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November 16, 1993

Charles R. Berry, Esq.
Titus, Brueckner & Berry
Suite B-252, Scottsdale Centre
7373 North Scottsdale Road
Scottsdale, Arizona 85253-3527

RE: Friendship Retirement Corporation
A.R.S. § 44-1843(A)(6)

Dear Mr. Berry:

On the basis of the facts set forth in your letter of March 24, 1993, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the securities registration requirements of the Securities Act of Arizona should the transaction take place as set forth in your letter. In this particular case, however, the Division is not granting no-action with respect to the dealer registration requirements and will require Friendship Retirement Corporation to register as an issuer-dealer pursuant to A.R.S. § 44-1801(9)(b) or to secure the services of a registered dealer to act as underwriter. Additionally, please note the filing requirements of A.R.S. § 44-1843(B), which apply to this transaction.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable. In addition, the granting of this no-action request should in no way be construed as approval of any prior activities of or offerings by Friendship Retirement Corporation or any of its affiliates.

We have attached a photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Dee Ridgell Harris".

DEE RIDDELL HARRIS
Director of Securities

DRH:lb
Attachment

LAW OFFICES

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A PROFESSIONAL CORPORATION

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March 24, 1993

TELEPHONE (602) 483-9600
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Of Counsel
JAMES B. CONNOR

Securities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Re: Friendship Retirement Corporation

Ladies and Gentlemen:

This letter is written on behalf of Friendship Retirement Corporation, an Arizona nonprofit corporation ("FRC") requesting a "no action" position from the Division that notes or bonds issued by FRC are securities exempt from the registration requirements of A.R.S. §§44-1841 and 44-1842 by virtue of the exemption contained in A.R.S. §44-1843(6). A check in the amount of \$200 is enclosed to cover your processing fee.

FRC is a nonprofit charitable corporation exempt from federal income tax under §501(c)(3) of the Internal Revenue Code. A copy of its determination letter issued by the Internal Revenue Service in January, 1973 is enclosed as Exhibit A. FRC proposes to restructure and refinance certain of its existing debt by issuing new promissory notes or bonds which will be secured by liens on certain real estate owned by FRC.

We have examined relevant facts, statutes, no action positions and legal precedents, and believe that the notes or bonds to be issued by FRC would constitute exempt securities under §1843(6), Arizona Revised Statutes.

A.R.S. §44-1843(6) exempts:

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Securities issued by a corporation organized and operated exclusively for religious, educational, benevolent, fraternal, charitable or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual, excluding, however, securities made liens upon revenue producing property subject to taxation and securities other than pooled income funds or units of pooled income funds under §642(c)(56) of the Internal Revenue Code issued by a nonprofit organization which is

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engaged in, intends to engage in, controls, finances, or lends funds or property to other entities engaged in the construction, operation, maintenance, or management of a hospital, sanatorium, rest home, clinic, medical hotel, mortuary, cemetery, mausoleum or other similar facilities.

As a nonprofit corporation, FRC has no capital stock, no stockholders and no members. Its business is conducted by its board of directors, who are selected by cooperating churches and others pursuant to FRC's bylaws. All net earnings, if any, are devoted exclusively to the charitable purposes for which FRC was organized. A copy of FRC's articles of incorporation and bylaws are included as Exhibit B. There can be no question that FRC is an issuing corporation falling within the exemption.

FRC owns and operates Glencroft, a Christian retirement community which offers a variety of lifestyles within a master planned community located in Glendale, Arizona. Glencroft includes 240 one and two bedroom garden apartments, 96 one and two bedroom condo apartments, 102 apartments in Glencroft Towers (which includes government subsidized rental facilities) and 120 one bedroom and efficiency Villa apartments, of which 20 are assisted living units. Glencroft also includes the Glencroft Care Center, a 225 bed Medicare certified skilled nursing facility, as well as recreation areas, community centers, dining halls, and other amenities. FRC's ownership of these facilities, and its operation of the care center and assisted living facilities, raise the issue of whether the exception to the exemption contained in the latter part of A.R.S. §44-1843(6) may apply.

Our analysis indicates that the mere ownership and operation of facilities, if it lacks a profit motive, will not prevent the notes and bonds from falling within the nonprofit exemption. We recognize that in cases where the sponsoring nonprofit organization finances developers or operators of a facility which has a profit motive, the exemption might not be appropriate. See Securities & Exchange Commission v. Children's Hospital, 214 F.Supp. 883 (D. Ariz. 1963). However, FRC's activities seem to fall squarely within the no-action position previously taken by the Division with respect to the Roman Catholic Church Diocese of Phoenix (February 18, 1992). In addition to owning cemeteries, the Diocese operated missions, schools and other facilities.

The only significant difference we perceive between the Catholic Diocese situation and that of FRC is that the FRC notes or bonds will be secured by liens on revenue producing property. These properties are owned and properties operated by FRC, and all

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revenues from operations are devoted to FRC's charitable purposes. No part of the notes or bonds will be secured by liens upon any revenue producing property subject to taxation. All of the revenue producing property owned by FRC is exempt from taxation, and has been so for 20 years.

Based upon the above analysis, we believe that the language of A.R.S. §44-1843(6) which excludes from the exemption certain securities issued in connection with financing structures where a profit motive exists, does not apply to the notes or bonds described herein to be issued by FRC. The exclusion was clearly designed to cover arrangements to finance for-profit operations by tax exempt entities. Here, FRC owns and operates its facilities totally within its 501(c)(3) organization, and its securities should be exempt from registration. FRC is aware that the exemption from registration does not obviate the need for FRC to comply with the full disclosure and antifraud provisions of the statute.

If you have any questions with regard to this request, please contact me.

Very truly yours,

TITUS, BRUECKNER & BERRY, P.C.


Charles R. Berry

CRB:df

Enclosures

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