

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
SEPTEMBER 10, 2009
10:00 A.M.**

Members of the Executive Committee Present:

Lucy Hancock Bode, Chairman
George H.V. Cecil
Gerald P. Cox
Charles T. Frock

Members of the Executive Committee Absent:

Joseph D. Crocker, Vice-Chairman
Mary L. Piepenbring
Dr. Robert E. Schaaf

Members of Staff Present:

William J. Horton, DSHR Acting Director/NCMCC Acting Secretary
Christopher B. Taylor, CPA, Assistant Secretary

Others Present:

Kevin Dougherty, McGuire Woods, LLP
Alice Pinckney Adams, Robinson, Bradshaw & Hinson, P.A.

1. **Purpose of Meeting**

To consider for approval a resolution authorizing the conversion of a \$30,000,000 North Carolina Medical Care Commission Health Care Facilities First Mortgage Revenue Bonds (Community Facilities Project), Series 2007A to a Bank Qualified Mode and the appointment of a successor remarketing agent for the North Carolina Medical Care Commission Health Care Facilities Revenue Bonds (Lenoir Memorial Hospital Project), Series 2005.

2. **RESOLUTION AUTHORIZING THE CONVERSION OF \$30,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF THE OUTSTANDING NORTH CAROLINA MEDICAL CARE COMMISSION HEALTH CARE FACILITIES FIRST MORTGAGE REVENUE BONDS (COMMUNITY FACILITIES PROJECT), SERIES 2007A TO A BANK-QUALIFIED MODE-** Remarks were made by Kevin Dougherty.

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

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; and

WHEREAS, Community Facilities, Inc. (the "Corporation") is a not-for-profit corporation duly incorporated and validly existing under and by virtue of the laws of the State of New York and a "nonprofit agency" within the meaning of the Act; and

WHEREAS, the Commission has heretofore issued its Health Care Facilities First Mortgage Revenue Bonds (Community Facilities Project), Series 2007A in the original aggregate principal amount of \$30,125,000 (the "Series 2007A Bonds") and its Taxable Health Care Facilities First Mortgage Revenue Bonds (Community Facilities Project), Series 2007B in the original aggregate principal amount of \$1,765,000 (the "Series 2007B Bonds" and, together with the Series 2007A Bonds, the "Bonds") for the purpose of providing funds, together with other available funds, to (i) refund the Commission's Health Care Facilities First Mortgage Revenue Bonds (DePaul Community Facilities Project), Series 1998, issued in the original principal amount of \$4,645,000; (ii) refund the Commission's Health Care Facilities First Mortgage Revenue Bonds (DePaul Community Facilities Project), Series 1999, issued in the original principal amount of \$14,315,000; (iii) refund the mortgage note, dated as of January 12, 1998, insured by the Federal Housing Administration with respect to Woodridge House (as defined in the Original Loan Agreement hereinafter mentioned); (iv) retire certain indebtedness incurred to finance the acquisition of East Towne House (as defined in the Original Loan Agreement); (v) pay, or reimburse the Corporation for paying, a portion of the cost of the Series 2007A Project (as defined in the Original Loan Agreement) and a portion of the cost of the Series 2007B Project (as defined in the Original Loan Agreement); and (vi) pay certain expenses

incurred in connection with the issuance of the Series 2007A Bonds and the Series 2007B Bonds; and

WHEREAS, the Bonds were issued under and are secured by a Trust Agreement, dated as of October 1, 2007 (the “Original Trust Agreement”), by and between the Commission and The Bank of New York Mellon Trust Company, N.A., as bond trustee (the “Bond Trustee”); and

WHEREAS, simultaneously with the issuance of the Bonds, the Corporation and the Commission entered into a Loan Agreement, dated as of October 1, 2007 (the “Original Loan Agreement”), pursuant to which the Commission loaned the proceeds of the Bonds to the Corporation and as evidence of the loan, the Corporation executed and delivered its Series 2007 Note (as defined in the Original Loan Agreement) to the Commission; and

WHEREAS, the Commission entered into the Original Trust Agreement for the purpose of authorizing the Bonds and securing the payment thereof by assigning its rights as the registered owner of the Series 2007 Note and certain of its rights under the Original Loan Agreement; and

WHEREAS, the Corporation provided additional security for the repayment of the Bonds by the delivery to the Bond Trustee of an irrevocable, direct-pay letter of credit issued by RBS Citizens, N.A. (the “Bank”) pursuant to a Reimbursement Agreement, dated as of October 1, 2007 (the “Reimbursement Agreement”), by and between the Bank and the Corporation; and

WHEREAS, the Series 2007A Bonds are currently Outstanding (as defined in the Original Trust Agreement) in the aggregate principal amount of \$30,030,000 and the Series 2007B Bonds are currently Outstanding (as defined in the Original Trust Agreement) in the aggregate principal amount of \$1,635,000; and

WHEREAS, the Bonds are currently bearing interest at a Variable Interest Rate (as defined in the Original Trust Agreement); and

WHEREAS, the municipal credit markets for variable rate demand obligations are unsettled and the cost of capital to the Corporation evidenced by the Bonds is uncertain; and

WHEREAS, the Corporation is now desirous of converting the Series 2007A Bonds to a new interest rate mode, and for the purpose of Sections 103 and 141 to 150 of the Internal Revenue Code of 1986, as amended (the “Code”), “reissuing” the Series 2007A Bonds as “qualified tax-exempt obligations” within the meaning of Section 265(b) of the Code; and

WHEREAS, the Commission has determined to enter into an Amended and Restated Trust Agreement, dated as of September 1, 2009 (the “Amended and Restated Trust Agreement”), with the Bond Trustee, for the purpose of amending and the restating the Original Trust Agreement in its entirety, in order to provide for the conversion of the Series 2007A Bonds, in the aggregate principal amount of \$30,000,000, to bear interest in a bank-qualified mode (the “Bank-qualified Conversion”); and

WHEREAS, pursuant to Section 1003 of the Original Trust Agreement, the Bank is deemed to be the Holder of the Bonds for purposes of giving any consents required under Section 1102 of the Original Trust Agreement; and

WHEREAS, the Bank is willing to give its consent to the terms and provisions of the Amended and Restated Trust Agreement and the amendment of the Original Trust Agreement, to purchase the Series 2007A Bonds subject to the Bank-qualified Conversion, and to make a taxable loan to the Corporation for the purpose of retiring the balance of the Series 2007A Bonds (\$30,000) and all of the Series 2007B Bonds; and

WHEREAS, Bond Counsel is willing to render the opinion of counsel required by Section 1106 of the Original Trust Agreement in connection with the execution and delivery of the Amended and Restated Trust Agreement; and

WHEREAS, the Commission has determined that the public will best be served by the proposed Bank-qualified Conversion described above, and, by resolution adopted on August 14, 2009, has approved the Bank-qualified Conversion, subject to compliance by the Corporation with the conditions set forth in such resolution, and the Corporation 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 Bank-qualified Conversion:

(a) the Purchase Agreement, to be dated September 17, 2009 or such other date as shall be acceptable to the parties thereto (the "Purchase Agreement"), between the Corporation and the Bank, pursuant to which the Bank will purchase the Series 2007A Bonds subject to the Bank-qualified Conversion;

(b) the Amended and Restated Trust Agreement;

(c) the Amended and Restated Loan Agreement, dated as of September 1, 2009 (the "Amended and Restated Loan Agreement"), by and between the Commission and the Corporation, which amends and restates the Original Loan Agreement in its entirety; and

(d) the Supplement to Reimbursement Agreement, dated as of September 1, 2009 (the "Supplement to Reimbursement Agreement"), by and between the Corporation and the Bank; and

WHEREAS, the Commission has determined that, taking into account the historical financial performance of the Corporation and financial forecasts internally generated by the Corporation, the Corporation is financially responsible and capable of fulfilling its obligations under the Amended and Restated Loan Agreement; and

WHEREAS, the Commission has determined that the public interest will be served by the proposed Bank-qualified Conversion and that, taking into account the historical financial performance of the Corporation and financial forecasts internally generated by the Corporation, adequate provision has been made for the payment of the principal of, redemption premium, if any, and interest on the Series 2007A Bonds subject to the Bank-qualified Conversion;

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

Section 1. The forms, terms and provisions of the Amended and Restated Trust Agreement and the Amended and Restated Loan Agreement are hereby approved in all respects, and the Chairman, the Vice Chairman or any member of the Commission designated in writing by the Chairman of the Commission for such purpose and the Secretary or any Assistant Secretary of the Commission are hereby authorized and directed to execute and deliver the Amended and Restated Trust Agreement and the Amended and Restated Loan Agreement in substantially the forms presented to this meeting, together with such changes, modifications and deletions, as they, with the advice of counsel, may deem necessary and appropriate; such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

Section 2. The form of the Series 2007A Bonds bearing interest at the Bank Purchase Interest Rate (as defined in the Amended and Restated Trust Agreement) set forth in the Amended and Restated Trust Agreement is hereby approved in all respects and the Chairman, the Vice Chairman or any member of the Commission designated in writing by the Chairman of the Commission for such purpose and the Secretary or any Assistant Secretary of the Commission are hereby authorized and directed to execute, by manual or facsimile signature as provided in such form of the Series 2007A Bonds, and to deliver to the Bond Trustee for authentication on behalf of the Commission, the Series 2007A Bonds in definitive form, which shall be in substantially the form presented to this meeting, together with such changes, modifications and deletions as they, with the advice of counsel, may deem necessary, appropriate and consistent with the Amended and Restated Trust Agreement; such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

Section 3. The forms, terms and provisions of the Purchase Agreement and the Supplement to Reimbursement Agreement are hereby approved in substantially the forms presented at this meeting, together with such changes, modifications and deletions as the Chairman, the Vice Chairman or any member of the Commission designated in writing by the Chairman of the Commission, with the advice of counsel, may deem necessary and appropriate; the execution and delivery of the Amended and Restated Trust Agreement pursuant to Section 1 of this Resolution shall be conclusive evidence of the approval by the Commission of the Purchase Agreement and the Supplement to Reimbursement Agreement.

Section 4. The Commission hereby designates the Series 2007A Bonds, in the aggregate principal amount of \$30,000,000, as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3)(B) of the Code, and the Commission hereby approves and authorizes the Bank-qualified Conversion of such Series 2007A Bonds.

Section 5. The Chairman, the Vice Chairman, any member of the Commission designated in writing by the Chairman of the Commission, the Secretary and any Assistant Secretary of the Commission are 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, undertakings, consents, agreements or other instruments, as they, with the advice of counsel, may deem necessary or appropriate to effect the Bank-qualified Conversion and the

transactions contemplated by the Amended and Restated Trust Agreement, the Amended and Restated Loan Agreement, the Purchase Agreement and the Supplement to Reimbursement Agreement.

Section 6. This Resolution shall take effect immediately upon its passage.

3. **Resolution of the North Carolina Medical Care Commission Approving the Appointment of BB&T Capital Markets, a division of Scott & Stringfellow, LLC as Remarketing Agent for the North Carolina Medical Care Commission Health Care Facilities Revenue Bonds (Lenoir Memorial Hospital Project) Series 2005-** Remarks were made by Alice Pinckney Adams.

Executive Committee Action: Motion was made Mr. Charles Frock, seconded by Mr. Gerald Cox and unanimously approved.

WHEREAS, the North Carolina Medical Care Commission (the "Commission"), a commission of the Department of Health and Human Services of the State of North Carolina, has issued \$22,000,000 aggregate principal amount of its Health Care Facilities Revenue Bonds (Lenoir Memorial Hospital Project) Series 2005 (the "Bonds"), of which \$20,180,000 is outstanding, pursuant to the terms of a Trust Indenture, dated as of September 1, 2005 (the "Trust Indenture"), between the Commission and Branch Banking and Trust Company, as bond trustee (the "Trustee"); and

WHEREAS, the Commission loaned the proceeds from the sale of the Bonds to Lenoir Memorial Hospital, Incorporated (the "Corporation") pursuant to a Loan Agreement, dated as of September 1, 2005 (the "Loan Agreement"), between the Commission and the Corporation; and

WHEREAS, since their initial issuance, the Bonds have been bearing interest at the Weekly Rate and are subject to optional and mandatory tender; and

WHEREAS, Wachovia Bank, National Association is currently serving as Remarketing Agent for the Bonds, and a letter of credit (the "Credit Facility") issued by Wachovia Bank, National Association secures the payment of principal and purchase price of and interest on the Bonds when due; and

WHEREAS, the Corporation has arranged for Branch Banking and Trust Company to deliver a letter of credit (the "Alternate Credit Facility") to replace the Credit Facility and secure the payment of principal and purchase price of and interest on the Bonds when due; and

WHEREAS, in connection with the delivery of the Alternate Credit Facility, the Corporation has requested that Wachovia Bank, National Association resign as Remarketing Agent and that the Commission consent to the Corporation's appointment of BB&T Capital Markets, a division of Scott & Stringfellow, LLC, as successor Remarketing Agent for the Bonds pursuant to Section 10.1(d) of the Trust Indenture; and

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


Section 1. The appointment by the Corporation of BB&T Capital Markets, a division of Scott & Stringfellow, LLC, as successor Remarketing Agent for the Bonds is hereby approved. The Chairman, Vice Chairman, the Secretary or any Acting Secretary and the Assistant Secretary of the Commission (or any member of the Commission designated by the Chairman) are hereby authorized and directed to take such action and to execute and deliver any and all documents, certificates, undertakings, agreements or other instruments as they, with the advice of bond counsel, may deem necessary or appropriate to effect the appointment of BB&T Capital Markets, a division of Scott & Stringfellow, LLC, as successor Remarketing Agent for the Bonds.

Section 2. This Resolution shall take effect immediately upon its passage.

4. **Adjournment**

There being no further business, the meeting was adjourned at 10:20 a.m.

Respectfully submitted,


Christopher A. Taylor, CPA
Assistant Secretary