



# MEMORANDUM

Office of the City Attorney

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(SW)

**TO:** Kurt Lannon,  
Clerk of the Commission

**DATE:** November 8, 2001

**FROM:** Alice F. Murnahan, Sr. Legal Assistant

**SUBJECT:** Shands Resolution

2001 NOV -9 PM 3:02

CITY OF GAINESVILLE  
CITY COMMISSION

Attached is a copy of Exhibit "A"(Omnibus Agreement) to the above-referenced Resolution for public inspection and review. The item is set for the November 26, 2001 City Commission agenda.

If you have any questions, please contact me.

## OMNIBUS AGREEMENT

**THIS OMNIBUS AGREEMENT**, dated as of the first day of October, 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");

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

**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 October 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**