

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES

**The North Carolina Medical Care Commission
809 Ruggles Drive
Raleigh, North Carolina**

MINUTES

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

September 20, 2012

11:00 A.M.

Members of the Executive Committee Present:

Joseph D. Crocker, Vice-Chairman
Dr. George Binder
George H.V. Cecil
Albert F. Lockamy
Mary L. Piepenbring
Dr. Carl Rust

Members of the Executive Committee Absent:

Lucy Hancock Bode, Chairman

Members of Staff Present:

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

Others Present:

Tommy Brewer, BB&T Capital Markets
Steve Cordell, Nexsen Pruet, PLLC
Ken Durham, Local Government Commission
Charles Long, CN Davis

1. Purpose of Meeting

To consider a series resolution authorizing the issuance of up to \$27,665,000 North Carolina Medical Care Commission Retirement Facilities First Mortgage Revenue Bonds (Cornelia Nixon Davis, Inc. Project), Series 2012 and to consider a resolution that grants preliminary approval to a project for Cumberland County Hospital System, Inc. d/b/a Cape Fear Valley Health System.

2. SERIES RESOLUTION AUTHORIZING THE ISSUANCE OF \$27,665,000 NORTH CAROLINA MEDICAL CARE COMMISSION UP TO RETIREMENT FACILITIES FIRST MORTGAGE REVENUE BONDS (CORNELIA NIXON DAVIS, INC. PROJECT), SERIES 2012- Remarks were made by Steve Cordell

Executive Committee Action: A motion was made by Dr. CK Rust, seconded by Mr. Al Lockamy and unanimously approved with Mr. George 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 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, Cornelia Nixon Davis, Inc. (the “Corporation”) is a North Carolina nonprofit corporation and a “non-profit agency” within the meaning and intent of the Act, which owns and operates retirement facilities for the elderly in Wilmington, North Carolina; and

WHEREAS, the Corporation has made an application to the Commission for a loan for the purpose of providing funds, together with other available funds, to (i) refund the Refunded Bonds (as defined in the hereinafter-mentioned Trust Agreement), (ii) pay, or reimburse the Corporation for paying, the cost of the Project (as defined in the hereinafter-mentioned Loan Agreement) and (iii) pay certain expenses incurred in connection with the authorization and issuance of the Bonds (as hereinafter defined); and

WHEREAS, the Commission has determined that the public will best be served by the proposed financing and, by a resolution adopted on August 12, 2011, has approved the issuance of the Bonds, 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 issuance of the Bonds:

- (a) the Contract of Purchase, to be dated September 27, 2012 or such other date as shall be agreed upon by the parties thereto (the “Contract of Purchase”), by and between the Local Government Commission of North Carolina (the “Local Government Commission”)

and Wells Fargo Bank, National Association (the "Bank"), and approved by the Commission and the Corporation;

(b) the Loan Agreement, to be dated as of September 1, 2012 or such other date as shall be agreed upon by the parties thereto (the "Loan Agreement"), by and between the Corporation and the Commission, pursuant to which the Commission will lend the proceeds of the Bonds to the Corporation;

(c) a Promissory Note, to be dated on or about September 27, 2012 (the "Note"), to evidence the obligations of the Corporation under the Loan Agreement;

(d) the Trust Agreement, to be dated as of September 1, 2012 or such other date as shall be agreed upon by the parties thereto (the "Trust Agreement"), by and between the Commission and Wells Fargo Bank, National Association, as bond trustee (the "Bond Trustee"), securing the Bonds;

(e) the Continuing Covenant Agreement, to be dated as of September 1, 2012 or such date as shall be agreed upon by the parties thereto (the "Covenant Agreement"), by and between the Corporation and the Bank;

(f) a Reimbursement Note, to be dated on or about September 27, 2012 (the "Reimbursement Note"), to be executed and delivered by the Corporation to the Bank; and

(g) the Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement, to be dated as of September 1, 2012 (the "Deed of Trust"), from the Corporation to the deed of trust trustee named therein for the benefit of the beneficiaries named in the Deed of Trust; and

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

WHEREAS, the Commission has determined that the public interest will be served by the proposed financing and that, taking into account historical financial performance 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 Bonds;

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

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

Section 2. Authorization of Bonds. Pursuant to the authority granted to it by the Act, the Commission hereby authorizes the issuance of a series of revenue bonds consisting of up to

\$27,665,000 aggregate principal amount of North Carolina Medical Care Commission Retirement Facilities First Mortgage Revenue Bonds (Cornelia Nixon Davis, Inc. Project), Series 2012 (the "Bonds"), dated the Issue Date, and having a final stated maturity date of September 1, 2032.

The Bonds shall be issued as fully registered bonds, initially in the denominations of \$250,000 and any integral multiple of \$5,000 in excess of \$250,000, provided that the Bonds may be initially issued to, and purchased by, the Bank in any principal amount, and thereafter in denominations authorized by the provisions of the Trust Agreement. Commencing on the Issue Date, the Bonds shall bear interest at the LIBOR Index Rate, calculated as provided in the Trust Agreement. The initial LIBOR Index Rate shall be the rate of interest per annum equal to (i) the product of (x) 75% and (y) the LIBOR Index plus (ii) 1.28% per annum, adjusted monthly and in accordance with the Trust Agreement. Thereafter the Bonds shall bear interest as provided in the Trust Agreement. Interest on the Bonds shall be payable on each Interest Payment Date on so much of the principal amount of the Bonds as shall be advanced from time to time pursuant to the Contract of Purchase, the Trust Agreement and the Loan Agreement. The Initial Bank Purchase Date shall be September 26, 2022.

Section 3. Redemption. The Bonds shall be subject to extraordinary, optional and mandatory redemption at the times, upon the terms and conditions, and at the price set forth in the Trust Agreement. The Sinking Fund Requirements for the Bonds are set forth in Schedule 1 attached to this Series Resolution.

Section 4. Optional and Mandatory Tender for Purchase. The Bonds shall be subject to optional and mandatory tender for purchase at the times, upon the terms and conditions, and at the price set forth in the Trust Agreement.

Section 5. Use of Bond Proceeds. The Commission hereby finds that the use of the proceeds of the Bonds for the purposes described in the preamble to this Series Resolution accomplishes the public purposes set forth in the Act. The proceeds of the Bonds shall be advanced as set forth in Section 2.08 of the Trust Agreement.

Section 6. Authorization of Loan Agreement and Trust Agreement. The forms, terms and provisions of the Loan Agreement and the Trust Agreement are hereby approved in all respects, and the Chairman, Vice Chairman or any member of the Commission designated in writing by the Chairman of the Commission for such purpose and the Secretary or the Assistant Secretary of the Commission are hereby authorized and directed to execute and deliver the Loan Agreement and the Trust 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, including but not limited to changes, modifications and deletions necessary to incorporate the final terms of the Bonds; and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

Section 7. Authorization of Contract of Purchase. The form, terms and provisions of the Contract of Purchase are hereby approved in all respects and the Chairman, Vice Chairman or any member of the Commission designated in writing by the Chairman of the Commission for such purpose is hereby authorized and directed to approve, by execution and delivery, the

Contract of Purchase in substantially the form presented to this meeting, together with such changes, modifications, insertions and deletions as the Chairman, Vice Chairman or such member of the Commission, 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 8. Forms of Bonds. The forms of the Bonds set forth in the Trust Agreement are hereby approved in all respects and the Chairman, Vice Chairman or any member of the Commission designated in writing by the Chairman of the Commission for such purpose and the Secretary or the Assistant Secretary of the Commission are hereby authorized and directed to execute, by manual or facsimile signature as provided in such forms of the Bonds, and to deliver to the Bond Trustee for authentication on behalf of the Commission, the Bonds in definitive form, which shall be 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, appropriate and consistent with the Trust Agreement; and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

Section 9. Approval of Other Financing Documents. The forms, terms and provisions of the Note, the Covenant Agreement, the Reimbursement Note and the Deed of Trust are hereby approved in substantially the forms presented at this meeting, together with such changes, modifications and deletions as the Chairman, Vice Chairman or any member of the Commission designated in writing by the Chairman of the Commission for such purpose, with the advice of counsel, may deem necessary and appropriate; and the execution and delivery of the Trust Agreement pursuant to Section 6 of this Series Resolution shall be conclusive evidence of the approval by the Commission of the agreements and instruments set forth in this Section 9.

Section 10. Purchase of Bonds. The Commission hereby approves the action of the Local Government Commission in awarding the Bonds to the Bank at a price not exceeding \$27,665,000 (representing the maximum principal amount of the Bonds). Payment for the Bonds by the Bank from time to time shall be made at the purchase price of 100% of so much of the principal amount of the Bonds as shall be advanced from time to time pursuant to the Contract of Purchase.

Upon their execution in the form and manner set forth in the Trust Agreement, the Bonds shall be deposited with the Bond Trustee for authentication, and the Bond Trustee is hereby authorized and directed to authenticate the Bonds upon the due and valid execution of the Trust Agreement, the Loan Agreement, the Note, the Covenant Agreement, the Reimbursement Note, the Deed of Trust and the Contract of Purchase by the parties thereto and thereafter the Bond Trustee shall deliver the Bonds to the Bank against payment therefor in accordance with and subject to the provisions of the Contract of Purchase.

Section 11. Commission Representatives. Drexdal R. Pratt, Secretary to the Commission, Christopher B. Taylor, C.P.A., Assistant Secretary to the Commission, Steven C. Lewis, Chief of the Construction Section of the Division of Health Service Regulation, and Kathy C. Larrison, Auditor to the Commission, are each hereby appointed a Commission Representative as that term is defined in the Loan Agreement, with full power to carry out the duties set forth therein.

Section 12. Ancillary Actions. The Chairman, the Vice Chairman, any member of the Commission designated in writing by the Chairman of the Commission for such purpose, the Secretary and the 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, agreements or other instruments as they, with the advice of counsel, may deem necessary or appropriate to effect the transactions contemplated by the Trust Agreement, the Loan Agreement, the Note, the Deed of Trust, the Covenant Agreement, the Reimbursement Note and the Contract of Purchase.

Section 13. Professional Fees. A comparison of the professional fees as set forth in the resolution adopted by the Commission granting preliminary approval of this financing with the actual professional fees incurred in connection with this financing is attached to this Series Resolution as Schedule 2.

Section 14. Effective Date. This Series Resolution shall take effect immediately upon its passage.

Schedule 1

Sinking Fund Requirements

<u>Year</u> <u>(September 1)</u>	<u>Amount</u>
2013	\$1,225,000
2014	1,215,000
2015	1,235,000
2016	1,250,000
2017	1,270,000
2018	1,290,000
2019	1,310,000
2020	1,325,000
2021	1,345,000
2022	1,365,000
2023	1,385,000
2024	1,405,000
2025	1,430,000
2026	1,450,000
2027	1,470,000
2028	1,495,000
2029	1,515,000
2030	1,540,000
2031	1,560,000
2032*	1,585,000

* Maturity

Schedule 2
Professional Fees

<u>Professional</u>	<u>Preliminary Approval</u>	<u>Actual</u>
Bank Fee	\$145,000	\$145,000
Accountant Fees	\$15,000	\$33,520
Corporation Counsel	\$20,000	\$20,000
Bond Counsel	\$40,000	\$50,000
Bank Counsel	\$30,000	\$30,000

3. **Cumberland County Hospital System, Inc., d/b/a/ Cape Fear Valley Health System, Fayetteville** -- Christopher B. Taylor and Tommy Brewer

Executive Committee Action: A motion was made by Mr. George Cecil, seconded by Ms. Mary Piepenbring and unanimously approved with Dr. George Binder and Dr. CK Rust abstaining from the vote.

Resolution: The Commission grants preliminary approval to a project for Cumberland County Hospital System, Inc. (d/b/a) (Cape Fear Valley Health System) to provide funds to be used together with other available funds, to refund the \$133,335,000 North Carolina Medical Care Commission Health Care Facilities Revenue Bonds (Cape Fear Valley Health System) Series 2008C currently outstanding in the amount of \$128,420,000. The refunding is estimated to generate a present value savings of 6.75% for a dollar amount of \$8.66 million in today's market. The project is in accordance with an application received as follows:

ESTIMATED SOURCES OF FUNDS

Par amount of bonds to be issued	\$135,925,000
2008C Bond Debt Service Reserve Funds	<u>11,360,393</u>
Total Sources of Funds	\$147,285,393

ESTIMATED USES OF FUNDS

Escrow deposit to refund Series 2008C Bonds	\$134,716,162
Debt Service Reserve Fund for Series 2012 Bonds	11,028,554
Underwriter's discount	1,087,400
Underwriter's counsel	75,000
Bond counsel (two law firms)	120,000
Corporation Counsel Fee	50,000
Accountants' fees	50,000
Rating agencies	105,000
Trustee fees	3,000
Printing	5,000
Local Government Commission fee	8,750
Miscellaneous	<u>36,527</u>
Total Estimated Uses of Funds	\$147,285,393

Tentative approval is given with the understanding that the governing board of Cape Fear Valley Health Systems accepts the following conditions:

1. The project will continue to be developed pursuant to the applicable Medical Care Commission guidelines.

2. Any required certificate of need must be in effect at the time of the issuance of the bonds or notes.
3. Financial feasibility must be determined prior to the issuance of bonds.
4. The project must, in all respects, meet requirements of §G.S. 131A (Health Care Facilities Finance Act).
5. The Executive Committee of the Commission is delegated the authority to approve the issuance of bonds for this project and may approve the issuance of such greater principal amount of the loan as shall be necessary to finance the project; provided, however, that the amount set forth above shall not be increased by more than ten percent (10%).
6. The bonds or notes shall be sold in such a manner and upon such terms and conditions as will, in the sole judgment of the Executive Committee of the Commission, result in the lowest cost to the facility and its patients.
7. The borrower will provide the Commission annually a copy of the Advocacy Needs Data Initiative (ANDI) form it files with the North Carolina Hospital Association (NCHA) in accordance with a resolution passed by the Commission on February 9, 2007 adopting the NCHA Community Benefits reporting format and methodology for hospitals reporting to the Commission.
8. All health care facilities and services directly or indirectly owned or controlled by the health care organization, including physician practices, shall be available to Medicare and Medicaid patients with no limitations imposed as a result of the source of reimbursement.
9. If public approval of the bonds is required for the purpose of Section 147(f) of the Internal Revenue Code of 1986, as amended (“Section 147(f)”), this tentative approval shall constitute the recommendation of the Commission that the Governor of the State of North Carolina (the “Governor”) approve the issuance of such bonds, subject to the satisfaction of the requirements of Section 147(f) concerning the holding of a public hearing prior to the submission of such recommendation to the Governor.

Based on information furnished by applicant, the project is:

1. Financially feasible	✓	Yes	_____	No	_____	N/A
2. Construction and related costs are reasonable		Yes	_____	No	_____	✓ N/A

Notes:

- 1) **Information from 2011 Audit**

Income from Operations	\$17,451,000
Increase in Net Assets	\$13,588,000
Net Cash provided by Operating Activities	\$66,449,000
Net increase (decrease) in Cash and Cash Equivalents (Primarily due to acquisition of investments)	(\$6,938,000)

- 2) **Long Term Debt Service Coverage Ratios - FYE 2011 - 4.12**

- 3) **Projected Long Term Debt Service Coverage Ratios**

FYE 2012	<u>3.57</u>
FYE 2013	<u>3.35</u>
FYE 2014	<u>3.30</u>
FYE 2015	<u>3.30</u>

- 4) **Community Benefits per ANDI Form for 2011** **\$80,555,000**
Bad Debts per ANDI Form **\$22,266,000**

- 5) **Bond Ratings**
Moody's - A3
Standard & Poor's - A-

- 6) **Senior Manager- BB&T Capital Markets**
Bond Counsel - Hunton & Williams
Co-Bond Counsel -The Charleston Group

4. Adjournment

There being no further business, the meeting was adjourned at 11:35 a.m.

Respectfully submitted,

Christopher B. Taylor, CPA
Assistant Secretary

Date: September 20, 2012

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