

Minutes of the New Jersey Health Care Facilities Financing Authority meeting held on December 16, 2010 on the fourth floor of Building #4, Station Plaza, 22 South Clinton Avenue, Trenton, NJ.

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

Vice-Chairman Gus Escher, Public Member; Maryann Kralik, Designee of the Commissioner of Banking and Insurance; Eileen Stokley, Designee of the Commissioner of Human Services (via telephone); Bill Conroy, Designee of the Commissioner of Health and Senior Services; Suzette Rodriguez, Public Member (via telephone); and Ulysses Lee, Public Member (via telephone).

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

Mark Hopkins, Lou George, Steve Fillebrown, Ron Marmelstein, Suzanne Walton, Michael Ittleson, Brooke Liebowitz, Taryn Jauss, Carole Conover, Bill McLaughlin, Tammy Romsdahl, Bernie Miller, and Edwin Fuentes.

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

Clifford Rones, Deputy Attorney General; Maura Tully, Governor's Authorities Unit; John Kelly, Wilentz Goldman & Spitzer; Gary Walsh, Windels Marx Lane & Mittendorf; Erica Craner and Sandra Casas (via telephone), Marsh USA; Debbie Hughes (via telephone), ACE Insurance; and Ryan Feeney, NJ Office of Public Finance.

## **CALL TO ORDER**

Vice-Chairman Gus Escher called the meeting to order at 10:08 a.m. and announced that this was a regular meeting of the Authority, held in accordance with the schedule adopted at the May 27, 2010 Authority meeting. Complying 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*, enough in advance to permit the publication of an announcement at least 48 hours before the meeting.

### **1. APPROVAL OF MINUTES** **November 18, 2010 Authority Meeting**

Minutes from the Authority's November 18, 2010 meeting were presented for approval. Mr. Conroy offered a motion to approve the minutes; Ms. Kralik seconded. The vote was unanimous and the minutes were approved.

### **2. ERRORS & OMISSIONS POLICY**

Mr. Michael Ittleson introduced to Members the Authority's broker, Erica Craner from Marsh USA, who attended the meeting in person. He further introduced Sandra Casas, also from Marsh USA, and Debbie Hughes, underwriter from ACE, both of whom were attending the meeting via telephone.

Mr. Ittleson reported that at the November meeting the discussion on a Public Officials liability insurance policy, also known as Error and Omissions or E & O, was tabled due to an additional

option being presented at the meeting which staff then needed time to review. This additional option removes the Employment Practices liability, which is already in the Authority's D & O policy, and in doing so reduces the premium on the potential \$1 million E & O policy with a \$1 million side car expense tower to \$9,320 plus a NJ surcharge of \$131 for a total of \$9,451. This is a decrease of \$4,056 from the original option mentioned last month that included the Employment Practices liability. He noted that the options of reserving \$1 million of the Authority's fund balance, or not doing anything regarding an E & O policy, are also still on the table.

Earlier this week, Ms. Kralik asked if staff had checked with other authorities to see if they have E & O policies. Authority staff then contacted other state authorities and National council members. Mr. Ittleson reported that the response was varied and gave examples:

- Several authorities have D & O and no E & O policies but set aside a reserve for legal fees or an unspecified reserve that could be used for insurance purposes. One indicated their reserve was \$2 million. Another indicated that based on the structure of their deals, their broker does not feel they have significant exposure in that area.
- Three authorities do not have D & O or E & O policies. One is covered by their State's tort claims act, the second is covered by their State's general State sovereign immunity for governmental employees, which their lawyers have informed them they are covered even though they are not State employees. They do, however, purchase coverage for both that covers the deductible. The third indicated they rely on their State statute.
- The Kansas Development Finance Authority (KDFA) carries both D&O and E&O policies. KDFA is also covered by the Kansas Tort Claims Act, which provides limited immunity for State law claims and caps damages at \$500,000.
- In New Jersey, HMFA indicated that E & O will be a topic of discussion with their broker when their renewal comes up early next year. EFA has a combined D & O and E & O policy of \$7 million, and EDA has a combined policy with a main limit and various sublimits due to the nature of their activities.

Mr. Ittleson said he and staff are looking for guidance from the Members regarding a potential E & O policy: The Authority could purchase a policy, reserve a \$1 million of the fund balance or just leave things as is. Mr. Ittleson also suggested that the Attorney General's office may want to review the New Jersey State Torts Claims Act to see if an E & O policy was even necessary.

Mr. Escher asked if the Authority were required to purchase an E & O policy. Mr. Ittleson replied that the Authority was not required to purchase a policy, but were considering purchasing a policy in order to receive more quotes from carriers. He reminded Members that several carriers would not bid on the Authority's General Liability policy if the Authority did not have an E & O policy in place. Mr. Hopkins asked the representatives from Marsh that if the Authority were to establish a reserve, would carriers be more likely to provide quotes. Ms. Casas responded that being self-insured would not likely result in lower bids or remove the requirement to carry an E & O policy. Mr. Escher asked when the General Liability policy needed to be renewed, to which Mr. Ittleson informed him was in April. Mr. Escher suggested that Members table the discussion until closer to the renewal date and, in the meantime, asked Ms. Craner to research quotes from carriers and determine the actual price of the premium, factoring in both with an E & O policy and without an E & O policy in place. Mr. Escher then made a motion to take no action at this time but expressed a willingness to reconsider the purchase of an E & O policy until March when Ms. Craner would be

able to get back to Members with quotes. Mr. Conroy seconded the motion. The motion passed unanimously.

### **AB RESOLUTION NO. KK-52**

**NOW, THEREFORE, BE IT RESOLVED**, that the Authority hereby takes no action on the decision to purchase an Errors & Omissions Insurance Policy.

### **3. AMENDMENT OF DOCUMENTS**

#### **Bridgeway Assisted Living**

Ms. Suzanne Walton reported that on October 21 of this year, the Authority issued approximately \$5.4 million of its Revenue Refunding Bonds on behalf of Bridgeway Assisted Living, L.L.C. (the “Bonds”). Proceeds of the Bonds were used to currently refund and redeem Bridgeway’s Series 1999A Bonds. The financing was structured as a variable rate transaction and would bear interest at a floating rate from the date of closing until final maturity. The Bonds were privately placed with TD Bank, N.A. and secured by a pledge of gross receipts, a mortgage on the property and an assignment of all contracts, licenses and permits related to the facility. Interest on the Bonds and a portion of the unpaid principal would be payable on the 15<sup>th</sup> calendar day of each month (each an “Interest Payment Date”). The Trust Agreement and the Bond currently provide that the amount of interest payable with respect to the Bonds on any Interest Payment Date should be computed on the basis of a 365- or 366-day year for the number of days actually elapsed. In connection with the issuance and sale of the Bonds to the Purchaser, the Authority delivered a Direct Purchase Memorandum.

Subsequent to closing on the Bond, the Borrower and the Purchaser mutually agreed that the amount of interest payable with respect to the Bonds should be computed on the basis of a 360-day year for the number of days actually elapsed and have requested that the Authority and the Trustee amend the Bond documents to provide for the change to the day count methodology.

Ms. Walton asked the Members consideration of a resolution that would amend the Trust Agreement and the Bond to provide that the amount of interest payable with respect to the Bonds on any Interest Payment Date shall be computed on the basis of a 360-day year for the number of days actually elapsed and authorizes its officers to execute and deliver all documents necessary to enable the Authority and the Trustee to effectuate such amendments, including, without limitation, the First Supplemental Trust Agreement.

The Resolution also approves the form of the First Supplemental Trust Agreement and authorizes the Authorized Officers to execute the document in substantially such form, with such changes as counsel may advise, provided that prior to, or simultaneously with the execution and delivery of the First Supplemental Trust Agreement, the Authorized Officer shall have received a Favorable Opinion of Bond Counsel and executed copies of the Consent and Agreement of the Purchaser and the Consent of the Borrower into the forms attached to the First Supplemental Trust Agreement.

Ms. Walton further reported that the Resolution also approves the delivery of a Supplement to the Direct Purchase Memorandum in connection with the amendments to the Trust Agreement and the Bonds effectuated by this Resolution and authorizes the Authorized Officers to approve the contents of the Supplement on behalf of the Authority.

Mr. Conroy made a motion to approve the amending of the bond documents as recommended by Authority staff. Ms. Kralik seconded the motion. The motion passed unanimously.

#### **AB RESOLUTION NO. KK-53**

**NOW, THEREFORE, BE IT RESOLVED**, that the Authority hereby approves a “RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST SUPPLEMENTAL TRUST AGREEMENT AND SUPPLEMENT TO THE DIRECT PURCHASE MEMORANDUM IN CONNECTION WITH ITS REVENUE REFUNDING BONDS, BRIDGEWAY ASSISTED LIVING, L.L.C. ISSUE, SERIES 2010.”

*(attached)*

#### **4. APPROVAL OF EXPENSES**

Vice Chairman Escher referenced a summary of Authority expenses and invoices. Mr. Conroy offered a motion to approve the bills and to authorize their payment; Ms. Kralik seconded. The vote was unanimous and the motion was approved.

#### **AB RESOLUTION NO. KK-54**

**WHEREAS**, the Authority has reviewed memoranda dated December 9, 2010, 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 \$940,788.44, \$31,705.04 and \$116,022.67 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.

#### **5. STAFF REPORTS**

Mr. Escher thanked staff for the Project Development Summary, Cash Flow Statement, and Legislative Advisory reports. Mr. Escher then asked Mr. Hopkins to present his Executive Director’s Report.

Mr. Hopkins reported to Members the following hospital news:

- Saint Barnabas Health Care was upgraded to investment grade last week, with both Standard & Poor’s and Fitch Ratings boosting the credit to BBB-minus from BB-plus.
- Kennedy Health Care Center opened its \$12.5 million addition last week which adds another 60 beds for sub-acute patients. This project was funded by bond proceeds issued through the Authority.
- LibertyHealth completed the sale of Meadowlands Hospital to MHA LLC. Ownership was transferred on December 7, 2010.

Mr. Hopkins thanked Authority staff for their hard work this past year and wished everyone a happy new year.

Suzette Rodriguez left the meeting at 10:30.

## 6. EXECUTIVE SESSION

Mr. Escher asked the Members to meet in Executive Session, as permitted by the Open Public Meetings Act and the Authority's By-Laws to discuss personnel matters. Mr. Conroy offered a motion to meet in Executive Session. Ms. Kralik seconded the motion. The vote was unanimous and the motion carried. Mr. Escher noted that the results of this discussion will be made public when the need for confidentiality no longer exists.

### AB RESOLUTION NO. KK-55

**NOW, THEREFORE, BE IT RESOLVED**, that, as permitted by the Open Public meetings Act and the Authority's By-Laws, the Authority met in Executive Session to discuss matters relating to personnel;

**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. No Action was taken during Executive Session.

As there was no further business to be addressed, following a motion by Mr. Conroy and a second by Ms. Stokley, the Members voted unanimously to adjourn the meeting at 10:45 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  
DECEMBER 16, 2010.

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Carole A. Conover  
Assistant Secretary