

**STATE OF NORTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

MEDICAL CARE COMMISSION QUARTERLY MEETING

**DIVISION OF HEALTH SERVICE REGULATION
701 BARBOUR DRIVE,
RALEIGH NC 27603**

November 13, 2009

9:00 A.M.

MINUTES

I. MEDICAL CARE COMMISSION PLANNING MEETING, NOVEMBER 13, 2009 – 3:00 p.m.

| MEMBERS PRESENT | MEMBERS ABSENT |
|--|---|
| Lucy H. Bode, Chairperson Joseph D. Crocker, Vice-Chairperson Gerald P. Cox George H.V. Cecil Charles T. Frock Mary L. Piepenbring Robert E. Schaaf, M.D. Elizabeth Kanof, M.D. Henry A. Unger, M.D. | Martha Barham, RN George A. Binder, M.D. Carl K. Rust, MD Margaret Weller-Stargell Albert F. Lockamy, Jr. RPh Clifford B. Jones, Jr. DDS James H. Leonard John A. Fagg, M.D. |
| <u>DIVISION OF HEALTH SERVICE REGULATION STAFF</u> | |
| Jeff Horton, Acting, Secretary, MCC; Acting Director, DHSR Christopher B. Taylor, CPA, Assistant Secretary, MCC William L. Warren, Chief, Construction Section, DHSR Diana Barbry, Administrative Assistant, MCC/DHSR Nadine Pfeiffer, Rules Coordinator, DHSR Steven Lewis, Construction Section, DHSR | |

COMMISSION ACTION

The Medical Care Commission held its planning meeting on Thursday, November 12, 2009 to review the agenda for Friday, November 13, 2009.

The agenda was referred without action to the Medical Care Commission meeting on November 13, 2009.

II. MEDICAL CARE COMMISSION QUARTERLY MEETING, NOVEMBER 13, 2009 – 9:00 a.m.

| MEMBERS PRESENT | MEMBERS ABSENT |
|--|---|
| Lucy H. Bode, Chairperson Joseph D. Crocker, Vice-Chairperson George H. V. Cecil Gerald P. Cox Carl K. Rust, II, M.D. Charles T. Frock John A. Fagg, M.D. Mary L. Piepenbring Robert E. Schaaf, M.D. Elizabeth Kanof, M.D. Henry A. Unger, M.D. | Martha Barham, RN George A. Binder, M.D. Margaret Weller-Stargell Albert F. Lockamy, Jr. RPh Clifford B. Jones, Jr. DDS James H. Leonard |
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III. CHAIRPERSON'S COMMENTS

Ms. Bode welcomed everybody to the meeting and asked the audience to introduce themselves, she then questioned the members to see if anyone had a conflict of interest with anything coming before the Commission at the meeting, Mr. Frock requested recusal from First Health and Mr. Cecil requested recusal from Mission Hospital.

IV. APPROVAL OF MINUTES from the August 14, 2009 meeting was requested (**Exhibit A**).

Commission Action: Motion made by Mr. Crocker, seconded by Mr. Cox and unanimously approved

V. DIVISION DIRECTOR'S REPORT

Mr. Horton reported on matters of interest to the Commission, he gave a brief overview of the budget issues that DHSR is currently facing, which is currently being managed by lapsed salaries, he also announced that Lee Hoffman, Chief of the Certificate of Need section would be retiring on December 1, 2009 after 34 years of service.

Other items to report on are listed below (**see Exhibits B –B/6**):

1. Quarterly Report on Bond Program (**attached as Exhibit B**).
2. Report on Split of Fixed and Variable Rate Debt by Borrowers (**attached as Exhibit B/6**).
3. The Executive Committee held telephone conference meetings on the following dates:

September 10, 2009 – 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. (attached as Exhibit B/1).

September 29, 2009 – To consider preliminary approval for a refunding bond issue for High Point Regional Health System. (attached as Exhibit B/2).

October 7, 2009 – To consider a Resolution for preliminary approval for refunding bond issues for First Health of the Carolinas and a Resolution for preliminary approval for a refunding bond issue for Aldersgate United Methodist Retirement Community. (attached as Exhibit B/3).

October 15, 2009 – To authorize the sale of bonds, the proceeds of which are to be loaned to Cypress Glen Retirement Community. (attached as Exhibit B/4).

October 22, 2009 – To consider approval for three resolutions which are (1) Series resolution authorizing the issuance of \$5,705,000 North Carolina Medical Care Commission Adjustable Rate Demand Health Care Facility Revenue Bonds (Cornelia Nixon Davis, Inc. Project), Series 2009, (2) To authorize the sale of bonds, the proceeds of which to be loaned to Duke University Health System, Inc., and (3) Series resolution authorizing the issuance of \$9,540,000 North Carolina Medical Care Commission Hospital Revenue Refunding Bonds (High Point Regional Health System), Series 2009. (attached as Exhibit B/5)

V. Presentation - NC Comprehensive Cancer Program**Walter L. Shepherd, M.A.**, Program Director
Executive Director – NC Advisory Committee on Cancer Coordination & Control

VI. Old Business:

1. Hospice Rules.....**Exhibit I**

Commission Action: Motion made by Mr. Unger, seconded by Mr. Crocker and unanimously approved

The Commission adopted the rules to mirror the federal condition of participation for Medicare for staffing requirements for RN in inpatient hospice facilities providing respite care.

2. In Home Aid Rules.....**Exhibit J**

Commission Action: Motion made by Mr. Crocker, seconded by Mr. Cox and unanimously approved

The Commission adopted the rules to add definitions for limited and extensive assistance and added clarification to the competency verification of non Nurse Aide I personnel.

3. Home Care Companion Sitter & Respite Service Rules.....**Exhibit K**

Commission Action: Motion made by Mr. Crocker, seconded by Mr. Cecil and unanimously approved

The Commission adopted the rules for in home companion sitter and respite services pursuant to G.S. 131 E 136.

VII. BOND PROJECTS

A. Mission Health System, Inc., Asheville, - Christopher B. Taylor & William L. Warren (**Exhibit C& H**)

Statements were given by Charles Ayscue, Sr. Vice President and CFO, Kathy Guyette, Vice President of Nursing & True Morse, Director of Facility Planning.

Commission Action: Motion made by Mr. Crocker, seconded by Mr. Cox and approved with the recusal of Mr. Cecil.

Resolved: The Commission grants preliminary approval to a project for Mission Health System, Inc. to provide funds, to be used together with other available funds, to finance (A) construction of a 117,000 sq. ft. outpatient Cancer Center; (B)

renovation of 35,000 sq. ft. of the 6th level of Dogwood building to accommodate a 32-bed acute care nursing unit; (C) renovation of 9,300 sq. ft. of a building at 400 Ridgefield Court to accommodate a pharmacy packaging system; (D) purchase of a 2.378 acre property with a 6,105 sq. ft. building at Hamilton Street; (E) upgrade of the HVAC and electrical systems of Fullerton building; (F) renovation of 9,800 sq. ft. of Fullerton building for surgery staff support; and (G) renovation of 5,600 sq. ft. of Fullerton building for surgery recovery (PACU); all in accordance with a preliminary application, plans and specifications and participation as follows:

ESTIMATED SOURCES OF FUNDS

| | |
|--|---------------------|
| Principal amount of bonds to be issued | \$60,000,000 |
| Mission Health equity contribution | 23,047,187 |
| Interest earned during construction | <u>293,721</u> |
| Total | \$83,340,908 |

ESTIMATED USES OF FUNDS

| | | |
|--|------------------|---------------------|
| Site costs: | | \$3,329,000 |
| Land acquisition: | | |
| (A) Cancer Center | \$ 29,000 | |
| (B) Dogwood Level 6 Upfit | 0 | |
| (C) 400 Ridgefield IV Prep / Dose Packaging | 0 | |
| (D) Hamilton Street Property and Building | 3,300,000 | |
| (E) Fullerton HVAC and Electrical Systems | 0 | |
| (F) Fullerton Surgery Support | <u>0</u> | |
| (G) Fullerton PACU | | |
| Construction contracts: | | 50,022,611 |
| (A) Cancer Center | \$ 37,373,611 | |
| (B) Dogwood Level 6 Upfit | 4,731,000 | |
| (C) 400 Ridgefield IV Prep / Dose Packaging | 1,591,000 | |
| (D) Hamilton Street Property and Building | 0 | |
| (E) Fullerton HVAC and Electrical Systems | 1,930,000 | |
| (F) Fullerton Surgery Support | 2,322,000 | |
| (G) Fullerton PACU | <u>2,075,000</u> | |
| Construction contingency | | 500,226 |
| Architect/engineer fees and reimbursables | | 4,504,828 |
| Moveable equipment | | 15,916,902 |
| Surveys, tests, insurance | | 1,075,795 |
| Consultants' fees related to construction | | 3,103,421 |
| Capitalized interest | | 3,898,125 |
| Underwriters' discount (\$10 per \$1000 Bonds) | | 600,000 |
| Accountants fees | | 62,500 |
| Legal fees for hospital counsel | | 30,000 |
| Bond counsel | | 50,000 |
| Underwriter's counsel | | 40,000 |
| Rating agencies | | 150,000 |
| Trustee fees | | 15,000 |
| Printing costs | | 7,500 |
| DHSR reimbursables and plan review | | 15,000 |
| LGC fee | | 3,500 |
| Miscellaneous | | <u>16,500</u> |
| Total | | \$83,340,908 |

Tentative approval is given with the understanding that the governing board of Mission Health System, Inc. 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 bonds 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 |

B. Arbor Acres United Methodist Retirement Community, Inc., Winston-Salem. – Christopher B. Taylor & William L. Warren (*Exhibit D&H*).

Statements were given by David Piner, CEO and Ken Boyles, CFO of Arbor Acres.

Commission Action: Motion made by Mr. Cecil, seconded by Mr. Cox and unanimously approved

Resolved: The Commission grants preliminary approval to a project for Arbor Acres United Methodist Retirement Community, Inc. located in Winston Salem to provide funds, to be used together with other available funds, a) to finance the construction of a 8,725 square foot, 12-bed addition to the Memory Care Unit with a spacious day-lighted multi-purpose room and b) to construct a 117,522 square foot, 72-bed licensed assisted-living building with beds to be housed in 60 units, including multiple activity areas, a community life center, therapy suite with a state of the art aqua-therapy pool, bathing spa, and accessible terrace gardens; all in accordance with a preliminary application, plans and specifications and participation as follows: The project will be funded as a Fixed Rate Bond Issue, a Bank Qualified Bond Issue or as a combination thereof.

ESTIMATED SOURCES OF FUNDS

| | |
|--|---------------|
| Principal amount of bonds to be issued | \$ 34,748,000 |
| Arbor Acres equity | 2,000,000 |

| | |
|-------------------------------------|----------------------|
| Interest earned during construction | <u>592,576</u> |
| Total | \$ 37,340,576 |

ESTIMATED USES OF FUNDS

| | |
|--|----------------------|
| Construction contracts: | |
| a) Fitzgerald Ctr.: Dementia Care Expansion | \$2,332,633 |
| Assisted Living Facility Addition | 22,004,703 |
| Construction contingency | 243,373 |
| Architect/engineer fees and reimbursables: (includes construction-related consultants' fees) | |
| a) Fitzgerald Ctr.: Dementia Care Expansion | 227,186 |
| Assisted Living Facility Addition | 1,312,324 |
| Moveable equipment | 767,012 |
| Furnishings | 1,200,000 |
| Bond interest during construction | 4,558,302 |
| Debt service reserve fund | 3,527,168 |
| Underwriters' discount | 882,875 |
| Feasibility fees | 75,000 |
| Accountants fees | 10,000 |
| Legal fees for Corporation counsel | 35,000 |
| Bond counsel | 55,000 |
| Underwriter's Counsel | 40,000 |
| Rating agencies | 25,000 |
| Trustee fees | 10,000 |
| Printing costs | 4,000 |
| DHSR reimbursables & plan review | 5,000 |
| Local Government Commission reimbursables | 3,500 |
| Miscellaneous | <u>22,500</u> |
| Total | \$ 37,340,576 |

Tentative approval is given with the understanding that the governing board of Arbor Acres United Methodist Retirement Community, Inc. 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 bonds 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. 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.
8. The borrower will comply with the Commission's Resolution: Community Benefits/Charity Care Agreement and Program Description for CCRC's as adopted on November 9, 2007.

Based on information furnished by applicant, the project is -

- | | | | | | | |
|--|----------|-----|-------|----|-------|-----|
| 1. Financially feasible | <u>✓</u> | Yes | _____ | No | _____ | N/A |
| 2. Construction and related costs are reasonable | <u>✓</u> | Yes | _____ | No | _____ | N/A |

C. United Methodist Retirement Homes, Inc. Wesley Pines Campus, Lumberton – Christopher B. Taylor & William L. Warren (*Exhibit E & H*)

Statements were given by Jonathan Erickson, Executive Director UMRH & Wade Rose, Executive Director of Wesley Pines.

Commission Action: Motion made by Mr. Crocker, seconded by Dr. Schaaf and unanimously approved

Resolved: The Commission grants preliminary approval to a project to provide funds, to be used together with other available funds, to finance the construction of a new 64,825 square-foot replacement health-care facility for United Methodist Retirement Homes, Inc. on the Wesley Pines campus located in Lumberton, N.C., to include: 62 nursing facility beds in 20 semi-private rooms and 22 private rooms, plus all required living, activities, exercise, and support spaces; 42 adult care beds (in 35 rooms, including 7 double-occupancy rooms) plus all required living, activities, exercise and support spaces; a central commons area with administrative and marketing offices, dining facilities, central kitchen, storage, laundry, and loading dock; and a separate 3,942 square-foot multi-purpose building; and a separate 2,520 square-foot maintenance building and trash enclosure all in accordance with a preliminary application, plans and specifications and participation as follows: The project will be funded by a Letter of Credit Backed Bond Issue or a Bank Qualified Bond Issue.

ESTIMATED SOURCES OF FUNDS

| | |
|--|---------------------|
| Principal amount of bonds to be issued | <u>\$15,400,000</u> |
| Total | \$15,400,000 |

ESTIMATED USES OF FUNDS

| | |
|--|---------------|
| Land acquisition | \$45,000 |
| Site utility development and accessibility costs | 302,000 |
| Construction contracts | 9,700,000 |
| Construction contingency (5% of construction contract) | 485,000 |
| Architect/engineer fees and reimbursables | 720,000 |
| Moveable equipment | 1,169,000 |
| Surveys, tests, insurance | 65,000 |
| Consultants' fees related to construction | 315,000 |
| Development Consultant Fees | 460,000 |
| Legal/Professional/Accounting/Other Consulting | 204,075 |
| Travel/Reimbursables/Administrative/Pre-Opening | 116,100 |
| Bond interest during construction | 1,237,856 |
| Letter of credit fee | 145,387 |
| Underwriters' discount/placement fee (\$10 per 1000 bonds) | 154,000 |
| Accountants fees | 15,000 |
| Legal fees for Hospital counsel | 35,000 |
| Bond counsel | 50,000 |
| Rating agencies | 15,000 |
| Trustee fees | 10,000 |
| Printing costs | 5,000 |
| DHSR reimbursables/Plan review fee | 5,000 |
| Local Government Commission reimbursables | 3,500 |
| Bank Commitment Fee | 77,886 |
| Bank Counsel | 40,000 |
| Title Insurance | 10,000 |
| Miscellaneous Costs | <u>15,196</u> |

Total

\$15,400,000

Tentative approval is given with the understanding that the governing board of United Methodist Retirement Homes, Inc. 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 bonds 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. 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.
8. The borrower will comply with the Commission's Resolution: Community Benefits/Charity Care Agreement and Program Description for CCRC's as adopted on November 9, 2007.

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 |

D. LUTHERAN SERVICES FOR THE AGING, INC.— Christopher B. Taylor & William L. Warren (*Exhibit F & H*)

Statements were given by Ted Goins, Executive Director of Lutheran Services.

Commission Action: Motion made by Mr. Crocker, seconded by Dr. Rust and unanimously approved

Resolved: The Commission grants preliminary approval to a project to provide funds, to be used together with other available funds, to finance projects for new construction, refinancing, equipment purchase, and land acquisition for Lutheran Services for the Aging, Inc. New construction includes a 67,869 square foot, 100 bed Skilled Nursing Facility for Lutheran Home located in Wilmington. Land acquisitions include land in Catawba County for a future replacement facility for Lutheran Home – Hickory West and land in Forsyth County near the Elms at Tanglewood in Clemmons for a future nursing home facility. Refinancing includes a taxable loan for the existing 104 bed assisted living facility, Elms at Tanglewood, and a taxable loan for two plots of land for Lutheran Home – Wilmington. Facility upgrades including but not limited to a new generator and installation for the Elms at Tanglewood are also proposed. The projects are to be funded through a Bank Qualified Bond with BB& T. All projects are in accordance with a preliminary application, plans and specifications and participation as follows:

ESTIMATED SOURCES OF FUNDS

| | |
|--|----------------|
| Principal amount of bonds to be issued | \$ 30,000,000 |
| Interest earned during construction | 35,577 |
| Equity contribution | <u>809,620</u> |

Total **\$ 30,845,197**

ESTIMATED USES OF FUNDS

| | | |
|--|------------------|----------------------|
| Land acquisition, survey fees, legal fees, and subsoil investigation | | \$ 4,000,000 |
| Forsyth County Property | \$2,000,000 | |
| Catawba County Property | <u>2,000,000</u> | |
| Site utility development and accessibility costs | | 770,000 |
| Lutheran Home - Wilmington | | |
| Construction contract | | 7,432,100 |
| 100 Bed SNF Lutheran Home – Wilmington (\$109.51 per s.f.) | | |
| New generator, installation and facility upgrades at Elms | | 500,000 |
| Architect and Engineering Fees | | 150,000 |
| Contingency (1% of construction) | | 743,210 |
| Moveable Equipment | | 713,000 |
| Refinancing Costs | | 14,025,000 |
| Lutheran Home – Wilmington Land | \$2,612,900 | |
| Wilmington Additional Land | 2,487,100 | |
| Elms at Tanglewood Land | <u>8,925,000</u> | |
| Start Up and Initial Operating Costs | | 798,799 |
| Bond Interest during Construction | | 1,083,033 |
| Placement Fee | | 300,000 |
| Feasibility Fees | | 55,000 |
| Accountant Fees | | 15,000 |
| Legal Fees for Corporate Counsel | | 25,000 |
| Bond Counsel | | 50,000 |
| Bank Commitment Fee | | 150,000 |
| Local Government Commission | | 3,500 |
| Bank Counsel | | 30,000 |
| Miscellaneous | | <u>1,555</u> |
| Total | | \$ 30,845,197 |

Tentative approval is given with the understanding that the governing board of Lutheran Services for the Aging, Inc. 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 bonds 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. 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.
8. The borrower will comply with the Commission’s Resolution: Community Benefits/Charity Care Agreement and

Program Description for CCRC's as adopted on November 9, 2007.

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 |

E. Galloway Ridge at Fearrington, Pittsboro - Christopher B. Taylor & William L. Warren (*Exhibit G & H*)

Statements were given by Jason Cronk, Executive Director of Galloway Ridge & Mike Kelly of Ziegler Capital Markets.

Commission Action: Motion made by Mr. Cox, seconded by Mr. Crocker and unanimously approved

Resolved: The Commission grants preliminary approval to a project for Galloway Ridge, Inc. to provide funds, to be used with other available funds, to finance the expansion of it's existing Continuing Care Retirement Community located in Pittsboro to include (A) an addition to the existing health care building for 14 new multi-unit housing with services beds, 24 new skilled-nursing beds, and 15 memory-impaired adult-care beds; (B) a renovation of the existing health-care building for 14 new adult-care beds; (C) one new cottage; (D) an expansion of the existing commons-building auditorium; (E) an expansion of the commons building; (F) a new maintenance building; (G) a new fitness center; (H) 66 new independent-living apartments; (I) a carport addition; and (J) site development Phase II all in accordance with a preliminary application, plans and specifications and participation as follows:

ESTIMATED SOURCES OF FUNDS

| | |
|--|---------------------|
| Principal amount of bonds to be issued | \$63,055,000 |
| Cash and negotiable securities from reserves | 271,000 |
| Interest earned during construction | 710,000 |
| Entrance Fees | <u>3,500,000</u> |
| Total | \$67,536,000 |

ESTIMATED USES OF FUNDS

| | |
|--|------------|
| Land acquisition: | \$450,000 |
| Construction contracts: | |
| (A) Health Care Addition | 9,780,000 |
| (B) Existing Health Care Renovations | 635,000 |
| (C) New Cottage | 320,000 |
| (D) Auditorium Expansion | 2,995,000 |
| (E) Commons Building Expansion | 2,645,000 |
| (F) New Maintenance Building | 500,000 |
| (G) New Duke Center (Fitness Center) | 1,620,000 |
| (H) New Independent Living Facility | 11,355,000 |
| (I) Carport Addition | 300,000 |
| (J) Site Development Phase II | 3,850,000 |
| Construction contingency | 2,040,000 |
| Architect/engineer fees and reimbursables: | |
| Architect | 2,176,000 |
| Master Planning | 80,000 |
| Civil Engineer (7% Site Costs) | 225,000 |
| Landscape architect | 110,000 |
| Other Consultants (AV, Acoustical, Dining, etc.) | 100,000 |
| Low Voltage Consultant | 50,000 |
| Reimbursable Expenses | 75,000 |
| Printing | 150,000 |
| Additional Services | 100,000 |

| | |
|---|---------------------|
| Moveable equipment | 1,750,000 |
| Surveys, tests, insurance | 227,000 |
| Owner's Representative | 250,000 |
| Preconstruction Services | 125,000 |
| Bondholder Construction Review Services | 120,000 |
| Development costs – CRSA | 1,675,000 |
| Unit density costs | 1,320,000 |
| Marketing costs | 1,575,000 |
| Unit tap fees | 889,000 |
| Accounting fees | 90,000 |
| Certificate of Need fees | 35,000 |
| Consulting fees for marketing & financial planning | 125,000 |
| Exterior sign package | 50,000 |
| Local fees and permits | 50,000 |
| Counsel fees (<i>during construction and opening</i>) | 125,000 |
| Appraisal | 25,000 |
| Bond interest during construction | 8,872,000 |
| Debt service reserve fund | 5,637,000 |
| Feasibility fees | 90,000 |
| Legal fees for corporation counsel | 65,000 |
| Bond counsel | 87,500 |
| Trustee fees | 9,000 |
| Printing costs | 10,000 |
| Mortgage, title recording and survey | 35,000 |
| Bank counsel (<i>Bank of Scotland</i>) | 75,000 |
| Underwriters discount (<i>\$18 per 1000 bonds</i>) | 1,135,000 |
| Operating reserve fund (<i>Funded from entrance fees</i>) | 1,500,000 |
| Working capital (<i>Funded from entrance fees</i>) | 2,000,000 |
| DHSR reimbursables and plan review | 15,000 |
| Local Government Commission reimbursables | 3,500 |
| Miscellaneous | <u>15,000</u> |
| Total | \$67,536,000 |

Tentative approval is given with the understanding that the governing board of Galloway Ridge at Fearington 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 bonds 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. 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.

8. The borrower will comply with the Commission's Resolution: Community Benefits/Charity Care Agreement and Program Description for CCRC's as adopted on November 9, 2007.

Based on information furnished by applicant, the project is -

| | | | | | | |
|--|-------------------------------------|-----|--------------------------|----|--------------------------|-----|
| 1. Financially feasible | <input checked="" type="checkbox"/> | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | N/A |
| 2. Construction and related costs are reasonable | <input checked="" type="checkbox"/> | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | N/A |

F. FirstHealth of the Carolinas, Inc. Pinehurst- Christopher B. Taylor

Statements were given by Charles Frock, of First Health.

Commission Action: Motion made by Mr. Crocker, seconded by Dr. Unger and approved with the recusal of Mr. Frock.

Resolved: The Commission grants preliminary approval to an amended project for FirstHealth of the Carolinas, Inc. to provide funds, to be used together with other available funds, to (1) refund \$20,185,000 of the \$50,000,000 North Carolina Medical Care Commission Health Care Facilities Variable Rate Demand Revenue Bonds (FirstHealth of the Carolinas Project) Series 2002, (2) refund \$29,400,000 of the \$75,015,000 Series 2008A and refund \$28,900,000 of the \$31,830,000 Series 2008B North Carolina Medical Care Commission Variable Rate Demand Health Care Facilities Revenue Refunding Bonds (FirstHealth of the Carolinas Project) Series 2008 and (3) refund the \$45,505,000 North Carolina Medical Care Commission Health Care Facilities Revenue Bonds (FirstHealth of the Carolinas Project) Series 2009B outstanding in the amount of \$45,505,000. The variable rate bonds (2002, 2008A, 2008B and 2009B) are being refunded to fixed rate bonds and bank qualified bonds in order to reduce debt and interest rate risk. The project is in accordance with an amended application received as set forth below:

Note: The amendment to the original approval dated October 7, 2009 increases the amount of 2002 Bonds to be refunded from \$5,680,000 to \$20,185,000.

ESTIMATED SOURCES OF FUNDS

| | |
|---|----------------------|
| Principal amount of bonds to be issued: | |
| 2009C | \$100,000,000 |
| 2010 | 30,000,000 |
| Bond discount | <u>(4,040,000)</u> |
| Total Sources | \$125,960,000 |

ESTIMATED USES OF FUNDS

| | |
|-------------------------------------|---------------|
| Amount to refund Series 2002 Bonds | \$20,185,000 |
| Amount to refund Series 2008A Bonds | 29,400,000 |
| Amount to refund Series 2008B Bonds | 28,900,000 |
| Amount to refund Series 2009B Bonds | 45,505,000 |
| Underwriters discount | 1,000,000 |
| Accountants fee | 25,000 |
| Corporation counsel | 75,000 |
| Bond counsel | 100,000 |
| Rating agencies | 100,000 |
| Trustee fee | 25,000 |
| Printing | 10,000 |
| LGC | 3,500 |
| Underwriters counsel | 80,000 |
| Financial advisor | 125,000 |
| Bank loan origination fee | 200,000 |
| Bank Qualified Bonds counsel fees | 130,000 |
| Miscellaneous | <u>96,500</u> |

Total

\$125,960,000

Tentative approval is given with the understanding that the governing board of First Health of the Carolinas, Inc. 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 | <input checked="" type="checkbox"/> | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | N/A |
| 2. Construction and related costs are reasonable | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No | <input checked="" type="checkbox"/> | N/A |

Notes:

A) Projected Long Term Debt Service Coverage Ratio

| | |
|------|-------|
| 2009 | 4.48% |
| 2010 | 4.92% |
| 2011 | 5.37% |
| 2012 | 5.88% |

B) Ratings

| | |
|-------------------|-----|
| Moody's | Aa3 |
| Standard & Poor's | AA- |
| Fitch | AA |

C) Community Benefits for 2008 per ANDI form for First Health of the Carolinas

| | |
|--------------------|------------------|
| Community Benefits | \$36,568,801 |
| Bad Debt | <u>8,094,640</u> |

Total \$44,663,441

G. RESOLUTION - Baptist Retirement Homes of North Carolina- Winston-Salem - Christopher B. Taylor

Statements were given by Christopher Taylor.

Commission Action: Motion made by Mr. Frock, seconded by Mr. Cecil and unanimously approved.

**RESOLUTION OF THE
NORTH CAROLINA MEDICAL CARE COMMISSION**

The North Carolina Medical Care Commission, a commission of the Department of Health and Human Services of the State of North Carolina (the "Commission"), acting at a regular scheduled meeting of the Commission on November 13, 2009, adopts the following resolution:

WHEREAS, the Commission is party to that certain Trust Agreement between the Commission and First-Citizens Bank & Trust Company ("First-Citizens"), dated as of October 1, 2001, securing \$40,285,000 Commission Health Care Facilities First Mortgage Revenue Bonds (Baptist Retirement Homes of North Carolina, Incorporated) Series 2001A (the "Series 2001A Trust Agreement") and that certain Trust Agreement between the Commission and First-Citizens, dated as of October 1, 2001, securing \$8,100,000 Commission Variable Rate Demand Health Care Facilities First Mortgage Revenue Bonds, Series (Baptist Retirement Homes of North Carolina, Incorporated) 2001B and \$5,900,000 Commission Variable Rate Demand Health Care Facilities First Mortgage Revenue Bonds (Baptist Retirement Homes of North Carolina, Incorporated) Series 2001C (the "Series 2001B and Series 2001C Trust Agreement," and, together with the Series 2001A Trust Agreement, the "Trust Agreements"); and

WHEREAS, pursuant to Section 913 of each of the Trust Agreements, First-Citizens wishes to resign as Bond Trustee under the Trust Agreements; and

WHEREAS, pursuant to Section 915 of each of the Trust Agreements, Baptist Retirement Homes of North Carolina, Incorporated (the "Corporation") has requested that the Commission appoint Branch Banking & Trust Company ("BB&T") as successor Bond Trustee; and

WHEREAS, BB&T has expressed its willingness to accept appointment as successor Bond Trustee; and

WHEREAS, the Commission, at the request Baptist Retirement Homes of North Carolina, agrees to appoint BB&T as successor Bond Trustee under the Trust Agreements pursuant to a Resignation, Appointment and Acceptance Agreement by and among the Commission, the Corporation, First-Citizens, and BB&T (the "Agreement"), substantially in the form attached hereto as **Exhibit A**; and

NOW, THEREFORE, BE IT RESOLVED, that the Commission hereby appoints BB&T as successor Bond Trustee under the Trust Agreements, pursuant to Section 915 of each of the Trust Agreements; and

BE IT FURTHER RESOLVED, that the Commission hereby approves the Agreement, substantially in the form attached hereto as **Exhibit A**; and

BE IT FURTHER RESOLVED, that the Commission authorizes the Assistant Secretary of the Commission to execute and deliver on behalf of the Commission the Agreement, together with any and all other documents, agreements or instruments necessary or appropriate to effectuate the terms of the Agreement, all with such terms and conditions as the Assistant Secretary shall approve, such approval to be evidenced conclusively by the Assistant Secretary's execution and delivery of the same.

The foregoing resolutions are effective November 13, 2009

Exhibit A

RESIGNATION, APPOINTMENT AND ACCEPTANCE AGREEMENT

This Resignation, Appointment And Acceptance Agreement (this "Agreement"), is dated as of November ___, 2009, by and among First-Citizens Bank & Trust Company ("First-Citizens"), Branch Banking & Trust Company ("BB&T"), Baptist Retirement Homes of North Carolina, Incorporated (the "Issuer"), and the North Carolina Medical Care Commission (the "Commission").

WITNESSETH:

A. First-Citizens currently serves as Master Trustee (the "Trustee") pursuant to the Master Trust Indenture by and between the Issuer and First-Citizens, dated as of October 1, 2001 (the "Trust Indenture"), the Supplemental Indenture for Obligation No. 1 by and between the Issuer and First-Citizens, dated as of October 1, 2001 (the "Supplemental Indenture for Obligation No. 1"), the Supplemental Indenture for Obligation No. 2 by and between the Issuer and First-Citizens, dated as of October 1, 2001 (the "Supplemental Indenture for Obligation No. 2"), and the Supplemental Indenture for Obligation No. 3 by and between the Issuer and First-Citizens, dated as of October 1, 2001 (the "Supplemental Indenture for Obligation No. 3", and together with the Supplemental Indenture for Obligation No. 1 and the Supplemental Indenture for Obligation No. 2, the "Supplemental Indentures"), subject to the terms and conditions therein. First-Citizens also serves as Bond Trustee (the "Bond Trustee") under the Trust Agreement between the Commission and First-Citizens, dated as of October 1, 2001, securing \$40,285,000 North Carolina Medical Care Commission Health Care Facilities First Mortgage Revenue Bonds Series 2001A (the "Series 2001A Trust Agreement"), and the Trust Agreement between the Commission and First-Citizens, dated as of October 1, 2001, securing \$8,100,000 North Carolina Medical Care Commission Health Care Facilities Variable Rate Demand Bonds Series 2001B and \$5,900,000 North Carolina Medical Care Commission Health Care Facilities Variable Rate Demand Bonds Series 2001C (the "Series 2001B and Series 2001C Trust Agreement" and, together with the Series 2001A Trust Agreement, the "Trust Agreements").

B. The Issuer, with the consent of the Commission, desires to appoint BB&T as successor Trustee under the Trust Indenture and the Supplemental Indentures, and the Commission desires to appoint BB&T as successor Bond Trustee under the Trust Agreements. First-Citizens desires to assign and transfer to BB&T, and BB&T desires to accept and perform the services, functions and duties of the Trustee under the Trust Indenture and the Supplemental Indentures and of the Bond Trustee under the Trust Agreements.

NOW THEREFORE, the signatories hereto, in consideration of the covenants and undertakings made herein, agree as follows:

1. Capitalized terms used but not defined herein shall have the respective meanings established for such terms under the Trust Indenture.

2. As of the "Effective Date" (as defined below), First-Citizens hereby resigns as Trustee under the Trust Indenture and the Supplemental Indentures, and as Bond Trustee under the Trust Agreements, and assigns and transfers to BB&T all of First-Citizens' rights, claims and obligations under the Trust Indenture, Supplemental Indentures, and Trust Agreements relating to services to be performed as Trustee and as Bond Trustee from and after the Effective Date, and all records maintained as Trustee and as Bond Trustee, necessary for administration from and after the Effective Date.

3. First-Citizens shall have no rights, claims or obligations under the Trust Indenture or the Supplemental Indentures as Trustee or under the Trust Agreements as Bond Trustee relating to services to be performed as Trustee and as Bond Trustee, from and after the Effective Date; *provided, however*, that First-Citizens shall retain its obligations, and shall retain its rights and claims, under the Trust Indenture, the Supplemental Indentures and the Trust Agreements for its performance of its services, functions and duties prior to the Effective Date.

4. The Issuer, with the consent of the Commission, hereby appoints BB&T as successor Trustee under the Trust Indenture and the Supplemental Indentures, and the Commission hereby appoints BB&T as successor Bond Trustee under the Trust Agreements, effective as of the Effective Date.

5. BB&T hereby accepts each of the foregoing appointments, and fully assumes, as of the Effective Date, the rights, claims and obligations of Trustee and agrees to perform the services, functions and duties of the Trustee under the Trust Indenture and the Supplemental Indentures, and as Bond Trustee under the Trust Agreements, as expressly provided therein.

6. The effective date of this Agreement (the "Effective Date") shall be the later of (i) the date that a fully executed copy of this Agreement is delivered to BB&T, or (ii) the date marking the end of any applicable notice period required for the appointment of successor trustees under the Trust Indenture and the Supplemental Indentures and for the appointment of successor bond trustees under the Trust Agreements.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed and delivered on its behalf.

BAPTIST RETIREMENT HOMES OF NORTH CAROLINA, INCORPORATED

By: _____
William B. Stillerman, President

FIRST-CITIZENS BANK & TRUST COMPANY

By: _____
Name: _____ Title: _____

BRANCH BANKING & TRUST COMPANY

By: _____
Name: _____ Title: _____

NORTH CAROLINA MEDICAL CARE COMMISSION

By: _____
Name: _____ Title: _____

H: Professional Fees

Commission Action: Motion made by Mr. Cecil, seconded by Mr. Crocker and unanimously approved

At the suggestion of Joe Crocker, the Commission decided that the series resolutions which it adopts and which authorizes the issuance of bonds and other debt, will for all debt issues contain a section setting forth a comparison of: (1) fees paid to various parties for a issue; (2) with the fees set forth in the preliminary resolution adopted by the Commission for financing.

VIII. Refunding of Commission Bond Issues

Commission Action: Motion made by Mr. Cecil, seconded by Mr. Crocker and unanimously approved

Resolved:

WHEREAS, the bond market is in a period of generally fluctuating interest rates, and

WHEREAS, in the event of decline of rates during the next quarter, refunding of certain projects could result in significant savings in interest expense thereby reducing the cost of health care to patients, and

WHEREAS, the Commission will not meet again until February 12, 2010

THEREFORE, BE IT RESOLVED; that the Commission authorizes its Executive Committee to approve projects involving only the refunding of existing Commission debt between this date and February 12, 2010.

IX. MEMBER REPORT – No reports from members was submitted

X. QUESTIONS FROM THE PUBLIC - The Chairperson will receive questions from the public.- No questions received.

XI. **ADJOURNMENT** - A motion to adjourn is requested.

Commission Action: Motion made by Mr. Cecil seconded by Mr. Crocker and unanimously approved

THE MEETING ADJOURNED AROUND 11:45 A.M.

Jeff Horton
Acting Secretary

Jeff Horton

12/7/2009

Date

2010 QUARTERLY MEETINGS

| DATES | LOCATIONS |
|-----------------------------------|--|
| February 11 & 12, 2010 | Division of Health Service Regulation <u>701 Barbour Drive, Raleigh, N.C.</u> Conference Room 201 |
| May 20 & 21, 2010 | Division of Health Service Regulation <u>701 Barbour Drive, Raleigh, N.C.</u> Conference Room 201 |
| August 12 & 13, 2010 | Division of Health Service Regulation <u>701 Barbour Drive, Raleigh, N.C.</u> Conference Room 201 |
| November 18 & 19, 2010 | Division of Health Service Regulation <u>701 Barbour Drive, Raleigh, N.C.</u> Conference Room 201 |

Thursday planning meetings will start at 4:00 p.m., and Friday meetings will start at 9:00 a.m.