

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES

**The North Carolina Medical Care Commission
701 Barbour Drive
Raleigh, North Carolina**

MINUTES

**CALLED MEETING OF THE EXECUTIVE COMMITTEE
CONFERENCE TELEPHONE MEETING ORIGINATING
FROM THE COMMISSION'S OFFICE**

JUNE 18, 2009

2:00 P.M.

Members of the Executive Committee Present:

Joesph D. Crocker, Vice-Chairman
George H.V. Cecil
Gerald P. Cox
Charles T. Frock

Members of the Executive Committee Absent:

Lucy Hancock Bode, Chairman
Mary L. Piepenbring
Dr. Robert E. Schaaf

Members of Staff Present:

Christopher B. Taylor, CPA, Assistant Secretary
Alice S. Creech, Bond Program Assistant

Others Present:

Alice Pinckney Adams, Robinson Bradshaw & Hinson, PA
Chan Chandler, Lutheran Retirement Ministries
Charles Harris, Lutheran Retirement Ministries
Scott Leo, Parker Poe Adams & Bernstein
Allen K. Robertson, Robinson Bradshaw & Hinson, PA

1. **Purpose of Meeting**

To authorize a letter of credit and remarketing agent for Lutheran Retirement Ministries and to authorize the financing of certain health care equipment for the benefit of Mission Hospital, Inc. pursuant to a master lease and sublease agreement.

2. **RESOLUTION AUTHORIZING THE SUBSTITUTION OF LETTER OF CREDIT AND REMARKETING AGENT FOR NORTH CAROLINA MEDICAL CARE COMMISSION HEALTH CARE FACILITIES REVENUE AND REVENUE REFUNDING BONDS (LUTHERAN RETIREMENT MINISTRIES PROJECT), SERIES 2007.** – Remarks were made by Charles Harris, Chan Chandler, and Scott Leo.

Executive Committee Action: Motion was made by Mr. George H.V. Cecil, seconded By Mr. Gerald Cox and unanimously approved.

PREAMBLES

WHEREAS, the North Carolina Medical Care Commission (the “*Commission*”), is a commission of the Department of Health and Human Services of the State of North Carolina and is authorized under Chapter 131A of the General Statutes of North Carolina, as amended (the “*Act*”), to borrow money and to issue in evidence thereof bonds and notes for the purpose of providing funds to pay all or any part of the cost of financing or refinancing health care facilities;

WHEREAS, Lutheran Retirement Ministries of Alamance County, North Carolina (the “*Borrower*”), is a private, nonprofit corporation duly incorporated and validly existing under and by virtue of the laws of the State of North Carolina, is an organization duly qualified under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, with its principal offices and facilities located in Elon, North Carolina, and owns and operates certain assisted living facilities and independent living facilities located in Elon, North Carolina;

WHEREAS, the Commission issued its Health Care Facilities Revenue and Revenue Refunding Bonds (Lutheran Retirement Ministries Project), Series 2007 (the “*Bonds*”) pursuant to a Trust Agreement, dated as of October 1, 2007 (the “*Trust Agreement*”), between the Commission and The Bank of New York Trust Company, N.A., as Bond Trustee, and loaned the proceeds thereof to the Borrower pursuant to the terms of a Loan Agreement, dated as of October 1, 2007 (the “*Loan Agreement*”), between the Commission and the Borrower, to finance and refinance certain improvements on the Borrower’s campus;

WHEREAS, SunTrust Bank currently provides an irrevocable, direct-pay letter of credit (the “*Credit Facility*”) to secure the Borrower’s obligations related to the Bonds and Raymond James & Associate currently serves as the remarketing agent for the Bonds;

WHEREAS, the Borrower has requested that the Commission approve the substitution of the Credit Facility provided by SunTrust Bank for the Bonds with an Alternate Credit Facility to

be provided by Branch Banking and Trust Company and the replacement of Raymond James & Associates as remarketing agent for the Bonds with BB&T Capital Markets, a division of Scott & Stringfellow, LLC:

NOW, THEREFORE, THE EXECUTIVE COMMITTEE OF THE NORTH CAROLINA MEDICAL CARE COMMISSION DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. ***Definitions.*** Capitalized words and terms used in this Resolution and not defined herein shall have the same meanings in this Resolution as such words and terms are given in the Trust Agreement and the Loan Agreement.

Section 2. ***Substitution of Credit Facility and Remarketing Agent.*** The provision of an Alternate Credit Facility for the Bonds by Branch Banking and Trust Company is hereby approved. The removal of Raymond James & Associates as remarketing agent for the Bonds and the appointment of BB&T Capital Markets, a division of Scott & Stringfellow, LLC as the remarketing agent for the Bonds is hereby approved.

Section 3. ***Approval of All Acts.*** All other acts and deeds of the officers and agents of the Commission previously taken and to be taken that are in conformity with the purposes and intent of this Resolution and in furtherance of the substitution of the letter of credit for the Bonds and the replacement of the remarketing agent for the Bonds, including, but not limited to, the execution and delivery of any certificates, instruments and documents necessary in connection therewith, are hereby approved, ratified and confirmed.

Section 4. ***Severability.*** If any court of competent jurisdiction determines that any section, paragraph, clause or provision of this Resolution is invalid and unenforceable, such determination will not invalidate any other provision of this Resolution.

Section 5. ***Repealer.*** All ordinances, resolutions or orders, or parts thereof, in conflict with the provisions of this Resolution are repealed to the extent they are inconsistent with this Resolution.

Section 6. ***Headings.*** Any headings in this Resolution are solely for convenience of reference and will not constitute a part of this Resolution nor will they affect its meaning, construction or effect.

Section 7. ***Effective Date.*** This Resolution will take effect immediately upon adoption.

3. **Resolution of the North Carolina Medical Care Commission Authorizing Financing in the Aggregate Principal Amount of up to \$30,000,000 of Health Care Equipment for the Benefit of Mission Hospital, Inc.-** Remarks were made by Alice Adams & Allen Robertson.

Executive Committee Action: Motion was made by Mr. Gerald Cox, seconded By Mr. Charles Frock and unanimously approved with George H. V. Cecil abstaining from the vote.

WHEREAS, the North Carolina Medical Care Commission (the “Commission”) is a commission of the Department of Health and Human Services of the State of North Carolina and is authorized under Chapter 131A of the General Statutes of North Carolina, as amended (the “Act”), to (i) finance health care facilities and pay all or any part of the cost thereof from funds available to the Commission for such purpose, (ii) acquire personal property constituting health care facilities by lease upon such terms and at such cost as shall be agreed upon by the owner and the Commission, (iii) lease as lessor personal property, (iv) lease any health care facility to a nonprofit agency for operation and maintenance, (v) fix and collect rents for the use of health care facilities, and (vi) pledge and assign the revenues and receipts from any health care facilities and any lease and the rent received thereunder; and

WHEREAS, Mission Hospital, Inc. (“Mission Hospital”) is a nonprofit corporation duly incorporated and validly existing under and by virtue of the laws of the State of North Carolina and is a “non-profit agency” within the meaning of the Act, the sole corporate member of which is Mission Health System, Inc. (“Mission Health”); and

WHEREAS, Mission Hospital has made application to the Commission requesting that the Commission provide financing for the cost of acquiring certain health care equipment for the benefit of Mission Hospital pursuant to a master lease and sublease agreement; and

WHEREAS, the Commission has determined that the public will best be served by the proposed financing and, by a resolution adopted on January 22, 2009 by the Executive Committee, has approved the financing, subject to compliance by Mission Hospital with the conditions set forth in such resolution, and Mission Hospital has complied with such conditions to the satisfaction of the Commission; and

WHEREAS, there have been presented at this meeting draft copies of the following documents relating to the financing:

(a) a Master Lease and Sublease Agreement to be dated on or after July 1, 2009 (the “Master Lease”) among First-Citizens Bank & Trust Company (“Lessor”), the Commission and Mission Hospital, including the form of Schedule (as defined in the Master Lease) attached as Exhibit A-3 thereto (the Master Lease and a Schedule being referred to herein as an “Agreement” and collectively as the “Agreements”), pursuant to which the Commission will lease medical, computer, office and capital equipment for use at Mission Hospital’s or its affiliates’ health care facilities (collectively, the “Equipment”) from Lessor (the obligations of the Commission to make payments to Lessor for the use of Equipment pursuant to an Agreement being referred to herein as a “Lease” and collectively as the “Leases”) and sublease the Equipment to Mission Hospital, and Lessor, on behalf of the Commission, will pay or provide the proceeds of the Leases in the aggregate principal amount of up to \$30,000,000 to Mission Hospital for the purpose of financing and reimbursing the cost of acquiring and installing the Equipment (the “Project”); and

(b) a Corporate Guaranty and Negative Pledge Agreement to be dated on or after July 1, 2009 (the "Guaranty Agreement") from Mission Health to Lessor pursuant to which Mission Health will guarantee the payment and performance of all of Mission Hospital's obligations under the Agreements; and

WHEREAS, the Commission has determined that Mission Hospital is financially responsible and capable of fulfilling its obligations under the Agreements; and

WHEREAS, the Commission has determined that adequate provision has been made for the payment of the principal of, prepayment premium, if any, and interest on the Agreements;

NOW, THEREFORE, THE NORTH CAROLINA MEDICAL CARE COMMISSION DOES HEREBY RESOLVE, as follows:

Section 1. Capitalized words and terms used in this Resolution and not defined herein shall have the same meanings in this Resolution as such words and terms are given in the Master Lease.

Section 2. Pursuant to the authority granted to it by the Act, the Commission hereby authorizes the incurrence of the Leases in the aggregate principal amount of up to \$30,000,000. Each Lease shall be repaid and shall bear interest upon the terms and conditions set forth in such Agreement.

Section 3. Each Lease shall be subject to prepayment at the times, upon the terms and conditions, and with the premium set forth in the related Agreement.

Section 4. The proceeds of each Lease shall be applied as provided in the related Agreement. The Commission hereby finds that the use of the proceeds of the Leases to finance the cost of the Project will accomplish the public purposes set forth in the Act.

Section 5. The forms, terms and provisions of the Master Lease are hereby approved in all respects, and any of the Chairman, the Vice Chairman, any member of the Commission designated by the Chairman, the Secretary and the Assistant Secretary of the Commission are each hereby authorized and directed to execute and deliver the Master Lease in substantially the form presented at this meeting, together with such changes, modifications and deletions as they, with the advice of counsel, may deem necessary and appropriate, and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

Section 6. Any of the Chairman, the Vice Chairman, any member of the Commission designated by the Chairman, the Secretary and the Assistant Secretary of the Commission are each hereby authorized and directed to execute and deliver Schedules in substantially the form of Exhibit A-3 to the Master Lease, together with such changes, modifications and deletions as they, with the advice of counsel, may deem necessary and appropriate, and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

Section 7. The forms, terms and provisions of the Guaranty Agreement are hereby approved in substantially the forms presented to this meeting, together with such changes, modifications, insertions and deletions as the Chairman, Vice Chairman, Secretary or the Assistant Secretary of the Commission (or any member of the Commission designated by the Chairman), with the advice of counsel, may deem necessary and appropriate, and the execution and delivery of the Master Lease by the Commission shall be conclusive evidence of the approval of the Guaranty Agreement by the Commission.

Section 8. Any of the Chairman, the Vice Chairman, any member of the Commission designated by the Chairman, the Secretary and any Assistant Secretary of the Commission are each hereby authorized and directed (without limitation except as may be expressly set forth herein) to take such action and to execute and deliver any such documents, certificates, financing statements, undertakings, agreements or other instruments as they, with the advice of counsel, may deem necessary or appropriate to effect the transactions contemplated by the Agreements.

Section 9. This Resolution shall take effect immediately upon its passage.

4. Adjournment

There being no further business, the meeting was adjourned at 2:30 p.m.

Respectfully submitted,

Christopher B. Taylor, CPA
Assistant Secretary