

AGREEMENT TO CONTRIBUTE FUNDS
Madison County Nursing Home Bonds Defeasance

THIS AGREEMENT is made by and between the **MADISON COUNTY NURSING HOME** (the "Nursing Home"), a community hospital of the State of Mississippi, acting by and through its duly appointed and serving Board of Trustees, and **MADISON COUNTY, MISSISSIPPI** (the "County"), a county of the State of Mississippi, acting by and through its duly elected and serving Board of Supervisors.

WITNESSETH:

WHEREAS, the County and Nursing Home are authorized pursuant to §§ 41-13-10 *et seq.*, Mississippi Code of 1972, as amended (the "Act"), to contract with each other for necessary purposes related to the establishment, operation or maintenance of community hospitals and related programs wherever located, and may either accept from, sell or contribute to the other entities, monies, personal property or existing health facilities; and

WHEREAS, the Act further provides that owners of community hospitals are authorized and empowered to issue and sell bonds, notes or other evidences of indebtedness thereof, for the purpose of providing funds with which to acquire real estate for and to establish, erect, build, construct, remodel, add to, acquire, equip and furnish community hospitals, nurses' homes, health centers, health departments, diagnostic or treatment centers, rehabilitation facilities, nursing homes and related facilities, and that a board of supervisors acting for a county are authorized and empowered to levy ad valorem taxes on all the taxable property of such county for the purposes of raising funds for the maintenance and operation of hospitals, nurses' homes, health centers, health departments, diagnostic or treatment centers, rehabilitation facilities, nursing homes and related facilities, and for making additions and improvements thereto and to pledge such ad valorem taxes, whether or not actually levied, for the retirement of debt incurred either by or on behalf of such facilities and/or pursuant to agreements executed under the authority of the Mississippi Hospital Equipment and Facilities Authority Act; however, any debt incurred by the pledge of taxes to retire debt incurred either by or on behalf of such facilities and/or pursuant to such agreements shall not be included in debt limits prescribed by Section 19-9-5 unless and until such pledged taxes are actually levied, and such levy shall not exceed five (5) mills on the dollar in any one (1) year; and

WHEREAS, the Mississippi Development Bank, a public body corporate and politic of the State of Mississippi (the "Bank"), previously issued its Mississippi Development Bank Special Obligation Refunding Bonds, Series 2009 (Madison County, Mississippi Limited Tax Pledge Revenue Bonds Refunding Project), dated June 24, 2009 (the "2009 Bank Bonds"), in the original aggregate principal amount of \$8,000,000, under the terms and provisions of a Trust Indenture dated June 24, 2009 (the "2009 Indenture"), by and between the Bank and Trustmark

National Bank, Jackson, Mississippi, as trustee (in such capacity, the "2009 Trustee"), and there remains outstanding \$5,475,000 in aggregate principal amount of 2009 Bank Bonds; and

WHEREAS, the proceeds of the 2009 Bank Bonds were loaned by the Bank to the County and the Nursing Home in exchange for the County's and the Nursing Home's \$8,000,000 Promissory Note (Madison County, Mississippi Limited Tax Pledge Revenue Bonds Refunding Project), Series 2009 (the "2009 Note"), which 2009 Note was issued by the County and the Nursing Home pursuant to a Loan Agreement dated June 24, 2009 (the "2009 Loan Agreement") by and among the Bank, the County and the Nursing Home; and

WHEREAS, the County used the proceeds received from the sale of the 2009 Note under the 2009 Loan Agreement to provide funds to the County to (a) fund the Refunding Project, (b) fund a debt service reserve fund; and (c) paying for the costs of issuance of the 2009 Bank Bonds and the 2009 Note, along with payment for the Insurance Policy, as such capitalized terms are defined and described in the 2009 Indenture; and

WHEREAS, the Nursing Home has informed that County that the Nursing Home has earned and maintains on deposit an amount of cash necessary to prepay the obligations of the Nursing Home and the County under the 2009 Loan Agreement and the 2009 Note; and

WHEREAS, the County has determined to prepay the 2009 Note to or for the benefit of the holders of the 2009 Note and the 2009 Bank Bonds using funds provided by the Nursing Home; and

WHEREAS, the County desires, pursuant to the authority provided under the Act, the 2009 Loan Agreement and the 2009 Note, to prepay the 2009 Note in whole, and has prepared and distributed a notice to the 2009 Trustee providing for (i) the prepayment of the 2009 Note payable each June 1 in the years 2018 through 2029, both inclusive (the "Defeased 2009 Note"), with the funds to be provided from the Nursing Home to the County, (ii) the defeasance of all outstanding maturities of the 2009 Bank Bonds maturing June 1 in the years 2018 through 2029, both inclusive (the "Defeased 2009 Bank Bonds"), with the proceeds of the prepayment of the Defeased 2009 Note, and (iii) the optional redemption of such portion of the Defeased 2009 Bank Bonds maturing June 1 in the years 2020 through 2029, both inclusive (the "Callable 2009 Bank Bonds"), on June 1, 2019, at par; and

WHEREAS, to effect the prepayment to or for the benefit of the holders of the 2009 Note and the 2009 Bank Bonds, the County has approved the form of and execution of an Escrow Agreement (the "2009 Escrow Agreement"), by and among the Bank, the County and Trustmark National Bank, Jackson, Mississippi, as escrow agent (in such capacity, the "Escrow Agent"), regarding the defeasance of the Defeased 2009 Bank Bonds; and

WHEREAS, the County and the Nursing Home, in accordance with the 2009 Loan Agreement, desire to, and hereby do, enter into this Agreement to Contribute Funds (this "Agreement") wherein the Nursing Home agrees to pay to the County to or for the benefit of the holders of the 2009 Note and the 2009 Bank Bonds an amount of cash equal to at least the amount necessary to (a) fund the amounts required by the 2009 Escrow Agreement to provide for the defeasance of the Defeased 2009 Bank Bonds and the redemption of the Callable 2009 Bank Bonds on June 1, 2019, and (b) pay for the costs of such transaction.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the above and the mutual covenants and promises contained herein, the County and the Nursing Home do hereby agree as follows:

1. **DURATION:** This Agreement shall be in force and effect until all outstanding 2009 Bank Bonds are finally paid in full upon the final termination of the 2009 Escrow Agreement.

2. **PURPOSE:** The purpose of this Agreement is to define the responsibilities of the County and Nursing Home with respect to the defeasance of the Defeased 2009 Bank Bonds and the redemption of the Callable 2009 Bank Bonds and the payment of the costs thereof.

3. **STATUTORY AUTHORITY:** The County and Nursing Home are authorized to fulfill the terms of this Agreement under the authority of §§41-13-10 *et seq.*, Mississippi Code of 1972, as amended.

4. **DEFEASANCE PROJECT:** The "Defeasance Project" shall consist of (a) funding the 2009 Escrow Agreement in the amounts required thereby to defease the Defeased 2009 Bank Bonds and redeem the Callable 2009 Bank Bonds on June 1, 2019, at par, and (b) payment of all costs associated therewith.

5. **ADMINISTRATION:** This Agreement shall be administered as an undertaking of the Nursing Home to the County. A separate entity is not created under this Agreement.

(1) **County Obligations.** The County shall have the following obligations and responsibilities:

a. The County is designated as the legal entity assigned the responsibility for administration of this joint undertaking, and the Chancery Clerk of the County and the County Administrator are each hereby designated as the officers to receive, disburse and account for the funds of the undertaking in the manner prescribed by law.

b. The County will enter into the 2009 Escrow Agreement with the Bank and the Escrow Agent, and, as between the County and the Nursing Home, the County will be the

party obligated to ensure that all County approvals are undertaken and professionals employed in order to effect the Defeasance Project, including, without limitation, the adoption of appropriate resolutions and such other procedures and documents and distribution of notices as may be required of the County by the 2009 Indenture and the 2009 Loan Agreement.

c. Payment of the principal of and interest on the Defeased 2009 Bank Bonds will be secured and provided for by a pledge of the funds and securities within the 2009 Escrow Agreement. Subject to the County's verification of the County's receipt of the lawfully available Nursing Home Defeasance Funds (as defined herein below) under this Agreement, the County agrees to and shall use its own funds (the "County Defeasance Funds") to provide a payment to the Escrow Trustee of all necessary cash requirements of the 2009 Escrow Agreement and will use all reasonable efforts to undertake the establishment of the 2009 Escrow Agreement and completion of the Defeasance Project; provided, however, that the County will not pay any County Defeasance Funds for the Defeasance Project to the Escrow Agent until such time as the Nursing Home has complied with the prerequisites set forth herein, including the County's prior receipt of the Nursing Home Defeasance Funds.

d. "Nursing Home Defeasance Funds" shall mean the amount of Five Million Nine Hundred Thousand Dollars (\$5,900,000) cash of the Nursing Home to be paid by the Nursing Home to the County for use by the County as a reimbursement to the County for County's payment of the County Defeasance Funds to the Escrow Agent.

e. Costs of the Defeasance Project including, but not limited to, the fees and expenses thereof, will be paid from the proceeds of the County Defeasance Funds deposited with the Escrow Agent in the 2009 Escrow Agreement, provided that all such costs shall be reimbursed to the County from the Nursing Home Defeasance Funds.

f. The County hereby agrees to pay to the Nursing Home any amount of the Nursing Home Defeasance Funds that are or were in excess of the amounts required to be provided for the Defeasance Project and which remain on deposit with the County following the complete funding of the 2009 Escrow Agreement (including the professional and other costs associated therewith), which payment of such excess funds, if any, the County shall make to the Nursing Home within seven (7) business days following the funding of date of funding of the 2009 Escrow Agreement.

(2) **Nursing Home Obligations.** The Nursing Home shall have the following obligations and responsibilities:

a. As set forth in this Agreement, the Nursing Home shall pay to and deliver to the County all of the Nursing Home Defeasance Funds as security for the County's payment of the County Defeasance Funds.

b. The Nursing Home hereby agrees to execute any instruments consistent with this Agreement as may be reasonably necessary and required by the County or the County's Bond Counsel for the implementation and completion of the Defeasance Project and payment of the costs thereof.

c. The Nursing Home shall provide for the payment of all of the Nursing Home Defeasance Funds to the County no later than the date the County is to provide its verbal award to purchase securities to fund the 2009 Escrow Agreement (the "Nursing Home Funding Date"). Any payment by the Nursing Home of the Nursing Home Defeasance Funds on the Nursing Home Funding Date to the County shall be in such form and paid to such account as may be directed by the Chancery Clerk of the County or the County Administrator, so as to ensure that the Nursing Home Defeasance Funds are on deposit with the County prior to the Nursing Home Funding Date.

d. The Nursing Home hereby agrees that once paid to the County, the Nursing Home shall completely relinquish and have no rights to any of the Nursing Home Defeasance Funds.

e. Following the funding of the 2009 Escrow Agreement, if it is determined that any deficiencies exist in the amounts deposited in the 2009 Escrow Agreement, the Nursing Home agrees to pay the County any and all amounts necessary to cure any such deficiencies.

5. **PAYMENTS FOR THE BENEFIT OF HOLDERS.** All payments, including, without limitation, the payment from the Nursing Home to the County of the Nursing Home Defeasance Funds, the payment from the County to the 2009 Trustee or the 2009 Escrow Agent of the County Defeasance Funds, and the payment from the 2009 Trustee and 2009 Escrow Agent to the holders of the 2009 Bank Bonds under the 2009 Escrow Agreement, all as referenced herein, shall for all purposes be considered transfers of property to the holders of the 2009 Note and 2009 Bank Bonds on account of such 2009 Note and 2009 Bank Bonds.

6. **AMENDMENT:** This Agreement may be amended only by mutual written consent of the Nursing Home and the County.

7. **EFFECTIVE DATE:** This Agreement shall become effective from and after the date it has been approved by the governing authorities of the Nursing Home and County and executed by the parties hereto using multiple counterparts.

[The remainder of this page is intentionally left blank; signature page to follow.]

THIS AGREEMENT TO CONTRIBUTE FUNDS ENTERED into this the ____ day of _____, 2016.

MADISON COUNTY, MISSISSIPPI

By: _____
President, Board of Supervisors

ATTEST:

By: _____
Chancery Clerk

MADISON COUNTY NURSING HOME

By: *Cabell Mackin, President*
Authorized Signatory

ATTEST:

Rene Zupusky
Secretary

Signature page to the Agreement to Contribute Funds dated _____, 2017 between Madison County, Mississippi and the Madison County Nursing Home