

**MINUTES  
SPECIAL MEETING  
CAYUGA COUNTY LEGISLATURE  
SEPTEMBER 15, 2008, 6:00 PM**

**CALL TO ORDER:** Hon Roger Mills Chairman, at 6:00PM

**ROLL CALL:** Mary Jones Clerk of the Legislature, all Legislator's present, except Chapman and Murphy excused.

**PLEDGE OF ALLEGIANCE:**

**MOMENT OF PRAYER:**

**TOPIC: AUBURN MEMORIAL HOSPITAL**

Bill Marquardt Attorney for AMH

Approving COPS Modification Documents for AMH Financing. First step in SEQRA requires environmental review before type 2 action. Adoption of this resolution is an action.

Fearon, motion to divide the question, all in favor.

**RESOLUTIONS:**

**RESOLUTION NO. 557-08**

**CAYUGA COUNTY, NEW YORK**

**SEPTEMBER 15, 2008**

A [regular/special] meeting of the County Legislators of Cayuga County, New York was held at the Legislature Chamber on the 6<sup>th</sup> floor of the Cayuga County Office Building, 160 Genesee Street, Auburn, New York on September 15, 2008, at 6:00 P.M. (Prevailing Time).

**There were present:** (County Legislators)

Patrick Mahunik  
Christopher Palermo  
David Axton  
Ann Petrus  
Raymond Lockwood  
George Fearon  
Francis Mitchell  
Steven Cuddeback  
Peter Tortorici  
Daniel Schuster  
Daniel Sincebaugh  
Patrick McIntosh  
Roger Mills

**There were Absent:** (County Legislators)

Michael Chapman  
Linda Murphy

**Also Present:**

Fred Westphal  
Mary Jones  
Sheila Smith  
Steve Johnson  
Bill Marquardt

The following resolution was offered Ann Petrus, who moved its adoption, and second by George Fearon to wit:

**RESOLUTION NO. 557-08**

**RESOLUTION OF CAYUGA COUNTY, NEW YORK, ADOPTED ON SEPTEMBER 15, 2008, DECLARING LEAD AGENCY STATUS, DETERMINING "TYPE II" ACTION AND DETERMINING NO FURTHER ENVIRONMENTAL REVIEW OF THE PROPOSED ACTION IS REQUIRED**

**WHEREAS**, Section 215 of the County Law empowers the County Legislators of Cayuga County, New York (the "County") to adopt a resolution for the general care and control of real and personal property of the County; and

**WHEREAS**, on March 23, 1994, the Cayuga County Hospital Improvement Corporation (the "Issuer") issued its Cayuga County Hospital Improvement Corporation (Auburn Memorial Hospital Project) Certificates of Participation, Series 1994 in the aggregate principal amount of \$26,375,000 (the "Series 1994 Certificates") pursuant to the terms of a Trust Indenture dated as of February 1, 1994 (the "Original Indenture") to finance the costs of certain capital improvements to a hospital facility located at 17 Lansing Street, Auburn, New York 13021.

**WHEREAS**, pursuant to the terms of a Ground Lease dated as of February 1, 1994 (the "Ground Lease") by and between Auburn Memorial Hospital (the "Hospital") and the Issuer, the Hospital leased certain of its facilities (the "Hospital Facility") to the Issuer; and

**WHEREAS**, pursuant to the terms of a Lease Purchase Sublease Agreement dated as of February 1, 1994 (the "Sublease") by and between the Issuer and the County, the Issuer subleased the Hospital Facility to the County; and

**WHEREAS**, pursuant to the terms of a License and Operating Agreement dated as of February 1, 1994 (the "Original Operating Agreement") by and between the County and the Hospital, the Hospital undertook and completed a certain capital improvement project and has been operating the Hospital Facilities, as improved; and

**WHEREAS**, the Hospital has requested that the County modify certain terms of the Original Operating Agreement in accordance with the Hospital's approved Plan of Reorganization under Chapter 11 of the United States Bankruptcy Code (the "Plan of Reorganization"); and

**WHEREAS**, in order to consummate the aforesaid modifications, the County has been requested to execute and deliver a certain First Amendment to License and Operating Agreement and a certain Amendment to Financing Documents (the execution and delivery of such documents and the undertaking of the transactions contemplated therein being collectively referred to herein as the "Project"); and

**WHEREAS**, the County is a local agency pursuant to the New York State Environmental Quality Review Act ("SEQRA"), ECL Section 8-0101, *et seq.*, and implementing regulations, 6 NYCRR Part 617 (the "Regulations"); and

**WHEREAS**, undertaking the Project is an Action as defined by SEQRA; and

**WHEREAS**, the County has reviewed the classifications of actions contained in the Regulations; and

**NOW, THEREFORE BE IT RESOLVED ON SEPTEMBER 15, 2008 BY THE COUNTY LEGISLATORS OF CAYUGA COUNTY, NEW YORK, AS FOLLOWS:**

1. The County hereby determines that the Project constitutes a Type II Action pursuant to Part 617.5(c)(20) of the Regulations and as such is not subject to review under SEQRA.
2. This resolution shall take effect immediately.

**WHEREFORE**, the foregoing Resolution was put to a vote of the members of the County Legislators of the County on September 15, 2008, the result of which vote was as follows:

<u>COUNTY LEGISLATOR</u>		<u>VOTE</u>
Patrick Mahunik	yes	
Christopher Palermo		yes
David Axton		yes
Ann Petrus		yes
Raymond Lockwood		yes
George Fearon		yes
Francis Mitchell	yes	
Steven Cuddeback		yes
Peter Tortorici		yes
Daniel Schuster	yes	
Daniel Sincebaugh		yes
Patrick McIntosh	yes	
Roger Mills		yes
Michael Chapman		excused
Linda Murphy		excused

**DATED:** September 15, 2008

**CERTIFICATE**

I, the undersigned County Clerk of Cayuga County, State of New York, **HEREBY CERTIFY:**

That I have compared the annexed extract of the minutes of a meeting of the County Legislators of said County including the resolution contained therein, held on September 15, 2008, with the original thereof on file in my office, and that the same is a true, complete and correct copy thereof and of the whole of said original minutes so far as the same relates to the subject matters therein referred to.

**I FURTHER CERTIFY** that all members of said County Legislators had due notice of said meeting.

**I FURTHER CERTIFY** that, pursuant to Section 103 of the Public Officers Law (Open Meetings Law) proper notice was given relative to said meeting and said meeting was open to the general public.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the corporate seal of the Cayuga County, New York, this 15 day of September, 2008.

[SEAL]

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**Susan M. Dwyer, County Clerk**

Bill Marquardt Attorney for AMH, operating agreement with County, back stop to financing, certain modification to COBS. Bond Insurance, Radian will make payment if Hospital or County does not. Fees of County and Radian clarified, reimburse County and Radian if bankruptcy comes up. You will be getting a month by month update. Legislator Fearon, they are already doing that.  
Bill Marquardt Attorney for AMH, Hospital has obligation to pay, restriction on more debt ness for the Hospital, operating fund, approved in bankruptcy plan.  
Legislator Tortorici, is this approved in the budget.  
Fred Westphal County Attorney, yes.

**RESOLUTION NO. 558-08**

**CAYUGA COUNTY, NEW YORK**

**SEPTEMBER 15, 2008**

A [regular/special] meeting of the County Legislators of Cayuga County, New York was held at the Legislature Chamber on the 6<sup>th</sup> floor of the Cayuga County Office Building, 160 Genesee Street, Auburn, New York on September 15, 2008, at 6:00 P.M. (Prevailing Time).

**There were present:** (County Legislators)

Patrick Mahunik  
Christopher Palermo  
David Axton  
Ann Petrus  
Raymond Lockwood  
George Fearon  
Francis Mitchell  
Steven Cuddeback  
Peter Tortorici  
Daniel Schuster  
Daniel Sincebaugh  
Patrick McIntosh  
Roger Mills

**There were Absent:** (County Legislators)

Michael Chapman  
Linda Murphy

**Also Present:**

Fred Westphal  
Mary Jones  
Sheila Smith  
Steve Johnson  
Bill Marquardt

The following resolution was offered Ann Petrus, who moved its adoption, and second by George Fearon to wit:

**RESOLUTION NO. 558-08**

**RESOLUTION OF CAYUGA COUNTY, NEW YORK, ADOPTED ON SEPTEMBER 15, 2008 AUTHORIZING THE MODIFICATION OF CERTAIN TERMS OF THE CAYUGA COUNTY HOSPITAL IMPROVEMENT CORPORATION (AUBURN MEMORIAL HOSPITAL PROJECT) CERTIFICATES OF PARTICIPATION, SERIES 1994 EVIDENCING PROPORTIONATE INTERESTS IN BASE RENT TO BE PAID BY THE COUNTY OF CAYUGA, NEW YORK AND THE EXECUTION OF RELATED DOCUMENTS.**

**WHEREAS**, Section 215 of the County Law empowers the County Legislators of Cayuga County, New York (the "County") to adopt a resolution for the general care and control of real and personal property of the County; and

**WHEREAS**, on March 23, 1994, the Cayuga County Hospital Improvement Corporation (the "Issuer") issued its Cayuga County Hospital Improvement Corporation (Auburn Memorial Hospital Project) Certificates of Participation, Series 1994 in the aggregate principal amount of \$26,375,000 (the "Series 1994 Certificates") pursuant to the terms of a Trust Indenture dated as of February 1, 1994 (the "Original Indenture") to finance the costs of certain capital improvements to a hospital facility located at 17 Lansing Street, Auburn, New York 13021.

**WHEREAS**, pursuant to the terms of a Ground Lease dated as of February 1, 1994 (the "Ground Lease") by and between Auburn Memorial Hospital (the "Hospital") and the Issuer, the Hospital leased certain of its facilities (the "Hospital Facility") to the Issuer; and

**WHEREAS**, pursuant to the terms of a Lease Purchase Sublease Agreement dated as of February 1, 1994 (the "Sublease") by and between the Issuer and the County, the Issuer subleased the Hospital Facility to the County; and

**WHEREAS**, pursuant to the terms of a License and Operating Agreement dated as of February 1, 1994 (the "Original Operating Agreement") by and between the County and the Hospital, the Hospital undertook and completed a certain capital improvement project and has been operating the Hospital Facilities, as improved; and

**WHEREAS**, the Hospital has requested that the County modify certain terms of the Original Operating Agreement in accordance with the Hospital's approved Plan of Reorganization under Chapter 11 of the United States Bankruptcy Code (the "Plan of Reorganization"); and

**WHEREAS**, in order to consummate the aforesaid modifications, the County has been requested to execute and deliver a certain First Amendment to License and Operating Agreement and a certain Amendment to Financing Documents (the execution and delivery of such documents and the undertaking of the transactions contemplated therein being collectively referred to herein as the "Project"); and

**WHEREAS**, by resolution dated the date hereof, the County, a local agency pursuant to the New York State Environmental Quality Review Act ("SEQRA"), ECL Section 8-0101, *et seq.*, and implementing regulations, 6 NYCRR Part 617 (the "Regulations"), determined that the Project constitutes a Type II Action pursuant to Part 617.5(c)(20) of the Regulations and as such is not subject to review under SEQRA; and

**NOW, THEREFORE BE IT RESOLVED ON SEPTEMBER 15, 2008 BY THE COUNTY LEGISLATORS OF CAYUGA COUNTY, NEW YORK, AS FOLLOWS:**

Section 1. The County hereby finds and determines that it is in the County's best interest to modify the terms of the Original Operating Agreement in order to assist the Hospital to implement the Plan of Reorganization.

Section 2. In consequence of the foregoing, the County hereby consents to the modification of the Original Operating Agreement and determines to execute and deliver (a) the First Amendment to License and Operating

Agreement; (b) the Amendment to Financing Documents; and (c) all other agreements, certificates and documents as may be requested by the Hospital and the Trustee in connection with the modification of the financing documents relating to the Series 1994 Certificates (collectively, the "Modification Documents").

Section 3 . The form and substance of the Modification Documents, copies of which are attached hereto, are hereby approved, subject to the approval of the officers of the County identified in Section 4 hereof.

Section 4. The Treasurer and the Chairman of the Legislature are each hereby authorized, on behalf of the County, to negotiate, approve, execute (by manual or facsimile signature) and deliver the Modification Documents and the County Clerk and the Deputy to the County Clerk are each hereby authorized to affix the seal (or a facsimile thereof) of the County to them and to attest to all of them, all in substantially the forms presented to this meeting with such changes, variations, omissions and insertions as the Treasurer or the Chairman of the Legislature shall approve. The execution of them by the Treasurer or the Chairman of the Legislature shall constitute conclusive evidence of that approval.

Section 5. The officers, employees and agents of the County are hereby authorized and directed for and in the name and on behalf of the County to do all acts and things required or provided for by any of the provisions of the Modification Documents, and to execute and deliver, all additional agreements, certificates, instruments and documents in connection therewith, and to pay all fees, charges and expenses and to do all other acts as may be necessary, or in the opinion of the officer, employee or agent, desirable or proper to effectuate the purposes of the foregoing resolution and to cause compliance by the County with all of the terms, covenants and provisions of the Modification Documents binding upon the County. None of the officers, employees or agents of the County, however, shall have any personal liability under the Modification Documents.

Section 6. This resolution shall take effect immediately.

**WHEREFORE**, the foregoing Resolution was put to a vote of the members of the County Legislators of the County on September 15, 2008, the result of which vote was as follows:

<u>COUNTY LEGISLATOR</u>		<u>VOTE</u>
Patrick Mahunik	yes	
Christopher Palermo		yes
David Axton		yes
Ann Petrus		yes
Raymond Lockwood		yes
George Fearon		yes
Francis Mitchell	yes	
Steven Cuddeback		yes
Peter Tortorici		yes
Daniel Schuster	yes	
Daniel Sincebaugh		yes
Patrick McIntosh	yes	
Roger Mills		yes
Michael Chapman		excused
Linda Murphy		excused

**DATED:** September 15, 2008

## CERTIFICATE

I, the undersigned County Clerk of Cayuga County, State of New York, **HEREBY CERTIFY**:

That I have compared the annexed extract of the minutes of a meeting of the County Legislators of said County including the resolution contained therein, held on September 15, 2008, with the original thereof on file in my office, and that the same is a true, complete and correct copy thereof and of the whole of said original minutes so far as the same relates to the subject matters therein referred to.

**I FURTHER CERTIFY** that all members of said County Legislators had due notice of said meeting.

**I FURTHER CERTIFY** that, pursuant to Section 103 of the Public Officers Law (Open Meetings Law) proper notice was given relative to said meeting and said meeting was open to the general public.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the corporate seal of the Cayuga County, New York, this 15 day of September, 2008.

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**Susan M. Dwyer, County Clerk**

[SEAL]

**And any other business that comes before the Board.**

Motion by Fearon to go into executive session at 6:18PM re: possible Pending Litigation, all in favor.

Motion by Lockwood to come out of executive session at 6:25PM, all in favor.

Motion by Lockwood to adjourn at 6:26PM, all in favor.

Minutes approved on 9-23-08, motion by Chapman, all in favor.