

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

January 27, 2015

2:00 P.M.

Members of the Executive Committee Present:

John A. Fagg, MD, Chairman  
George H. V. Cecil  
Charles T. Frock  
Albert F. Lockamy, R.Ph.  
Mary L. Piepenbring

Members of the Executive Committee Absent:

Joseph D. Crocker, Vice-Chairman  
Charles H. Hauser

Members of Staff Present:

Christopher B. Taylor, CPA, Assistant Secretary  
Alice S. Creech, Executive Assistant

Others Present:

Charles Ayscue, Mission Health  
Kevin Dougherty, McGuire Woods, LLP  
Carol Goodrum, Mission Health

**1. Purpose of the Meeting**

To consider a resolution which grants preliminary approval to a project for Mission Health System, Inc. and to consent to a sale of a facility by DePaul and the accompanying redemption of the Bonds associated with the facility.

**2. Mission Health System, Inc. – Asheville – Christopher B. Taylor & Charles Ayscue**

**Executive Committee Action:** Motion was made by Mr. Lockamy, seconded by Ms. Piepenbring and unanimously approved with Mr. Cecil abstaining from the vote.

**Resolution:** The Commission grants preliminary approval to a project for Mission Health System, Inc., to provide funds to be used together, with other available funds, for an advance refunding of \$84,235,000 of the \$260,430,000 North Carolina Medical Care Commission Health System Revenue Bonds (Mission Health Combined Group) Series 2007 (outstanding in the amount of \$239,330,000). The advance refunding is expected to generate \$6,120,913 in present value savings. The project is in accordance with an application received as follows:

**ESTIMATED SOURCES OF FUNDS**

Principal amount of bonds to be issued	\$78,480,000
Premium on Bonds	15,190,927
Cash and negotiable securities form reserves	<u>2,008,350</u>
<b>Total Sources</b>	<b>\$95,679,277</b>

**ESTIMATED USES OF FUNDS**

Escrow to refund Series 2007 Bonds	\$94,963,307
Underwriters discount	392,400
Accountants fees	54,800
Corporation counsel	8,500
Bond counsel	60,000
Underwriters counsel	37,500
Rating services	142,520
Trustee fees and counsel	2,250
Escrow agent	5,000
Verification agent	2,250
Printing	2,000
Local Government Commission fee	<u>8,750</u>
<b>Total Uses</b>	<b>\$95,679,277</b>

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/conversion of the bonds or notes.
3. Financial feasibility must be determined prior to the issuance/conversion 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/conversion of bonds of 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/converted 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. The borrower will furnish, prior to the sale of or reissuance of the bonds or notes or execution of the leases, evidence that it is in compliance with the covenants of all of its outstanding Medical Care Commission debt.
10. 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                          | <u>  √  </u>  | Yes | <u>      </u> | No | <u>      </u> | N/A |
| 2. Construction and related costs are reasonable | <u>      </u> | Yes | <u>      </u> | No | <u>  √  </u>  | N/A |

**Notes:**

**(1) Information from 2013 audit on Mission Health System, Inc. and Affiliates (2014 audit not available)**

Operating Income	\$29,803,000
Change in unrestricted net assets	\$153,084,000
Change in net assets	\$163,306,000
Net Cash provided by operating activities	\$59,264,000
Net (decrease) increase in cash and cash equivalents (A)	(\$35,631,000)

(A) Due primarily to purchase of assets limited as to use and capital expenditures.

**(2) Ratings**

Moody's	<u>  Aa3  </u>
Standard & Poor's	<u>  Aa3  </u>
Fitch	<u>  AA-  </u>

**(3) Community Benefits per NCHA ANDI Report for Mission Hospital**

Total Community Benefits	\$112,926,190
Estimated Cost of Treating Bad Debt Patients	\$26,821,697

**(4) Long Term Debt Service Coverage Ratios**

Actual	FYE 2014	<u>  6.1  </u>
Forecasted	FYE 2015	<u>  4.5  </u>
Forecasted	FYE 2016	<u>  5.2  </u>
Forecasted	FYE 2017	<u>  4.9  </u>

**(5) Financing Participants**

Senior Manager (underwriter)	Wells Fargo Securities
Co-manager	Bank of America Merrill Lynch
Bond counsel	Womble Carlyle Sandridge & Rice, PLLC
Underwriter's counsel	McGuire Woods, LLC
Trustee	Bank of New York Mellon Trust Company, NA
Trustee counsel	Nexsen Pruettt, LLC
Borrower's counsel	Patla, Straus, Robinson, & Moore, P.A.

**3. RESOLUTION APPROVING THE RELEASE AND TERMINATION OF CERTAIN SECURITY INSTRUMENTS IN CONNECTION WITH THE SALE OF CHATHAM CREEK HOUSE AND THE PARTIAL REDEMPTION OF THE OUTSTANDING NORTH CAROLINA MEDICAL CARE COMMISSION HEALTH CARE FACILITIES FIRST MORTGAGE REVENUE BONDS (COMMUNITY FACILITIES PROJECT), SERIES 2007A** – Remarks were made by Kevin Dougherty

**Executive Committee Action:** Motion was made by Mr. Frock, seconded by Mr. 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 (the “Series 2007A Bonds”), which are currently outstanding in the aggregate principal amount of \$29,345,000, pursuant to a Trust Agreement, dated as of October 1, 2007 (the “Original Trust Agreement”), by and between the Commission and The Bank of New York Trust Company, N.A. (now known as The Bank of New York Mellon Trust Company, N.A.), as Bond Trustee (the “Bond Trustee”); and

**WHEREAS**, the Commission loaned the proceeds of the Series 2007A Bonds to the Corporation 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; (ii) refund the Commission’s Health Care Facilities First Mortgage Revenue Bonds (DePaul Community Facilities Project), Series 1999; (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 certain of the Acquired Facilities (as defined in the Original Trust 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), including the cost of acquiring an 80-bed adult care home located in the Town of Cary, North Carolina (“Chatham Creek House”), and the cost of acquiring and installing furnishings and equipment for use in, and constructing routine capital improvements and renovations at, Chatham Creek House; and (vi) pay certain expenses incurred in connection with the issuance of the Series 2007A Bonds; and

**WHEREAS**, simultaneously with the issuance of the Series 2007A 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 Series 2007A 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 Series 2007 Note is secured by the Deeds of Trust (as defined in the Original Loan Agreement) on certain real property located in Burke, Forsyth, Lincoln, Mecklenburg, Surrey, Union and Wake Counties, North Carolina, including the Deed of Trust, dated as of October 1, 2007 (the "Chatham Creek Deed of Trust"), covering the site of Chatham Creek House, the Chatham Creek House and certain other property of the Corporation as more fully described therein (the "Chatham Creek Mortgaged Property"); and

**WHEREAS**, the Corporation and DePaul Adult Care have entered into a Lease Agreement, dated as of October 1, 2007 (the "Chatham Creek Lease"), covering the site of Chatham Creek House, the Chatham Creek House and certain other property of the Corporation as more fully described therein (the "Chatham Creek Demised Premises"); and

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

**WHEREAS**, on September 17, 2009, the Commission and the Bond Trustee entered into an Amended and Restated Trust Agreement, dated as of September 1, 2009 (the Original Trust Agreement as so amended and restated is hereinafter referred to as the "Trust Agreement"), the Commission and the Corporation entered into an Amended and Restated Loan Agreement, dated as of September 1, 2009 (the Original Loan Agreement as so amended and restated is hereinafter referred to as the "Loan Agreement"), and the Series 2007A Bonds were converted to bear interest in a Bank Purchase Interest Rate Period (as defined in the Trust Agreement); and

**WHEREAS**, the Corporation has entered into a purchase and sale agreement with Agemark Acquisition, LLC, a North Carolina limited liability company (the "Purchaser"), pursuant to which the Corporation has agreed to sell Chatham Creek House to the Purchaser; and

**WHEREAS**, the Corporation has covenanted in the Loan Agreement that it will not take any action will, or fail to take any action which failure will, cause interest on the Series 2007A Bonds to become includable in the gross income of the owners of the Series 2007A Bonds for federal income tax purposes; and

**WHEREAS**, on the basis of advice received from Bond Counsel, the Commission and the Corporation have determined to take a remedial action described in U.S. Treasury Regulations Section 1.141-12(d), by redeeming \$3,525,000 in principal amount of the outstanding Series 2007A Bonds concurrently with the closing on the sale of Chatham Creek House to the Purchaser; and

**WHEREAS**, in connection with such sale of Chatham Creek House and such redemption of a portion of the Series 2007A Bonds, it will be necessary to release the liens or security interests

granted by the Chatham Creek Deed of Trust and the Chatham Creek Lease and otherwise terminate such instruments;

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

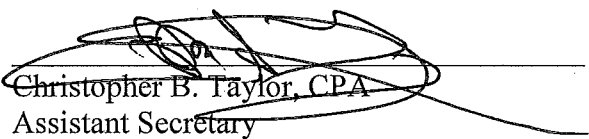
The Chairman, the Vice Chairman, any member of the Commission designated in writing by the Chairman of the Commission, the Secretary and the Assistant Secretary of the Commission are authorized and directed to take such action and to execute and deliver any such documents, certificates, undertakings, consents, agreements or other instruments, as they, with the advice of counsel, may deem necessary or appropriate to effect (a) the redemption of a portion (\$3,525,000) of the outstanding Series 2007A Bonds and (b) the release of the liens or security interests granted by the Chatham Creek Deed of Trust in the Chatham Creek Mortgaged Property and the Chatham Creek Lease in the Chatham Creek Demised Premises. The Chairman, the Vice Chairman, any member of the Commission designated in writing by the Chairman of the Commission, the Secretary and the Assistant Secretary of the Commission are also authorized to execute a replacement bond for the unredeemed portion of the Series 2007A Bonds and to deliver the same for authentication by the Bond Trustee in accordance with the provisions of the Trust Agreement.

This Resolution shall take effect immediately upon its passage.

**4. Adjournment**

There being no further business, the meeting was adjourned at 2:20 p.m.

Respectfully submitted,

  
Christopher B. Taylor, CPA  
Assistant Secretary