to the Authority, and certain funds and accounts established by the bond documents for the Bonds.

The public hearing will provide an opportunity for all interested persons to express their views, both orally and in writing, on the proposed issuance of the Bonds and the Projects to be financed. Any person interested in the issuance of the Bonds and the Projects to be financed may appear and be heard or submit written comments. Any person wishing to submit written comments regarding the proposed issuance of the Bonds and the Projects to be financed should do so prior to August 16, 2021, by mailing such written comments to the Clerk to the Board’s Office, 200 College Street, Asheville, North Carolina 28801. This notice is given pursuant to the provisions of Section 147(f) of the Code, Section 66.0304(11)(a) of the Wisconsin Statutes and Section 4 of the Amended and Restated Joint Exercise of Powers Agreement Relating to the Authority. Additional information concerning the Bonds and the Projects to be financed may be obtained from Jeffrey A. Poley, Esq., 301 Fayetteville Street, Suite 1400, Raleigh, NC 27601; Phone (919) 835-4659; Email Address: jeffpoley@parkerpoe.com.

COUNTY OF BUNCOMBE, NORTH CAROLINA

By: Lamar Joyner
Clerk to the Board of Commissioners
County of Buncombe, North Carolina

EXHIBIT B

CERTIFICATE AND SUMMARY

The undersigned Clerk to the Board of the County of Buncombe, North Carolina, hereby certifies:

1. Notice of a public hearing to be held on September 7, 2021, with respect to the issuance of bonds by the Public Finance Authority (the “*Authority*”) for the benefit of The Givens Estates, Inc. and Givens Highland Farms, LLC, each a North Carolina nonprofit corporation, was published on August 27, 2021 in the *Citizen-Times*.
2. The presiding officer was the Chair of the Board of Commissioners.
3. The following is a list of the names and addresses of all persons who spoke at the Hearing:
4. The following is a summary of the oral comments made at the Hearing:

IN WITNESS WHEREOF, my hand this September 7, 2021.

Lamar Joyner
Clerk to the Board of County Commissioners
County of Buncombe, North Carolina