

2013-12-05

RESOLUTION NO.

PARLIAMENT

WHEREAS by virtue of subsections (1) and (2) of section 13 of the *Queen Elizabeth Hospital Act*, Cap. 54, the Board of the Queen Elizabeth Hospital may with the approval of the Minister borrow amounts required to meet any of the obligations or performing any of the functions of the Board;

AND WHEREAS by virtue of section 13 (5) of the *Queen Elizabeth Hospital Act*, Cap. 54, the Government of Barbados may, by a resolution of both Houses of Parliament guarantee, in such manner and on such terms and conditions as it thinks fit, the payment of any amount borrowed by the Board of the Queen Elizabeth Hospital, together with any interest payable thereon;

AND WHEREAS the Board of the Queen Elizabeth Hospital is desirous of entering into an agreement with the RBC Royal Bank (Barbados) Limited, a company incorporated under the *Companies Act*, Cap. 308, for a loan facility in the sum of \$25 million Barbados dollars on the terms and conditions set out in the *Schedule* to this Resolution, for the purpose of financing the repayment of the bond arranged on behalf of the Queen Elizabeth Hospital by the Citicorp Merchant Bank which matured on September 19, 2012.

SCHEDULE

TERMS AND CONDITIONS

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| Facility: | Term Loan. |
| Amount: | BDS \$ 25 000 000.00. |
| Lender: | RBC Royal Bank (Barbados) Limited. |
| Borrower: | Board of the Queen Elizabeth Hospital. |
| Guarantor: | Government of Barbados. |
| Purpose: | To finance the repayment of the Citicorp bond which matured on September 19, 2012. |
| Tenor: | 7 years. |
| Arrangement Fee: | A non-refundable fee of \$100,000.00. |
| Interest Rate: | Fixed at 6.6% per annum for the first 36 months, and is subject to review and reset every 36 months. |

The fixed interest rate will increase by 0.25% on the date that is 6 months after closing and every 6 months thereafter until the irrevocable and unlimited guarantee is approved by the Parliament in favour of RBC Royal Bank (Barbados) Limited.

SCHEDULE - (Cont'd)

TERMS AND CONDITIONS - (Cont'd)

- Repayment: Semi-annual principal payments of \$1,785,714.29 plus interest based on an amortization period of 7 years, commencing 6 months after disbursement.
- Security: The Lender shall be provided with the following as security for the borrowing and all other obligations of the Borrower to the Lender:
- (a) An unconditional and binding Letter of Comfort from the Guarantor stating, inter alia, that the Guarantor agrees to repay to the Lender all amounts due to the Lender by the Borrower;
 - (b) A Debt Service Account governed by a Debt Service Agreement between the Borrower and the Lender by which the portion of the Borrower's subventions approved for the purposes of debt servicing are to be paid directly from the Ministry of Finance to the Lender to fund both the required semi-annual principal and interest payments due to the Lender;
 - (c) a Direction to Pay from the Borrower to the Ministry of Finance, whereby the Borrower directs the Ministry of Finance to pay the portion of the Borrower's subvention that have been approved for the purposes of debt servicing directly to the Debt Service Account, and an Acknowledgement of that Direction to Pay from the Ministry of Finance;
 - (d) The Letter of Comfort will be replaced by an irrevocable and unlimited guarantee from the Guarantor to the Lender on the issuing of Parliamentary approval for the Guarantee.

SCHEDULE - (Cont'd)

TERMS AND CONDITIONS - (Cont'd)

Representations
and Warranties:

The Borrower and Guarantor represent and warrant to the Lender that:

- (a) the execution, delivery and performance of the Agreement have been duly authorized by all necessary actions and do not violate its constating documents or any Applicable Laws or agreements to which it is subject or by which it is bound;
- (b) no event has occurred which constitutes, or which, with notice, lapse of time, or both, would constitute, an Event of Default;
- (c) the Borrower, the Board of the Queen Elizabeth Hospital, is a duly incorporated statutory board, validly existing and duly registered or qualified to carry on business in Barbados;
- (d) the most recent financial statements provided to the Lender fairly represent the financial position of the Borrower as of the date thereof and the financial results of the Borrower's operations and cash flows for the fiscal period covered thereby, and since the date of such financial statements, there has occurred no material adverse change in its business or financial condition;
- (e) the Borrower is in compliance in all material respects with all Applicable Laws including, without limitation, all Environmental Laws;

SCHEDULE - (Cont'd)

TERMS AND CONDITIONS - (Cont'd)

- Representations and Warranties:
(Concl'd)
- (f) the Borrower has and will at all times conduct its business in accordance with all Applicable Laws;
 - (g) there is no claim, action, prosecution or other proceeding of any kind pending or threatened against the Borrower or any of its assets or properties before any court or administrative agency which relates to any non-compliance with any Environmental Law or any release from its lands of a contaminant into the natural environment or which, if adversely determined, might have a material adverse effect upon its financial condition or operations or its ability to perform its obligations under the Agreement or any of the Lender's security, and there are no circumstances of which it is aware which might give rise to any such proceeding which it has not fully disclosed to the Lender.
- Covenants:
- The Borrower and Guarantor covenant and agree with the Lender, while the Agreement is in effect:
- (a) to pay all sums of money when due by it under the Agreement;
 - (b) to provide the Lender with prompt written notice of any event which constitutes, or which, with notice, lapse of time, or both, would constitute an Event of Default;
 - (c) to give the Lender 30 days prior written notice of any intended change in the structure of the Borrower and not to consent to, or facilitate a change in structure of the Borrower, including but not limited to the conversion or re-organization of the Borrower into a privately-owned company, without the prior written consent of the Lender;

SCHEDULE - (Cont'd)

TERMS AND CONDITIONS - (Cont'd)Covenants:
(Cont'd)

- (d) to keep its assets fully insured against such perils and in such manner as would be customarily insured by companies carrying on a similar business or owning similar assets;
- (e) to, at all times keep in effect the usual and customary insurance policies for the business carried on by the Borrower in such amount as the Lender may from time to time require, and to keep in effect all other policies of insurance that the Lender may from time to time require;
- (f) to comply in all material respects with all Applicable Laws including, without limitation, all Environmental Laws;
- (g) the Borrower will not, without the prior written consent of the Lender, incur any further borrowings or indebtedness except in the ordinary course of its business;
- (h) the Borrower will not, without the prior written consent of the Lender, grant, create, assume or suffer to exist any mortgage, charge, lien, pledge, security interest or other encumbrance affecting any of its properties, assets or other rights;
- (i) the Borrower will not, without the prior written consent of the Lender, sell, transfer, convey, lease or otherwise dispose of any of its properties or assets other than in the ordinary course of business and on commercially reasonable terms;

SCHEDULE - (Cont'd)

TERMS AND CONDITIONS - (Cont'd)

Covenants:
(Concl'd)

- (j) the Borrower will not, without the prior written consent of the Lender, guarantee or otherwise provide for, on a direct, indirect or contingent basis, the payment of any monies or performance of any obligations by any other Person, except as may be provided for herein;
- (k) not to, without the prior written consent of the Lender, merge, amalgamate, or otherwise enter into any other form of business combination with any other Person;
- (l) to provide the Lender with prompt written notice of any non-compliance by the Borrower with any Environmental Laws or any release from the land of the Borrower of a contaminant into the natural environment and to indemnify and save harmless the Lender from all liability of loss as a result of an Environmental Activity or any non-compliance with any Environmental Law;
- (m) to permit the Lender or its representatives, from time to time, to visit and inspect the Borrower's premises, properties and assets and examine and obtain copies of the Borrower's records or other information and discuss the Borrower's affairs with the auditors, counsel and other professional advisers of the Borrower.

Nothing contained in the foregoing Covenants shall limit any right of the Lender under the Agreement to terminate or demand payment of, or cancel or restrict availability of any unutilized portion of, any demand or other discretionary facility made available under the Agreement.

SCHEDULE - (Cont'd)

TERMS AND CONDITIONS - (Cont'd)

Conditions
Precedent:

The obligation of the Lender to make available any borrowing is conditional upon the receipt of:

- (a) a duly executed copy of the Agreement;
- (b) the security requirements (a), (b) and (c) executed in a form which is satisfactory to the Lender;
- (c) the opening of a Debt Service Account by the Borrower;
- (d) such certificates, authorizations, resolutions and legal opinions as the Lender may reasonably require are received by the Lender;
- (e) all regulatory, Parliamentary and any other government approvals or authorizations required for the granting of the Credit Facility and for the security thereof, including but not limited to the written approval of Cabinet for the Credit Facility and for the grant of a subvention to the Borrower for the purpose of repaying the Credit Facility;
- (f) that such financial and other information or documents relating to the Borrower or Guarantor as the Lender may reasonably require.

SCHEDULE - (Cont'd)

TERMS AND CONDITIONS - (Cont'd)

- Events of Default: Without limiting any other rights of the Lender under the Agreement, if any one or more of the following events has occurred and is continuing:
- (a) the Borrower fails to pay, when due, any principal, interest, fees or other amounts due under the Agreement;
 - (b) the Borrower or Guarantor breaches any covenant or any other provision, express or implied, of the Agreement or any security or other agreement with the Lender or any subsidiary or affiliate of the Lender;
 - (c) the Borrower or Guarantor defaults in the payment of any indebtedness to any person other than the Lender, or in the performance or observance of any agreement in respect of any such indebtedness where, as a result of such default, the maturity of such indebtedness is or may be accelerated;
 - (d) any representation or warranty made or deemed to have been made herein or in any certificate or security provided for herein shall be false or inaccurate in any materially adverse respect;
 - (e) there is, in the opinion of the Lender, a material adverse change in the financial condition, operation or ownership of the Borrower;
 - (f) the Borrower or Guarantor is unable to pay its debts as such debts become due, or is, or is adjudged or declared to be, or admits to being bankrupt or insolvent;

SCHEDULE - (Cont'd)

TERMS AND CONDITIONS - (Cont'd)

- Events of Default:
(Cont'd)
- (g) any notice of intention is filed or any voluntary or involuntary case or proceeding is filed or commenced for
 - (i) the bankruptcy, liquidation, winding-up, dissolution or suspension of general operations of the Borrower;
 - (ii) the composition, re-scheduling, re-organization, arrangement or re-adjustment of, or other relief from, or stay of proceedings to enforce, some or all of the debts of the Borrower;
 - (iii) the appointment of a trustee, receiver, receiver and manager, liquidator, administrator, custodian or other official for, all or any significant part of the assets of the Borrower; or
 - (iv) the possession, foreclosure or retention, or sale or other disposition of, or other proceedings to enforce security over, all or any significant part of the assets of the Borrower;
 - (h) any secured creditor, encumbrancer or lienor, or any trustee, receiver, receiver and manager, agent, bailiff or other similar official appointed by or acting for any secured creditor, encumbrancer or lienor, takes possession of, or forecloses or retains, or sells or otherwise disposes of, or otherwise proceeds to enforce security over all or any significant part of the assets of the Borrower or gives notice of its intention to do any of the foregoing;

SCHEDULE - (Concl'd)

TERMS AND CONDITIONS - (Concl'd)

- Events of Default: (Concl'd)
- (i) if the Letter of Comfort, Guarantee or any other security provided in support of the Credit Facility fails or ceases in any way or respect to have full force and effect or to be continuing or is terminated or disputed or becomes in jeopardy, invalid or unenforceable;
 - (j) if a final judgment is rendered against the Borrower or the Guarantor and within fifteen business days after entry thereof, such judgment shall not have been discharged, or execution thereof stayed pending appeal, or if, within fifteen business days after the expiration of any such stay, such judgment shall not have been discharged;
 - (k) if the Borrower becomes a party to any legal, arbitration or other proceedings which in the opinion of the Lender would or could have a material adverse effect on the financial position of the Borrower;

then, in such event, the ability of the Borrower to make further borrowings under the Agreement shall immediately terminate and the Lender may, by written notice to the Borrower, declare the borrowings outstanding under the Agreement to be immediately due and payable. Upon receipt of such written notice, the borrower shall immediately pay to the Lender all borrowings outstanding under the Agreement and all other obligations of the Borrower to the Lender in connection with the Agreement.

Governing Law: Laws of Barbados.

ADDENDUM

The Board of the Queen Elizabeth Hospital is desirous of entering into an Agreement with RBC Royal Bank (Barbados) Limited for a loan in the sum of \$25 million Barbados dollars for the purpose of financing the repayment of the bond arranged on behalf of the Board of the Queen Elizabeth Hospital by Citicorp Merchant Bank.

Parliamentary approval for the guarantee of the loan by the Government of Barbados is being sought in accordance with section 13(5) of *Queen Elizabeth Hospital Act, Cap. 54*.

