

**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  
JANUARY 22, 2009  
2:00 P.M.**

**Members of the Executive Committee Present:**

Lucy Hancock Bode, Chairman  
Joseph D. Crocker, Vice-Chairman  
George H.V. Cecil  
Gerald P. Cox  
Mary L. Piepenbring  
Dr. Robert E. Schaaf

**Members of the Executive Committee Absent:**

Charles T. Frock

**Members of Staff Present:**

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

**Others Present:**

Charles Ayscue, Mission Healthcare, Inc.  
Kevin Dougherty, McGuire Woods, LLP  
Carol Goodrum, Mission Healthcare, Inc.  
Bruce Gurley, Morgan Stanley  
Larry Hill, Mission Healthcare, Inc.

1. **Purpose of Meeting**

To consider a tax-exempt operating lease program for Mission Healthcare, Inc. and to approve the sale of bonds for North Carolina Baptist Hospital.

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

**Executive Committee Action:** A motion was made by Mr. Joseph Crocker, seconded by Mr. Gerald Cox, and unanimously approved with Mr. George H. V. Cecil abstaining from the vote.

**Resolution:** The Commission approves a project for Mission Health System, Inc. to fund a tax exempt operating lease program in the amount of \$30 million. The program will be through a master lease structure with a lessor to be determined and will have a beginning date of January 1, 2009 and an ending date of December 31, 2011. The lease program will fund the acquisition and installation of moveable equipment over the three year period, including, though not limited to, a CT scanner, a Linear Accelerator equipment to be used in the Dogwood and Cancer Center Projects, and other routine equipment. The project is in accordance with an application received as follows:

**ESTIMATED SOURCES OF FUNDS**

Tax Exempt Lease Financing	\$30,000,000
Corporation Equity	<u>50,000</u>
Total	<b>\$30,050,000</b>

**ESTIMATED USES OF FUNDS**

Moveable Equipment and Installation	\$30,000,000
Corporation Counsel	25,000
Bond Counsel	<u>25,000</u>
Total Use	<b>\$30,050,000</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 funding of the leases.
3. Financial feasibility must be determined prior to the issuance of the debt.
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 debt for this project and may approve the issuance of such

greater principal amount of the debt 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 debt or notes shall be financed 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 debt 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	_____	No	_____	N/A
2.	Construction and related costs are reasonable	_____	Yes	_____	No	<u>✓</u>	N/A

3. **SERIES RESOLUTION AUTHORIZING THE ISSUANCE OF \$157,000,000 NORTH CAROLINA MEDICAL CARE COMMISSION HOSPITAL REVENUE REFUNDING BONDS (NORTH CAROLINA BAPTIST HOSPITAL), SERIES 2009- Remarks were made by Kevin Dougherty and Bruce Gurley**

**Executive Committee Action:** A motion was made by Mr. Gerald Cox, seconded by Mr. George H. V. Cecil, and unanimously approved with Mrs. Lucy Hancock Bode 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; and

**WHEREAS**, North Carolina Baptist Hospital (the “Corporation”) is a private, nonprofit corporation duly incorporated and validly existing under and by virtue of the laws of the State of North Carolina; and

**WHEREAS**, the Corporation owns and operates health care facilities located in Winston-Salem, North Carolina; and

**WHEREAS**, the Commission has heretofore issued its Hospital Revenue Bonds (North Carolina Baptist Hospitals Project), Series 2002 (the “Series 2002 Bonds”), the proceeds of which have heretofore been loaned to the Corporation pursuant to a Loan Agreement, dated as of October 1, 2002, by and between the Commission and the Corporation; and

**WHEREAS**, the Corporation has made an application to the Commission for a loan for the purposes of providing funds, together with other available funds, to refund in whole the outstanding principal amount of the Series 2002 Bonds; and

**WHEREAS**, the Commission has determined that the public will best be served by the proposed refinancing and, by a resolution adopted by the Executive Committee of the Commission on October 9, 2008, has approved the issuance of the Bonds (as hereinafter defined), 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**, the Bonds will be issued in three series: Series 2009A (the “Series 2009A Bonds”), Series 2009B (the “Series 2009B Bonds”) and Series 2009C (the “Series 2009C Bonds”); and

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

(a) the Bond Purchase Agreement, to be dated the date of sale of the Series 2009A Bonds (the “2009A Bond Purchase Agreement”), by and between the Local Government Commission

of North Carolina (the “Local Government Commission”) and Merrill Lynch, Pierce, Fenner & Smith Incorporated (“MLPFS”), and approved by the Commission and the Corporation;

(b) the Bond Purchase Agreement, to be dated the date of sale of the Series 2009B Bonds and the Series 2009C Bonds (the “2009B/C Bond Purchase Agreement” and, together with the 2009A Bond Purchase Agreement, the “Bond Purchase Agreements”), by and between the Local Government Commission and Morgan Stanley & Co. Incorporated (“MS”), and approved by the Commission and the Corporation;

(c) the Supplemental Master Indenture for Obligation No. 10, to be dated as of January 1, 2009 or such other date as shall be agreed upon by the parties thereto (“Supplemental Indenture No. 10”), by and between the Corporation and First-Citizens Bank & Trust Company, as master trustee (the “Master Trustee”), supplementing the Amended and Restated Master Trust Indenture, dated as of June 1, 2000 (the “Master Indenture”), by and between the Corporation and the Master Trustee;

(d) the Supplemental Master Indenture for Obligation No. 12, to be dated as of January 1, 2009 or such other date as shall be agreed upon by the parties thereto (“Supplemental Indenture No. 12”), by and between the Corporation and Master Trustee, supplementing the Master Indenture, which shall be in substantially the form of Supplemental Indenture No. 10;

(e) the Supplemental Master Indenture for Obligation No. 14, to be dated as of January 1, 2009 or such other date as shall be agreed upon by the parties thereto (“Supplemental Indenture No. 14”), by and between the Corporation and Master Trustee, supplementing the Master Indenture, which shall be in substantially the form of Supplemental Indenture No. 10;

(f) the Trust Agreement, to be dated as of January 1, 2009 or such other date as shall be agreed upon by the parties thereto (the “2009A Trust Agreement”), by and between the Commission and First-Citizens Bank & Trust Company, as bond trustee (the “Bond Trustee”), the provisions of which relate to the issuance of and security for the Series 2009A Bonds;

(g) the Trust Agreement, to be dated as of January 1, 2009 or such other date as shall be agreed upon by the parties thereto (the “2009B Trust Agreement”), by and between the Commission and the Bond Trustee, the provisions of which relate to the issuance of and security for the Series 2009B Bonds, which shall be in substantially the form of the 2009A Trust Agreement;

(h) the Trust Agreement, to be dated as of January 1, 2009 or such other date as shall be agreed upon by the parties thereto (the “2009C Trust Agreement” and, collectively with the 2009A Trust Agreement and the 2009B Trust Agreement, the “Trust Agreements”), by and between the Commission and the Bond Trustee, the provisions of which relate to the issuance of and security for the Series 2009C Bonds, which shall be in substantially the form of the 2009A Trust Agreement;

(i) the Loan Agreement, to be dated as of January 1, 2009 or such other date as shall be agreed upon by the parties thereto (the “2009A Loan Agreement”), by and between the Corporation and the Commission, pursuant to which the Commission will lend the proceeds of the Series 2009A Bonds to the Corporation;

(j) the Loan Agreement, to be dated as of January 1, 2009 or such other date as shall be agreed upon by the parties thereto (the “2009B Loan Agreement”), by and between the Corporation and the Commission, pursuant to which the Commission will lend the proceeds of

the Series 2009B Bonds to the Corporation, which shall be in substantially the form of the 2009A Loan Agreement;

(k) the Loan Agreement, to be dated as of January 1, 2009 or such other date as shall be agreed upon by the parties thereto (the “2009C Loan Agreement” and, collectively with the 2009A Loan Agreement and the 2009B Loan Agreement, the “Loan Agreements”), by and between the Corporation and the Commission, pursuant to which the Commission will lend the proceeds of the Series 2009C Bonds to the Corporation, which shall be in substantially the form of the 2009A Loan Agreement;

(l) Obligation No. 10 of the Corporation, to be dated the date of its delivery (“Obligation No. 10”), to be issued by the Corporation to the Commission and assigned by the Commission to the Bond Trustee;

(m) Obligation No. 12 of the Corporation, to be dated the date of its delivery (“Obligation No. 12”), to be issued by the Corporation to the Commission and assigned by the Commission to the Bond Trustee, which shall be in substantially the form of Obligation No. 10;

(n) Obligation No. 14 of the Corporation, to be dated the date of its delivery (“Obligation No. 14”), to be issued by the Corporation to the Commission and assigned by the Commission to the Bond Trustee, which shall be in substantially the form of Obligation No. 10;

(o) the Remarketing Agreement, to be dated as of January 1, 2009 or such other date as shall be agreed upon by the parties thereto (the “2009A Remarketing Agreement”), by and among the Commission, the Corporation and MLPFS, as Remarketing Agent for the Series 2009A Bonds;

(p) the Remarketing Agreement, to be dated as of January 1, 2009 or such other date as shall be agreed upon by the parties thereto (the “2009B Remarketing Agreement”), by and among the Commission, the Corporation and MS, as Remarketing Agent for the Series 2009B Bonds;

(q) the Remarketing Agreement, to be dated as of January 1, 2009 or such other date as shall be agreed upon by the parties thereto (the “2009C Remarketing Agreement” and, collectively with the 2009A Remarketing Agreement and the 2009B Remarketing Agreement, the “Remarketing Agreements”), by and among the Commission, the Corporation and MS, as Remarketing Agent for the Series 2009C Bonds;

(r) the Tender Agent Agreement, dated as of January 1, 2009 (the “2009A Tender Agent Agreement”), by and between the Corporation and First-Citizens Bank & Trust Company, as tender agent (the “Tender Agent”), pursuant to which the Tender Agent will act in such capacity for the Series 2009A;

(s) the Tender Agent Agreement, dated as of January 1, 2009 (the “2009B Tender Agent Agreement”), by and between the Corporation and the Tender Agent, pursuant to which the Tender Agent will act in such capacity for the Series 2009B Bonds, which shall be in substantially the form of the 2009A Tender Agent Agreement;

(t) the Tender Agent Agreement, dated as of January 1, 2009 (the “2009C Tender Agent Agreement” and, collectively with the 2009A Tender Agent Agreement and the 2009B Tender Agent Agreement, the “Tender Agent Agreements”), by and between the Corporation and the Tender Agent, pursuant to which the Tender Agent will act in such capacity for the Series 2009C Bonds, which shall be in substantially the form of the 2009A Tender Agent Agreement;

(u) the Standby Bond Purchase Agreement, dated as of January 1, 2009 (the “2009A Standby Agreement”), among the Corporation, the Tender Agent and Wachovia Bank, National Association (“Wachovia”), relating to the Series 2009A Bonds;

(v) the Standby Bond Purchase Agreement, dated as of January 1, 2009 (the “2009B Standby Agreement”), among the Corporation, the Tender Agent and RBC Bank (USA) (“RBC”), relating to the Series 2009B Bonds;

(w) the Standby Bond Purchase Agreement, dated as of January 1, 2009 (the “2009C Standby Agreement” and, collectively with the 2009A Standby Agreement and the 2009B Standby Agreement, the “Standby Agreements”), among the Corporation, the Tender Agent and Branch Banking and Trust Company (“BB&T”), relating to the Series 2009C Bonds;

(x) the Supplemental Master Indenture for Obligation No. 11, to be dated as of January 1, 2009 or such other date as shall be agreed upon by the parties thereto (“Supplemental Indenture No. 11”), by and between the Corporation and the Master Trustee;

(y) the Supplemental Master Indenture for Obligation No. 13, to be dated as of January 1, 2009 or such other date as shall be agreed upon by the parties thereto (“Supplemental Indenture No. 13”), by and between the Corporation and the Master Trustee, which shall be in substantially the form of Supplemental Indenture No. 11;

(z) the Supplemental Master Indenture for Obligation No. 15, to be dated as of January 1, 2009 or such other date as shall be agreed upon by the parties thereto (“Supplemental Indenture No. 15” and, collectively with Supplemental Indentures No. 10 to No. 14, the “Supplemental Indentures”), by and between the Corporation and the Master Trustee, which shall be in substantially the form of Supplemental Indenture No. 11;

(aa) Obligation No. 11, to be dated the date of its delivery (“Obligation No. 11”), to be issued by the Corporation to Wachovia, as obligor under the 2009A Standby Agreement;

(bb) Obligation No. 13, to be dated the date of its delivery (“Obligation No. 13”), to be issued by the Corporation to RBC, as obligor under the 2009B Standby Agreement, which shall be in substantially the form of Obligation No. 11;

(cc) Obligation No. 15, to be dated the date of its delivery (“Obligation No. 15”, and, collectively with Obligations No. 10 to No. 14, the “Obligations”), to be issued by the Corporation to BB&T, as obligor under the 2009C Standby Agreement, which shall be in substantially the form of Obligation No. 11; and

(dd) the Official Statement of the Commission, dated January 22, 2009 (the “Official Statement”), relating to the Bonds; 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 Loan Agreements, the Obligations and the Supplemental Indentures; and

**WHEREAS**, the Commission has determined that the public interest will be served by the proposed refinancing 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.** 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 Trust Agreements and the Loan Agreements.

**Section 2.** Pursuant to the authority granted to it by the Act, the Commission hereby authorizes the issuance of the North Carolina Medical Care Commission Hospital Revenue Refunding Bonds (North Carolina Baptist Hospital), Series 2009 in the aggregate principal amount of \$157,000,000 (the “Bonds”), dated as of their original date of issuance and maturing on June 1, 2034. The Bonds shall be issued in three series: the Series 2009A Bonds in the principal amount of \$77,000,000, the Series 2009B Bonds in the principal amount of \$40,000,000 and the Series 2009C Bonds in the principal amount of \$40,000,000.

The Bonds shall be issued as fully registered bonds, initially in the denominations of \$100,000 and any integral multiple of \$5,000 in excess of \$100,000 and thereafter in denominations permitted by the provisions of the Trust Agreements. Commencing on the date of original delivery of the Bonds, the Series 2009A Bonds, the Series 2009B Bonds and the Series 2009C Bonds shall bear interest at Weekly Rates, each calculated as provided in the Trust Agreements. Thereafter the Series 2009A Bonds, the Series 2009B Bonds and the Series 2009C Bonds shall bear interest as provided in the Trust Agreements. Interest on the Bonds shall be payable on each Interest Payment Date as provided in the Trust Agreements.

**Section 3.** The Bonds shall be subject to mandatory, extraordinary and optional redemption at the times, upon the terms and conditions, and at the prices set forth in the Trust Agreements. In addition, the Bonds are subject to optional and mandatory tender for purchase at such times, under such circumstances and upon such terms and conditions as are set forth in the Trust Agreements.

**Section 4.** The proceeds of each Series of Bonds shall be applied as provided in Section 218 of the applicable Trust Agreement.

The Commission hereby finds that the use of the proceeds of the Bonds for the purpose described in the preamble to this Series Resolution accomplishes the public purposes set forth in the Act.

**Section 5.** The forms, terms and provisions of the Trust Agreements, the Loan Agreements and the Remarketing Agreements 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 Assistant Secretary of the Commission are hereby authorized and directed to execute and deliver the Trust Agreements, the Loan Agreements and the Remarketing Agreements 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 as shall be set forth in the Bond Purchase Agreements; and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

**Section 6.** The forms, terms and provisions of the Bond Purchase Agreements 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 Bond Purchase Agreements in substantially the forms 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 7.** The form of the Bonds set forth in each of the Trust Agreements is 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 Assistant Secretary of the Commission are hereby authorized and directed to execute, by manual or facsimile signature as provided in such form 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 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 Trust Agreements; and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

**Section 8.** The forms, terms and provisions of Supplemental Indentures, the Obligations, the Tender Agent Agreements and the Standby Agreements 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 Agreements pursuant to Section 5 of this Series Resolution shall be conclusive evidence of the approval by the Commission of the agreements and instruments set forth in this Section 8.

**Section 9.** The Commission hereby approves the action of the Local Government Commission in awarding (i) the Series 2009A Bonds to MLPFS in the principal amount of \$77,000,000, (ii) the Series 2009B Bonds to MS in the principal amount of \$40,000,000, and (iii) the Series 2009C Bonds to MS in the principal amount of \$40,000,000. The Commission hereby approves (i) payment by the Corporation from its own funds to MLPFS of \$127,050.00 as compensation for underwriting the Series 2009A Bonds and (ii) payment by the Corporation from its own funds to MS of \$132,000.00 as compensation for underwriting the Series 2009B Bonds and the Series 2009C Bonds.

**Section 10.** Upon their execution in the form and manner set forth in the Trust Agreements, the Bonds shall be deposited with the Bond Trustee for authentication, and the Bond Trustee is hereby authorized and directed to authenticate the Bonds and, upon the due and valid execution of the Bond Purchase Agreements, the Trust Agreements, the Supplemental Indentures, the Obligations, the Loan Agreements, the Remarketing Agreements, the Tender Agent Agreements and the Standby Agreements by the proper parties thereto, the Bond Trustee shall deliver the Bonds to MLPFS, the underwriter for the Series 2009A Bonds, and MS, the underwriter for the Series 2009B Bonds and the Series 2009C Bonds, against payment therefor, subject to the provisions of Section 218 of each of the Trust Agreements.

**Section 11.** The Commission hereby authorizes and approves the use and distribution of the Official Statement in connection with the sale of the Bonds, 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 to execute, on behalf of the Commission, the Official Statement; and such execution shall be conclusive evidence of the approval thereof by the Commission. The Commission hereby ratifies, approves and authorizes the distribution and use of copies of the Official Statement, the Trust Agreements, the Master Indenture, the Supplemental Indentures, the Obligations, the Loan Agreements, the Remarketing Agreements, the Tender Agent Agreements and the Standby Agreements by MLPFS and MS in connection with such sale.

**Section 12.** The Depository Trust Company (“DTC”), New York, New York, is hereby appointed as the initial Securities Depository for the Bonds, with Cede & Co., as nominee of DTC, being the initial Securities Depository Nominee and initial registered owner of the Bonds.

**Section 13.** Christopher B. Taylor, C.P.A., Assistant Secretary to the Commission, and William L. Warren, Chief of the Construction Section of the Division of Health Service Regulation, are each hereby appointed a Commission Representative as that term is defined in the Trust Agreements and the Loan Agreements, with full power to carry out the duties set forth therein.

**Section 14.** The Chairman, the Vice Chairman, any member of the Commission designated in writing by the Chairman of the Commission for such purpose and the Secretary or 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 Agreements, the Loan Agreements, the Bond Purchase Agreements, the Official Statement, the Master Indenture, the Supplemental Indentures, the Obligations, the Remarketing Agreements, the Tender Agent Agreements and the Standby Agreements.

**Section 15.** This Series Resolution shall take effect immediately upon its passage.

#### **4. Adjournment**

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

Respectfully submitted,

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Christopher B. Taylor, CPA  
Assistant Secretary

January 22, 2009

