

**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  
JUNE 3, 2010  
11:00 A.M.**

**Members of the Executive Committee Present:**

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

**Members of the Executive Committee Absent:**

None

**Members of Staff Present:**

Jeff Horton, DHSR Acting Director/NCMCC Acting Secretary  
Christopher B. Taylor, CPA, NCMCC Assistant Secretary  
Alice S. Creech, NCMCC Bond Program Assistant

**Others Present:**

Allen K. Robertson, Robinson Bradshaw & Hinson, P.A.  
John Franklin, BB&T Capital Markets

1. **Purpose of Meeting**

To authorize the sale of bonds, the proceeds of which are to be loaned to Arbor Acres United Methodist Retirement Community, Inc. and to consider preliminary approval for a project for CaroMont Health to provide for the conversion of the Series 2008 Bonds from a variable rate mode to a fixed rate mode.

2. **Resolution of the North Carolina Medical Care Commission Authorizing the Issuance of \$28,875,000 North Carolina Medical Care Commission Retirement Facilities First Mortgage Revenue Bonds (Arbor Acres United Methodist Retirement Community Project), Series 2010**—Remarks were made by Allen Robertson and John Franklin.

Executive Committee Action: A motion was made by Mr. Joe Crocker seconded by Mr. Gerald Cox 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 (including retirement facilities) and to refund bonds previously issued by the Commission; and

WHEREAS, Arbor Acres United Methodist Retirement Community, Inc. (the “Corporation”) is a nonprofit corporation duly incorporated and validly existing under and by virtue of the laws of the State of North Carolina and is a “nonprofit agency” within the meaning of the Act; and

WHEREAS, the Corporation has made application to the Commission for a loan for the purpose of providing funds, together with other available funds, to a) pay, or reimburse the Corporation for paying, the cost of expanding and renovating the Corporation’s existing continuing care retirement community located at 1240 Arbor Road, Winston-Salem, North Carolina, including (1) construction and equipping of an approximately 117,522 square-foot, 72-bed assisted living building, including a new central kitchen for all licensed facilities and a physical, occupational, and speech Therapy Center, with a therapeutic pool to serve all residents, and (2) construction and equipping of an 8,725 square-foot, 12-bed addition to MemoryCare (collectively, the “Project”); (b) pay the interest accruing on the Bonds (as defined below) during the construction of the Project; and (c) pay certain expenses incurred in connection with the authorization and issuance of the Bonds by the Commission; and

WHEREAS, the Commission has determined that the public will best be served by the proposed financing and, by a resolution adopted on November 13, 2009, 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) a Trust Agreement, dated as of June 1, 2010 (the "Trust Agreement"), between the Commission and Branch Banking and Trust Company, Wilson, North Carolina, as bond trustee (the "Bond Trustee");

(b) a Loan Agreement, dated as of June 1, 2010 (the "Loan Agreement"), between the Commission and the Corporation;

(c) a Supplemental Indenture for Obligation No. 3, dated as of June 1, 2010 ("Supplement No. 3"), between the Corporation and Branch Banking and Trust Company, as master trustee (in such capacity, the "Master Trustee") under the Master Indenture;

(d) Obligation No. 3, to be dated the date of delivery of the Bonds ("Obligation No. 3"), from the Corporation to the Commission;

(e) a Supplemental Indenture for Obligation No. 4, dated as of June 1, 2010 ("Supplement No. 4" and together with Supplement No. 3, the "Supplemental Indentures"), between the Corporation and the Master Trustee;

(f) Obligation No. 4, to be dated the date of delivery of the Bonds ("Obligation No. 4" and together with Obligation No. 3, the "Obligations"), from the Corporation to the Bank;

(g) Second Amendment to Deed of Trust, dated as of June 1, 2010 (the "Second Amendment"), from the Corporation to the Deed of Trust trustee named therein for the benefit of the Master Trustee, amending and supplementing the Deed of Trust, dated as of March 1, 2002 (the "Deed of Trust"), from the Corporation to the Deed of Trust trustee named therein for the benefit of the Master Trustee;

(h) an Assignment of Contracts, dated as of June 1, 2010 (the "Assignment of Contracts"), between the Corporation and the Master Trustee; and

(i) a Contract of Purchase, to be dated as of the date of delivery of the Bonds (the "Purchase Agreement"), between the Local Government Commission of North Carolina (the "LGC") and Branch Banking and Trust Company, as the initial purchaser of the Bonds (the "Bank"), and approved by the Commission and the Corporation.

WHEREAS, the Commission has determined that the Corporation is financially responsible and capable of fulfilling its obligations under the Loan Agreement, the Master Indenture, the Supplemental Indentures, the Obligations, and the Deed of Trust; and

WHEREAS, the Commission has determined that adequate provision has been made for the payment of the principal of, redemption premium, if any, and interest on the Bonds;

NOW, THEREFORE, 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 Master Indenture, the Trust Agreement and the Loan Agreement.

Section 2. Pursuant to the authority granted to it by the Act, the Commission hereby authorizes the issuance of North Carolina Medical Care Commission Retirement Facilities First Mortgage Revenue Bonds (Arbor Acres United Methodist Retirement Community Project), Series 2010 (the "Bonds"), in the aggregate principal amount of \$28,875,000. The Bonds shall mature on January 1, 2038 and shall bear interest at such rates determined in accordance with the Trust Agreement and shall be subject to the Sinking Fund Requirements set forth in Schedule 1 hereto. During the initial Bank-Bought Rate Period, the Bonds will bear interest at 68% of one-month LIBOR plus 1.3975%, subject to adjustment under certain circumstances.

The Bonds shall be issued as fully registered bonds in (i) denominations of \$100,000 and any integral multiple of \$5,000 in excess of \$100,000 during any Bank-Bought Rate Period or Weekly Rate Period and (ii) denominations of \$5,000 and any integral multiples thereof during any Long-Term Rate Period or Adjustable Rate Period. While bearing interest at the Weekly Rate, Long-Term Rate or Adjustable Rate, the Bonds shall be issuable in book-entry form as provided in the Trust Agreement. Interest on the Bonds shall be paid at the times and at the rates determined as specified in the Trust Agreement. Payments of principal of and interest on the Bonds shall be made to the registered owners of the Bonds in such manner as is set forth in the Trust Agreement.

Section 3. The Bonds shall be subject to (i) optional, extraordinary and mandatory redemption, (ii) during any Weekly Rate Period or Adjustable Rate Period, optional tender for purchase, and (iii) mandatory tender for purchase, all at the times, upon the terms and conditions, and at the prices set forth in the Trust Agreement.

Section 4. The proceeds of the Bonds shall be applied as provided in Section 2.10 of the Trust Agreement. The Commission hereby finds that the use of the proceeds of the Bonds for a loan to finance a portion of the costs of the Project, pay a portion of the interest accruing on the Bonds and pay costs of issuing the Bonds will accomplish the public purposes set forth in the Act.

Section 5. The forms, terms and provisions of the Trust Agreement and the Loan Agreement are hereby approved in all respects, and the Chairman or Vice Chairman (or any member of the Commission designated by the Chairman) and the Secretary or any Assistant Secretary of the Commission are hereby authorized and directed to execute and deliver the Trust Agreement and the Loan Agreement in substantially the forms presented at this meeting, together with such changes, modifications and deletions as they, 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 6. The form, terms and provisions of the Purchase Agreement are hereby approved in all respects, and the Chairman, Vice Chairman, Secretary or any Assistant Secretary of the Commission (or any member of the Commission designated by the Chairman) is hereby authorized and directed to execute and deliver the Purchase Agreement in substantially the form presented at this meeting, together with such changes, modifications, insertions and deletions as they, 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 forms of the Bonds set forth in the Trust Agreement are hereby approved in all respects, and the Chairman or Vice Chairman (or any member of the Commission designated by the Chairman) and the Secretary or any Assistant Secretary of the Commission are hereby authorized and directed to execute, by manual or facsimile signature as provided in such 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 at 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 8. The forms, terms and provisions of the Supplemental Indentures, the Obligations, the Second Amendment and the Assignment of Contracts are hereby approved in substantially the forms presented to this meeting, together with such changes, modifications and deletions as the Chairman or Vice Chairman (or any member of the Commission designated by the Chairman) and the Secretary or any Assistant Secretary of the Commission, with the advice of counsel may deem necessary and appropriate; and the execution and delivery of the Trust Agreement as provided in Section 5 of this Series Resolution shall be conclusive evidence of the approval of the documents listed in this Section by the Commission.

Section 9. The Commission hereby approves the action of the Local Government Commission authorizing the private sale of the Bonds to the Bank in accordance with the Purchase Agreement at the purchase price of 100% of the principal amount thereof.

Section 10. 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 and, upon the satisfaction of the conditions set forth in Section 2.10 of the Trust Agreement, the Bond Trustee shall deliver the Bonds to the Bank against payment therefor.

Section 11. Branch Banking and Trust Company is hereby appointed as the initial Bond Trustee for the Bonds.

Section 12. If the Bonds are converted to the Weekly Rate, a Long-Term Rate or an Adjustable Rate, the Depository Trust Company, New York, New York is hereby appointed as the initial Securities Depository of the Bonds, with Cede & Co., a nominee thereof, being the initial Securities Depository Nominee and initial registered owner of the Bonds.

Section 13. The Secretary of the Commission, Christopher B. Taylor, C.P.A., Assistant Secretary of the Commission, Steven C. Lewis, Chief of the Construction Section of the Division of Health Service Regulation, and Kathy C. Larrison, Auditor of 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 14. The Chairman, Vice Chairman, Secretary, and any Assistant Secretary of the Commission (or any member of the Commission designated by the Chairman) are each hereby 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, and the Purchase Agreement.

Section 15. All references in this Resolution to the Secretary of the Commission include any Acting Secretary of the Commission.

Section 16. This Series Resolution shall take effect immediately upon its passage.

3. CaroMont Health, Gastonia, N.C. Christopher B. Taylor

**Executive Committee Action:** A motion was made by Mr. Gerald Cox seconded by Mr. Joe Crocker and unanimously approved.

**Resolution:** The Commission grants preliminary approval to a project for CaroMont Health to provide for the conversion of the \$118,400,000 North Carolina Medical Care Commission Hospital Revenue Bonds (CaroMont Health) Series 2008 outstanding in the amount of \$106,460,000 to a fixed rate bond issue. A conversion of all of the outstanding Series 2008 Bonds from a variable rate mode to a fixed rate bond issue would enable CaroMont Health to keep the bond insurance policy issued by Assured Guaranty (Currently rated AAA by S&P and Aa3 by Moody's) in place and to address the global concern expressed by the rating agencies over variable rate exposure by healthcare entities. The project is in accordance with an application received as follows:

**ESTIMATED SOURCES OF FUNDS**

Principal Amount of Bonds to be Converted	106,460,000
Net Original Issue Premium	840,431
Equity Contribution	<u>661,094</u>
<b>Total Sources</b>	<b>\$107,961,525</b>

## ESTIMATED USES OF FUNDS

Conversion of Series 2008 Bond	\$106,460,000
Underwriters/ Placement/Remarketing Fee and Counsel Fee (\$9.74 per \$1,000 bonds)	1,036,525
Accountants Fees	58,500
Corporation Counsel Fee	90,000
Bond Counsel Fee (D)	60,000
Insurer's Counsel Fee	15,000
Trustee Fees	8,000
Printing	5,000
Local Government Commission	3,500
Rating Agencies	10,000
Financial Advisor Fee	140,000
Miscellaneous	<u>75,000</u>
<b>Total</b>	<b>\$107,961,525</b>

Tentative approval is given with the understanding that the governing board of CaroMont Health 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 or conversion of the bonds or notes.
3. Financial feasibility must be determined prior to the issuance or 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 or conversion of bonds on 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 or 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. 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 | _____ | No  | _____    | N/A |
| 2. Construction and related costs are reasonable |          |     | _____ | Yes | _____    | No  |
|  |          |     |       |     | <u>✓</u> | N/A |

**Notes:**

- (A) Community Benefits per ANDI Report for 2009 was \$49,519,483
- (B) Information from audit for CaroMont Health, Inc. and Affiliates for FYE June 30, 2009.
- |   |                |
|---|----------------|
| Income from Operation                     | \$20,414,415   |
| Decrease in Net Assets                    | (\$56,824,495) |
| Net cash provided by operating activities | \$55,248,849   |
| Net increase in cash and cash equivalents | \$14,216,302   |
- (C) Long Term Debt Service Coverage Ratios
- 2009 Actual 4.16
- 2010 Forecasted 4.54
- 2011 Forecasted 4.83
- 2012 Forecasted 5.49



- (D) Bond counsel fee will increase to \$75,000 if conversion requires material amendments or if deal changes from a total conversion to a partial conversion in accordance to MCC Resolution dated May 12, 2010 concerning bond counsel for CaroMont bond conversion/refunding.

**4. Adjournment**

There being no further business, the meeting was adjourned at 11:30 a.m.

Respectfully submitted,

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Christopher B. Taylor, C.P.A.  
Assistant Secretary

Schedule 1

<u>Due January 1</u>	<u>Sinking Fund Requirement</u>	<u>Due January 1</u>	<u>Sinking Fund Requirement</u>
2013	\$ 30,000	2026	\$780,000
2014	480,000	2027	785,000
2015	485,000	2028	840,000
2016	540,000	2029	845,000
2017	540,000	2030	900,000
2018	545,000	2031	905,000
2019	600,000	2032	960,000
2020	600,000	2033	2,345,000
2021	605,000	2034	2,460,000
2022	660,000	2035	2,580,000
2023	665,000	2036	2,645,000
2024	720,000	2037	2,760,000
2025	720,000	2038*	2,880,000

\* Maturity

Professional Fees Comparison for  
Arbor Acres United Methodist Retirement Community, Inc.

<u>Professional</u>	Fees Estimated In Preliminary Approval <u>Resolution</u>	<u>Actual Fees</u>
Structuring fee (BB&T Capital Markets)	\$882,875	\$288,750
Feasibility Consultants	75,000	80,000
Accountants	10,000	0
Corporation counsel	35,000	35,000
Bond counsel	55,000	40,000
Underwriter's counsel	40,000	0
Bank loan origination fee	0	75,000
Bank counsel	0	35,000