



MEMORANDUM

Office of the City Attorney

002123
Phone: 334-5011/Fax 334-2229
Box 46

TO: Mayor and City Commission

DATE: November 26, 2001
RESOLUTION

FROM: City Attorney

SUBJECT: **A Resolution of the City of Gainesville, Florida authorizing the modification of its Health Facilities Revenue Note, Series 2000 (Shands Teaching Hospital and Clinics, Inc.); authorizing execution and delivery of an Omnibus Agreement that amends the documents pursuant to which such Series 2000 Note was issued; and providing an effective date.**

Recommendation: The City Commission: 1)hear an explanation from Shands' representatives; and 2) adopt the proposed Resolution.


The City Commission at its meeting of December 11, 2000, adopted a Resolution that authorized the issuance of a Health Facilities Revenue Note, Series 2000 (Shands Teaching Hospital and Clinics, Inc.) (the "Note"), to finance the cost of capital improvements and equipment to be located at Shands Hospital at the University of Florida (the "Project").

Bond counsel has requested that the City Commission adopt a new Resolution. The purpose of this resolution is to change the stated interest rate on the Note from the 3 month LIBOR rate minus 1.182% to 82% of the 3 month LIBOR rate. No new money will be issued so bond counsel advises that it is not necessary to file a TEFRA notice or have a TEFRA hearing. However, the modification of the interest rate is a "reissuance" for tax purposes and, for this reason, this Resolution must be adopted and new documents executed and filed.

The Note shall not constitute a debt, liability or obligation of the City, Alachua County, or the State of Florida, or any political subdivision thereof, but shall be payable solely from revenues paid by Shands to the City under the terms of a Loan Agreement between the City and Shands.

It is recommended that the City Commission adopt the Resolution, which (a) authorizes the City to modify the terms of the Note to modify the stated interest rate due to change in market conditions pursuant to the terms of the Resolution, and (b) authorizes the Mayor and the Clerk of the Commission to execute the Omnibus Agreement and Note.

The Director of Finance has reviewed these documents and has approved them for the purposes stated therein.

Submitted by: 
Marion J. Radson, City Attorney
City Attorney

LAW OFFICES

SMITH HULSEY & BUSEY

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POST OFFICE BOX 53315
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November 6, 2001



Marion J. Radson
City of Gainesville
200 E. University Ave., Suite 425
P. O. Box 1110
Gainesville, Fl 32602-110

Re: \$10,000,000 City of Gainesville Florida Health
Facilities Revenue Note, Series 2000 (Shands Teaching
Hospital & Clinic, Inc. Project)

Dear Marion:

Attached is a draft resolution for the City's approval. Please place it on the City's agenda for the November 26 meeting. The purpose of this resolution is to change the stated interest rate on the above-referenced bonds from the 3 month LIBOR rate minus 1.182% to 82% of the 3 month LIBOR rate. No new money will be issued and it is not necessary to file a TEFRA notice or have a TEFRA hearing. However, the modification of the interest rate is a "reissuance" for tax purposes and, for this reason, a form 8038 must be filed. I will draft the form 8038.

Please call me if you have any questions.

Sincerely,

David J. Hull
David J. Hull

DJH/clt/363247

*Marion, I tentatively plan
to attend the meeting.*

A RESOLUTION OF THE CITY OF GAINESVILLE, FLORIDA AUTHORIZING THE MODIFICATION OF ITS HEALTH FACILITIES REVENUE NOTE, SERIES 2000 (SHANDS TEACHING HOSPITAL AND CLINICS, INC.); AUTHORIZING EXECUTION AND DELIVERY OF AN OMNIBUS AGREEMENT THAT AMENDS THE DOCUMENTS PURSUANT TO WHICH SUCH SERIES 2000 NOTE WAS ISSUED; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA, (the "Issuer") as follows:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This resolution, hereinafter called "instrument," is adopted pursuant to the provisions of Chapter 166, Part II, and Chapter 159, Part II, Florida Statutes (the "Act"), and other applicable provisions of law.

SECTION 2. DEFINITIONS. Unless the context otherwise requires, the terms used in this resolution shall have the meanings specified in the Loan Agreement, dated as of December 1, 2000, as amended (the "Loan Agreement") between the Issuer and Shands Teaching Hospital and Clinics, Inc. ("Shands"), the Note Purchase Agreement (the "Note Agreement"), dated as of December 1, 2000, between the Issuer and Compass Bank (the "Bank"), the Fourteenth Supplemental Master Trust Indenture, dated as of December 1, 2000, between Shands and First Union National Bank (the "Master Trustee") ("Supplemental Master Indenture"), the Health Facilities Revenue Note, Series 2000 (Shands Teaching Hospital and Clinics, Inc.) issued by the Issuer to the Bank (the "Series 2000 Note"), and the Shands Obligated Group Note, dated as of December 18, 2000 issued by Shands to the Master Trustee (the "Obligated Group Note"). In addition, the term "Omnibus Agreement" shall mean the Omnibus Agreement dated as of September 1, 2001, to be entered into among the Issuer, the Bank, Shands and the Master Trustee.

SECTION 3. FINDINGS. It is hereby ascertained, determined and declared as follows:

A. The City Commission of the Issuer has previously issued the Series 2000 Note due and payable on December 18, 2010, pursuant to Resolution No. 000755, adopted by the Issuer on December 11, 2000. The Series 2000 Note was issued for the purpose of financing the cost of capital improvements and equipment to be located at Shands Hospital at the University of Florida.

B. Shands and the Bank have requested: (i) the Issuer to modify the terms of the Note to modify the stated interest rate due to changes in market conditions from the Three Month LIBOR minus 1.182% to 82% of the Three Month LIBOR; and (ii) that the Issuer cause to be delivered to the Bank, in substitution for the Series 2000 Note, a new note with modified interest rate terms (the "Substitute Series 2000 Note") and in the form attached as Exhibit "A" to the Omnibus Agreement.

SECTION 4. AUTHORIZATION, EXECUTION AND DELIVERY OF THE OMNIBUS AGREEMENT AND THE SUBSTITUTE SERIES 2000 NOTE. The Omnibus Agreement, in substantially the form on file in the office of the Clerk of the Commission as Exhibit "A" hereto and the Substitute Series 2000 Note in substantially the form attached as Exhibit "A" to the Omnibus Agreement, with such changes, alterations and corrections as may be recommended by counsel to the Issuer and as may be approved by the Mayor or Mayor Pro Tempore, such approval to be presumed by his or her execution thereof, are hereby approved by the Issuer, and the

Issuer hereby authorizes and directs said Mayor or Mayor Pro Tempore to execute and the Clerk of the Commission to attest under the seal of the Issuer the Omnibus Agreement and the Substitute Series 2000 Note and to deliver to Shands the Omnibus Agreement and the Substitute Series 2000 Note, all of the provisions of which, when executed and delivered by the Issuer as authorized herein and by the other parties duly authorized, shall be deemed to be a part of this instrument as fully and to the same extent as if incorporated verbatim herein.

SECTION 5. NO PERSONAL LIABILITY. No covenant, stipulation, obligation or agreement herein contained or contained in the Omnibus Agreement or the Substitute Series 2000 Note shall be deemed to be a covenant, stipulation, obligation or agreement of any member, agent, officer or employee of the Issuer or its governing body in his or her individual capacity, and neither the members of the Issuer nor any official executing the Substitute Series 2000 Note shall be liable personally thereon or be subject to any personal liability or accountability by reason of the issuance thereof.

SECTION 6. NO THIRD PARTY BENEFICIARIES. Nothing in this instrument, the Omnibus Agreement, or the Substitute Series 2000 Note, expressed or implied, is intended or shall be construed to confer upon any person or firm or corporation other than the Issuer, Shands, the Bank, the Master Trustee and the owner of the Substitute Series 2000 Note any right, remedy or claim, legal or equitable, under and by reason of this instrument, the Omnibus Agreement, or the Substitute Series 2000 Note; this instrument, the Omnibus Agreement and the Substitute Series 2000 Note are intended to be and being for the sole and exclusive benefit of the Issuer, Shands, the Bank, the Master Trustee and the owner from time to time of the Substitute Series 2000 Note.

SECTION 7. PREREQUISITES PERFORMED. All acts, conditions and things relating to the adoption of this instrument, to the issuance of the Substitute Series 2000 Note, and to the execution of the Omnibus Agreement, required by the Constitution or laws of the State of Florida to happen, exist and be performed precedent to the adoption hereof, and precedent to the issuance of the Substitute Series 2000 Note, and to the execution and delivery of the Omnibus Agreement, have happened, exist and have been performed as so required.

SECTION 8. ALL OTHER NECESSARY ACTION. The Mayor, Mayor Pro Tempore, Clerk of the Commission, Counsel to the Issuer, and Smith Hulsey & Busey, bond counsel to the Issuer, are each designated agents of the Issuer in connection with the issuance and delivery of the Substitute Series 2000 Note, and are authorized and empowered, collectively or individually, to take all actions and steps to execute and deliver any and all instruments, documents or contracts on behalf of the Issuer which are necessary or desirable in connection with the execution and delivery of the Substitute Series 2000 Note and which are not inconsistent with the terms and provisions of this resolution and other actions relating to the Substitute Series 2000 Note heretofore taken by the Issuer. The members of the governing body of the Issuer and its officers, attorneys, engineers or other agents or employees are hereby authorized to do all acts and things required of them from time to time by this instrument and the Omnibus Agreement, or desirable or consistent with the requirements hereof or thereof, for the full, punctual and complete performance of all the terms, covenants and agreements contained in the Substitute Series 2000 Note and the Omnibus Agreement.

SECTION 9. THIS INSTRUMENT CONSTITUTES A CONTRACT. The Issuer covenants and agrees that this instrument shall constitute a contract between the Issuer, Shands and the Bank and its successor and assigns that from time to time may hold the Substitute Series 2000 Note.

SECTION 10. ISSUER BOND POLICY COMPLIANCE. Shands is in substantial compliance with the criteria and requirements of the Issuer's Industrial Development Revenue Bond Policy and, consistent with the provisions of the laws of the State of Florida and the Internal Revenue Code relating to the issuance of the Substitute Series 2000 Note, the ratings requirements regarding Shands' obligations and the independent bond trustee requirements are hereby waived.

SECTION 11. SEVERABILITY OF INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof or of the Substitute Series 2000 Note issued hereunder.

SECTION 12. REPEALING CLAUSE. All resolutions or parts thereof of the Issuer in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

SECTION 13. EFFECTIVE DATE. This instrument shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the City Commission of the City of Gainesville, Florida, this 26th day of November, 2001.

CITY OF GAINESVILLE, FLORIDA

(SEAL)

By: _____
Mayor

ATTEST:

By: _____
Clerk of the Commission

Approved as to form and legality:

By: _____
City Attorney

OMNIBUS AGREEMENT

THIS OMNIBUS AGREEMENT, dated as of the first day of September, 2001, by and among the **CITY OF GAINESVILLE, FLORIDA** (hereinafter called the "Issuer"), a municipal corporation organized and existing under the provisions of laws of the State of Florida, **SHANDS TEACHING HOSPITAL AND CLINICS, INC.** (hereinafter called the "Borrower"), a not for profit corporation organized and existing under the laws of the State of Florida, **COMPASS BANK** (the "Bank"), and **FIRST UNION NATIONAL BANK** (the "Master Trustee");

WITNESSETH:

WHEREAS, the City Commission of the Issuer is authorized under Chapter 166, Part II, and Chapter 159, Part II, Florida Statutes (hereinafter called the "Act"), to finance or refinance facilities required or useful for health care purposes, including hospital facilities, equipment, land, rights in land and other appurtenances and facilities related thereto, to the end that the Issuer may be able to promote the improvement of health and living conditions of the people of the City of Gainesville, Florida, Alachua County, and the State of Florida and to provide for such financing or refinancing through the issuance of revenue bonds; and

WHEREAS, the Issuer has issued its Health Facilities Revenue Note, Series 2000 (Shands Teaching Hospital and Clinics, Inc. Project) (the "Series 2000 Note") to the Bank under the Act for the purpose of providing funds which were loaned to Shands to pay the costs of acquisition, construction and equipping of all or a portion of the Project (as hereinafter defined), all as authorized by the Act; and

WHEREAS, Shands and the Bank have requested: (i) the Issuer to modify the terms of the Series 2000 Note to modify the stated interest rate due to changes in market conditions from the Three Month LIBOR (as defined in the Series 2000 Note) minus 1.182% to 82% of the Three Month LIBOR effective September 1, 2001; and (ii) that the Issuer cause to be delivered to the Bank, in substitution for the Series 2000 Note, a new note with modified interest rate terms (the "Substitute Series 2000 Note") and in the form attached as Exhibit "A" to this Omnibus Agreement.

WHEREAS, the Issuer, Shands, the Bank and the Master Trustee have determined to modify the Series 2000 Note and the Note Documents (as hereinafter defined) on such terms as have been provided herein; and

WHEREAS, the Issuer, at a meeting duly convened and held, has authorized the execution and delivery of this Omnibus Agreement;

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the parties hereto agree as follows (provided, that in the performance of the agreements of the Issuer herein contained, any obligation it may thereby incur for the payment of money and any obligation or liability it may incur for damages resulting from the breach of any covenant, undertaking, agreement or warranty herein made shall not be a general debt on its part or a mortgage or pledge of its full faith and credit or taxing power or any of its real estate,

property or franchises but shall be payable solely out of the proceeds derived from the Loan Agreement (as hereinafter defined) the Series 2000 Note and the sale of the Series 2000 Note):

ARTICLE I DEFINITIONS

Section 1.01. Definitions. Unless the context otherwise requires, the terms used in this Omnibus Agreement shall have the meanings specified in the Loan Agreement, dated as of December 1, 2000, as amended (the "Loan Agreement"), between the Issuer and Shands Teaching Hospital and Clinics, Inc. ("Shands"), the Note Purchase Agreement (the "Note Agreement"), dated as of December 1, 2000, between the Issuer and the Bank, the Fourteenth Supplemental Master Trust Indenture, dated as of December 1, 2000, between Shands and the Master Trustee (the "Supplemental Master Indenture"), (the Series 2000 Note, and the Shands Obligated Group Note, dated as of December 18, 2000 (the "Obligated Group Note"). In addition, the following terms shall have the following meanings:

"Note Documents" shall mean the Loan Agreement, the Note Agreement, the Supplemental Master Indenture, the Series 2000 Note, and the Obligated Group Note.

"Omnibus Agreement" shall mean this Omnibus Agreement dated as of September 1, 2001, between the Issuer, the Bank, Shands and the Master Trustee.

"Substitute Series 2000 Note" shall mean the substitute Series 2000 Note with modified interest rate terms issued pursuant to this Omnibus Agreement in the form attached as Exhibit "A" hereto.

ARTICLE II
REPRESENTATIONS

Section 2.01. Representations by the Issuer. The Issuer makes the following representations as the basis for the undertakings of the Borrower herein contained:

(a) The Issuer is a duly created and existing municipal corporation under the Act. The Issuer has the power under the Act to enter into the transactions contemplated by this Omnibus Agreement and to carry out its obligations hereunder. The Issuer, pursuant to a resolution of its City Commission duly adopted, has been duly authorized to execute, assign and deliver this Omnibus Agreement, and to execute and deliver the Substitute Series 2000 Note in the form attached as Exhibit "A" hereto.

(b) Neither the execution and delivery of this Omnibus Agreement, the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the terms and conditions hereof conflict with or result in a breach of any of the terms, conditions or provisions of any agreement or instrument to which the Issuer is now a party or by which it is bound, or constitute a default under any of the foregoing, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Issuer under the terms of any instrument or agreement, except as provided in the Note Agreement or in the Loan Agreement.

Section 2.02. Representations by the Borrower. The Borrower makes the following representations as the basis for the undertakings of the Issuer herein contained:

(a) The Borrower is a private, not for profit corporation duly organized, validly existing and in good standing under the laws of the State of Florida, with all requisite power and authority necessary for the making and performing of this Omnibus Agreement, for the carrying on of the business now conducted by it and for the carrying out of the transactions contemplated by this Omnibus Agreement.

(b) All necessary proceedings have been taken by the Borrower to authorize the execution, delivery and performance of this Omnibus Agreement and the Substitute Series 2000 Note and the consummation of the transactions contemplated hereby or thereby. No further action on the part of the Borrower is required in connection with the execution, delivery and performance of this Omnibus Agreement and the Substitute Series 2000 Note or the consummation of the transactions contemplated hereby or thereby.

(c) The Borrower is in compliance with its representations and covenants in the Loan Agreement.

ARTICLE III

AMENDMENT OF THE SERIES 2000 NOTE AND THE NOTE DOCUMENTS

Section 3.01. (a) Amendment of the Series 2000 Note. The Series 2000 Note is hereby modified to change the stated interest rate from the Three Month LIBOR minus 1.182% to 82% of the Three Month LIBOR effective September 1, 2001. The Issuer shall deliver to the Bank, in substitution for the Series 2000 Note, the Substitute Series 2000 Note with modified interest rate terms and in the form attached as Exhibit "A" hereto.

(b) Amendment of the Note Documents. The Note Documents are hereby amended so that references to the Series 2000 Note in the Note Documents shall mean the Series 2000 Note as amended by this Omnibus Agreement and in the form attached as Exhibit "A" hereto.

**ARTICLE IV
MISCELLANEOUS**

Section 4.01. Florida Law Controlling. This Omnibus Agreement shall be construed and enforced in accordance with the laws of the State of Florida.

Section 4.02. Multiple Counterparts. This Omnibus Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original constituting but one and the same instrument.

Section 4.03. Severability. If any one or more of the covenants, agreements or provisions of this Omnibus Agreement shall be determined by a court of competent jurisdiction to be invalid, the invalidity of such covenants, agreements and provisions shall in no way affect the validity or effectiveness of the remainder of this Omnibus Agreement, and this Omnibus Agreement shall continue in force to the fullest extent permitted by law.

Section 4.04. Extent of Covenants. All covenants, stipulations, obligations and agreements of the Issuer and the Borrower contained in this Omnibus Agreement shall be effective to the extent authorized and permitted by applicable law.

IN WITNESS WHEREOF, the City of Gainesville, Florida has caused this Omnibus Agreement to be executed in its name and on its behalf by its Mayor and its corporate seal to be hereunto affixed and attested by its Clerk of Commission; Shands Teaching Hospital and Clinics, Inc. has caused this Omnibus Agreement to be executed in its name and on its behalf by its duly authorized officer and attested by its duly authorized officer; Compass Bank has caused this Omnibus Agreement to be executed in its name and on its behalf by its duly authorized officer and attested by its duly authorized officer; and First Union National Bank has caused this Omnibus Agreement to be executed in its name and on its behalf by its duly authorized officer and attested by its duly authorized officer, as of the day and year first above written.

CITY OF GAINESVILLE, FLORIDA

(SEAL)

By: _____
Mayor

ATTEST:

By: _____
Clerk of the Commission

Approved as to form and legality:

By: _____
City Attorney

**SHANDS TEACHING HOSPITAL
AND CLINICS, INC.**

By: _____
Its: Senior Vice President &
Chief Financial Officer/Treasurer

ATTEST:

By: _____
Paul M. Rosenberg
Senior Vice President,
General Counsel/Secretary

COMPASS BANK

By: _____
Its: Vice President

ATTEST:

By: _____
City President

FIRST UNION NATIONAL BANK

By: _____
Its: Trust Officer

ATTEST:

By: _____
Its: _____

**EXHIBIT A
SUBSTITUTE NOTE**

