

Minutes of the New Jersey Health Care Facilities Financing Authority meeting held on June 22, 2006 on the fourth floor of Building #4, Station Plaza, 22 South Clinton Avenue, Trenton, New Jersey.

The following **Authority Members** were in attendance:

Fred M. Jacobs, M.D., (Chairman) Commissioner of Health and Senior Services; Moshe Cohen, Ph.D., Public Member; Gus Escher, Public Member; Freida Phillips, Designee of the Commissioner of Human Services; and, Maryann Kralik, Designee of the Commissioner of Banking and Insurance.

The following **Authority staff members** were in attendance:

Mark Hopkins, Dennis Hancock, Jim Van Wart, Steve Fillebrown, Michael Ittleson, Suzanne Walton, Marji McAvoy, Susan Tonry, Lou George, Carole Conover, Bill McLaughlin, Ronald Marmelstein, Wanda Lewis, and Stephanie Bilovsky.

The following **representatives from State offices and/or the public** were in attendance:

Kari Fazio, Jack Swire, Wachovia Bank; Kerry Morgan, Gluck, Walrath LLP; Edward Tetelman, Designee of the Commissioner of Health and Senior Services; Robert Osler, Virtua Health, Inc.; Thomas Papa, Treasurer's Office; and, Clifford T. Roncs, Deputy Attorney General.

### ***CALL TO ORDER***

Dr. Jacobs called the meeting to order at 10:07 a.m. and announced that this was a regular meeting of the Authority, held in accordance with the schedule adopted at the May 25, 2006 Authority meeting. In accordance with the Open Public Meetings Act and the Authority's By-laws, notice of this meeting was delivered to all newspapers with mailboxes at the Statehouse, including *The Star-Ledger* and the *Courier Post*, far enough in advance to permit the publication of an announcement at least 48 hours before the meeting.

### ***APPROVAL OF MINUTES***

#### ***May 25, 2006 Authority Meeting***

The minutes for the Authority's May 25, 2006 meeting were distributed for review and approval. Ms. Phillips offered a motion to approve the minutes; Ms. Kralik seconded. Dr. Jacobs abstained, Dr. Cohen voted yes, Mr. Escher voted yes, Ms. Phillips voted yes, and Ms. Kralik voted yes. The motion carried and the minutes were approved.

### ***NEGOTIATED SALE REQUEST***

#### ***Chilton Memorial Hospital – Private Placement***

Mark Hopkins reported to the Members that Forrest S. Chilton 3rd Memorial Hospital, Inc. ("Chilton") signed a Memorandum of Understanding with the Authority to undertake a tax-exempt financing to finance renovation and equipment at Chilton's hospital campus. With costs of issuance and other costs, Chilton is seeking to finance a total of approximately \$15,000,000

through the Authority. Because the project consists largely of equipment, the bonds are expected to mature in approximately 15 years.

The Authority issued \$43,480,000 in bonds for Chilton in 1993, of which \$22,250,000 remained outstanding as of March 31, 2006. These bonds are expected to remain outstanding. The Authority also issued bonds on behalf of Chilton in 1974, 1981 and 1985, none of which remain outstanding.

Mr. Hopkins described Chilton as a 256-bed not for profit acute care hospital located in located in Pequannock Township. Chilton is the sole corporate member of Chilton Memorial Hospital Foundation, Inc., which was formed to solicit and receive contributions for the benefit of Chilton, its affiliates and other organizations in the service area acting in support of Chilton.

According to the consolidated audited financial statements provided with the Memorandum of Understanding, Chilton generated excess revenues over expenses of approximately \$2.12 million in 2005 and expenses over revenues of approximately \$3.79 million in 2004. Unaudited information thru April 2006 show excess revenues over expenses of approximately \$813,000.

Chilton asks that the Authority permit the use of a negotiated private placement sale based on its expected use of variable rate debt. Since this reason is considered under the Authority's policy regarding Executive Order #26 to be a justification for the use of a negotiated private placement sale, Chilton and the Authority staff recommend the Members' consideration of the resolution approving the use of a negotiated private placement sale and the forwarding of a copy of the justification in support of said resolution to the State Treasurer.

Mr. Hopkins added that, after performing a competitive process, Chilton selected Wachovia Bank as Placement Agent for the bonds. Additionally, Chilton researched several law firms from the Authority's qualified list and requested that Windels Marx be selected to serve as bond counsel. Chilton's request has been forwarded to the Attorney General's Office for approval.

Mr. Escher offered a motion to approve the use of a negotiated private placement sale and the forwarding of a copy of the justification in support of the resolution to the State Treasurer. Ms. Phillips seconded. The vote was unanimous, and the motion carried.

**AB RESOLUTION NO. GG-07**  
*(attached)*

***AMENDMENT OF PROJECT***  
***Virtua Health, Inc.***

After introducing Bob Osler, Treasury Director of Virtua Health, Inc. ("Virtua"), Wanda Lewis reminded the Members that the Authority issued \$11,000,000 worth of bonds on behalf of Virtua Health, Inc. ("Virtua") through the Variable Rate Composite Program Series 2003 A-7 on June 20, 2003. The Series bears interest at a weekly rate but pays interest on the first business day of each calendar month. The bonds are secured by an irrevocable letter of credit issued by Wachovia Bank, N.A., and are due to mature on July 1, 2018.

The financing was approved to fund the construction and renovation of various capital improvements at Virtua West Jersey Health System, Virtua-Memorial Hospital of Burlington County, and Virtua's Camden facility. The proceeds were also used to acquire various items of medical, office and communications equipment for these facilities. The original project, however, was completed at costs lower than expected. Because funds remain available in the

project fund, Virtua requests that the currently defined “Project” be amended to reflect additional uses of the balance.

Ms. Lewis stated that bond counsel Gluck Walrath LLP prepared a form of the Amendment to the Loan Agreement, an Assignment of Loan Agreement Amendment to The Bank of New York as Bond Trustee, and a Resolution that authorizes the execution and delivery of various documents relating to the project amendment. Additionally, bond counsel has provided the form of the Opinion required pursuant to the loan documents that the Amendment will not adversely affect the tax-exempt status of the bonds and that the authorizing Resolution has been duly and lawfully adopted by the Authority in accordance with the provisions of the Resolutions.

Wachovia Bank, N.A. as Letter of Credit provider, granted Virtua approval to amend the project, and The Bank of New York, as Bond Trustee, issued consent for the amendment. Ms. Lewis, on behalf of staff and the borrower, then requested that the Members authorize: the Amendment to the Project, the Assignment of Loan Agreement Amendment to the Bond Trustee, and the Resolution that authorizes the execution and delivery of various documents relating to the amendment of the project.

Mr. Escher asked how much is leftover to be reallocated to the amended project, to which Mr. Osler responded that approximately \$600,000 remains from the Virtua-Memorial Hospital of Burlington County project funds with approximately \$100,000 additionally remaining from the Voorhees facility project, totaling roughly \$700,000 for use.

Mr. Escher offered a motion to amend the project on behalf of Virtua and to authorize the necessary documents to enable that project amendment; Ms. Kralik seconded. The vote was unanimous, and the motion carried.

#### **AB RESOLUTION NO. GG-08**

*(see attached corresponding documents)*

***NOW, THEREFORE, BE IT RESOLVED***, that, with respect to the Variable Rate Composite Program Series 2003 A-7 bonds issued on behalf of Virtua Health, Inc., the Authority hereby authorizes the Amendment to the Project and the Assignment of Loan Agreement Amendment to the Bond Trustee; and,

***BE IT FURTHER RESOLVED***, that the Authority hereby authorizes the “RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF VARIOUS DOCUMENTS RELATING TO THE AMENDMENT TO THE PROJECT IN RESPECT OF THE AUTHORITY’S REVENUE BONDS (VARIABLE RATE COMPOSITE PROGRAM – VIRTUA HEALTH PROJECT) SERIES 2003 A-7”.

#### ***APPROVAL OF REPLACEMENT TRUSTEE AND RELATED ROLES***

##### ***Beth Israel Hospital Association of Passaic***

Jim Van Wart reminded the Members that on December 20, 2003, the Authority issued \$30,300,000 of Series 2003 Bonds on behalf of the Beth Israel Hospital Association of Passaic (“PBIR”), and on June 15, 2004, the Authority issued \$13,300,000 of Series 2004 A-2 Bonds on PBIR’s behalf. As of May 31, 2006, there were \$10,592,797 and \$12,175,000 of bonds outstanding for the 2003 and 2004 A-2 issues respectively. Commerce Bank, N.A. (“Commerce”) is the Trustee, Registrar and Paying Agent for both series of bonds. They are also the Master Trustee for the 2003 issue, the owner of the Series 2003 Bonds, and the Letter of

Credit Provider for the Series A-2 2004 Bonds. Further, its subsidiary, Commerce Capital Markets, is the Remarketing Agent for that series, as well.

With PBIR currently in technical default on both of the aforementioned series of bonds, negotiations have been taking place between Commerce and PBIR as to the ultimate outcome of the default. Commerce requests that their responsibilities as Trustee, Master Trustee, Registrar and Paying Agent be transferred to another approved Trustee because of the potential for a conflict of interest in these negotiations. The current list of approved trustees includes:

- The Bank of New York
- Commerce Bank, N.A.
- U.S Bank National Association
- JPMorganChase
- Wells Fargo Bank

The Bank of New York (“BONY”) has excellent experience with the Authority in the roles from which Commerce seeks termination. Staff held discussions with BONY, which agreed to the transfer for the same fees that Commerce is currently receiving with the caveat that the parties would enter into negotiations for a new fee schedule if their responsibilities increase due to actions taken by Commerce. Staff recommended that the Authority approve the transfer of the aforementioned responsibilities to BONY. BONY, if approved, will assume the aforementioned roles in accordance with the governing instruments.

Mr. Escher asked if the Authority now has a policy to disallow the same bank from serving in those capacities simultaneously for one borrower. Mr. Van Wart replied that the Authority’s policy allows such simultaneous roles by a single bank with the caveat that the trustee may decide if there is a conflict of interest and then resign from one or more of the conflicting roles.

Mr. Escher offered a motion to approve BONY’s replacement of Commerce as the Master Trustee for the 2003 Series, and as Trustee, Registrar and Paying Agent for both the PBIR Series 2003 Bonds and Series 2004 A-2 Bonds. Dr. Cohen seconded. The vote was unanimous, and the motion carried.

#### **AB RESOLUTION NO. GG-09**

***NOW, THEREFORE, BE IT RESOLVED***, that the Authority hereby approves appointing The Bank of New York to replace Commerce Bank N.A. as Master Trustee for the Beth Israel Hospital Association of Passaic 2003 Series Bonds, and as Trustee, Registrar and Paying Agent for both the Beth Israel Hospital Association of Passaic Series 2003 Bonds and Series 2004 A-2 Bonds.

#### ***AUTHORIZATION FOR EXECUTIVE DIRECTOR TO EXECUTE IRS DOCUMENTS***

Mr. Van Wart stated that recently one of the Authority’s borrowers requested a Private Letter Ruling from the Internal Revenue Service (“IRS”) with regard to a project financed through its bonds that were issued by the Authority. In 2002, another borrower from the Authority requested a closing agreement with the IRS. In both instances, the IRS required that an Authorized Officer of the Authority execute certain documents that were required in order for the IRS to evaluate the requests.

Because of the fact that the IRS has time requirements on these requests, it is important that the Authority be in a position to execute the required documents as quickly as possible. The

IRS requires that the Authority participate in these requests as the issuer of the bonds involved. Some of the documents that have required an Authorized Officer's signature are:

- A Declaration that the Statement of Facts in a submission were to the best of the Authority's knowledge
- Closing Agreement Terms
- Form 2848 Power of Attorney
- Acknowledgement of Request for Nonreviewable Ruling
- Joinder letter from the Authority to the IRS

In order to conform to the time requirements of the IRS, Mr. Van Wart recommended that the Members authorize the Executive Director to execute these documents, after the Attorney General's office has reviewed and approved their execution, and as long as there is no liability to the Authority and the tax-exempt nature of the bonds is not affected. Mr. Escher offered a motion to approve the authorization. Ms. Phillips seconded. The vote was unanimous, and the motion carried.

#### **AB RESOLUTION NO. GG-10**

***NOW, THEREFORE, BE IT RESOLVED***, that the Authority hereby authorizes the Executive Director to execute certain documents as requested by the Internal Revenue Service after the Attorney General's office has reviewed and approved their execution, and as long as there is no liability to the Authority, and the tax-exempt nature of the bonds is not affected.

#### ***APPROVAL OF DIVISION OF LAW AGREEMENT***

Mr. Van Wart presented the Division of Law and Public Safety's proposed Client Agency Agreement for legal services to be provided to the Authority for the period from July 1, 2006 to June 30, 2007. As in previous years, the proposed agreement contemplates the assignment of 1.5 Deputy Attorneys General, which represents 1,800 hours of work on behalf of the Authority. It also contemplates the use of .80 Clerical/Secretarial staff plus overhead. Mr. Van Wart noted that the Authority only pays for service hours utilized.

The estimated annual cost of \$234,895 reflected in the agreement is based on the average cost of all deputies presently on staff. In comparison, estimated fees for the 2006 fiscal year were \$223,357. Through March 31, 2006 on a fiscal year basis for three quarters, actual fees from the Attorney General's office have been \$55,624 compared to approximately \$167,518 that was estimated for the same period. The Authority's 2006 budget (calendar year) includes \$125,000 for this category. Actual billings for calendar 2005 were \$85,405.

Mr. Van Wart noted that the aforementioned figures represent gross billings submitted to the Authority. Effective for Memorandums of Understanding received after January 1, 2003, Deputy Attorney General charges related to specific bond issues were passed onto borrowers. In 2005, the charges that were passed on amounted to \$45,587. As of January 1, 2006, the Authority discontinued billing specific charges for these services to borrowers. Mr. Van Wart then stated that there is currently no need to increase the Authority's 2006 budget.

Mr. Escher offered a motion to approve the proposed extension of the Authority's Division of Law Agreement; Dr. Cohen seconded. The vote was unanimous and the motion carried.

**AB RESOLUTION NO. GG-11**

**NOW, THEREFORE, BE IT RESOLVED**, that the Authority hereby approves the proposed Division of Law Agreement for the period from July 1, 2006 to June 30, 2007.

***AUTHORITY EXPENSES***

Dr. Jacobs referenced a summary of Authority expenses and invoices. Mr. Escher offered a motion to approve the bills and to authorize their payment; Dr. Cohen seconded. The vote was unanimous and the motion carried.

**AB RESOLUTION NO. GG-12**

**WHEREAS**, the Authority has reviewed memoranda dated June 22, 2006, summarizing all expenses incurred by the Authority in connection with FHA Mortgage Servicing, Trustee/Escrow Agent/Paying Agent fees, and general operating expenses in the amounts of \$970,589.10, \$94,378.14 and \$1,740.89 respectively, and has found such expenses to be appropriate;

**NOW, THEREFORE, BE IT RESOLVED**, that the Authority hereby approves all expenses as submitted and authorizes the execution of checks representing the payment thereof.

***OLD/NEW BUSINESS***

***Election of Finance Committee***

Ms. Kralik nominated Moshe Cohen to serve as Chairman of the Authority's Finance Committee and Gus Escher to serve as a Member of the Finance Committee for the coming year. Ms. Phillips seconded the nominations. The vote was unanimous and the motion was carried.

**AB RESOLUTION NO. GG-13**

**NOW, THEREFORE, BE IT RESOLVED**, that the following individuals are hereby elected to serve as the Authority's Finance Committee through the Authority's Annual meeting on May 25, 2007, or until the next Finance Committee election:

- Chairman - Moshe Cohen
- Member - Gus Escher

***STAFF REPORTS***

Dr. Jacobs referenced staff reports that were distributed for review, including the Project Development Summary, Interest Rate Trends Graph, Cash Flow Statement, and a Legislative Advisory. There were no questions from the Members; he thanked staff for preparing the reports.

Mr. Hopkins then announced the following items as his Executive Director's Report:

1. Jim Van Wart gave a presentation to the Alliance for Action Construction Conference on June 20th. He outlined the Authority's potential health care construction projects for the coming year. He then turned the floor over to Jim to discuss the events of the conference.

Mr. Van Wart stated that it was a very interesting conference. Joining him as speakers were executives from Raritan Bay Medical Center, Atlantic Health System, and Saint Barnabas, all discussing underway and upcoming projects. Virtua Health, Inc. representatives also gave an impressive presentation outlining a rather aggressive expansion plans over the next few years expecting to total roughly \$460 million. Jersey Shore Medical Center also presented a major expansion planned for its campus totaling roughly \$290 million.

The conference also discussed the accessibility to capital for New Jersey's hospitals, which seems to be challenged for the time being. Michael R. D'Agnes, President and Chief Executive Officer of Raritan Bay Medical Center, discussed issues such as charity care and reimbursement difficulties for New Jersey's hospitals. Mr. Van Wart stated that it was a very enlightening conference for the attendees.

2. Authority Members will recall that St. Mary Hospital in Hoboken, which does not have any debt outstanding with the Authority, sought a certificate of need for a closure. There was a possibility that UMDNJ was interested in the facility but that interest faded. The city of Hoboken expressed an interest in acquiring the facility to keep it operating. To that end, legislation was recently introduced to allow the creation of municipal hospital authorities, permitting those authorities to own hospitals, act as a hospital's governing body and issue bonds to acquire and improve hospitals. The bonds may be secured by a deficiency agreement between the municipal hospital authority and the municipality. Senator Bernard F. Kenney, Jr. is the sponsor of the legislation.

It was noted that when the bill was first introduced on June 12<sup>th</sup>, it did not seek to grant powers to issue bonds to these municipal authorities, however, a substitute was added to the bill on June 19<sup>th</sup> that did grant such power. Although it seems that the proposed municipal authorities would not be permitted unless they are created to operate a hospital, there remains concern about the ability for these authorities to issue bonds, namely:

- A new authority would lack the expertise, talent and experience present at this Authority when issuing health care facility financings;
- Overlapping powers between this Authority and municipal Authorities may diminish the Authority's negotiating grounds or may cause confusion in the marketplace;
- Duplicative powers within government authorities are unnecessary and wasteful; and,
- New smaller hospital-governing authorities may open doors for abuse, since the issuer can control how expenses are defined.

It was agreed that the sponsor of the bill probably was not aware of the actions of this Authority and the potential dangers of giving additional small authorities some of the duties already fulfilled by the NJHCFFA. The Members all agreed that staff should expeditedly contact the sponsor of the bill and let him know the concerns of the Authority and the ways in which the bill can be altered to best suit the needs of the State, the hospitals, and the municipalities.

Mr. Escher asked if there is a timeline for the legislation. Dr. Jacobs expressed that the bill is expected to be passed by the end of the following week. The Members reiterated that staff should work expediently to address the issue.

3. The Authority's Human Resources Manager, Robin Piotrowski, was recently certified by the American Payroll Association as a Certified Payroll Specialist.

Certification requires a requisite amount of professional experience and/or training along with the satisfactory completion of an examination administered by the APA. In addition to this certification, Ms. Piotrowski is certified as a Professional in Human Resources by the Human Resource Certification Institute, an affiliate of the Society for Human Resource Management. Mr. Hopkins congratulated Ms. Piotrowski.

4. On June 16<sup>th</sup>, it was announced that the Saint Barnabas Health Care System, which operates seven hospitals in New Jersey, settled federal charges that it overbilled Medicare for “outlier” services provided between 1999 and 2003. The settlement requires Saint Barnabas to pay back \$265 million over the next six years. As a result of the announcement, the three rating agencies have placed Saint Barnabas on their watch lists. Members of senior staff will be attending a meeting on July 6<sup>th</sup> to further learn about and discuss the situation.
5. Atlantic Health Systems continues to seek a buyer for Mountainside Hospital. Bidders were narrowed to two finalists: Merit Health Systems of Louisville, Kentucky; and Doctors Community Healthcare Corp. of Scottsdale, Arizona. Both are for-profit health care organizations. Mr. Tetelman asked about the group of doctors that was previously interested in purchasing the facility. Mr. Hopkins noted that both the doctor group and St. Joseph’s Medical Center, which had noted interest in the past, submitted bids that were determined to be not among the best two options for the seller.
6. Authority staff received notice from an attorney for Commerce Bank, in its role as Trustee for the Authority’s 2003 bonds issued on behalf of PBI, that it is declaring an event of default and accelerating the bonds in accordance with the bond documents. As a result, the current amount of bonds outstanding, \$10.6 million, is immediately due and payable. PBI and Commerce Bank, which is also the holder of the 2003 bonds, are working together to resolve this matter.
7. Carmen Saginario, Jr. announced his intention to resign as a Member of the Authority to avoid potential conflicts of interest with clients of his law firm. Mr. Hopkins stated that he will greatly miss Mr. Saginario’s insight and humor.
8. Governor Corzine filed a nomination to reappoint Gus Escher as an Authority Member and filed a nomination to appoint Thomas M. Jackson to the Authority Membership, replacing Mr. Saginario. These nominations are subject to the advice and consent of the Senate. Mr. Jackson, an attorney who resides in Morris Township, received his undergraduate degree from DePauw University in Indiana and his law degree from the University of Cincinnati. Currently serving as general counsel for GAB Robins of Parsippany, a major independent claim adjustment company, Mr. Jackson was previously employed by Prudential and recently ran for State Assembly in the 25<sup>th</sup> legislative district.
9. Members will recall that the future of the water and sewer supply for the addiction services facility financed by the Authority for Recovery Management Systems is in flux. Dennis Hancock recently attended a meeting between Recovery Management Systems and the Department of Treasury and presented the events of the meeting to the Members.

He reminded the Members that the Recovery Management Systems issue first came to light through a newspaper story that questioned whether or not the facility would have the necessary access to water and sewer to open on the expected date. The Department of Treasury assured those at the meeting that its intent is not to prevent the opening of the facility, adding that it is currently prepared and permitted

to provide water and sewage via the current site through the year 2010; therefore, there is nothing preventing the facility from opening on schedule.

The ability to provide water and sewer services after the year 2010 remains a topic of discussion; both the Department of Treasury and the Western Monmouth Utilities Authority are discussing options for providing the service. Some cost and location issues have yet to be worked out. Mr. Hancock reminded the Members that Recovery Management Systems will single-handedly provide 25% of the State's beds to care for drug, alcohol and gambling addicted individuals, and the State has said that it believes only 5% of the population needing treatment in these areas is currently receiving it. Therefore, there is a strong push for Recovery Management System's facility to be up and running to provide these services to the addicted population.

Mr. Escher noted that when this was last discussed, it seemed the issue threatened to halt the facility. Mr. Hancock noted that, with the assurance that water and sewer will be provided through 2010, the project continues on track; however, it is good that the parties are addressing the concern now because the solutions to problems such as cost and location may require a substantial amount of time.

### ***EXECUTIVE SESSION***

As permitted by the Open Public Meetings Act and the Authority's By-Laws, the Members voted to meet in Executive Session to discuss personnel and contractual matters, and to receive advice from the Office of the Attorney General. Dr. Jacobs stated that the results of the discussion would be made known at such time as the need for confidentiality no longer existed. Mr. Escher offered a motion to enter the session; Ms. Phillips seconded it. The vote was unanimous and the motion carried.

### **AB RESOLUTION NO. GG-14**

**NOW, THEREFORE, BE IT RESOLVED**, that, as permitted by the Open Public Meetings Act and the Authority's By-Laws, the Authority meet in Executive Session to discuss personnel and contractual matters, and to receive advice from the Office of the Attorney General.

**BE IT FURTHER RESOLVED**, that the results of discussions may be made known at such time as the need for confidentiality no longer exists.

Public session reconvened. It should be noted that Dr. Jacobs exited the executive session and meeting at 11:20. Ed Tetelman, who is appointed as Dr. Jacobs designee, votes on the Commissioner's behalf in his absence. As there was no further business to be addressed, Mr. Escher moved to adjourn the meeting, Mr. Tetelman seconded. The vote was unanimous, and the motion was carried at 11:50 a.m.

I HEREBY CERTIFY THAT THE  
FOREGOING IS A TRUE COPY  
OF MINUTES OF THE NEW  
JERSEY HEALTH CARE  
FACILITIES FINANCING  
AUTHORITY MEETING HELD  
ON JUNE 22, 2006.

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Dennis Hancock  
Assistant Secretary

**AB RESOLUTION NO. GG-07**

**RESOLUTION OF INTENT TO ISSUE REVENUE BONDS BY  
PRIVATE PLACEMENT TRANSACTION PURSUANT TO  
EXECUTIVE ORDER NO. 26**

*Forrest S. Chilton, 3<sup>rd</sup>, Memorial Hospital, Inc.  
(Chilton Memorial Hospital)*

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**WHEREAS**, the New Jersey Health Care Facilities Financing Authority (the “Authority”) was duly created and now exists under the New Jersey Health Care Facilities Financing Authority Law, P.L. 1972, c. 29, N.J.S.A. 26:2I-1 et seq., as amended (the “Act”), for the purpose of ensuring that all health care organizations have access to financial resources to improve the health and welfare of the citizens of the State; and,

**WHEREAS**, the Authority issues its bonds from time to time for the achievement of its authorized purposes; and

**WHEREAS**, on October 25, 1994, the Governor issued Executive Order No. 26 which sets forth procedures by which an issuer may determine the method of sale of bonds or notes; and,

**WHEREAS**, on December 8, 1994, the Authority adopted Section 2 of its policy which was developed to implement Executive Order No. 26, which requires an Authority resolution to pursue a negotiated sale of bonds; and,

**WHEREAS**, on March 28, 1996, the Authority amended its policy related to Executive Order No. 26; and,

**WHEREAS**, the Authority’s policy states that a negotiated sale of bonds will be conducted if it is determined by the Authority that it would better serve the requirements of a particular financing; and,

**WHEREAS**, a negotiated transaction would be permitted in circumstances including, but not limited to, the sale of bonds for a complex or poor credit; the development of a complex financing structure, including those transactions that involve the simultaneous sale of more than one series with each series structured differently; volatile market conditions; large issue size; programs or financial techniques that are new to investors; or, for variable rate transactions; and,

**WHEREAS**, Chilton Memorial Hospital has entered into a Memorandum of Understanding with the Authority to pursue a revenue bond financing (the “Financing”); and,

**WHEREAS**, Chilton Memorial Hospital has requested consideration of a determination that a negotiated private placement sale is the appropriate method of financing; and,

**WHEREAS**, the Authority's policy states that a private placement would be permitted if, based on a financial analysis, it would be less expensive on a present value basis to complete a private

placement; or, if such other circumstances (i.e., credit considerations) would limit effectiveness or usefulness of a public sale; and,

**WHEREAS**, the project could be considered a complex or poor credit; and,

**WHEREAS**, Chilton Memorial Hospital is considering the issuance of variable rate bonds for all or a portion of the Financing; and,

**WHEREAS**, it has been shown that a private placement would be less expensive on a present value; and,

**WHEREAS**, the Authority is desirous of being responsive to Chilton Memorial Hospital's request; and,

**WHEREAS**, the aforementioned resolution and justification in support of such resolution must be filed, within five days of its adoption, with the State Treasurer;

**NOW, THEREFORE, BE IT RESOLVED**, that, based upon the findings above, the Authority hereby determines that it would better serve the requirements of this Financing to conduct a negotiated private placement; and,

**BE IT FURTHER RESOLVED**, that the Executive Director is hereby directed and authorized to transmit a copy of this Resolution and justification in support of such resolution to the State Treasurer.

(See AB RESOLUTION No. GG-08)

**RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF VARIOUS DOCUMENTS RELATING TO THE AMENDMENT TO THE PROJECT IN RESPECT OF THE AUTHORITY'S REVENUE BONDS (VARIABLE RATE COMPOSITE PROGRAM - VIRTUA HEALTH PROJECT) SERIES 2003 A-7**

Adopted: June 22, 2006

**WHEREAS**, the New Jersey Health Care Facilities Financing Authority (the "Authority") was duly created and now exists under the New Jersey Health Care Facilities Financing Authority Law, P.L. 1972, c. 29, N.J.S.A. 26:2I-1 *et seq.* as amended (the "Act"), for the purpose of ensuring that all health care institutions have access to financial resources to improve the health and welfare of the citizens of the State of New Jersey; and

**WHEREAS**, on June 20, 2003, the Authority issued \$11,000,000 aggregate principal amount of its Revenue Bonds (Variable Rate Composite Program - Virtua Health Project) Series 2003 A-7 (the "Bonds") pursuant to a Trust Indenture, dated as of June 1, 2003 (the "Trust Indenture"), between the Authority and The Bank of New York, as trustee (the "Trustee"), which Trust Indenture was authorized by a resolution adopted by the Authority on May 22, 2003; and

**WHEREAS**, the Authority loaned the proceeds of the Bonds to Virtua Health (the "Institution") pursuant to a Loan Agreement, dated as of June 1, 2003 (the "Original Loan Agreement"), between the Authority and the Institution, for the purpose of financing the various health care projects to be located at the Institution in Voorhees and Mt. Holly, New Jersey (the "Project"); and

**WHEREAS**, inasmuch as a portion of the Project was to be owned or used from time to time by Virtua West Jersey Health System, Inc. ("Virtua-West-Jersey") and/or Virtua-Memorial Hospital of Burlington County, Inc. (Virtua-Memorial"), affiliates of the Institution, the Authority required that Virtua-West Jersey and Virtua-Memorial each execute and deliver a Letter of Representations and Agreements (collectively, the "Original Letters of Representations") by which Virtua-West Jersey and Virtua-Memorial made certain representations and agreements in connection with Virtua-West Jersey and Virtua-Memorial and the portion of the Original Project to be owned and/or used by Virtua-West Jersey and Virtua-Memorial.

**WHEREAS**, the Bonds are secured by a Letter of Credit issued by Wachovia Bank, National Association (the "Bank"), dated June 20, 2003; and

**WHEREAS**, the Original Loan Agreement was thereupon assigned, pursuant to an Assignment dated as of June 1, 2003 (the "Original Loan Agreement Assignment"), from the Authority to the Trustee; and

**WHEREAS**, the Institution has subsequently determined to expand the scope of the Project; and

**WHEREAS**, to implement such changes the Institution must, *inter alia*, amend certain provisions of the Original Loan Agreement and the Original Letters of Representations; and

**WHEREAS**, pursuant to Section 3.2(a) of the Original Loan Agreement, the Institution has, by correspondence dated June \_\_\_\_, 2006 (a copy of which is attached hereto as Exhibit A), heretofore represented to the Authority that no certificate of need is necessary for the completion of these additional Project items, that no approval from the New Jersey Department of Community Affairs to any changes in the plans and specifications of the Project is required, and that no additional moneys (in excess of the moneys available in the Project Fund) are required for such amendments; and

**WHEREAS**, pursuant to Section 9.09 of the Trust Indenture, the Institution has heretofore obtained the written consent of the Bank (a copy of which is attached hereto as Exhibit B) to an amendment to the Original Loan Agreement to implement such change; and

**WHEREAS**, Virtua-West Jersey and Virtua-Memorial will each provide to the Authority and the Trustee an Amendment No. 1 to each of the Letter of Representations by which Virtua-West Jersey and Virtua-Memorial will ratify and confirm the representations and agreements made in the Original Letters of Representations with respect to the Project, as amended; and

**WHEREAS**, pursuant to Section 3.2(a) of the Original Loan Agreement and Section 9.06 of the Trust Indenture, in connection with the proposed amendment to the Original Loan Agreement, the Institution will provide for the delivery to the Authority and the Trustee of a legal opinion from GluckWalrath LLP, bond counsel to the Authority (the “Bond Counsel Opinion”), in substantially the form attached to this resolution as Exhibit C; and

**WHEREAS**, pursuant to paragraph (a)(2) of the Original Loan Agreement Assignment, the Authority has retained the exclusive right and duty to execute supplements and amendments to the Original Loan Agreement; and

**WHEREAS**, the Authority now desires to authorize the execution and delivery of such documents and the taking of such actions as may be necessary to accomplish the foregoing purposes;

**NOW, THEREFORE, BE IT RESOLVED** by the New Jersey Health Care Facilities Financing Authority, as follows:

Section 1. Amendment to Loan Agreement and Assignment Thereof. The Amendment No. 1 to Loan Agreement between the Authority and the Institution and consented to by the Trustee (the “Amendment to Loan Agreement”) and the Assignment thereof from the Authority to the Trustee (the “Assignment of Loan Agreement Amendment”), in the forms attached to this resolution as Exhibit D, are hereby approved. Any Authorized Officer of the Authority is hereby authorized and directed to execute, acknowledge and deliver, and any other Authorized Officer of the Authority is hereby authorized and directed to affix and attest the seal of the Authority to, the Amendment to Loan Agreement and the Assignment of Loan Agreement Amendment in substantially such forms, with such insertions and changes therein and any

supplements thereto as counsel may advise and the Authorized Officer executing the same may approve, such approval to be evidenced by such Authorized Officer's execution thereof.

Section 2.     Additional Actions. The Authorized Officers of the Authority are hereby authorized and directed to execute and deliver such other documents, certificates, directions and notices, and to take such other action as may be necessary or appropriate in connection with the foregoing matters.

Section 3.     Prior Resolutions. All prior resolutions of the Authority or provisions thereof inconsistent herewith are hereby repealed.

Section 4.     Effective Date. This resolution shall take effect upon the occurrence of both (i) ten (10) days, exclusive of Saturdays, Sundays and public holidays, after delivery to the Governor of the minutes of the meeting of the Authority at which this resolution is adopted, or at such earlier time as the Governor signs a statement of approval, all in accordance with subsection (i) of Section 4 of the Act, and (ii) receipt by the Authority of the Bond Counsel Opinion, in form and substance satisfactory to the Authority and the Office of the Attorney General of the State, required by Section 3.2 of the Original Loan Agreement.

## **AMENDMENT NO. 1 TO LOAN AGREEMENT**

THIS AMENDMENT NO. 1 TO LOAN AGREEMENT (the “First Amendment”), dated as of July \_\_, 2006 (the “Effective Date”), by and between the New Jersey Health Care Facilities Financing Authority (the “Authority”), a public body corporate and politic and a political subdivision of the State of New Jersey, and VIRTUA HEALTH, INC., a non-profit corporation duly created and validly existing under the laws of the State of New Jersey (together with its successors and permitted assigns, the “Institution”). Capitalized terms not otherwise defined shall have the meanings ascribed to them in the Loan Agreement (as defined below).

### **W I T N E S S E T H**

WHEREAS, the Authority financed the cost of the Project by the issuance of its Bonds pursuant to a Trust Indenture dated as of June 1, 2003 (the “Indenture”) with The Bank of New York, as trustee (the “Trustee”); and

WHEREAS, in connection with the financing of the Project, the Institution entered into, among other things, a Loan Agreement with the Authority dated as of June 1, 2003 (the “Loan Agreement”), which sets forth the terms of the loan by the Authority to the Institution; and

WHEREAS, the Institution has notified the Authority that it wishes to amend the scope of the Project by adding certain additional items; and

WHEREAS, it is necessary to amend Exhibit A of the Loan Agreement in order to implement such additional portions of the Project; and

WHEREAS, the requirements of Section 3.2 of the Loan Agreement have been satisfied and the parties now desire to enter into this First Amendment; and

WHEREAS, the parties have determined that this First Amendment does not materially adversely affect the interests of the Holders of the Bonds;

NOW, THEREFORE, in pursuance of said agreement and consideration of the sum of One Dollar (\$1.00) and other valuable consideration, receipt of which is hereby acknowledged, the parties hereto mutually covenant and agree as follows:

**Amendments to the Loan Agreement.** *Effective as of the Effective Date, the Loan Agreement shall be amended as follows:*

*The Loan Agreement is hereby amended by adding the information in "Exhibit A" attached to this First Amendment. Henceforth, all references in the Loan Agreement to Exhibit A shall refer to Exhibit A, as revised.*

*Whenever appearing in the Loan Agreement, the term "Loan Agreement" shall be deemed to mean the Loan Agreement as amended hereby.*

*Except as otherwise provided herein, all of the provisions of the Loan Agreement are hereby confirmed and ratified and shall remain in full force and effect.*

**Successors and Assigns.** *This First Amendment shall be binding upon and inure to the benefit of the Institution and the Authority and their respective successors and/or assigns.*

**Governing Law.** *This First Amendment shall be governed by and construed according to the laws of the State of New Jersey.*

**Counterparts.** *This First Amendment may be signed in any number of counterparts each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.*

**Fees and Expenses.** *The Institution hereby agrees to pay all fees and expenses of the Authority and the Trustee incurred in connection with this First Amendment, including without limitation, reasonable legal fees and expenses.*

IN WITNESS WHEREOF, each of the undersigned has executed this First Amendment, effective as of the Effective Date.

NEW JERSEY HEALTH CARE  
FACILITIES FINANCING AUTHORITY

By: \_\_\_\_\_  
Name: Mark E. Hopkins  
Title: Executive Director

VIRTUA HEALTH, INC.

By: \_\_\_\_\_  
Name: Richard Miller  
Title: President

**CONSENTED TO:**  
THE BANK OF NEW YORK, as Trustee

By: \_\_\_\_\_  
Name:  
Title: Assistant Vice President

VIRTUA MEMORIAL HOSPITAL  
BURLINGTON COUNTY, INC.

By: \_\_\_\_\_  
Name:  
Title:

VIRTUA WEST JERSEY HEALTH  
SYSTEM, INC.

By: \_\_\_\_\_  
Name:  
Title:

## EXHIBIT A

### Additional Components of 2003 Project

1.	<u>Virtua - Memorial Hospital Burlington County.</u>	
	Replace counter tops in ED, Stokes 5th & 7th floor nursing stations	\$ 12,500
	Roof replacement of North Building	220,000
	Laboratory - Replace Roof Top HVAC Unit	100,000
	Cisco Wireless Phone network installation within hospital	100,000
	In the North Building replace Medical Air/Vacuum pumps	60,000
	Replace Operating Room doors (9)	43,560
	Roof replacement for Laboratory roof	40,000
	Replace Handicap doors and access (3) within hospital	<u>9,000</u>
	Total	\$585,060
2.	<u>Virtua - West Jersey Health System (Voorhees).</u>	
	Third Floor Nurses Station –Replace	\$ 30,000
	Kitchen Hood – replace Ansel system up to cock pit	25,000
	Renovate - Mens Locker Room - Ground Floor	25,000
	Construct Medical Oxygen Storage off Loading Dock	20,000
	Elevator carpet need Security desk	9,000
	Repair Leak in tunnel to ground floor (helicopter area)	<u>7,200</u>
	Total	\$116,200
	Grand Total	\$701,260

**ASSIGNMENT**

KNOW ALL MEN BY THESE PRESENTS that the NEW JERSEY HEALTH CARE FACILITIES FINANCING AUTHORITY (the "Authority") having its principal office at P.O. Box 366, Trenton, New Jersey 08625 does hereby sell, assign, transfer and set over to The Bank of New York as trustee (the "Trustee") under the Trust Indenture, dated as of June 1, 2003, between the Authority and the Trustee and relating to the Authority's Revenue Bonds (Variable Rate Composite Program - Virtua Health, Inc. Project) Series 2003 A-7, all the right, title and interest of the Authority in and to the Amendment No. 1 to Loan Agreement (the "First Amendment"), dated as of \_\_\_\_\_, 2006, between the Authority and Virtua Health, Inc. (the "Institution"), to the same extent as set forth in the Assignment dated as of June 1, 2003 heretofore made by the Authority to Trustee in respect of the Loan Agreement, dated as of June 1, 2003, between the Authority and the Institution.

IN WITNESS WHEREOF, NEW JERSEY HEALTH CARE FACILITIES FINANCING AUTHORITY has caused this Assignment to be duly executed and attested by its duly authorized officers and this Assignment to be dated as of \_\_\_\_\_, 2006.

[SEAL]

NEW JERSEY HEALTH CARE  
FACILITIES FINANCING AUTHORITY

Attest:

By: \_\_\_\_\_  
Name: Mark Hopkins  
Title: Executive Director

\_\_\_\_\_  
Name: Dennis Hancock  
Title: Assistant Secretary



—LAW OFFICES—  
**GLUCKWALRATH**

428 River View Plaza, Trenton, New Jersey 08611

Tel: (609) 278-1900/3900 Fax: (609) 278-9200/3901

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July \_\_, 2006

New Jersey Health Care Facilities Financing Authority  
22 South Clinton Avenue  
Trenton, New Jersey 08609

The Bank of New York, as Trustee  
385 Rifle Camp Road  
West Paterson, New Jersey 07424

Re: Amendment No. 1 to Loan Agreement, Relating to \$11,000,000  
Aggregate Principal Amount of New Jersey Health Care Facilities  
Financing Authority Revenue Bonds (Variable Rate Composite Program -  
Virtua Health, Inc. Project) Series 2003 A-7 (the "Bonds")

Ladies and Gentlemen:

The above-referenced Bonds were issued by the New Jersey Health Care Facilities Financing Authority (the "Authority") on June 20, 2003 pursuant to the Trust Indenture, dated as of June 1, 2003 (the "Trust Indenture"), between the Authority and The Bank of New York, as trustee (the "Trustee"), which Trust Indenture was authorized by a resolution adopted by the Authority on May 22, 2003. The proceeds of the Bonds were loaned by the Authority to Virtua Health, Inc (the "Institution") pursuant to a Loan Agreement, dated as of June 1, 2003 (the "Original Loan Agreement"), between the Authority and the Institution. The Bonds are secured by a Letter of Credit issued by Wachovia Bank, National Association (the "Bank"), dated June 20, 2003 (the "Letter of Credit"), which was issued pursuant to a Reimbursement Agreement, dated June 20, 2003, between the Bank and the Institution. Inasmuch as a portion of the Project financed by the Bonds was to be owned or used from time to time by Virtua-Memorial of Burlington County, Inc. ("Virtua-Memorial") and Virtua-West Jersey Health System, Inc. ("Virtua-West Jersey"), affiliates of the Institution, the Authority required that Virtua-Memorial and Virtua-West Jersey each execute and deliver a Letter of Representations and Agreements (each referred to as the "Original Letter of Representations") by which Virtua-Memorial and Virtua-West Jersey each made certain representations and agreements in connection with their use of the portion of the Project to be owned and/or used by each. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Trust Indenture.

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By letter dated June 7, 2006 (the "Institution Request"), the Institution notified the Authority, in accordance with Section 3.2(b)(i) of the Original Loan Agreement, that it wished to make certain additions to the Project that was to be financed by the Bonds. In order to implement such additions to the Project, the Authority and the Institution have entered into an Amendment No. 1 to Loan Agreement of even date herewith (the "Amendment to Loan Agreement"), which Amendment to Loan Agreement amends certain provisions of the Original Loan Agreement. The Amendment to Loan Agreement has been assigned by the Authority to the Trustee pursuant to an Assignment of even date herewith. In addition, Virtua-Memorial and Virtua-West Jersey have each entered into an Amendment No. 1 to its respective Letter of Representations and Agreements, of even date herewith (collectively, the "Letter of Representations Amendments"), confirming and ratifying its Original Letter of Representations with respect to the Project, as amended.

By instrument dated May 22, 2006 (the "Bank Consent"), the Bank has consented to the execution and delivery of the Amendment to Loan Agreement, pursuant to Section 9.09 of the Indenture.

In our capacity as bond counsel to the Authority, we have examined the proceedings relating to the authorization, execution and delivery of the Amendment to Loan Agreement, including (a) a certified copy of the resolution, entitled "Resolution Authorizing the Execution and Delivery of Various Documents Relating to the Amendment To The Project In Respect Of the Authority's Revenue Bonds (Variable Rate Composite Program - Virtua Health, Inc. Project) Series 2003 A-7, adopted by the Authority on June 22, 2006, (b) an executed copy of the Amendment to Loan Agreement, (c) executed copies of the Amendments to the Letters of Representations, (d) executed copies the Institution Request and the Bank Consent, (e) such matters of law, including the Internal Revenue Code of 1986, as amended (the "Code"), and (f) such other opinions, agreements, proceedings, certificates, records, approvals, resolutions and documents as to various matters with respect to the Amendment to Loan Agreement as we have deemed necessary. As to matters of fact, we have relied upon the representations and certifications of the Authority, the Institution, Virtua-Memorial, Virtua-West Jersey and the Trustee and, where we have deemed appropriate, upon representations or certifications of public officials. Further, in expressing such opinions, we have relied upon the genuineness, accuracy and completeness of the documents and other instruments which we have examined.

This opinion is being delivered to you in accordance with Section 3.2(a)(i)(B) of the Original Loan Agreement and Section 9.06 of the Trust Indenture.

Based upon the foregoing, it is our opinion that:

1. The Amendment to Loan Agreement is authorized by the Trust Indenture and by the Act.



January 1, 2004

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2. The execution and delivery of the Amendment to Loan Agreement will not, in and of itself, adversely affect the exclusion of interest on the Bonds for Federal income tax purposes or cause interest on the Bonds to be treated as an item of tax preference under Section 57 of the Code.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions. Furthermore, we have assumed compliance with all covenants and agreements contained in the Trust Indenture, the Original Loan Agreement, the Tax Certificates of the Authority the Institution, each dated June 20, 2003 relating to the Bonds, including (without limitation) covenants and agreements the compliance with which is necessary to assure that actions, omissions or events on and after the date of issuance of the Bonds have not caused and will not cause interest on the Bonds to be included in gross income for federal income tax purposes. We have not undertaken to determine compliance with any of such covenants and agreements or any other requirements of law, and (except as expressly set forth above in connection with the execution and delivery of the Amendment to Loan Agreement) we have not otherwise reviewed any actions, omissions or events occurring after the date of issuance of the Bonds or the exclusion of interest on the Bonds from gross income for federal income tax purposes. Accordingly, no opinion is expressed herein as to whether interest on the Bonds is excludable from gross income for federal income tax purposes or as to any other tax consequences related to the ownership or disposition of, or the accrual or receipt of interest on, the Bonds.

This opinion is furnished by us as bond counsel to the Authority. No attorney-client relationship has existed or exists between our firm and the Trustee in connection with the Bonds or by virtue of this opinion, and we disclaim any obligation to update this opinion. This opinion is delivered to the addressees hereof pursuant to certain requirements of the Original Loan Agreement and the Trust Indenture, and is not to be used, circulated, quoted or otherwise referred to or relied upon for any other purpose or by any person. This opinion is not intended to, and may not, be relied upon by any other party to whom it is not specifically addressed.

GLUCK WALRATH LLP