

**Joseph M. Kahn**  
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December 8, 2020

**VIA EMAIL**

Mr. Blake Thomas, Esq.  
Deputy General Counsel  
N.C. Department of Justice  
[bthomas@ncdoj.gov](mailto:bthomas@ncdoj.gov)

**Re: Response to First Request to Supplement Information Provided in Notice of  
Transfer of Assets of New Hanover Regional Medical Center**

Dear Mr. Thomas:

We are writing on behalf of our client, New Hanover Regional Medical Center (“NHRMC”), to respond to your office’s First Request to Supplement Information Provided in Notice of Transfer of Assets of New Hanover Regional Medical Center, dated November 7, 2020. Thank you again the opportunity to discuss the supplemental request with your team on November 12<sup>th</sup> and 16<sup>th</sup>. The supplemental request is reproduced in bold, below, and our responses to each question follow in-line. Capitalized terms used, but not specifically defined herein, have the meaning set forth in the Asset Purchase Agreement.

While NHRMC and Novant Health have endeavored to make this response, and the information attached hereto, available to the public, certain responsive information is strategic, proprietary, confidential, or otherwise exempt from public disclosure under N.C. Gen. Stat. § 131E-97.3. Distribution of these materials must be limited at this time; however, as we discussed, we will work with you to make sure you have access to the information necessary for your review.

**Responses to First Request to Supplement Information**

1. **Your response to question 4 in the notice form stated that “By partnering with Novant Health, NHRMC will be able to . . . increase charity care and health-equity initiatives at NHRMC.” Please provide any details about how charity care and health equity initiatives will be increased.**

Buyer made specific commitments to increase charity care and health-equity initiatives in Section 5.12 of the Asset Purchase Agreement. These covenants were heavily negotiated and are fundamental to the Transaction. By way of example, Buyer will:

- use its reasonable best efforts to expand, and at a minimum maintain, Sellers’ existing policies on charity and indigent care;
- continue to increase and expand the scope and level of care provided to indigent and low-income patients beyond the scope and level historically provided by Sellers;

- not engage in certain extraordinary debt collection practices with respect to patients of the Healthcare Businesses, including placing a lien on an individual's primary residence or real property, seizing bank accounts or other personal property, bringing civil actions, or wage garnishment;
- use reasonable best efforts to fully develop and expand Sellers' existing partnerships, and to establish new partnerships, focused on expanding health equity in the Service Area;
- expand and enhance Sellers' community outreach efforts and engagement beyond historical scope and levels, and shall continue to expand and enhance Sellers' existing community benefit programs and partnerships;
- continue to fully-fund and support Sellers' inclusion, anti-discrimination, and diversity programs, or replace them with Buyer's own programs if determined to be comparable or better;
- expand and enhance Sellers' efforts to identify social determinants of health and the impacts thereof in the Service Area, and develop and implement comprehensive strategies to address and mitigate the impacts of such social determinants of health;
- integrate the Healthcare Businesses into Buyer's existing diversity and inclusion programming, and, in collaboration with the Local Board, develop a Southeastern North Carolina metric-based scorecard to be used to measure the Healthcare Businesses' progress toward health equity and to identify health disparities;
- assist the Healthcare Businesses to formalize the creation of the Healthcare Businesses' Health Equity Department, including the development of a Health Equity Budget and a Southeastern North Carolina Community Engagement Team; and
- assist the Healthcare Businesses in developing a social worker strategy for highest clinical needs.

The parties expect and anticipate that implementation of these commitments will result in meaningful and verifiable improvements in the scope and amount of charity care available in the Service Area and progress toward ensuring health equity in the Service Area. As one example, while Seller's current charity care policy makes charity care available to patients up to 200% of Federal Poverty Guidelines, under Buyer's policy, charity care is available to patients up to 300% of Federal Poverty Guidelines. Transitioning to Buyer's charity care policies, therefore, will make charity care available to significantly more patients in need in the Service Area.

**2. Your responses to questions 5 and 6 in the notice form appear to relate only to NHRMC, but there are additional Sellers, including the County and NHRMC's Subsidiaries and Affiliates. Please answer questions 5 and 6 in the notice form for all Sellers.**

We understand your office has limited the scope of this request to the County at this time. In response to question 5 of the notice form, the officers and directors of the County are listed in Attachment A, attached hereto. In response to question 6 of the notice form, we can represent and confirm that no person identified in Attachment A will personally benefit from this Transaction, and there are no agreements providing for any such benefit.

**3. NHRMC's response to question 7 in the notice form included a one-page summary of the valuation performed by Ponder & Co. Please provide a complete copy of Ponder & Co.'s valuation report.**

Ponder & Co.'s work papers relating to the valuation include proprietary and confidential information. As discussed, we will work with you to provide you access to the information necessary for your review.

4. **Question 9 in our office's notice form requests "all board minutes . . . discussing or approving the proposed transaction." NHRMC's response did not include any minutes. Please provide these minutes along with a copy of any board handouts or materials discussing or approving the proposed transaction.**

Open session board minutes discussing the proposed transaction are attached hereto as Attachment B. Closed session board minutes and related materials are confidential and subject to privilege. As discussed, we will work with you to provide you access to the information necessary for your review.

5. **Asset Purchase Agreement Schedule 12.17(c), the Strategic Plan, has been redacted in full. Please provide an unredacted copy of this schedule.**

The Strategic Plan includes highly confidential competitive and strategic information. As discussed, we will work with you to provide you access to the information necessary for your review.

6. **Please provide documents sufficient to show the cash transfers expected to be made in connection with the Closing. In these documents, please provide the amounts (current and projected at Closing) in the Transferred Seller Bank Accounts. It appears that this information would be found in Schedule 1.4(r) to the Asset Purchase Agreement, which has been redacted in full.**

With respect to the Transferred Seller Bank Accounts, Schedule 1.4(r) to the Asset Purchase Agreement is simply a list of bank account names and account numbers. It does not include any other information, such as the cash amounts associated with the accounts.

At Closing, the Transferred Seller Bank Accounts will be transferred to Buyer. Buyer will, however, pay Sellers dollar-for-dollar for any cash remaining in the Transferred Seller Bank Accounts at Closing. The mechanism for this transfer of accounts and payment for cash is incorporated into the Asset Purchase Agreement through the defined term "Cash Amount" and Buyer's corresponding payment of the Estimated Cash Amount to Sellers at Closing.

- The Cash Amount is intended to capture the amount of all unrestricted cash in the Transferred Seller Bank Accounts as of Closing.
- Buyer will acquire the Transferred Seller Bank Accounts at Closing, including the Cash Amount included therein.
- Buyer will pay to Sellers the "Estimated Cash Amount" at Closing. The Estimated Cash Amount is the parties' good faith estimate of the Cash Amount as of Closing.
- The Cash Amount, and payment therefor, will be reconciled post-Closing in connection with customary post-Closing purchase price adjustments described in the Asset Purchase Agreement.

The Cash Amount transfers and payments are intended to facilitate the transfer of the Transferred Seller Bank Accounts to Buyer, without requiring Sellers to sweep all of the cash in those accounts at Closing. The net financial impact on Sellers will be neutral, since Sellers will be paid dollar-for-dollar for any Transferred Seller Bank Account cash transferred to Buyer.

Buyer and Seller are developing a Closing funds flow. We will provide your office with a copy of this funds flow once it is available.

**7. Please provide a copy of the current lease agreement between NHRMC and New Hanover County, along with the proposed documents that would terminate this lease at Closing.**

A copy of the current lease agreement between NHRMC and the County is attached as Attachment C. The termination document is being developed. We will, however, share that document with your office once it is available.

**8. For the Assets identified in Section 1.4 of the Asset Purchase Agreement, please provide a summary indicating which Assets are titled in the name of NHRMC, which Assets are titled in the name of New Hanover County, and which Assets (if any) are titled in the name of another Seller entity.**

All Assets are owned directly by the County, or are held by NHRMC or one of its Subsidiaries or Affiliates for the benefit of the County, and ultimately are subject to transfer by NHRMC or its Subsidiaries or Affiliates to the County under the lease between NHRMC and the County. The following, though, summarizes the current specific title status of the Assets described in Section 1.4 of the Asset Purchase Agreement:

- All Owned Real Property is titled as set forth in Attachment D;
- All Tenant Leases are held by NHRMC or one of its Subsidiaries or Affiliates;
- All Personal Property is held by NHRMC or one of its Subsidiaries or Affiliates;
- All NPIs and Licenses are held by NHRMC or one of its Subsidiaries or Affiliates;
- All Lessor Leases are held by NHRMC or one of its Subsidiaries or Affiliates;
- All Capital Leases and Personal Property Leases are held by NHRMC or one of its Subsidiaries or Affiliates;
- All Contracts are held by NHRMC or one of its Subsidiaries or Affiliates;
- All Inventory is held by NHRMC or one of its Subsidiaries or Affiliates;
- All Accounts Receivable is held by NHRMC or one of its Subsidiaries or Affiliates;
- All Non-Transferrable Governmental Patient Accounts Receivable are held by NHRMC or one of its Subsidiaries or Affiliates; and
- All other tangible and intangible Assets described in Section 1.4 are held by NHRMC or one of its Subsidiaries or Affiliates.

**9. Concerning the existing foundation, New Hanover Regional Medical Center Foundation, Inc. (“NHRMC Foundation”):**

**a. The Asset Purchase Agreement indicates that “funds currently held by NHRMC Foundation can remain with NHRMC Foundation immediately after the Closing based on the terms of the restricted gift or endowment agreements applicable to those funds.” § 2.10. However, in the materials that we have reviewed to date, we are not aware of any materials that describe (i) the plans for unrestricted NHRMC Foundation funds or assets or (ii) the long-term plans, in the months and years following the Closing, for restricted NHRMC Foundation funds and assets. Please summarize how the transaction will affect NHRMC Foundation funds and assets. Please include in this summary how, if at all, unrestricted assets will be treated differently from restricted assets, and what process is expected to be used to identify whether assets are subject to a restriction.**



The NHRMC Foundation will remain in place, and continue to operate in furtherance of its existing mission and purposes – to support the Healthcare Businesses – post-Closing. The Transaction is not expected to have any direct effect on the NHRMC Foundation’s funds or assets. All restricted and unrestricted funds of the NHRMC Foundation will remain with the NHRMC Foundation. There are no plans to change the future treatment of any such restricted or unrestricted funds.

**b. The Asset Purchase Agreement indicates that Sellers will transfer Sellers’ rights to appoint all of the board of directors of NHRMC Foundation. § 1.4(s). With respect to this planned change of control, please provide answers to questions 3-6 and 8-11 in our office’s standard Notice of Merger or Transfer of Assets form.**

Responses to questions 3-6 of your office’s notice form follow below. We understand that questions 8-11 on your office’s notice form have been withdrawn with respect to the NHRMC Foundation at this time.

The NHRMC Foundation is organized and operates for the purposes of providing support to the Healthcare Businesses operated by NHRMC. The Transaction, as it relates to the NHRMC Foundation, is structured as a transfer of Sellers’ right to appoint the governing body of the NHRMC Foundation to Buyer. The purpose of transferring the right to appoint the NHRMC Foundation’s Board is to ensure that the NHRMC Foundation continues to be aligned with, and to support, the operations of the Healthcare Businesses as operated by Buyer post-Closing. The NHRMC Foundation will remain in place, and operate for the same purposes and mission post-Closing.

The officers and directors of the NHRMC Foundation are listed in Attachment E. No person identified in Attachment E will personally benefit from this Transaction, and there are no agreements providing for any such benefit.

**10. Concerning Pender Memorial Hospital, Inc. (“Pender”):**

**a. Please provide the most current version of the Operating Agreement among NHRMC, Pender County, and Pender, or direct us to a location on the Internet where these materials may be found. Please also describe or provide a copy of any changes to the Operating Agreement that the parties contemplate making in connection with the Closing.**

The Operating Agreement among NHRMC, Pender County, and Pender Memorial Hospital is attached hereto as Attachment F. The parties have not proposed changes to this Operating Agreement at this time. If any such changes are proposed, we will provide your office a description of those changes.

**b. Page 111 of the Asset Purchase Agreement indicates that “Buyer will substitute as the member of Pender at the Closing.” With respect to this planned change of control, please provide answers to questions 3-6 and 8-11 in our office’s standard Notice of Merger or Transfer of Assets form.**

Responses to questions 3-6 of your office’s notice form follow below. We understand that questions 8-11 on your office’s notice form have been withdrawn with respect to Pender at this time.

NHRMC is the sole corporate member of Pender. Pender is governed by a Board of Trustees consisting of 11 individuals, appointed as follows: (i) six trustees are appointed by the Board of Commissioners of Pender County, (ii) one trustee is the Chief of the Medical Staff, and (iii) four trustees are appointed by the member (currently NHRMC). The Transaction, with respect to Pender, will be structured as a member substitution, pursuant to which Buyer will be substituted as the sole corporate member of Pender. The purpose of the Transaction, with respect to Pender, is to ensure continued alignment of Pender and the Healthcare Businesses operated by NHRMC, as well as continued operation and management of Pender by the Healthcare Businesses post-Closing.

The officers and directors of Pender are listed in Attachment G. No person identified in Attachment G will personally benefit from this Transaction, and there are no agreements providing for any such benefit.

**11. Concerning the new foundation expected to be named New Hanover Community Endowment, Inc. (the “Endowment”):**

**a. Please provide any formation documents for the Endowment that have not already been provided to our office. This includes, but is not limited to, the Endowment’s articles of incorporation.**

The Endowment’s formation documents are attached as Attachment H.

**b. Please provide any agreements between the parties concerning the Endowment’s governance that have not already been provided to our office.**

No such agreements are currently in existence. If any such agreements are developed in the future, we will provide copies to your office.

**c. Please provide any policies for the Endowment, including but not limited to any board or committee charters and any policies on grant-making, conflicts of interest or ethics, placement agents, investments, or governance.**

The Endowment’s policies have not yet been developed. We will provide copies of any such policies when they become available.

**d. Asset Purchase Agreement Exhibit C, § 3(e)(ii), states that “non-profit, governmental, or community organizations” would be eligible for Endowment grants. Please identify whether New Hanover County and other local governments in the region would be eligible to receive grants from the Endowment. Please also describe which kinds of organizations would be “community organizations” eligible to receive grants under this provision.**

The Endowment has been formed exclusively for charitable, scientific, or educational purposes under Section 501(c)(3) of the Internal Revenue Code, including supporting the public health needs and certain social welfare projects in New Hanover County. All Endowment grants will be made solely in support of these purposes and for the benefit of the residents of New Hanover County. Nonprofit and governmental entities will be eligible to receive grants. For-profit entities and individuals will not be eligible. Grants may be made available in support of qualifying projects and initiatives undertaken by New Hanover County or other governmental entities in New Hanover County. Nonprofit community-based organizations will be eligible for grant funding. We want to be careful not to speculate as to any specific entity that might be eligible, but hypothetical examples of such entities would include community-based social-service organizations engaged in addressing social determinants of health, community-based nutrition programs, and community-based education support organizations.

**12. Concerning the Buyer entities:**

**a. Please provide all formation documents for Novant Health New Hanover Regional Medical Center, LLC, Novant Health Coastal Region, LLC, and any other entity that may receive Buyer assets or provide operational support to the Healthcare Businesses (collectively, the “Buyer Entities”).**

The Articles of Organization and Operating Agreement of Novant Health Coastal Region, LLC are attached as Attachment I-1.

The Articles of Organization and Operating Agreement of NHHNHRMC are attached as Attachment I-2.

**b. We understand that the Buyer Entities will operate like nonprofit corporations. Please summarize the legal mechanisms that will accomplish this goal.**

Novant Health New Hanover Regional Medical Center, LLC (“NHHNHRMC”) has stated in the purposes and powers set forth in its operating agreement (the “NHHNHRMC Operating Agreement”) that it will operate exclusively for charitable, educational and scientific purposes and that it will not carry on any activities not permitted to be carried on by an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. The NHHNHRMC Operating Agreement explicitly authorizes NHHNHRMC to make payments and distributions in furtherance of its charitable and not-for-profit purposes. NHHNHRMC is managed by its sole member, Novant Health Coastal Region, LLC (“NHCR”). NHCR is a single-member limited liability company whose sole member is Novant Health, Inc., a North Carolina nonprofit corporation (“Novant Health”).

**c. Please identify all legal restrictions that will prevent the Buyer Entities from engaging in for-profit business.**

NHHNHRMC was formed to operate exclusively for charitable, educational and scientific purposes. The NHHNHRMC Operating Agreement states that the powers of NHHNHRMC are subject to its charitable and not-for-profit purposes.

The Amended and Restated Operating Agreement of NHCR, which the parties intend to enter into at the Closing, states that the Healthcare Businesses may not be transferred to a for-profit entity without the approval of NHCR’s Board of Managers. The Board of Managers of NHCR, which is composed of the individuals set forth in Section 6.2(f) of the Amended and Restated Operating Agreement of NHCR, is controlled by persons who were formerly on the Board of Trustees of NHRMC. Per Sections 5.20 and 5.24 of the Purchase Agreement, the Board of Managers of NHCR, which governs the Healthcare Businesses, will retain the sole power and authority to select, nominate, terminate and appoint all subsequent managers to the Board of Managers and, in doing so, will ensure that the composition of such Board of Managers, taken as a whole, is materially representative of the Service Area’s resident population served by the Healthcare Businesses for at least a 25 year period following Closing.

**d. Please identify all legal restrictions that will prevent the Buyer Entities from being converted to for-profit operation.**

See answer to 12(c) above.

The North Carolina Nonprofit Corporation Act provides that every corporation has the same powers as an individual to do all things necessary or convenient to carry out its affairs, including without limitation, to own and deal in and with shares or other interests in, or obligations of, any other entity, which is defined to include limited liability companies. N.C.G.S. § 55A-3-02(a)(6). The membership interests in NHCR, a wholly-owned subsidiary of Novant Health, and the membership interests of NHHNHRMC, a wholly-owned subsidiary of NHCR (together with NHCR, the “Buyer LLCs”), are each, directly or indirectly, assets owned by Novant Health, a North Carolina nonprofit corporation. As the assets of a North Carolina nonprofit corporation, Novant Health’s direct or indirect ownership in the Buyer LLCs would be subject to the same regulations applicable to the assets of a North Carolina nonprofit corporation set forth in the North Carolina Nonprofit Corporation Act.

**e. Please provide the full text of any legal documents that are identified in your answers to questions (a)-(c) above.**

See Attachment I-1 and Attachment I-2.

**f. Asset Purchase Agreement Exhibit F, the Novant Governing Documents, has been redacted in full. Please provide an unredacted copy of this exhibit.”**

The Novant Governing Documents pertain to the governance of the entire Novant Health organization and are, therefore, confidential. As discussed, we will work with you to provide you access to the information necessary for your review.

**13. Please provide all correspondence and communications with respect to the transaction or the Endowment with the UNC School of Government, the North Carolina Department of State Treasurer, or the North Carolina Local Government Commission.**

Copies of all such correspondence and communications are attached as Attachment J.

**14. If any commitments have been made to government officials with respect to the transaction or Endowment, and if those commitments go beyond the documents that NHRMC has provided, please provide a copy of those commitments (if written) or please describe those commitments (if unwritten).**

No commitments have been made to any government official with respect to the Transaction or Endowment outside of the Asset Purchase Agreement. We understand that representatives of Buyer have expressed to the County Board of Commissioners Buyer’s commitment to stand behind its covenants and obligations set forth in the Asset Purchase Agreement.

**15. Please provide unredacted copies of Attachment A to Schedule 1.4(g), which appears to list certain contracts, and Schedule 1.7(l), which appears to list Excluded Liabilities.**

The information included in these attachments and schedules is confidential. As discussed, we will work with you to provide you access to the information necessary for your review.

**16. Please provide a summary of the types of matters that have been redacted in Schedules 2.6, 2.7, 2.9(a), and 2.9(d), and summarize whether Seller would retain any expected liabilities for these matters.**

The referenced schedules include descriptions of routine legal and regulatory matters that occur in the ordinary course of the business of operating hospitals and health systems similar to the Healthcare Businesses. Examples include routine governmental payor audits, routine overpayment recovery actions, and potential information privacy and security matters. Each of these matters has been, or is currently being, addressed through appropriate legal channels consistent with applicable laws and regulations. To the extent there are liabilities associated with any such matter, Sellers may be responsible for such liabilities.

**17. Please provide any updates or amendments to the answers and transaction documents provided in the October 9 notice packet or provided in response to this November 7 letter. This is a continuing request that will remain in effect through the Closing Date.**

There are no updates or amendments at this time. We acknowledge this is a continuing request, and will share any such future updates or amendments, if any, with your office.

**18. As NHRMC did in the October 9 notice, please provide a certification from a representative of NHRMC that the answers provided in the response to this letter are true and complete to the best of the representative’s knowledge.**

Attached as Attachment K is the certification of a representative of NHRMC that the answers provided by NHRMC in response to this letter are true and complete to the best of such representative’s knowledge.

Thank you for your consideration. Please let me know if you have any questions regarding this matter.

Sincerely,

HALL, RENDER, KILLIAN, HEATH & LYMAN, LLP

A handwritten signature in black ink, appearing to read "Jo M Kahn", with a long horizontal flourish extending to the right.

Joseph M. Kahn  
Shareholder

JMK

Enclosure

cc: Ms. Llogan R. Walters, Esq., Assistant Attorney General, N.C. Department of Justice

## **Attachment A**

### **County Officers and Directors**

#### **Directors (Commissioners):**

- Julia Olson-Boseman
- Patricia Kusek
- Jonathan Barfield, Jr.
- Woody White
- Rob Zapple

#### **Officers:**

- Chris Coudriet – County Manager
- Wanda Copley – County Attorney
- Kym Crowell – Clerk
- Tim Burges – Deputy County Manager
- Tufanna Bradley – Assistant County Manager
- Sheryl Kelly – Assistant County Manager
- Lisa Wurtzbacher – Chief Finance Officer
- Linda Thompson – Chief Diversity and Equity Officer
- Jessica Loeper – Chief Communications Officer
- Mark Francolini – Chief Human Resources Officer
- Jennifer Rigby – Chief Strategy Officer
- Sara Warmuth – Chief Facilities Officer
- Leslie Chaney – Chief Information Officer

**Attachment B**

**Board Minutes**

[See Attached]

## **New Hanover Regional Medical Center**

### **Board of Trustees**

#### **Open Session FY 2018-2021 Minutes Discussing Transaction**

**August 27, 2019**

##### **Other Business**

A Resolution from the Board of Trustees regarding supporting New Hanover County's Intent to Issue a Request for Proposals was provided for discussion.

With questions being addressed and the board members informed of the components of the Resolution presented today,

**Motion was made, seconded; and noting 15 members present (2 absent: Rhonda Amoroso and Dr. Hope), 1 abstain by Dr. Cortina due to a conflicting role with a Medical Staff communication sent to the County Commissioners, 1 no by Rod Andrew, and 13 yes; as a majority voting approved the Resolution of the Board of Trustees of NHRMC as presented.**

**December 17, 2019**

##### **Subsequent to discussion during closed session**

Chairman Thompson called for a motion to endorse and approve the draft goals and objectives and the draft questions for the Partnership Exploration Request For Proposals substantially in the form reviewed by the Board, understanding that our subcommittee, the Partnership Advisory Group, may have clarifications and additions from its perspective.

**Motion was made, seconded and unanimously carried to endorse and approve the draft goals and objectives and the draft questions for the Partnership Exploration Request For Proposals substantially in the form reviewed by the Board, understanding that our subcommittee, the Partnership Advisory Group, may have clarifications and additions from its perspective.**

**January 21, 2020**

##### **PAG Update**

PAG Co-Chairs, Ms. Biehner and Mr. Broadhurst, presented an update from the PAG which included the following (noting that the same presentation was addressed at this morning's County Commissioners meeting):

- Responsibilities and the PAG members
- Ten Goals and Objectives approved by the PAG
- Request for Proposal, distribution list, and Strategic Options Assessment: Purpose, Process, Results
- Overview of next steps: Meetings 7,8, 9, and 10 objectives
- RFP was distributed January 13, 2020, with responses due by 5:00 p.m. on March 16, 2020.



Discussion was held regarding the responses to be reviewed in draft form, allowing 1-2 weeks for clarification before finalized and posted to public website, [www.nhrmcfuture.org](http://www.nhrmcfuture.org). During this time, the PAG will review and discuss NHRMC strategic options, including continuing status quo or completing an internal corporate restructuring.

### **March 24, 2020**

#### **Call to Order**

Jason Thompson, Chair, called the meeting to order at 5:00 p.m. and read the mission statement.

Due to so many people calling in, Mr. Thompson stated each BOT member name and guests' names requesting note of their presence. Along with that note, was a request to affirm adherence to the following which he read out loud and was also emailed to each Trustee prior to this meeting:

*Given the extremely confidential nature of the materials that will be shared during the Board of Trustee's closed session meeting this evening—and all closed session presentation comments, questions and discussion—this is a reminder that you are collectively and individually obligated to maintain such confidentiality. Each of you signed a statement in this regard as we began the process of partnership exploration. The organization cannot indemnify you for any intentional breach of this obligation.*

*All contents and information shared and discussed in our closed session regarding the partnership exploration is considered confidential information pursuant to N.C.G.S. § 131E-97.3 (competitive), N.C.G.S. 143-318.11(a)(1) (competitive and confidential) and N.C.G.S. 143.318.11(a)(3) (attorney-client privileged). Moreover, certain aspects are also protected under nondisclosure agreements that require your commitment to maintain confidentiality pursuant to one or more of these statutory protections. Given the number of call-in participants, we will be taking roll call tonight and asking that each specifically acknowledge and agree to this before proceeding. This includes affirmation that you are the sole person on the call from your line.*

Noted as acknowledged and affirmed - by all BOT and guests in the meeting room and individually noted by each of the BOT present via the conference call.

### **April 28, 2020**

#### **Administrative Update**

- Mr. Gizdic reported on the following:  
Partnership Exploration update- proposal are now public, numerous forums are being held/planned to keep communication clear and continuous.

#### **Subsequent to discussion during closed session**

The Trustees discussed having a meeting as a follow-up to the May 7<sup>th</sup> PAG meeting. All agreed to scheduling a Special Called BOT meeting on Monday, May 11<sup>th</sup>, 5:00 p.m. via teleconference.

**May 11, 2020**

**Partnership Exploration**

Mr. Thompson reviewed that at the PAG meeting of May 7<sup>th</sup>, it was unanimously voted to recommend focusing the evaluation on proposals from (in alphabetical order) Atrium Health, Duke Health, and Novant Health. This has already been announced to the public. The meeting of the BOT today will look at voting on a Resolution drafted and presented as follows:  
(read by Ms. Gordon):

**“NOW, THEREFORE**, be it hereby resolved by the BOT that it endorses (in no particular order) the following Respondents for further due diligence and letter of intent (“LOI”) discussions (such endorsement will be preliminary, pending further public input before any Respondent is formally eliminated from the RFP process): Atrium Health, Duke Health, Novant Health.

**FURTHER RESOLVED**, that NHRMC’s President and CEO, together with the PAG Support Team, is authorized to have direct partnership due diligence and LOI discussions with each of these three aforementioned organizations as part of this RFP process; provided, however, that in the event a determination is made to move forward with a Respondent LOI versus NHRMC remaining status quo or otherwise restructuring, any final LOI will be subject to review and approval of the BOT before its execution on behalf of NHRMC.”

Mr. Thompson confirmed that everyone heard the Resolution; and asked if there were any questions before the vote, that there be a closed session discussion in order to protect the respondents or any other confidential matters.

**Motion was made, seconded and unanimously carried to move into closed session pursuant to NCGS 143-318.11(a)(1), NCGS 131E-97.3, and NCGS 143-318.11(a)(3).**

The meeting moved into closed session at 5:07 p.m.

The regular meeting reconvened at 5:39 p.m.

Mr. Thompson requested that Ms. Gordon again read the Resolution that will require approval by the BOT. After confirming all understood and heard the Resolution being presented for approval; there being no further comments or questions,

**Motion was made, seconded, and all members voting unanimously carried to approve (one Trustee abstained from voting) the Resolution, as presented, Authorizing and Endorsing Further Due Diligence and Letter of Intent Discussions with Select Respondents to Request for Proposal.**

**June 23, 2020**

**CEO of the Medical Staff Report**

Mr. Gizdic reported on the following:

- Partnership Exploration: June 8<sup>th</sup> update to County Commissioners; June 16<sup>th</sup> Power Breakfast with WECT and Wilmington Business Journal hosting; June 22<sup>nd</sup> Public Hearing hosted by County Commissioners.

June 24, 2020

**Partnership Exploration**

**Closed Session**

There was a request for a motion to move into Closed Session pursuant to NCGS 143-318.11(a)(1), NCGS 131E-97.3, and NCGS 143-318.11(a)(3)

**Motion was made, seconded and unanimously carried to move into closed session pursuant to NCGS 143-318.11(a)(1), NCGS 131E-97.3, and NCGS 143-318.11(a)(3)**

The meeting moved into closed session at 5:42 p.m.

The regular meeting reconvened at 8:05 p.m.

June 29, 2020

**Partnership Exploration**

**Closed Session**

There was a request for a motion to move into Closed Session pursuant to NCGS 143-318.11(a)(1), NCGS 131E-97.3, and NCGS 143-318.11(a)(3)

**Motion was made, seconded and unanimously carried to move into closed session pursuant to NCGS 143-318.11(a)(1), NCGS 131E-97.3, and NCGS 143-318.11(a)(3)**

The meeting moved into closed session at 5:43 p.m.

The regular meeting reconvened at 7:25 p.m.

June 30, 2020

**Partnership Exploration**

**Closed Session**

There was a request for a motion to move into Closed Session pursuant to NCGS 143-318.11(a)(1), NCGS 131E-97.3, and NCGS 143-318.11(a)(3)

**Motion was made, seconded and unanimously carried to move into closed session pursuant to NCGS 143-318.11(a)(1), NCGS 131E-97.3, and NCGS 143-318.11(a)(3)**

The meeting moved into closed session at 5:35 p.m.

The regular meeting reconvened at 6:59 p.m.

July 7, 2020

**Partnership Exploration**

**Closed Session**

There was a request for a motion to move into Closed Session pursuant to NCGS 143-318.11(a)(1), NCGS 131E-97.3, and NCGS 143-318.11(a)(3)

**Motion was made, seconded and unanimously carried to move into closed session pursuant to NCGS 143-318.11(a)(1), NCGS 131E-97.3, and NCGS 143-318.11(a)(3)**

The meeting moved into closed session at 5:11 p.m.

The regular meeting reconvened at 8:22 p.m.

**Subsequent to discussion during closed session**

**Resolution**

Ms. Gordon presented a Board of Trustees Resolution Authorizing NHRMC an Execution of Letter of Intent ("LOI") among NHRMC, New Hanover County and Novant Health and Recommending and Endorsing such County Authorization by the New Hanover County Board of Commissioners. She read the following Resolution portions of the overall BOT Resolution:

**NOW, THEREFORE**, be it hereby resolved by the BOT that it approves NHRMC's President and CEO executing the Novant Health LOI on behalf of NHRMC, substantially in the form summarized and presented to the BOT, based upon the work of the PAC, PAG, PAG Support Team and BOT to date, the Ponder Report, Novant Health's solid proposal and intended partnership with UNC Health and the University of North Carolina School of Medicine to expand the existing medical education and pediatric specialty services in Southeastern North Carolina if NHRMC becomes part of Novant Health; and

**FURTHER RESOLVED**, that the BOT fully appreciates and endorses the County Commissioner initial allocation of proceeds' draft proposal to (i) provide for certain payments to be made, over time, to NHRMC employees to support a beneficial transition from NHRMC's existing pension plan to Novant Health's retirement benefits plan and to support staff and provider resiliency and retention, all through the \$200 Million NHRMC Team Investment and Resiliency Fund, (ii) provide for the \$300 Million New Hanover County Revenue Stabilization Fund to help protect local taxpayers from unexpected expenses and downturns, and (iii) provide \$50 Million to a Mental and Behavioral Health Fund to address one of our county's greatest challenges (focused in significant part on substance abuse and addiction treatment services); and

**FURTHER RESOLVED**, that the BOT fully appreciates and endorses the County Commissioner net proceeds' draft plan to establish the approximate \$1.25 Billion Foundation designated to provide financial support in one of the following areas in furtherance of the mission and initiatives of the County: (i) health and social equity, (ii) public primary, secondary and post-secondary education, (iii) community development, and (iv) community safety; and

**FURTHER RESOLVED**, that the BOT wholly endorses and recommends approval of the Novant Health LOI by New Hanover County, substantially in the form summarized and presented to the BOT, as the next and critical step towards ensuring that both the current and future needs of our growing region are met as we would then be better able to fund and to timely implement advancements in healthcare accessibility, quality, affordability, and equity for all now and into the future; and

**FURTHER RESOLVED**, that NHRMC's President and CEO, together with the PAG Support Team, is authorized to engage in further due diligence, drafting and negotiation with the County and Novant Health of the Definitive Agreement and other agreements, documents and arrangements ancillary thereto, which Definitive Agreement would then be posted publicly and subject to review and approval of each of the BOT and the County Commissioners before it can be executed and implemented by NHRMC and the County, respectively.

An individual polling of each Trustee was held for the following to be recorded in the minutes:

**Motion was made, seconded, and noting one (1) no vote from Trustee John Rod Andrew, the majority from the Board of Trustees (16-1) approved the Resolution as presented Authorizing NHRMC an Execution of Letter of Intent ("LOI") among NHRMC, New Hanover County and Novant Health and Recommending and Endorsing such County Authorization by the New Hanover County Board of Commissioners.**

Chairman Thompson announced that this resolution will be provided to the citizens to access and review. The County Commissioners will now have this Board's approval of this Resolution for further and final decision.

#### **August 25, 2020**

#### **Other Business**

Chairman Thompson initiated discussion regarding the potential need to have a new, temporary committee formed to focus on Consolidation/Integration during this time of the Novant partnership planning period. Discussion was held around aspects of the Definitive Agreement execution. The staff will be having many integration team meetings weekly and will keep the BOT informed. It was left TBD if the full BOT will hold Special called, even-month meetings during this time with just this one agenda topic or form a temporary committee. Staff will research industry standards relevant to this situation and report back to the Governance Committee and/or BOT for determination.

#### **October 1, 2020**

#### **Partnership Exploration**

The following was reviewed with a presentation regarding the Partnership Exploration:

- Process Overview (Barb Biehner presented):
  - Timeline from 2017 with the development of NHRMC's current strategic plan – to present
  - Survey conducted on behalf of Novant Health of 1,000 residents across 5 counties September 2020 – presented pie charts/percentages with survey overwhelmingly favorable sentiments/answers to questions that included: overall impact to local community, needed to support rapid growth in region, and positive impact on local economy
- Due Diligence Update (Joe Kahn presented):

- Compliance
- APA Summary and Discussion (Joe Kahn presented):
  - APA overview
  - Accomplishment of Goals and Objectives:
    - Improving Access to Care and Wellness
    - Advancing the Value of Care
    - Promoting Health Equity
    - Supporting and Maintaining Staff (*Mr. Gizdic noted an article in “Business NC” remarking about the stunning considerations with the pending relationship by NHRMC and Novant Health to protect employees in the proposed transition*)
    - Partnering with Providers
    - Driving Quality of Care
    - Growing the Level and Scope of Care
    - Strategic Positioning
    - Expanded UNC Health and UNC School of Medicine Programs
    - Governance Structure oversight of:
      - Novant Health Coastal Region Board (“Local Board”) and NHRMC Newco Board (“Hospital Board”)
      - Novant Health Coastal Region Board (“Local Board”) overseeing the Hospital Boards(s), Physician Group Board, Other Entity Board(s) that may be added over the years
      - Initial Regional Local Board: demographics of members
    - Financial Commitments
      - Capital Contributions
      - Key Transaction Points
      - Break Fee
- Use of Proceeds (Mr. Gizdic presented)
  - New Hanover County
  - NHRMC
  - Public Benefit Community Foundation
- Historical Context on Today’s Vote –Recognitions were given to County staff and NHRMC staff for all of their work throughout this entire complex process, beginning with the exploration of SystemCo to today’s consideration of the Resolution being proposed for approval.

Mr. Thompson read the Resolution to be acted upon in approving the APA and transactions described therein among NHMRC, New Hanover County, Novant Health, Inc. and Novant Health New Hanover Regional Medical Center, LLC and recommending to the New Hanover County Board of Commissioners approval of such APA and the transactions described therein.

Motion to approve the Resolution was made and seconded. Discussion was held and with questions addressed,

**The majority from the Board of Trustees (16-1), noting one (1) no vote from Rod Andrew, approved the Resolution as presented - approving the APA and transactions described therein among NHMRC, New Hanover County, Novant Health, Inc. and Novant Health New Hanover Regional Medical Center, LLC and recommending to the New Hanover County Board of Commissioners approval of such APA and the transactions described therein.**

**October 27, 2020**

**Other Business**

Mr. Eckel suggested that the newly formed Novant Health Coastal Region (“Local”) Board have its initial meeting(s) in November for the agenda purpose of appointments to the Community Foundation Board.

**Comments**

Mr. Andrew reiterated his reasons for voting no on the sale of the hospital; commenting his best to the organization as it becomes part of the Novant Health system.

**Attachment C**

**NHRMC and County Lease**

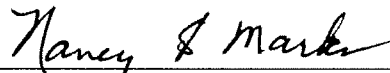
[See Attached]



**Certificate as to Lease Agreement**

We, NANCY S. MARKS, Secretary of New Hanover Regional Medical Center (the "Corporation"), and SHEILA L. SCHULT, Clerk to the Board of Commissioners for the County of New Hanover, North Carolina (the "County"), DO HEREBY CERTIFY that attached hereto is a true and complete copy of the Lease Agreement, dated as of October 1, 1993, by and between the County and the Corporation, as amended by a First Amendment to Lease Agreement, dated as of June 15, 1996, a Second Amendment to Lease Agreement, dated as of February 15, 1999, a Third Amendment to Lease Agreement, dated as of December 1, 2005, a Fourth Amendment to Lease Agreement, dated as of September 1, 2006, a Fifth Amendment to Lease Agreement, dated as of October 1, 2008 and a Sixth Amendment to Lease Agreement, dated as of June 1, 2009.

WITNESS our hands this 4th day of June, 2009.



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Nancy S. Marks  
Secretary of the Corporation

---


Sheila L. Schult  
Clerk to the County Board of Commissioners

**Certificate as to Lease Agreement**

We, NANCY S. MARKS, Secretary of New Hanover Regional Medical Center (the "Corporation"), and SHEILA L. SCHULT, Clerk to the Board of Commissioners for the County of New Hanover, North Carolina (the "County"), DO HEREBY CERTIFY that attached hereto is a true and complete copy of the Lease Agreement, dated as of October 1, 1993, by and between the County and the Corporation, as amended by a First Amendment to Lease Agreement, dated as of June 15, 1996, a Second Amendment to Lease Agreement, dated as of February 15, 1999, a Third Amendment to Lease Agreement, dated as of December 1, 2005, a Fourth Amendment to Lease Agreement, dated as of September 1, 2006, a Fifth Amendment to Lease Agreement, dated as of October 1, 2008 and a Sixth Amendment to Lease Agreement, dated as of June 1, 2009.

WITNESS our hands this 4th day of June, 2009.

\_\_\_\_\_  
Nancy S. Marks  
Secretary of the Corporation

  
\_\_\_\_\_  
Sheila L. Schult  
Clerk to the County Board of Commissioners

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LEASE AGREEMENT

By and Between

COUNTY OF NEW HANOVER, NORTH CAROLINA

and

NEW HANOVER REGIONAL MEDICAL CENTER

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Dated as of October 1, 1993

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## LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of the 1st day of October, 1993, by and between the County of New Hanover, North Carolina, a political subdivision of the State of North Carolina (the "County"), and New Hanover Regional Medical Center, a nonprofit corporation organized and existing under the General Statutes of North Carolina (the "Corporation"),

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

WHEREAS, the County is authorized and empowered, under the Constitution and laws of the State of North Carolina to construct, operate and maintain hospital facilities and to lease hospital facilities to any nonprofit association on such terms and subject to such conditions as will carry out the purposes of the laws of North Carolina; and

WHEREAS, the County owns certain hospital and other medical facilities, including a public general acute-care hospital located within the County of New Hanover (the "Existing Facilities"); and

WHEREAS, pursuant to a Lease Agreement dated June 7, 1982 (the "Prior Lease"), the County has leased a portion of the Existing Facilities to the Corporation for operation thereof; and

WHEREAS, the County and the Corporation propose to acquire, construct and equip certain improvements and additions to the Existing Facilities, including the construction, renovation and expansion of a rehabilitation hospital, the power plant, a parking garage, the pneumatic tube system, the telecommunications system and a cardiac recovery unit and the acquisition of equipment for those and other improvements and additions to the Existing Facilities (the "Project"); and

WHEREAS, the County and the Corporation desire to terminate the Prior Lease and to enter into this Lease Agreement (the "Lease") with respect to the Existing Facilities, the Project and improvements thereof and thereto; and

WHEREAS, under The State and Local Government Revenue Bond Act, Article 5, as amended, of Chapter 159 of the General Statutes of North Carolina (the "Act"), the County is authorized and empowered to issue revenue bonds to pay the cost of the Project; and

WHEREAS, the County has determined that it is consistent with the purposes of the Act and in the public interest (a) to issue revenue bonds of the County in the aggregate principal amount not exceeding \$30,000,000, designated Hospital Revenue Bonds (New Hanover Regional Medical Center), Series 1993 (the "Series 1993 Bonds"), pursuant to the Bond Order



and the Series Resolution (both hereinafter mentioned) (the Series 1993 Bonds and all other bonds at any time outstanding issued under the Bond Order being herein called the "Bonds") for the purpose of providing funds, together with other available funds, to pay the cost of the Project, (b) to enter into this Lease, and (c) to terminate the Prior Lease; and

WHEREAS, the execution and delivery of this Lease have been duly authorized by the County and the Corporation; and

WHEREAS, all acts, notices and things required by the Constitution and laws of the State and the Bylaws of the Corporation to happen, exist and be performed precedent to and in the execution and delivery of this Lease have happened, exist and have been performed as so required, in order to make this Lease a valid and binding agreement in accordance with its terms; and

WHEREAS, each of the parties hereto represents that it is fully authorized to enter into and perform and fulfill the obligations imposed upon it under this Lease, and the parties are now prepared to execute and deliver this Lease;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration paid by each of the parties to the other, the receipt of which is hereby acknowledged, the County and the Corporation hereby agree as follows:

## ARTICLE I

### Definitions

SECTION 1.01. Definitions. In addition to words and terms elsewhere defined in this Agreement, the following words and terms shall have the following meanings:

"Accountant" means Accountant as defined in Section 101 of the Bond Order.

"Accounts" means any right (i) of the County directly resulting from its ownership of the Health Care System or (ii) of the Corporation to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance.

"Act" means Act as defined in Section 101 of the Bond Order.

"Annual Budget" means the budget for the Corporation for a Fiscal Year adopted by the Corporation or in effect pursuant to the provisions of Section 4.13 of this Lease.

"Board of Trustees" means the Board of Trustees of the Corporation, as from time to time constituted, and any successor thereto, in which the general management of the Corporation is vested.

"Bond Fund" means the fund created and so designated by Section 501 of the Series 1993 Resolution.

"Bond Insurer" means Bond Insurer as defined in Section 101 of the Series 1993 Resolution.

"Bond Order" means the order adopted by the Board of Commissioners of the County on October 6, 1993 pursuant to the provisions of the Act.

"Bonds" means Bonds as defined in Section 101 of the Bond Order.

"Bond Year" means Bond Year as defined in Section 101 of the Series 1993 Resolution.

"Business Day" means any day (other than a Saturday or Sunday) on which banks located in New York, New York or in the city in which the principal corporate trust office of the Trustee is located are not required or authorized to remain closed and on which the New York Stock Exchange is not closed.

"Closing" means the date on which this Lease becomes legally effective, the same being the date on which the Series 1993 Bonds are delivered against payment therefor.

"Code" means the Internal Revenue Code of 1986, as amended or any corresponding provisions of succeeding law, as applicable to the Bonds.

"Corporation" means New Hanover Regional Medical Center, a nonprofit corporation duly incorporated and validly existing under and by virtue of the laws of the State of North Carolina and any successor or successors thereto as operator of the Health Care System.

"Corporation Representative" means each of the persons at the time designated to act on behalf of the Corporation in a written certificate furnished to the County and the Trustee, which certificate shall contain the specimen signature(s) of such person(s) and shall be signed on behalf of the Corporation by the President or Chief Financial Officer of the Corporation.

"Cost", as applied to the Project or any Improvements financed by Bonds, means, without intending thereby to limit or restrict any proper definition of such word under the

Act, all items of cost set forth in the Series Resolution relating to the issuance of such Bonds.

"County" means the County of New Hanover, North Carolina.

"County Representative" means each of the persons at the time designated to act on behalf of the County in a written certificate furnished to the Corporation and the Trustee, which certificate shall contain the specimen signature(s) of such person(s) and shall be signed on behalf of the County by the Chairman or Vice Chairman of its Board of Commissioners.

"Depository" means Depository as defined in Section 101 of the Bond Order.

"Eminent Domain" means the eminent domain or condemnation power by which all or any part of the Health Care System may be taken for public use or any agreement that is reached in lieu of proceedings to exercise such power.

"Equipment" means those items constituting equipment, as that term is defined in the North Carolina Uniform Commercial Code, and all fixtures, whether such equipment and fixtures are now owned or are hereafter acquired by the Corporation or the County for use in the operation and maintenance of the Health Care System.

"Event of Default" means with respect to the Bond Order each of those events set forth in Section 701 of the Bond Order and with respect to this Lease each of those events set forth in Section 10.01 of this Lease.

"Existing Facilities" means all of the property constituting the New Hanover Regional Medical Center as of October 26, 1993, including the Hospital Site described in Exhibit A to this Lease and the Medical Mall, together with all improvements and personal property therein and thereon existing at the time the Series 1993 Bonds are delivered.

"Fiscal Year" means the period commencing on the first day of October of any year and ending on the last day of September of the following year, unless the County and the Trustee are notified in writing by the Corporation of a change in such period, in which case the Fiscal Year shall be the 12-month period set forth in such notice.

"Governmental Restrictions" means Governmental Restrictions as defined in Section 101 of the Bond Order.

"Health Care System" means, collectively, the Existing Facilities, the Project, any Improvements, and all facilities of the County or the Corporation operated by the Corporation at which health care or medical services are provided, any additions, improvements, extensions, alterations and appurtenances thereto and thereof, all Equipment used in connection therewith and all real property upon which the same are located whether now existing or to be constructed, installed, used or acquired during the term of this Lease.

"Holder" means a person in whose name a Bond is registered in the registration books provided for in Section 206 of the Bond Order.

"Hospital Site" means the real property described in Exhibit A to this Lease on which the Existing Facilities are located, together with all real property acquired as an addition to, in replacement of, or in substitution for, all or any part of the real property described in Exhibit A to this Lease.

"Improvements" means any future additions, enlargements, improvements, extensions, alterations, fixtures, equipment, land, appurtenances and other facilities to or for the Health Care System.

"Income Available for Debt Service" means Income Available for Debt Service as defined in Section 101 of the Bond Order.

"Indebtedness" means Indebtedness as defined in Section 101 of the Bond Order.

"Independent Architect" means any independent architect or firm of architects of favorable repute for skill and experience in work related to the particular activity or function for which it is selected by the Corporation.

"Independent Counsel" means any attorney or attorneys duly admitted to practice law before the highest court of any state and not officers or full-time employees of the County, the Trustee or the Corporation.

"Independent Engineer" means any independent engineer or firm of engineers of favorable repute for skill and experience in work related to the particular activity or function for which it is selected by the Corporation.

"Insurance Adviser" means a person, a firm of persons or an advisory committee of favorable repute for skill and experience in dealing with the insurance requirements of hospitals similar in type and size to the Health Care

System, and in performing the duties to be imposed upon it by this Lease, selected by the Corporation.

"Insurer Default" means Insurer Default as defined in Section 101 of the Series 1993 Resolution.

"Interest Account" means the account in the Bond Fund created and so designated by Section 501 of the Series 1993 Resolution.

"Lease" means this Lease Agreement, including any amendments or supplements hereto as herein permitted.

"Local Government Commission" means the Local Government Commission of North Carolina, a division of the Department of the State Treasurer, and any successor or successors thereto.

"Long-Term Debt Service Coverage Ratio" means Long-Term Debt Service Coverage Ratio as defined in Section 101 of the Bond Order.

"Long-Term Debt Service Requirement" means Long-Term Debt Service Requirement as defined in Section 101 of the Bond Order.

"Long-Term Indebtedness" means Long-Term Indebtedness as defined in Section 101 of the Bond Order.

"Management Consultant" means a firm of independent certified public accountants or a management consulting firm of favorable reputation for skill and experience in performing the duties to be imposed upon it by the Bond Order and this Lease, selected by the Corporation.

"Maximum Annual Debt Service" means Maximum Annual Debt Service as defined in Section 101 of the Bond Order.

"Net Book Value" means, at the time of determination, property, plant and equipment, net of accumulated depreciation, of the Health Care System as shown on the financial statements of the Corporation for the most recent Fiscal Year for which such audited financial statements are available.

"Net Proceeds" means the gross proceeds derived from insurance or any Eminent Domain award or agreement in lieu of an award in Eminent Domain proceedings, less payment of attorneys' fees and expenses properly incurred in the collection of gross proceeds.

"Net Revenues" means the excess (if any) of the Revenues over the Operating Expenses.

"Officer's Certificate" means a certificate signed by a County Representative or a Corporation Representative, as the case may be.

"Operating Expenses" means the expenses of maintaining and operating the Health Care System, including, without limiting the generality of the foregoing, all administrative, general and commercial expenses, insurance and surety bond premiums, architectural expenses, legal expenses, refunds of over-payments on patient accounts, any taxes which may be lawfully imposed on the Health Care System or the income or operations thereof or the property forming a part thereof, rentals of equipment or other property, rental payments to the County hereunder, usual expenses of operations, maintenance and repair, amounts owed to others and collected by the County or the Corporation on their behalf and any other current expenses required to be paid by the County or the Corporation under the provisions of the Bond Order or by law, to the extent properly and directly attributable to the Health Care System, and the expenses, liabilities and compensation of the Trustee required to be paid under the Bond Order, including, during the continuance of an Event of Default, the reasonable costs and expenses of proceedings pursuant to any right given or action taken under the Bond Order resulting in the collection of moneys and the reasonable expenses and advances incurred or made by the Trustee with respect thereto. Operating Expenses shall be determined in accordance with generally accepted accounting principles for hospitals consistently applied, but shall not include reserves for operation, maintenance or repair or any allowance for depreciation, amortization of financing expenses, or the principal of or interest on Indebtedness.

"Outstanding" when used with reference to Bonds means, as of a particular date, all Bonds theretofore issued under the Bond Order, except:

(1) Bonds theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(2) Bonds for the payment of which money, Defeasance Obligations, or a combination of both, have been deposited with the Trustee in an amount sufficient to pay on the date when such Bonds are to be paid or redeemed the principal or the Redemption Price of, and the interest accruing to such date on, the Bonds to be paid or redeemed, provided that if any of such Bonds are to be redeemed prior to maturity, notice has been given in accordance with the Series Resolution or arrangements for the giving of notice have been made; Defeasance Obligations shall be deemed to be sufficient to pay or redeem Bonds on a specified date if the

principal of and the interest on such Defeasance Obligations, when due, will be sufficient to pay on such date the principal or Redemption Price of, as the case may be, and the interest accruing on, such Bonds to such date; and

(3) Bonds deemed to have been paid in accordance with Section 1101 of the Bond Order.

"Permitted Liens" means Permitted Liens as defined in Section 610 of the Bond Order.

"Principal Account" means the account in the Bond Fund created and so designated by Section 501 of the Series 1993 Resolution.

"Prior Lease" means the Lease Agreement, dated June 7, 1982, by and between the County and the Corporation.

"Project" means the Project described in Exhibit B hereto, including any modifications thereof, substitutions therefor, or additions thereto and exclusions therefrom.

"Redemption Fund" means the fund created and so designated by Section 501 of the Series 1993 Resolution.

"Redemption Price" means the Redemption Price as defined in Section 101 of the Bond Order.

"Revenues" means (a) all revenues, income and other money received in any period by the County or the Corporation from, in connection with or as a result of the ownership by the County, or the operation by the Corporation, of the Health Care System, including, but without limiting the generality thereof, income (1) from goods and properties sold or leased or services rendered, (2) from agreements and other arrangements with insurance companies, Medicare, Medicaid, Blue Cross, governmental units, agencies and instrumentalities, and prepaid health organizations net of contractual adjustments, and (3) from any award or agreement in lieu of an award resulting from Eminent Domain proceedings, (b) investment income from and revenues realized upon the liquidation or sale of securities held by or on behalf of the County resulting from the ownership of the Health Care System or by the Corporation, including those held in any of the funds or accounts established pursuant to the Bond Order or any Series Resolution, (c) business interruption insurance proceeds received by the County or by the Corporation which are deemed property of or derived from the Health Care System, and (d) all gifts, grants, bequests, contributions and donations, including the unrestricted income and profits therefrom, exclusive of gifts, grants, bequests,

contributions and donations to the extent specifically restricted to a particular purpose inconsistent with their use as Revenues. Except as provided in this paragraph, Revenues shall be determined in accordance with generally accepted accounting principles for hospitals consistently applied. There shall not be included in Revenues the proceeds of any borrowings the use of which is restricted by the terms of such borrowings for uses inconsistent with the payment of Indebtedness or income from investments held in a Qualified Escrow (as defined in the Bond Order).

"Series" means Series as defined in Section 101 of the Bond Order.

"Series 1993 Bonds" means the Bonds so designated by and issued under the Bond Order and the Series 1993 Resolution.

"Series 1993 Resolution" means the Series Resolution adopted by the Board of Commissioners of the County on October 6, 1993.

"Series Resolution" means Series Resolution as defined in Section 101 of the Bond Order.

"Short-Term Indebtedness" means Short-Term Indebtedness as defined in Section 101 of the Bond Order.

"Sinking Fund Account" means the account in the Bond Fund created and so designated by Section 501 of the Series 1993 Resolution.

"State" means the State of North Carolina.

"Transfer" means Transfer as defined in Section 101 of the Bond Order.

SECTION 1.02. Rules of Construction. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words "Bond," "owner," "Holder" and "person" shall include the plural as well as the singular number and the word "person" shall mean any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.



## ARTICLE II

### Representations

SECTION 2.01. Representations by the County. The County represents that it has the power to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder; that by proper action of its Board of Commissioners, the County has been duly authorized to execute and deliver this Lease; and that the County proposes to lease the Existing Facilities to the Corporation, all as provided in this Lease. The County further represents that it proposes to issue the Series 1993 Bonds which will mature, bear interest, be redeemable and have the other terms and provisions set forth in the Bond Order and the Series 1993 Resolution, pursuant to which its interest in the Net Revenues derived by it from the Health Care System will be pledged to the Trustee as security for payment of the principal of, the premium, if any, and the interest on all Bonds and any other Long-Term Indebtedness secured pari passu therewith.

SECTION 2.02. Representations by the Corporation. The Corporation represents that it is a nonsectarian, nonprofit corporation, no part of the net earnings of which inures to the benefit of any private member or individual; that it has authority to lease the Existing Facilities and operate the Health Care System, and, by proper corporate action, has been duly authorized to execute and deliver this Lease; and that the execution and delivery of this Lease, its consummation of the transactions contemplated hereby and fulfillment of or compliance with the terms and conditions of this Lease, do not conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction, or any agreement or instrument to which the Corporation is now a party or by which it is bound, and do not constitute a default under any of the foregoing, or result in the creation or imposition of any lien or encumbrance of any nature whatsoever upon any of the property or assets of the Corporation under the terms of any instrument or agreement (other than this Lease and the Bond Order).

## ARTICLE III

### Term; County Termination; Rent; Nature of Obligation

SECTION 3.01. Description of Interest in Existing Facilities. The County, as lessor, hereby demises, leases and rents the Existing Facilities to the Corporation, as lessee, under this Lease, and the Corporation hereby takes, accepts and rents the Existing Facilities from the County upon and in conformity with the terms, covenants, conditions and provisions of this Lease and subject to Permitted Encumbrances as described in Exhibit C hereto.

SECTION 3.02. Term of Lease. The term of this Lease shall commence on the date when this Lease shall become legally effective as provided in Section 12.18 of this Lease and terminate at 12:01 A.M., Wilmington, North Carolina Time, on the fifth anniversary thereof, unless terminated sooner pursuant to the provisions of Section 3.03 or Section 10.03 hereof. The Prior Lease is hereby terminated.

The Corporation may, at its option, renew this Lease for additional terms of five years beginning at the expiration of the five-year term herein provided for, and in each successive five-year term, it being understood that this Lease shall be renewed for additional five-year terms unless the Corporation shall give notice at least 120 days prior to the expiration of each such five-year term of its intention not to renew.

SECTION 3.03. County Termination of Lease. The County shall have the right to terminate this Lease upon ninety (90) days written notice to the Corporation which notice shall be given after a public hearing thereon. If the County exercises its right to terminate this Lease, the Corporation shall discontinue its occupancy, management and operation of all or any part of the Health Care System, shall allow the County or its designee to assume such occupancy, management and operation and shall deliver to the County or its designee, as required by Section 12.11 hereof, all property and money held by it hereunder.

If the County exercises its right to terminate this Lease, the Corporation shall do all such things required by the County to fully and certainly vest in the County or its designee the rights and powers of the Corporation with respect to the Health Care System, including those respecting accreditation; arrangements with insurance companies, Medicare, Medicaid, Blue Cross, governmental units, agencies and instrumentalities and prepaid health organizations; Accounts; gifts, grants, bequests, contributions and donations; maintenance and use; and insurance coverage.

SECTION 3.04. Rent and other Amounts Payable. The Corporation covenants and agrees to pay to the County as rent for the Existing Facilities for the term of this Lease, and any additional terms, the sum of \$1.00 per annum.

The Corporation shall also pay, when due and payable, certain costs and expenses, exclusive of costs and expenses payable from the proceeds of the Bonds issued by the County under the Bond Order and any Series Resolution including, but not limited to, (i) the fees and other costs payable to the Trustee; (ii) all costs incurred in connection with the purchase or redemption of Bonds to the extent money is not otherwise available therefor; and (iii) the fees and other costs incurred for services of such attorneys, engineers, Architects, Management

consultants, Insurance Advisers, and Accountants as are retained to make examinations, provide services, calculate rebate requirements, render opinions or prepare reports under this lease, the Bond Order or any Series Resolution.

SECTION 3.05. Collection and Application of Revenues.

The Corporation agrees to collect on behalf of the County and to deliver to the Trustee the Revenues for application in accordance with the provisions of Section 402 of the Bond Order and any Series Resolution or, if, the Bonds have been accelerated pursuant to Section 702 of the Bond Order, in accordance with the provisions of Section 704 thereof. The Corporation acknowledges that the Revenues, subject only to their application to the payment of Operating Expenses, have been pledged by the County to secure the payment of the Bonds.

The obligation of the Corporation to deliver the Revenues to the Trustee in the amounts and at the times provided in Sections 402 and 704 of the Bond Order for application as provided therein, in Section 611 of the Bond Order and in any Series Resolution shall be absolute and unconditional. The Corporation agrees to perform such obligation without notice or demand and without abatement, deduction or set-off, notwithstanding any rights or claims which the Corporation might otherwise have against the County, the Trustee or any other person.

SECTION 3.06. Bond Order Controlling. The parties to this Lease hereby agree that the Health Care System will be administered in a manner consistent with the Bond Order.

ARTICLE IV

General Agreements

SECTION 4.01. Maintenance of Health Care System.

Subject to the terms of this Lease, the Corporation, at its sole cost and expense, shall keep and maintain the Health Care System at all times in a good state of repair and sound operating condition, ordinary wear and tear, obsolescence in spite of repair, and acts of God excepted. The Corporation shall not permit, commit or suffer any waste of the whole or any part of the Health Care System and shall not use or permit the use of the Health Care System, or any part thereof, for any unlawful purpose or permit any nuisance to exist thereon.

The Corporation shall provide, at its own cost and expense, all Equipment, inventory, supplies, expendables, stock-in-trade, and other personal property required or convenient for the proper operation, repair and maintenance of the Health Care System in an economical and efficient manner consistent with standards of hospital operation and administration generally

required for State licensure and for accreditation or certification of hospitals comparable to the Health Care System.

SECTION 4.02. Use and Operation of Health Care System.

The Corporation shall operate the Health Care System exclusively as a public health care delivery system rendering hospital and health care services (which may include health care education and research) to the general public without discrimination as to race, creed, color, sex or national origin for the public purpose of better providing for the present and prospective health, safety and general welfare of the people of the State. The Corporation shall maintain and operate the Health Care System upon a revenue-producing basis in a manner consistent with the Corporation's obligations imposed under this Lease and its status as a tax-exempt organization.

The Corporation shall have the right to place a sign or signs on the Health Care System identifying the operation of the Health Care System as being that of the Corporation; provided, however, that the principal components of the Health Care System shall be known as New Hanover Regional Medical Center unless the County shall approve any change.

SECTION 4.03. Religious Use of Health Care System.

The Corporation shall not use the Health Care System or any part thereof for sectarian instruction, or primarily as a place of religious worship or as a facility used primarily as a part of a program of a school or department of divinity. To the extent permitted by law, the foregoing shall not be deemed to exclude a meditation room or a pastoral care program, both reasonably available to all persons of all religions and reasonably related to the providing of proper hospital services. If, at any time, applicable law shall permit the Health Care System to be used for any purpose prohibited by this Section 4.03, such prohibition shall be of no further force or effect or shall be limited to the extent permitted by law unless the validity or tax-exempt status of the interest on the Bonds or any thereof would be adversely affected thereby.

SECTION 4.04. Compliance with Law and Insurance Requirements. Throughout the term of this Lease, the Corporation, at its sole cost and expense, shall comply or cause there to be compliance with all laws, orders, rules, regulations and requirements relating to the acquisition, construction, use or occupancy of the Health Care System and shall also observe and comply with the requirements of all policies of insurance at any time in force with respect to any of the buildings, improvements, machinery or Equipment constituting a part of the Health Care System. Nothing contained in this Section shall prevent the Corporation from contesting in good faith the applicability or validity of any law, ordinance, order, rule, regulation or requirement, so long as the Corporation shall have delivered to the Trustee an opinion of Independent Counsel acceptable to the

Trustee to the effect that such failure to comply during the period of such contest will not materially impair the use of the Health Care System or the interest of the County in the Health Care System.

SECTION 4.05. Liens and Encumbrances. Except as otherwise provided in this Lease, the Corporation covenants and agrees that it shall not create or suffer to be created any lien, encumbrance, or charge other than Permitted Liens upon the Health Care System or Revenues or any part of the foregoing, and shall satisfy or discharge or shall make adequate provision to satisfy and discharge, within sixty (60) days after the same shall accrue, all claims and demands for labor, materials, supplies or other items that might by law become a lien upon the Health Care System or the Revenues, if not satisfied. If any such lien shall be filed or asserted against the Health Care System or the Revenues or any part of the foregoing by reason of labor, materials, supplies or other items supplied or claimed to have been supplied on or to the Health Care System at the request or with the permission of the Corporation or of anyone claiming to act for the Corporation, then, within sixty (60) days after it receives notice of the filing or the assertion thereof, the Corporation shall cause the same to be discharged of record or effectively prevent the enforcement or foreclosure thereof against the Health Care System, the Revenues, or any part of the foregoing, by contest, payment, deposit, bond, order of court or otherwise. Nothing in this Section shall require the Corporation to satisfy or discharge any such lien, encumbrance, charge, claim or demand so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, and the Corporation shall have delivered to the Trustee an opinion of Independent Counsel satisfactory to the Trustee to the effect that such contest does not jeopardize the interests of the County, the Trustee or the Holders in the Health Care System, the Revenues or any part of the foregoing; provided that prior to such contest the Corporation shall have prevented the foreclosure or enforcement of any lien, claim, encumbrance, charge or demand against the Corporation arising from or related to the construction of any Improvements by depositing with an escrow agent, or requesting the Trustee to set aside and segregate, an amount sufficient to satisfy or discharge such lien, claim, encumbrance, charge or demand or by delivering to the Trustee a surety bond in an amount sufficient to satisfy the same. The Corporation shall notify the County and the Trustee of any judgment lien entered against the Corporation in the amount of \$100,000 or more within ten (10) days after it has notice that such a judgment lien has been entered.

SECTION 4.06. Payment of Other Charges. The Corporation shall pay from Revenues directly to the appropriate party, when due, all assessments, levies, taxes and insurance premiums of every kind and nature to the whole or any part of the Health Care System or any interest therein, and all costs,

expenses, liabilities and charges of every kind and nature, including wages, charges for gas, electricity, water, sewer and other utilities, relating to the maintenance, operation, repair, replacement or improvement of the Health Care System, or any part thereof, or any facilities, machinery or equipment thereon, or to the operations or services conducted or provided thereon or in connection therewith that may arise or accrue during the term of this Lease; provided, however, that with respect to the obligations imposed upon it under this Section, the Corporation may exercise the right to contest them to the same extent and in the same manner as is provided in Section 4.05 of this Article. All such payments made pursuant to this Section shall constitute Operating Expenses.

SECTION 4.07. Income Tax Status. The Corporation shall take all appropriate measures to maintain its status as an organization described in Section 501(c)(3) of the Code and its exemption from federal income tax under Section 501(a) of the Code. The Corporation shall not perform any acts or enter into any agreements that shall have the effect of prejudicing the Corporation's tax-exempt status or the exemption from federal income tax of the interest on any Bonds or fail to perform any act or fulfill any obligation required to maintain such status or exemption. The Corporation shall take all appropriate measures to maintain its tax-exempt status under State income tax laws and the regulations thereunder. None of the Corporation's revenues, receipts, income or profits, either realized or unrealized, and none of its other assets or property shall be distributed to any of its employees or inure to the benefit of any private person, association or corporation, other than for the lawful corporate purposes of the Corporation; provided, however, that the foregoing shall not prevent the Corporation from paying the cost of services or property, real or personal, provided for or to the Corporation by any person, association or corporation. Neither the Corporation nor any related person, as defined in Section 144(a)(3) of the Code, shall, pursuant to any arrangement, formal or informal, purchase the Series 1993 Bonds in an amount related to the principal amount of this Lease.

SECTION 4.08. Rates and Charges. (a) The Corporation shall fix, charge and collect rates, fees and charges for the use of and for the goods and services furnished by the Health Care System, and shall revise such rates, fees and charges as often as may be necessary or appropriate, to produce a Long-Term Debt Service Coverage Ratio in each Fiscal Year of not less than 1.10. If Long-Term Indebtedness is incurred to pay the Cost of Improvements, the debt service thereon shall not be included in the computation of the Long-Term Debt Service Coverage Ratio until the first Fiscal Year following the completion of such Improvements unless the County or the Corporation is required to pay any portion of the principal thereof or interest thereon from sources other than the proceeds of such Long-Term Indebtedness prior to such Fiscal Year, in which case such Long-Term

Indebtedness shall be included in such computation beginning in the first Fiscal Year when such payments are made.

(b) If in any Fiscal Year the Long-Term Debt Service Coverage Ratio is less than the amount required under paragraph (a) of this Section, then, within thirty (30) days of the receipt of the audit report for such Fiscal Year, the Corporation shall employ a Management Consultant to review and analyze the financial status, administration and operations of the Health Care System, to inspect the Health Care System and to submit, within sixty (60) days thereafter, a written report to the Corporation recommending revisions of the rates, fees and charges of the Health Care System and the methods of operation of the Health Care System that will result in producing the amount so required in the following Fiscal Year. Promptly upon its receipt of such recommendations, the Corporation shall transmit copies thereof to the Local Government Commission, the Trustee and the County and shall revise the Health Care System's rates, fees and charges, or alter its methods of operation and take such other action as shall conform with such recommendations.

(c) In the event the Corporation shall fail to comply with the recommendations of the Management Consultant, the County or the Trustee may institute and prosecute an action or proceeding in any court or before any board or commission having jurisdiction to compel the Corporation to comply with the recommendations and the requirements of the preceding paragraph of this Section.

(d) If the Corporation shall comply, to the extent permitted by law, with all recommendations of the Management Consultant in respect to the Health Care System's rates, fees, charges and methods of operation, the failure of the Long-Term Debt Service Coverage Ratio to meet the requirements of paragraph (a) of this Section shall not constitute an Event of Default under the provisions of this Lease so long as the Revenues shall not be less than the amount required to pay the total Operating Expenses and to pay the debt service on all Indebtedness of the County and the Corporation for such Fiscal Year.

(e) If a report of a Management Consultant is delivered to the Trustee, which report shall state that Governmental Restrictions have been imposed which make it impossible for the coverage requirement in paragraph (a) hereof to be met, then such coverage requirement shall be reduced to the maximum coverage permitted by such Governmental Restrictions but in no event shall Revenues be less than the amount required to pay the total Operating Expenses and to pay the debt service on all Indebtedness of the County and the Corporation for such Fiscal Year.

(f). The Corporation shall maintain accounting and management procedures adequate to determine the need for any

change in such rates and to permit the timely application to any regulatory authorities having jurisdiction for a change in or modification of the Corporation's rates that may be necessary to enable the Corporation to comply with paragraphs (a) and (b) of this Section. The Corporation shall make timely application for and diligently pursue to a prompt conclusion any procedures required to obtain all regulatory approvals necessary to enable the Corporation to comply with the provisions of such paragraphs.

While the covenants of the Corporation hereinabove set forth in this Section are subject to applicable requirements imposed by law or lawfully imposed by federal, State or local regulatory authority, nothing herein shall be construed or applied so as to permit any federal, State or local regulatory authority to impair the obligation of the Corporation to fix, charge and collect rates, fees and charges in the amounts required by this Section.

SECTION 4.09. Covenant as to Peaceful Enjoyment. The County covenants that, so long as the Corporation shall pay the rent as provided herein and shall duly observe and perform all the terms, covenants, conditions, provisions, stipulations and agreements of this Lease obligatory on it, the Corporation shall have, hold and enjoy, during the term hereof, peaceful, quiet and undisputed possession of the Health Care System, subject, however, to the provisions of this Lease and the Bond Order, and the County shall from time to time take all necessary action to that end.

The County agrees that, subject to Sections 3.03 and 10.03 hereof, it will take no action to appropriate or otherwise cause the divestiture of any Revenues or Property (as defined in the Bond Order), except for health care purposes and for services provided by or through the Health Care System.

SECTION 4.10. Role of the Corporation. Except as otherwise provided in this Lease or the Bond Order, the Corporation shall be the sole operating authority empowered to manage, administer and govern the Health Care System in all its activities and affairs on a continuing day-to-day basis, including matters relating to the medical staff and all other functions customarily conducted or pursued by the independent management and governing authority of a private nonprofit corporation operating a hospital.

SECTION 4.11. Performance of the Corporation's Obligations by the County or Trustee. In the event the Corporation neglects, refuses or fails to perform any of its obligations under this Lease, the County or the Trustee, at their respective options and following at least thirty (30) days' written notice to the Corporation (except where a shorter period of notice is necessary to avoid a default on the Bonds or to avoid endangering the interests of the County, the Trustee, or



the Holders in respect of the Health Care System or the Revenues or to prevent any loss or forfeiture thereof), may perform or cause to be performed such obligations, and all expenditures incurred by the County or the Trustee thereby shall be promptly paid or reimbursed by the Corporation to the County or the Trustee, as the case may be, together with interest thereon at the prime rate announced from time to time charged by the commercial lending department of the Trustee.

SECTION 4.12. Accreditation. The Health Care System has been accredited by the Joint Commission on Accreditation of Healthcare Organizations and the Corporation shall use its best efforts to maintain such accreditation so long as the Corporation reasonably believes the same to be in the best interest of the Corporation and the Holders. The Corporation shall furnish copies of all correspondence relating to a loss or voluntary relinquishment of such accreditation to the County, the Local Government Commission and the Trustee.

SECTION 4.13. Budgets. The Corporation agrees that it shall adopt and submit to the County, the Trustee and the Local Government Commission prior to the beginning of each Fiscal Year during the period when the Bonds are Outstanding, a budget or budgets (including any material amendments thereof) indicating the Revenues and Operating Expenses for the ensuing Fiscal Year in adequate detail to satisfy the County that sufficient Revenues will be available to meet the obligations created by the Bond Order and this Lease. If an Event of Default has occurred and is continuing or if the Long-Term Debt Service Coverage Ratio is less than the amount required under paragraph (a) of Section 4.08 hereof, the budget or budgets shall contain the amount of Operating Expenses required to be disbursed by the Corporation during the ensuing Fiscal Year on a monthly basis. The Corporation also agrees that such budget or budgets shall be prepared in accordance with the budgetary laws of the State generally applicable to public hospitals. The County reserves the right to require from the Corporation a statement of its proposed capital expenditures in any Fiscal Year.

If for any reason the Corporation shall not have adopted the Annual Budget before the first day of any Fiscal Year, the preliminary budget for such Fiscal Year, or, if there is none, the budget for the preceding Fiscal Year, shall be deemed to be in force and shall be treated as the Annual Budget until the adoption of the Annual Budget.

SECTION 4.14. Report and Certificates of the Corporation. Within one hundred twenty (120) days after the end of each Fiscal Year, the Corporation shall furnish to the County, the Local Government Commission, the Trustee, Standard & Poor's Corporation, Moody's Investors Service, Inc. and any Holder requesting the same in writing a copy of its annual financial report. This report shall include, at least, the financial

statements and notes thereto for such Fiscal Year, prepared in accordance with generally accepted accounting principles, and the auditor's opinion on the material presented, explicitly including compliance with Sections 3.05 and 4.08 of this Lease and all other provisions of this Lease and the Bond Order. The audit shall be conducted and the report rendered in accordance with generally accepted auditing standards.

In addition, the Corporation shall furnish, within one hundred twenty (120) days after the end of each Fiscal Year, an Officer's Certificate of the Corporation which shall state that, to the best of the knowledge of the party signing such certificate, the Corporation is not in default under any of the provisions of this Lease or the Bond Order, and a certificate of the Corporation's Insurance Adviser which shall state that the insurance required by Section 6.01 of this Lease is in effect. Such certificates shall be furnished to the County, the Local Government Commission and the Trustee.

SECTION 4.15. Inspections; Reports; Repairs. The County, the Trustee and the Holders of at least twenty percent (20%) in aggregate principal amount of the Outstanding Bonds, through their respective officers, employees, consultants and other authorized representatives, shall have reasonable access at all reasonable times and upon reasonable notice to make an inspection of the Health Care System for purposes of ascertaining whether the Corporation has complied with its agreements and obligations under this Lease. For the purpose of this Section 4.15, so long as an Insurer Default shall not exist, the Bond Insurer shall be deemed to be the Holder of the Bonds it has insured. Upon the request from time to time of the County or the Trustee, which request shall not be made unless any such inspection referred to above shall disclose that the Corporation may have violated any of its agreements under the provisions of this Lease, the Corporation shall cause an inspection of the Health Care System to be made by an Independent Architect or an Independent Engineer and shall file with the County and the Trustee immediately following each such inspection the report of such Independent Architect or Engineer setting forth (a) findings as to whether the Health Care System had been maintained in good repair, working order and condition and (b) recommendations as to the proper maintenance and repair of the Health Care System during the remaining life of the Bonds then Outstanding. If such report concludes that the Health Care System has not been maintained in good repair, working order and condition, the Corporation shall restore the Health Care System promptly to good repair, working order and condition with all expedition practicable.

SECTION 4.16. Payment for Indigent Care. The County covenants and agrees, subject to annual appropriation, to pay to the Corporation the sum of \$150,000 per annum for indigent care. Payment for indigent care shall be made on or about January 15 in each calendar year.

SECTION 4.17. Rebate. The Corporation covenants and agrees to become an expert in the calculation of, or to retain a recognized expert in the calculation of, the rebate requirement pursuant to the rules promulgated under applicable Treasury Regulations, and to prepare in a timely manner, a statement setting forth the rebate requirement and the method for making the determination in any form or statement prescribed therefor by the Internal Revenue Service or the U.S. Treasury. Upon completion of any such calculation, the Corporation shall certify to the County that such calculation has been completed and file copies thereof with the Trustee and the County. The Corporation shall provide any funds necessary from time to time to meet the rebate requirement.

SECTION 4.18 Debt Service Coverage Ratio. (a) The Corporation agrees that if the Long-Term Debt Service Coverage Ratio for any Fiscal Year shall be less than 1.75, the Corporation shall fund, as soon as practicable after the end of such Fiscal Year, by means of a cash deposit, letter of credit or other method acceptable to the Bond Insurer for the Series 1993 Bonds (so long as an Insurer Default shall not exist), a Debt Service Reserve Fund to be held by the Trustee pursuant to the Series 1993 Resolution for the exclusive benefit of the Holders of the Series 1993 Bonds in an amount equal to the Debt Service Reserve Fund Requirement. The Debt Service Reserve Fund Requirement shall be equal to the lesser of (i) maximum annual debt service on the Series 1993 Bonds for any Bond Year and (ii) 125% of the average annual debt service on the Series 1993 Bonds for any Bond Year. In the event that the Corporation shall be required to fund a Debt Service Reserve Fund pursuant to the provisions described above, the Bond Order, the Series Resolution and the Lease shall be amended without the consent of or notice to any of the Holders in order to make any changes therein that are necessary in connection with the establishment and maintenance of such Debt Service Reserve Fund.

(b) If the Debt Service Fund shall be funded pursuant to paragraph (a) above and thereafter the covenant contained therein is satisfied by the Corporation for two consecutive Fiscal Years after the Fiscal Year for which the covenant was not satisfied, then the Debt Service Reserve Fund shall no longer be required to be funded and any funds contained therein shall be released to the Corporation.

## ARTICLE V

### After-Acquired Property; Alterations; Removals; Easements

SECTION 5.01. After-Acquired Property as Part of the Health Care System. All buildings, structures and Equipment that shall be constructed, placed, installed or used in or upon the Health Care System as an addition or improvement to, as a substitute for, or in renewal, replacement or alteration of, any buildings, structures and Equipment now or hereafter constituting part of the Health Care System and all real property acquired or used as an addition to, in replacement of, or as a substitute for real property now or hereafter constituting a part of the Health Care System shall thereupon become a part of the Health Care System.

SECTION 5.02. Effecting Changes in the Health Care System. The Corporation at its own cost and expense may make such additions or improvements to or such replacements or alterations of the Health Care System as the Corporation may deem desirable to attain the purposes herein contemplated; provided, however, that any such additions, improvements, replacements, or alterations shall not impair the structural soundness of the Health Care System.

SECTION 5.03. Removal of Property. The Corporation agrees that it will not Transfer any portion of the Health Care System, cash and investments or Accounts unless (i) such Transfer is permitted by Section 614 of the Bond Order or (ii) such Transfer is required by Section 12.11 hereof.

SECTION 5.04. Release of Portions of the Health Care System. The Corporation shall have the right to have any land or other real property constituting a portion of the Health Care System which is Transferred pursuant to Section 5.03 of this Lease released from this Lease. The County and the Trustee shall join in any such release, at the expense of the Corporation, upon the written request of the Corporation therefor, accompanied by an Officer's Certificate of the Corporation stating that the conditions set forth in Section 614 of the Bond Order have been met.

SECTION 5.05. Costs and Damages. The Corporation shall pay all costs incurred in connection with or damages resulting from any demolition or removal of any property pursuant to the provision of this Article.

SECTION 5.06. Easements. With the consent of the Corporation, the County may lawfully grant or release, as the case may be, with or without consideration, easements, rights of way, licenses or other rights over, upon or beneath the surface of the land constituting a part of the Health Care System;

provided that the efficient operation of the Health Care System or reasonable ingress thereto and egress therefrom shall not be thereby impaired.

## ARTICLE VI

### Insurance

SECTION 6.01. Insurance. The Corporation agrees that it will maintain, or cause to be maintained, the following types of insurance (including one or more self-insurance programs considered to be adequate) in such amounts as, in its judgment, are adequate to protect it, the Health Care System and its operations and the County, with respect to its interest in the Health Care System: (i) comprehensive general public liability insurance, including blanket contractual liability and automobile insurance including owned and hired automobiles (excluding collision and comprehensive coverage thereon), (ii) fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, damage from aircraft, smoke and uniform standard coverage and vandalism and malicious mischief endorsements, (iii) workers' compensation insurance, (iv) business interruption insurance and (v) boiler insurance. The Corporation agrees that it will maintain, or cause to be maintained, professional liability or medical malpractice insurance in the minimum amount of \$1,000,000 per person and per occurrence and \$3,000,000 annual aggregate. All insurance policies carried pursuant to clauses (ii), (iv) and (v) of this Section shall name the County, the Corporation and the Trustee as parties insured thereunder as their respective interests appear. Each policy shall provide that losses thereunder shall be adjusted with the insurer by the Corporation, with the approval of the Trustee, on behalf of the insured parties; provided, however, that the approval of the Trustee shall not be required with respect to insurance policies covering professional liability or medical malpractice. Copies of each policy shall be provided to the Trustee upon request.

SECTION 6.02. Insurance Adviser. The Corporation shall engage an Insurance Adviser to review the insurance requirements of the Corporation and the Health Care System from time to time (but not less frequently than biennially). If the Insurance Adviser makes recommendations for the increase of any coverage, the Corporation shall increase or cause to be increased such coverage in accordance with such recommendations. Notwithstanding anything in this Section to the contrary, the Corporation shall have the right, without giving rise to an Event of Default solely on such account, (i) to maintain insurance coverage below that most recently recommended by the Insurance Adviser, if the Corporation furnishes to the Trustee a report of the Insurance Adviser to the effect that the insurance so provided affords either the greatest amount of coverage available

for the risk being insured against at rates which in the judgment of the Insurance Adviser are reasonable in connection with reasonable and appropriate risk management, or the greatest amount of coverage necessary by reason of state or federal laws now or hereafter in existence limiting medical and malpractice liability, or (ii) to adopt alternative risk management programs which the Insurance Adviser determines to be reasonable, including, without limitation, to self-insure in whole or in part individually or in connection with other institutions, to participate in programs of captive insurance companies, to participate with other health care institutions in mutual or other cooperative insurance or other risk management programs, to participate in state or federal insurance programs, to take advantage of state or federal laws now or hereafter in existence limiting medical and malpractice liability, or to establish or participate in other alternative risk management programs; all as may be approved by the Insurance Adviser as reasonable and appropriate risk management by the Corporation. If the Corporation shall be self-insured for any coverage in an amount greater than \$1,000,000, the report of the Insurance Adviser mentioned above shall state whether the anticipated funding of any self-insurance fund is actuarially sound, and, if not, the required funding to produce such result and such coverage shall be reviewed by such Insurance Adviser not less frequently than annually.

SECTION 6.03. Insurance Proceeds. (a) The Net Proceeds of all insurance carried or maintained with respect to the Health Care System, under clauses (ii) and (v) of Section 6.01 of this Lease, shall be paid to the Corporation if such Net Proceeds do not exceed ten percent (10%) of Net Book Value, and the Corporation shall forthwith apply such Net Proceeds to repair or restore the Health Care System to substantially the same condition as that which existed prior to the event causing damage to or destruction of the same; provided that if the Corporation can demonstrate to the satisfaction of the County that the portion of the Health Care System damaged or destroyed is unnecessary to Health Care System operations and that the failure to repair or restore the same will not impair or otherwise adversely affect the structural soundness of the Health Care System or the Revenues, the Corporation shall have no obligation to repair or restore the same.

If Net Proceeds exceed ten percent (10%) of Net Book Value, the Corporation either shall:

(i) promptly replace, repair, rebuild or restore the property damaged or destroyed to substantially its same condition as that which existed prior to such damage or destruction, with such alterations and additions as the Corporation may determine and as will not impair or otherwise adversely affect the capacity or character of the Health Care System, applying so much as may be necessary of

the Net Proceeds of insurance received by it on account of any such damage or destruction or of the Corporation's funds to payment of the cost of such replacement, repair, rebuilding or restoration, either on completion thereof or as the work progresses; or

(ii) apply all Net Proceeds of insurance received by it on account of any such damage or destruction to the redemption, in part, of Bonds, provided that such partial redemption may be made only if the Corporation shall have furnished to the County and the Trustee an opinion of an Independent Architect or an Independent Engineer stating that (A) the Health Care System has been restored to substantially the same condition as that which existed prior to such damage or destruction, or (B) the portion of the Health Care System damaged or destroyed is not necessary to Health Care System operations and that the failure of the Corporation to repair or restore the same will not impair or otherwise adversely affect the structural soundness of the Health Care System, and an opinion of the Corporation Representative that such failure to repair or restore will not adversely affect the Revenues; or

(iii) apply all Net Proceeds of insurance received on account of such damage or destruction to the redemption, in full, of the Bonds.

If the Corporation shall not apply Net Proceeds or cause them to be applied to the replacement, repair, rebuilding, or restoration of the damaged or destroyed property, the Corporation shall direct the Trustee to transfer such Net Proceeds to the Redemption Fund and to apply such proceeds to the redemption of Bonds.

Notwithstanding any other provision of this Section, in the event of the issuance of any Long-Term Indebtedness other than Bonds, the Trustee shall allocate any insurance proceeds and condemnation proceeds between the payment of all Long-Term Indebtedness, proportionately on the basis of the respective aggregate principal amounts of all Long-Term Indebtedness then outstanding.

If the Corporation shall apply Net Proceeds or cause them to be applied to the replacement, repair, rebuilding or restoration of the Health Care System, the Trustee shall hold such proceeds in a special fund and make disbursements therefrom, from time to time, upon receipt of a requisition, signed by the Corporation Representative, in form satisfactory to the Trustee. In the event said Net Proceeds are not sufficient to pay in full the costs of such repair, rebuilding or restoration, the Corporation will nonetheless complete this work thereof and shall pay the portion of the cost thereof in excess of the amount of said Net Proceeds.

Any balance of Net Proceeds remaining after the payment of all costs of such repair, rebuilding or restoration shall be transferred by the Trustee to the Corporation.

(b) The Net Proceeds of title insurance, if any, shall be paid to the Trustee for deposit in the Redemption Fund, unless replacement of the property to which title failed is specifically authorized by the County, in which case such Net Proceeds shall be applied in accordance with the provisions of paragraph (a) of this Section 6.03. If such Net Proceeds are deposited in the Redemption Fund, the County shall direct the Trustee to apply the same to the redemption of Bonds.

(c) The proceeds of any business interruption insurance carried pursuant to clause (iv) of Section 6.01 of this Lease shall be applied as follows (i) for deposit in the appropriate accounts to satisfy the principal and interest requirements on Bonds for the then current Fiscal Year, less any amounts on deposit in such accounts, (ii) for deposit in the Operating Fund in an amount sufficient to pay salaries of key personnel of the Corporation and (iii) for deposit as provided in any instrument providing for the issuance of any Long-Term Indebtedness other than Bonds, an amount equal to Maximum Annual Debt Service on such Long-Term Indebtedness, less any amounts on deposit pursuant to the instrument providing for the issuance of Long-Term Indebtedness other than Bonds, for the payment of principal and interest thereon. Any balance remaining after such deposits shall be paid to the Corporation.

SECTION 6.04. Failure to Carry Insurance. If the Corporation shall fail to obtain or maintain insurance or qualified self insurance as herein required, the Corporation shall forthwith notify the County and the Trustee of such failure, and the County or the Trustee may, at their respective options, obtain and maintain such insurance and the Corporation shall be obligated to promptly reimburse the Trustee or the County, as the case may be, for all amounts expended in connection therewith, together with interest thereon at the then announced prime rate charged by the commercial lending department of the Trustee.

SECTION 6.05. Prompt Loss Adjustments. The Corporation shall adjust losses under insurance policies related to the Health Care System in conformity with this Lease as promptly as practicable, and with due regard to the interests of the Trustee, the County and the Holders.



## ARTICLE VII

### Condemnation

SECTION 7.01. Notice of Taking; Cooperation of Parties. If any public authority or entity attempts to take or damage the Health Care System or any part thereof through Eminent Domain proceedings, the Corporation shall take prompt and appropriate measures to protect and enforce its rights and interests and those of the County and the Trustee in connection with such proceedings. Upon receiving notice of the institution of Eminent Domain proceedings by any public instrumentality, body, agency or officer, the party receiving such notice shall deliver written notice thereof to the other party to the Lease and the Trustee.

SECTION 7.02. Disposition of Money Awarded in Eminent Domain Proceedings. If the Health Care System or any part thereof shall be taken or damaged through Eminent Domain proceedings, the Net Proceeds of any award or compensation resulting from any such taking or damaging shall be applied in accordance with the provisions of Section 6.03(a) of this Lease as if such Net Proceeds were proceeds of property insurance policies.

## ARTICLE VIII

### Mergers and Consolidations; Leases; Contracts

SECTION 8.01. Maintenance of Corporate Existence; Permitted Mergers and Consolidations. The Corporation shall maintain its corporate existence and shall not dissolve or otherwise sell or dispose of all or substantially all of its assets or consolidate with or merge into another corporation or a governmental unit or permit one or more corporations or governmental units to consolidate with or merge into it unless the following conditions are satisfied:

(a) the County shall have consented in writing to such dissolution, disposition of assets, consolidation or merger;

(b) the successor corporation, after giving effect to such consolidation, merger or transfer, would not be in default in the performance or observance of any covenant or condition in this Lease and the conditions described in subsection (a) of Section 1201 of the Bond Order would be met for the incurrence of one additional dollar of Long-Term Indebtedness;

(c) the successor corporation (if other than the Corporation) has the power to assume and shall assume in writing all of the obligations of the Corporation under this Lease and, if it is not a corporation incorporated under the laws of the State, qualifies to do business in the State;

(d) the County and the Trustee have received a written opinion of bond counsel to the County to the effect that such merger, consolidation or transfer of assets will not adversely affect the exclusion from gross income for Federal income tax purposes of the interest on the Bonds intended to be tax-exempt for Federal income tax purposes;

(e) the unrestricted fund balance of the successor corporation as of the date of calculation is not less than 90% of the unrestricted fund balance of the Corporation as of the end of its most recent Fiscal Year;

(f) the County and the Trustee have received a written opinion of Independent Counsel to the effect that the successor corporation (if other than the Corporation) has duly authorized the assumption of the Corporation's duties under the Lease, and such assumption is a valid, binding and enforceable obligation of the successor corporation; and

(g) the successor corporation (if other than the Corporation) has met all hospital licensing requirements to which the Corporation is subject under the laws of the State.

Upon compliance with the foregoing conditions to the reasonable satisfaction of the Trustee, the County shall deliver to the predecessor corporation an instrument releasing the predecessor corporation from its obligations under this Lease.

SECTION 8.02. Distribution of Papers. The Corporation shall furnish to the County and the Trustee, within ten days of the effective date thereof a true and correct copy, appropriately certified by the Corporation Representative, of any lease or contract mentioned in Section 8.01 of this Article.

## ARTICLE IX

### Limitation on Certain Indebtedness of the Corporation

SECTION 9.01. Limitation on Indebtedness. After the effective date of this Lease, the Corporation shall not incur, assume, or guarantee any Indebtedness unless the following conditions are met:

(i) the Indebtedness is permitted by Section 1201 of the Bond Order; and

(ii) if the principal amount to be borrowed in a single transaction or a series of related transactions exceeds \$10,000,000, the Corporation shall have given written notification thereof to the County prior to incurring such Indebtedness.

SECTION 9.02. Liabilities Incurred in Regular Operations. The Corporation may incur liabilities other than Indebtedness in the regular operation of the Health Care System.

## ARTICLE X

### Default by the Corporation

SECTION 10.01. Events of Default. The following shall constitute Events of Default under this Lease:

(a) Failure of the Corporation to pay the rent under this Lease in a timely manner;

(b) Failure of the Corporation to deliver to the Trustee the Revenues for deposit in conformity with the Bond Order and this Lease;

(c) Failure of the Corporation to perform, observe or comply with any of the other covenants, agreements, conditions or provisions in this Lease, and the continuance thereof for a period of thirty (30) days after receipt by the Corporation of a written notice from the County or the Trustee specifying such default and requesting that it be corrected; provided, however, if prior to the expiration of such 30-day period the Corporation institutes action reasonably designed to cure such default, no "Event of Default" shall be deemed to have occurred upon the expiration of such 30-day period for so long as the Corporation pursues such curative action with reasonable diligence and provided that such curative action can be completed within a reasonable time;

(d) The abandonment of the Health Care System or any substantial portion thereof or the discontinuance of the operations therein, and the continuance thereof for a period of thirty days after receipt by the Corporation of a written notice from the County or the Trustee specifying such default and requesting that it be corrected;

(e) The dissolution or liquidation of the Corporation unless such dissolution or liquidation is permitted by Article VIII of this Lease;

(f) The Corporation shall: (i) become insolvent or the subject of insolvency proceedings, or (ii) be unable, or admit in writing its inability, to pay its debts as they mature; or (iii) make a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its property; or (iv) file a petition or other pleading seeking reorganization, composition, readjustment, or liquidation of assets; or requesting similar relief; or (v) apply to a court for the appointment of a receiver for any of its assets; or (vi) have a receiver or liquidator appointed for any of its assets (with or without the consent of the Corporation) and such receiver shall not be discharged within ninety (90) consecutive days after his appointment; or (vii) become the subject of an "order for relief" within the meaning of the United States Bankruptcy Code; or (viii) file an answer to a creditor's petition admitting the material allegations thereof for liquidation, reorganization, readjustment or composition or to effect a plan or other arrangement with creditors or fail to have such petition dismissed within sixty (60) consecutive days after the same is filed against the Corporation;

(g) Loss of federal tax-exempt status for the interest on the Bonds intended to be tax-exempt for Federal income tax purposes as a result of any action by the Corporation;

(h) The acceleration of the payment of any Indebtedness for borrowed money of the Corporation upon the occurrence and continuation of an event of default under the instrument pursuant to which such Indebtedness was incurred; or

(i) An "Event of Default" shall have occurred under the Bond Order or any Series Resolution.

The foregoing provisions of subsections (c) and (d) of this Section are subject to the following limitations: if by reason of Force Majeure, the Corporation is unable in whole or in part to carry out any of its agreements herein contained, the failure of the Corporation to carry out any such agreements, other than the obligations on the part of the Corporation contained in Sections 3.04, 3.05, 4.03, 4.07, 4.08, 6.01, 8.01 and 12.09 hereof, shall not be deemed an Event of Default during the continuance of such inability, including a reasonable time for the removal of the effect thereof.

The term "Force Majeure" shall mean any cause, circumstance or event that is not reasonably foreseeable and that is not within the control of the Corporation, including, without limitation, the following: acts of God, strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or

of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; war; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; droughts; floods; washouts; restraint of government and people; explosions, breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; or partial or entire failure of utilities.

The Corporation agrees, however, to use its best efforts to remedy with all reasonable dispatch any Force Majeure preventing it from carrying out its agreements; provided that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Corporation, and the Corporation shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of the Corporation unfavorable to the Corporation.

SECTION 10.02. Notice to and by the Corporation. Upon the occurrence of an Event of Default, the County or the Trustee shall give prompt written notice to the Corporation specifying the nature of the Event of Default. The Corporation shall give the County and the Trustee notice of all events of which it is aware that either constitute Events of Default under this Lease or, upon notice by the County or the Trustee or the passage of time, would constitute Events of Default hereunder.

SECTION 10.03. Remedies. Whenever any Event of Default hereunder shall have happened and be continuing, the County may, and upon the written request of the Trustee or the Holders of not less than fifty-one percent (51%) in principal amount of Bonds then Outstanding shall, take any one or more of the following remedial steps:

(a) Give to the Corporation and the Trustee written notice that this Lease shall terminate upon a date specified in such notice, which date shall be not less than thirty (30) days after the date of such notice, unless prior to such specified date of termination the Event of Default shall have been cured. Upon the date specified in such notice, this Lease shall terminate unless prior to such date such Event of Default shall have been cured. Upon any such termination of this Lease, the Corporation shall vacate and surrender possession of the Health Care System, and the County, or its designee, may re-enter and take possession thereof; in the event of such termination, the terms and provisions of this Lease shall be applicable to any successor lessee or, in the absence thereof, to the County;

(b) In lieu of terminating this Lease and upon notice to the Corporation and the Trustee, the County may (if the

Event of Default shall not have been cured prior thereto) re-enter and take possession of the Health Care System, and the Corporation shall vacate and surrender possession of the Health Care System. To protect its interest in the Health Care System, the County upon such repossession may (but shall be under no obligation to) provide for the use and occupancy of all or any part of the Health Care System, from time to time, in the name of the Corporation or the County, without further notice, for such term or terms, on such conditions and considerations and for such uses and purposes as the County, in its discretion, may determine, and may collect and receive all Revenues and apply the same in the manner provided in the Bond Order. In aid of the exercise of the power of entry conferred under this paragraph, the County in its discretion and without notice or demand upon the Corporation, such notice and demand being hereby expressly waived, shall be entitled to the appointment of a receiver by any court of competent jurisdiction and such receiver so appointed shall be entitled to exercise all powers hereby conferred upon the County in the use, management and control of the Health Care System. When, in the determination of the County, the Corporation has provided assurances satisfactory to the County that the Corporation will carry out its obligations under this Lease, the County shall restore possession of the Health Care System to the Corporation, subject, however, to any other agreement or agreements of lease or other contracts which the County may have previously executed with respect to the Health Care System, or any part thereof; provided, however, that nothing in this paragraph is intended to preclude the County from terminating the Lease;

(c) Require the Corporation to endorse all checks or other negotiable instruments representing Revenues to the order of the Trustee immediately upon the receipt thereof and to deliver such endorsed instruments daily to the Trustee;

(d) Notify any or all account debtors of the Corporation to pay any amounts, when due and owing, directly to the Trustee, as trustee, at the address set forth in Section 12.12 of this Lease;

(e) Direct the Corporation to employ a Management Consultant; or

(f) Take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due or to enforce observance or performance of any covenant, condition or agreement of the Corporation under this Lease.

For purposes of this Section 10.03, the Bond Insurer will be deemed the sole Holder of the Bonds it has insured.

Any amounts collected pursuant to action taken under this Section shall be applied in accordance with Articles IV or VII of the Bond Order, whichever is then applicable.

Notwithstanding the re-entry or repossession by the County of the Health Care System, the Corporation agrees that all rights of way, easements or other rights in land conveyed or otherwise provided, if any, in accordance with this Lease shall be continued in full force and effect.

SECTION 10.04. Cooperation upon Default. The Corporation covenants that if an Event of Default specified in Section 10.01 of this Lease occurs it will take the following action if directed to do so by the County or Trustee:

(a) The Corporation shall take the action set forth in paragraphs (c) and (e) of Section 10.03 of this Lease.

(b) The Corporation shall follow any direction of the County to employ a Management Consultant or other experts and personnel and shall follow the recommendations of such Management Consultant so long as such recommendations are consistent with the continued operation of the Health Care System as a nonprofit public hospital under Federal, State and local laws and regulations.

If the County exercises its right of entry, the Corporation shall discontinue its occupancy, management and operation of all or any part of the Health Care System and shall allow the County or its designee to assume such occupancy, management and operation.

SECTION 10.05. Remedies Not Exclusive. No remedy conferred upon or reserved to the County in connection with this Lease is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy either given under this Lease or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as it may be deemed expedient. In order to entitle the County to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

SECTION 10.06. Attorneys' Fees and Expenses. If the Corporation defaults under any of the provisions of this Lease and the County or the Trustee employs attorneys or incurs other expenses for the collection of payments due hereunder or for the

enforcement of performance or observance of any obligation or agreement on the part of the Corporation contained herein, the Corporation shall, on demand therefor, reimburse the County or the Trustee, as the case may be, for the reasonable fees of such attorneys and for all other reasonable expenses so incurred.

SECTION 10.07. Waivers. If any agreement contained herein should be breached by either party and such breach should thereafter be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No failure by the County, the Trustee or the Holders to insist upon the strict performance of any term, covenant, condition or provision of this Lease, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such term, covenant, condition or provision or a waiver or relinquishment for the future of the right to insist upon and to enforce by any appropriate legal remedy strict compliance with all the terms, covenants, conditions and provisions of this Lease, or of the right to exercise any such rights or remedies if any breach by the Corporation be continued or repeated. No waiver of any breach shall affect or alter this Lease, but every term, covenant, condition and provision of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

## ARTICLE XI

### Indemnification and Non-Liability of the County

SECTION 11.01. General. To the extent permitted by law, the Corporation shall and hereby does indemnify and hold harmless the County and all members of the Board of Commissioners, officers, agents, and employees thereof against all losses, costs, damages, expenses and liabilities (collectively referred to hereinafter as "Losses") of whatsoever nature (including but not limited to attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) directly or indirectly resulting from, arising out of or related to one or more Claims, as hereinafter defined, excluding any such Loss or Claim that arises out of an act of gross negligence or willful misconduct of any member of the Board of Commissioners, officer, director, agent, or employee of the County. The word "Claims" as used herein shall mean all claims, lawsuits, causes of action and other legal actions and proceedings of whatsoever nature, including, but not limited to, claims, lawsuits, causes of action and other legal actions and proceedings, involving bodily or personal injury or death of any person or damage to any property (including, but not limited to, persons employed by the County, the Corporation or any other person) brought against the County or to which the County is a



party, that directly or indirectly result from, arise out of or relate to (i) the design, construction, transfer, sale, operation, use, occupancy, maintenance or ownership of the Health Care System or any part thereof or (ii) the execution, delivery or performance of this Lease, the Bond Order, or any related instruments or documents. The obligations of the Corporation under this Section 11.01 shall apply to all Losses or Claims, or both, that result from, arise out of, or are related to any event, occurrence, condition or relationship prior to termination of this Lease, whether such Losses or Claims, or both, are asserted prior to termination of this Lease or thereafter. The County shall reimburse the Corporation for payments made by the Corporation pursuant to this Section to the extent of any proceeds, net of all expenses of collection, actually received by the County from any insurance covering such Claims with respect to the Losses sustained. The County shall have the duty to claim any such insurance proceeds and the County shall assign its rights to such proceeds, to the extent of such required reimbursement, to the Corporation. In case any action shall be brought against the County in respect of which indemnity may be sought against the Corporation, then the County shall promptly notify the Corporation in writing. Failure to notify the Corporation shall not relieve it from any liability that it may have other than on account of this Lease. The Corporation shall have the right to assume the investigation and defense thereof, including the employment of counsel, which counsel shall be satisfactory to the indemnified parties, and the payment of all expenses. The County shall have the right to employ separate counsel in any such action and participate in the investigation and defense thereof, and the fees and expenses of such counsel shall be paid by the Corporation.

SECTION 11.02. Payment of Costs upon Default. The Corporation shall pay, and shall indemnify the County and the Trustee against, all costs and charges, including reasonable counsel fees, lawfully and reasonably incurred in obtaining possession of the Health Care System after an Event of Default by the Corporation or upon expiration or earlier termination of any term hereof, or in enforcing any covenant or agreement of the Corporation contained in this Lease.

## ARTICLE XII

### Miscellaneous

SECTION 12.01. Commissioners, Directors, Officers and Employees of the County and the Corporation Not Liable. Neither the members of the Board of Commissioners, officers and employees of the County nor the members of the Board of Trustees, officers and employees of the Corporation shall be personally liable for any costs, losses, damages or liabilities caused or subsequently

incurred by the Corporation or any officer, director or agent thereof in connection with or as a result of this Lease.

SECTION 12.02. Enforcement. The rights, interests, powers, privileges and benefits accruing to or vested in the County under this Lease may be protected and enforced in conformity with the Bond Order.

SECTION 12.03. Amendment of Lease. So long as any of the Bonds are Outstanding and the Trustee does not hold in trust sufficient moneys for the payment of the Bonds, including principal, interest accrued and to accrue to the date of the payment of the Bonds and redemption premiums, if any, and for the payment of all other obligations incurred and to be incurred by the County in connection with the Health Care System and under the Bond Order and this Lease, this Lease may be amended, supplemented or modified only as follows:

(a) This Lease may be amended, from time to time, in the manner provided in Section 1301 of the Bond Order, to:

(i) cure any ambiguity or formal defect or omission in this Lease or in any supplement thereto;

(ii) identify more precisely the Equipment and real property constituting a part of the Health Care System under this Lease or to substitute or add additional Equipment and real property in accordance with this Lease;

(iii) grant to or confer upon the Trustee for the benefit of the Holders any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Holders or the Trustee;

(iv) comply with the provisions of this Lease, all Series Resolutions and the Bond Order pertaining to the issuance of Indebtedness. No such amendment and nothing herein or in the Bond Order shall permit or be construed as permitting any abatement, reduction, abrogation, waiver or diminution in any manner or to any extent whatsoever of the obligation of the Corporation to apply the Revenues as provided in the Bond Order and this Lease and to bear the costs of repair, maintenance, operation and insurance of the Health Care System or any impairment of any security or pledge accorded the Holders under the Bond Order;

(v) add conditions, limitations and restrictions on the issuance of Indebtedness or other conditions, limitations and restrictions to be observed thereafter;

(vi) make such changes to the terms of this Lease as may be necessary to enable the County to issue tax-exempt Bonds at a future date so long as such changes do not adversely affect the ability of the Corporation to pay the principal of and the interest on the Series 1993 Bonds; or

(vii) make any other change in the provisions of this Lease which, in the opinion of the Trustee, who may rely upon the opinion of Independent Counsel satisfactory to it, shall not affect materially and adversely the interests of the Holders.

(b) This Lease may be amended at any time in the manner provided in Section 1302 of the Bond Order.

SECTION 12.04. Redemption of Bonds. Upon the request of the Corporation made in accordance with this Lease, the County shall take all steps that may be proper and necessary under the applicable redemption provisions of the Bond Order and any Series Resolution to effect the redemption of all or part of the then Outstanding Bonds in such principal amount and on such redemption date as the Corporation shall direct. All expenses of such redemption shall be paid from money in the hands of the Trustee or by the Corporation and not from funds of the County.

SECTION 12.05. Assignments by the Corporation. The Corporation shall not assign or otherwise transfer its rights or obligations under this Lease unless the following conditions are satisfied:

(a) the County shall have consented in writing to such assignment or transfer;

(b) (i) after giving effect to such assignment or transfer, the assignee corporation would not be in default in the performance or observance of any covenant or condition in this Lease and the conditions described in paragraph (a) of Section 1201 of the Bond Order would be met for the incurrence of one additional dollar of Long-Term Indebtedness;

(c) the assignee corporation has the power to assume and shall assume in writing all of the obligations of the Corporation under this Lease and, if it is not a corporation incorporated in the State or a political subdivision of the State, qualifies to do business in the State;

(d) the County and the Trustee have received a written opinion of bond counsel to the County to the effect that such assignment or transfer of assets will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Series 1993 Bonds;

(e) the County and the Trustee have received a written opinion of Independent Counsel to the effect that all of the elements of items (b), (d) and (f) of this Section have been met, and the Assignment has been duly authorized and constitutes a valid, binding and enforceable obligation of the assignee corporation; and

(f) the assignee corporation has met all hospital licensing requirements to which the Corporation is subject under the laws of the State.

Upon compliance with the foregoing conditions to the reasonable satisfaction of the Trustee, the assignee corporation shall succeed to and be substituted for the Corporation with the same effect as if it had been named herein as the Corporation, and the Corporation shall be relieved of any further obligation under this Lease. Thereafter, the Corporation shall not operate a hospital or any competing health care facility that could have a material adverse effect upon the generation of Revenues by the assignee corporation.

SECTION 12.06. Limitation on the County's and the Corporation's Liability. All obligations of the County under this Lease shall be payable solely from Revenues and other funds derived and to be derived from the Corporation or the operation of the Health Care System. All obligations of the Corporation under this Lease shall be payable solely from Revenues and the proceeds thereof and any Property owned by the Corporation. Neither the officers nor employees of the County or of the Corporation shall be personally liable for the payment of any sum or for the performance of any obligation under this Lease.

SECTION 12.07. Corporation's Remedies. In the event the County should fail to perform any of its obligations under this Lease, the Corporation may institute such action against the County as the Corporation may deem necessary to compel performance; provided, however, that no such action shall seek to impose any pecuniary liability upon the County, or any personal or pecuniary liability upon any officer or employee thereof, except in the case of willful misconduct.

SECTION 12.08. Consents and Approvals. Whenever the written consent or approval of the County, the Corporation, or the Trustee shall be required under the provisions of this Lease, such consent or approval shall not be unreasonably withheld. Unless otherwise specified herein, consents of the County shall be executed and delivered on behalf of the County by the County Representative and consents of the Corporation shall be executed and delivered on behalf of the Corporation by the Corporation Representative.

SECTION 12.09. Arbitrage. The County and the Corporation shall take no action, and shall not approve any

action of, or the making of any investment or use of the proceeds of the Series 1993 Bonds, by the Trustee that would cause the Series 1993 Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and the regulations thereunder as such may be applicable to the Series 1993 Bonds at the time of such action, investment or use.

SECTION 12.10. Exclusion From Gross Income Covenant.  
The Corporation covenants that it will not take any action which will, or fail to take any action which failure will, cause interest on the Series 1993 Bonds to become includable in the gross income of the Holders for federal income tax purposes pursuant to the provisions of the Code and regulations promulgated thereunder.

SECTION 12.11. Transfer of Assets Upon Termination of Lease. Upon termination of this Lease (whether pursuant to Section 3.03 or Section 10.03 hereof, or otherwise), except as may otherwise be required by law, all of the assets of the Corporation shall be distributed and transferred as directed by the County for purposes consistent with the purposes of this Lease.

SECTION 12.12. Notices; Demands; Requests. All notices, demands and requests to be given to or made hereunder by the Corporation, the County or the Trustee shall be given or made in writing and shall be deemed to be properly given or made if sent by United States registered mail, return receipt requested, postage prepaid, addressed as follows:

(a) As to the Corporation--

New Hanover Regional Medical Center  
2131 S. 17th Street  
Wilmington, North Carolina 28401  
Attention: Executive Vice President-Finance

(b) As to the County--

County of New Hanover  
320 Chestnut Street  
Wilmington, North Carolina 28401  
Attention: Director of Finance

(c) As to Local Government Commission--

Local Government Commission of North Carolina  
325 North Salisbury Street  
Raleigh, North Carolina 27603-1388  
Attention: Secretary

(d) As to the Trustee--

First-Citizens Bank & Trust Company  
4505 Creedmor Road  
Raleigh, North Carolina 27612  
Attention: Corporate Trust Department

Any such notice, demand or request may also be transmitted to the appropriate above-mentioned party by telegram or telephone and shall be deemed to be properly given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing and sent as specified above.

Any of such addresses may be changed at any time upon written notice of such change sent by United States registered mail, postage prepaid, to the other parties by the party effecting the change.

SECTION 12.13. Multiple Counterparts. This Lease 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 12.14. Severability. If any one or more of the covenants, agreements or provisions of this Lease 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 Lease, and this Lease shall continue in force to the fullest extent permitted by law.

SECTION 12.15. Recordation of Lease. The Corporation covenants that it will cause this Lease or a memorandum thereof to be recorded and filed in the office of the New Hanover County Registry of Deeds.

SECTION 12.16. State Law Controlling. This Lease shall be construed and enforced in accordance with the laws of the State of North Carolina.

SECTION 12.17. Information to be Supplied to the Bond Insurer. The Corporation covenants and agrees, so long as an Insurer Default shall not exist, (a) to supply the Bond Insurer with an official statement or other disclosure document which includes a maturity schedule, interest rates, liquidity agreements, redemption provisions, security provisions and related information within thirty days of issuing additional debt of any kind; (b) to notify the Bond Insurer of any loss or change in the Chief Executive Officer, Chief Financial Officer or Chief Operating Officer within thirty days of such loss or change; and (c) to notify the Bond Insurer of any change in ownership or merger within ten days thereof.

SECTION 12.18. Effective Date of This Lease.

Notwithstanding that this Lease is dated as of the 1st day of October, 1993, this Lease shall take effect on the Closing Date, when it is fully executed and has been delivered to the parties hereto contemporaneously with the delivery of and payment for the Series 1993 Bonds, and no obligation shall be imposed on the Corporation prior to the effective date of this Lease.

IN WITNESS WHEREOF, the County of New Hanover has caused these presents to be signed in its name and on its behalf by the Vice Chairman of its Board of Commissioners and its official seal to be hereunto affixed and attested by the Clerk to said Board, thereunto duly authorized; and New Hanover Regional Medical Center has caused these presents to be signed in its name and on its behalf by its President and its corporate seal to be hereunto affixed and attested by its Secretary, all as of the 1st day of October, 1993.

COUNTY OF NEW HANOVER, NORTH CAROLINA

[SEAL]

Attest:



By

*E. M. Matthews Jr.*  
Vice Chairman of the  
Board of Commissioners

*Russell F. Hamell*  
Clerk to the Board  
of Commissioners

NEW HANOVER REGIONAL MEDICAL CENTER

[SEAL]

Attest:

By:

*J. R. Hobbs*  
President

*Charles R. Metro*  
Secretary

ACKNOWLEDGMENT OF EXECUTION ON BEHALF  
OF THE COUNTY

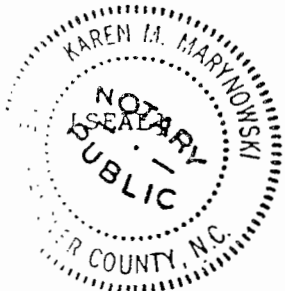
STATE OF NORTH CAROLINA     )  
  ) ss.:  
COUNTY OF NEW HANOVER     )

Before me, the undersigned, a Notary Public in and for said County and State on this 2nd day of October, 1993, personally appeared E.L. Mathews, Jr., being and to me known to be the Vice Chairman of the Board of Commissioners for the County of New Hanover, who being by me duly sworn, says that he resides at 8004 Bald Eagle Lane, Wilmington, North Carolina 28405, that he knows the seal of said County and that by authority duly given by, and as the act of, said County, the foregoing and annexed Lease Agreement, dated as of October 1, 1993, was signed by him as said Vice Chairman on behalf of said County, and the seal of said County affixed thereto, and personally appeared Lucie F. Harrell, being to me known to be the Clerk to the Board of Commissioners of said County, who, being by me duly sworn, says that she resides at

338 Island Creek Drive, Wilmington, NC 28405, that she knows the seal of said County and that by authority duly given by said County she impressed the official seal of said county upon the foregoing and annexed Lease Agreement in execution thereof for and on behalf of said County and that she attested the same as said Clerk to the Board of Commissioners by affixing her signature thereon in attestation thereof and said Vice Chairman and Clerk to the Board of Commissioners further acknowledged the foregoing and annexed Lease Agreement to be the act and deed of the County of New Hanover, North Carolina.

WITNESS my hand and official seal in the County and State last aforesaid this 2nd of October, 1993.

Karen M. Marynowski  
Notary Public



My commission expires: 4-17-96



ACKNOWLEDGMENT OF EXECUTION ON BEHALF  
OF THE CORPORATION

STATE OF NORTH CAROLINA) ss.:  
COUNTY OF NEW HANOVER )

Before me, the undersigned, a Notary Public in and for said County and State on this 25 day of October, 1993, personally appeared Jim R. Hobbs, being and to me known to be the President of New Hanover Regional Medical Center, who being by me duly sworn, says that he resides at 4300 FORWARD R. WILM., North Carolina, 28409, that he knows the seal of said Corporation and that by authority duly given by, and as the act of, said Corporation, the foregoing and annexed Lease Agreement, dated as of October 1, 1993, was signed by him as said President on behalf of said Corporation, and the seal of said Corporation affixed thereto, and personally appeared Anthony R. Watson, being to me known to be the Secretary of said Corporation, who, being by me duly sworn, says that he resides at 3606 COLE CT. CASTLE HAYNE North Carolina, 28429, that he knows the seal of said Corporation and that by authority duly given by said Corporation he impressed the corporate seal of said Corporation upon the foregoing and annexed Lease Agreement in execution thereof for and on behalf of said Corporation and that he attested the same as said Secretary by affixing his signature thereon in attestation thereof and said President and Secretary further acknowledged the foregoing and annexed Lease Agreement to be the act and deed of the New Hanover Regional Medical Center.

WITNESS my hand and corporate seal in the County and State last aforesaid this 25 day of October, 1993.

Rose B. Lohman  
Notary Public

{SEAL}

My commission expires: 2/17/96

EXHIBIT A

That certain tract or parcel of land lying and being situate in the County of New Hanover, State of North Carolina, and more particularly described as follows:

TRACT 1: Being all of the property described in the Deed from Edward B. Ward and wife, et al., to New Hanover County recorded September 1, 1962 in Book 704, Page 478 of the New Hanover County Registry; and being all of the property described in the Deed from O.R. Parker and wife to New Hanover County recorded September 1, 1962 in Book 704, Page 479 of the New Hanover County Registry.

EXCEPTING, however, from the property hereinabove described that certain 5.5 acre tract of land described in the Deed of Release from New Hanover Memorial Hospital, Inc. to New Hanover County recorded August 28, 1973 in Book 981, Page 486 of the New Hanover County Registry.

TRACT 2: Being all of the property described in the Deed from New Hanover Memorial Hospital, Inc. to New Hanover County recorded February 28, 1984 in Book 1246, Page 1790 of the New Hanover County Registry.

TRACT 3: Being all of the property described in the Deed from Glen Meade Shopping Center Associates to New Hanover Memorial Hospital, Inc. recorded August 31, 1990 in Book 1509, Page 0823 of the New Hanover County Registry and being the same property described in the Deed from New Hanover Regional Medical Center to New Hanover County recorded October 15, 1993 in Book 1709, Page 663 of the New Hanover Registry.

TRACT 4: Being all of the property described in the Deed from Waverly Development Corporation, et al., to New Hanover Memorial Hospital, Inc. recorded April 21, 1983 in Book 1220, Page 1703 of the New Hanover County Registry and being the same property described in the Deed from New Hanover Regional Medical Center to New Hanover County recorded October 15, 1993 in Book 1709, Page 663 of the New Hanover Registry.

EXHIBIT B

DESCRIPTION OF THE PROJECT

The Project consists of (i) constructing and equipping an approximately 67,340 square foot rehabilitation hospital, (ii) constructing an approximately 465-space parking garage, (iii) renovating and equipping the hospital power plant, (iv) renovating and expanding the hospital pneumatic tube system, (v) renovating and expanding the hospital telecommunications system, (vi) renovating and expanding a cardiac recovery unit and (vii) acquiring capital equipment for hospital use at New Hanover Regional Medical Center, 2131 South 17th Street, Wilmington, North Carolina 28402.

EXHIBIT C

PERMITTED ENCUMBRANCES

TRACT 1: (base tract - 37 ac. & 14.6 ac.)

1. Right-of-Way to the State Highway Commission recorded in Book 723, Page 108, of the New Hanover County Registry.
2. Rights-of-Way to Carolina Power & Light Company recorded in the New Hanover County Registry in:
  - (a) Book 773, Page 302;
  - (b) Book 903, Page 450;
  - (c) Book 999, Page 182;
  - (d) Book 999, Page 183; and
  - (e) Book 1610; Page 1254.
3. Easements to the City of Wilmington recorded in the New Hanover County Registry in:
  - (a) Book 1040, Page 581; and
  - (b) Book 1342, Page 0787.
4. Stormwater Management Facility Inspection and Maintenance Agreement between New Hanover Regional Medical Center, Inc. New Hanover County, and the City of Wilmington, recorded July 26, 1993, in Book 1685, Page 1093, in the New Hanover County Registry.

TRACT 2: (parking lot tract - 9.360 ac.)

1. Right-of-Way to Carolina Power & Light Company recorded in Book 672, Page 93, in the New Hanover County Registry.
2. Easement to the City of Wilmington recorded in Book 1141, Page 1460, in the New Hanover County Registry.

TRACT 3: (2.61 ac. - Glen Meade Shopping Center)

1. Rights-of-Way to the State Highway Commission recorded in the New Hanover County Registry in:
  - (a) Book 721, page 484;
  - (b) Book 722, Page 440; and
  - (c) Book 752, page 613.
2. Rights-of-Way to Carolina Power & Light Company recorded in the New Hanover County Registry in:
  - (a) Book 672, Page 93;
  - (b) Book 963, Page 389; and
  - (c) Book 963, Page 390.

3. All rights of any tenants in possession of any portion of the property under unrecorded leases of three years or less duration.

TRACT 4: (0.506 ac. - Delaney Avenue)

1. Right-of-Way to Carolina Power & Light Company recorded in Book 672, Page 93, of the New Hanover County Registry.

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT dated as of June 15, 1996 (this "Amendment"), is made by and between the County of New Hanover, North Carolina, a political subdivision of the State of North Carolina (the "County"), and New Hanover Regional Medical Center, a nonprofit corporation organized and existing under the General Statutes of North Carolina (the "Corporation") and amends the LEASE AGREEMENT dated as of October 1, 1993 (the "Lease") by and between the County and the Corporation,

W I T N E S S E T H:

WHEREAS, the County proposes to undertake the acquisition, construction, renovation, equipping and expansion of certain improvements and additions to the Existing Facilities, including (i) the construction of a new Oncology Center Clinical Laboratory and Outpatient Clinic building with a connecting concourse to the Existing Facilities, (ii) the renovation and addition of public areas, (iii) the renovation of the Emergency Department and the Pediatrics unit, (iv) the purchase of furnishings to be added to the new building, (v) the upgrade and installation of communication and information services, (vi) the construction of a Cardiac Surgery Recovery Unit and (vii) the relocation of the heliport and the construction of the East Parking Area (the "Project"); and

WHEREAS, under The State and Local Government Revenue Bond Act, Article 5, as amended, of Chapter 159 of the General Statutes of North Carolina, the County is authorized and empowered to issue revenue bonds to pay the cost of the Project; and

WHEREAS, the County adopted a Bond Order on October 6, 1993 and a Series Resolution on October 6, 1993 pursuant to which it issued \$29,535,000 of its Hospital Revenue Bonds (New Hanover Regional Medical Center Project) Series 1993 in order to finance, among other things, a portion of the cost of a project described in such Series Resolution; and

WHEREAS, the County has determined that it is consistent with the purposes of the Act and in the public interest (a) to issue revenue bonds of the County in the aggregate principal amount not exceeding \$66,000,000, designated Hospital Revenue Bonds (New Hanover Regional Medical Center Project), Series 1996 pursuant to the Bond Order and a Series Resolution adopted by the County on May 20, 1996 and amended on June 17, 1996 for the purpose of providing funds, together with other available funds, to pay the cost of the Project and to enter into this Amendment; and

WHEREAS, the execution and delivery of this Amendment have been duly authorized by the County and the Corporation; and

WHEREAS, all acts, notices and things required by the Constitution and laws of the State and the Bylaws of the Corporation to happen, exist and be performed precedent to and in the execution and delivery of this Amendment have happened, exist and have been performed as so required, in order to make this Amendment a valid and binding agreement in accordance with its terms; and

WHEREAS, each of the parties hereto represents that it is fully authorized to enter into and perform and fulfill the obligations imposed upon it under this Amendment and the Lease, and the parties are now prepared to execute and deliver this Amendment;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration paid by each of the parties to the other, the receipt of which is hereby acknowledged, the County and the Corporation hereby agree as follows:

## ARTICLE I

### Definitions

SECTION 1.01. Definitions. Unless elsewhere defined in this Amendment, all capitalized terms used in this Amendment shall have the meanings ascribed thereto in the Lease. The following terms shall have the following meanings:

"Bond Insurer" means Bond Insurer as defined in Section 101 of the Series 1993 Resolution or Section 101 of the Series 1996 Resolution, as applicable.

"Bond Year" means Bond Year as defined in Section 101 of the Series 1993 Resolution or Section 101 of the Series 1996 Resolution, as applicable.

"Insurer Default" means an Insurer Default as defined in Section 101 of the Series 1993 Resolution or Section 101 of the Series 1996 Resolution, as applicable.

"Series 1996 Bonds" means the Bonds so designated by and issued under the Bond Order and the Series 1996 Resolution.

"Series 1996 Resolution" means the Series Resolution adopted by the Board of Commissioners of the County on May 20, 1996 and amended on June 17, 1996.

## ARTICLE II

### Representations

SECTION 2.01. Representations by the County. The county represents that it has the power to enter into the transactions contemplated by this Amendment and to carry out its obligations hereunder; and that by proper action of its Board of Commissioners, the County has been duly authorized to execute and deliver this Amendment. The County further represents that it proposes to issue the Series 1996 Bonds which will mature, bear interest, be redeemable and have the other terms and provisions set forth in the Bond Order and the Series 1996 Resolution, pursuant to which its interest in the Net Revenues derived by it from the Health Care System will be pledged to the Trustee as security for payment of the principal of, the premium, if any, and the interest on all Bonds and any other Long-Term Indebtedness secured pari passu therewith.

SECTION 2.02. Representations by the Corporation. The Corporation represents that it is a nonsectarian, nonprofit corporation, no part of the net earnings of which inures to the benefit of any private member or individual; that it has authority to lease the Existing Facilities and operate the Health Care System, and, by proper corporate action, has been duly authorized to execute and deliver this Amendment; and that the execution and delivery of this Amendment, its consummation of the transactions contemplated hereby and fulfillment of or compliance with the terms and conditions of this Amendment, do not conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction, or any agreement or instrument to which the Corporation is now a party or by which it is bound, and do not constitute a default under any of the foregoing, or result in the creation or imposition of any lien or encumbrance of any nature whatsoever upon any of the property or assets of the Corporation under the terms of any instrument or agreement (other than this Amendment and the Bond Order).

## ARTICLE III

### AMENDMENTS TO LEASE

SECTION 3.01. Amendment to Section 4.18 of the Lease. Section 4.18 of the Lease is hereby amended in its entirety to provide as follows:

SECTION 4.18. Debt Service Coverage Ratio.  
(a) The Corporation agrees that if the Long-Term Debt Service Coverage Ratio for any Fiscal Year shall be less than 1.75, as soon as practicable after the end of such Fiscal Year: (i) the Corporation shall fund, by means of a cash deposit, letter of credit or other method acceptable to the Bond Insurer for the Series



1993 Bonds (so long as an Insurer Default shall not exist), a Debt Service Reserve Fund to be held by the Trustee pursuant to the Series 1993 Resolution for the exclusive benefit of the Holders of the Series 1993 Bonds in an amount equal to the Debt Service Reserve Fund Requirement for the Series 1993 Bonds; and (ii) the Corporation shall fund, by means of a cash deposit, letter of credit or other method acceptable to the Bond Insurer for the Series 1996 Bonds (so long as an Insurer Default shall not exist), a Debt Service Reserve Fund to be held by the Trustee pursuant to the Series 1996 Resolution for the exclusive benefit of the Holders of the Series 1996 Bonds in an amount equal to the Debt Service Reserve Fund Requirement for the Series 1996 Bonds. The Debt Service Reserve Fund Requirement for a particular Series of Bonds shall be equal to the lesser of (i) maximum annual debt service on such Series for any Bond Year and (ii) 125% of the average annual debt service on such Series for any Bond Year. In the event that the Corporation shall be required to fund Debt Service Reserve Funds pursuant to the provisions described above, the Bond Order, the Series 1993 Resolution, the Series 1996 Resolution and the Lease shall be amended without the consent of or notice to any of the Holders in order to make any changes therein that are necessary in connection with the establishment and maintenance of such Debt Service Reserve Funds.

(b) If the Debt Service Reserve Funds shall be funded pursuant to paragraph (a) above and thereafter the covenant contained therein is satisfied by the Corporation for two consecutive Fiscal Years after the Fiscal Year for which the covenant was not satisfied, then the Debt Service Reserve Funds shall no longer be required to be funded and any funds contained therein shall be released to the Corporation.

SECTION 3.02. Additions of Sections 4.19 and 4.20 to the Lease. Article IV of the Lease is hereby amended by adding the following Sections 4.19 and 4.20 at the end thereof:

SECTION 4.19. Secondary Market Disclosure.

The Corporation agrees, for the benefit of the beneficial owners of the Series 1996 Bonds; to provide:

(a) by not later than seven months after the end of each Fiscal Year of the Corporation, beginning with the Fiscal Year ending September 30, 1996, to each nationally recognized municipal securities information repository ("NRMSIR") and to the state information depository for the State of North Carolina ("SID"), if any, the audited financial statements of the Corporation for such Fiscal Year, if available, prepared in accordance with Section 159-39 of the

General Statutes of North Carolina, as amended from time to time or any successor statute, or if such audited financial statements are not available by seven months after the end of such Fiscal Year, the unaudited financial statements of the Corporation for such Fiscal Year to be replaced subsequently by the audited financial statements of the Corporation to be delivered within 15 days after such audited financial statements become available for distribution;

(b) by not later than seven months after the end of each Fiscal Year, beginning with the Fiscal Year ending September 30, 1996, to each NRMSIR, and to the SID, if any, the financial and statistical data as of a date not earlier than the end of the preceding Fiscal Year for the type of information included under the following headings in the Official Statement dated on or about June 26, 1996 relating to the Series 1996 Bonds, "Utilization," "Licensed Bed Capacity," "Service Area," "Analysis of Discharges by Specialty and "Third-Party Reimbursement and Sources of Payment," to the extent such items are not included in the audited financial statements referred to in (a) above;

(c) in a timely manner, to each NRMSIR or to the Municipal Securities Rulemaking Board ("MSRB"), and to the SID, if any, notice of any of the following events with respect to the Series 1996 Bonds, if material:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults;
- (3) unscheduled draws on any debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on any credit enhancements reflecting financial difficulties;
- (5) substitution of any credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions or events affecting the tax-exempt status of the security;
- (7) modification to the rights of security holders;
- (8) bond calls;

(9) defeasances;

(10) release, substitution or sale of any property securing repayment of the securities; and

(11) rating changes; and

(d) in a timely manner, to each NRMSIR or to the MSRB, and to the SID, if any notice of a failure of the Corporation to provide required annual financial information described in (a) or (b) above on or before the date specified.

In the event that the Corporation fails to comply with the undertakings described above, any beneficial owner of the Series 1996 Bonds then outstanding may take action to protect and enforce the rights of all beneficial owners with respect to such undertakings, including an action for specific performance; provided that failure to comply with such undertakings shall not be an event of default under the Lease and shall not result in any acceleration of payment of the Series 1996 Bonds. All actions shall be instituted, had and maintained in the manner provided in this paragraph for the benefit of all beneficial owners of the Series 1996 Bonds.

The Corporation reserves the right to modify from time to time the information to be provided to the extent necessary or appropriate in the judgment of the Corporation, provided that:

(a) any such modification may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, composition, nature or status of the Corporation;

(b) the information to be provided, as modified, would have complied with the requirements of Rule 15c2-12 issued under the Securities Exchange Act of 1934 ("Rule 15c2-12") as of the date of the Official Statement, after taking into account any amendments or interpretations of Rule 15c2-12, as well as any changes in circumstances; and

(c) any such modification does not materially impair the interests of the beneficial owners of the Series 1996 Bonds, as determined either by parties unaffiliated with the Corporation (such as bond counsel), or by the approving vote of the registered owners of a

majority in principal amount of the Series 1996 Bonds then Outstanding pursuant to the terms of the Bond Order and the Series 1996 Resolution as they may be amended from time to time.

Any annual financial information containing the modified operating data or financial information is required to explain, in narrative form, the reasons for the amendments and the impact of the change in the type of operating data or financial information being provided.

The undertaking described in this Section will terminate upon payment, or provision of having been made for payment in a manner consistent with Rule 15c2-12, in full of the principal of and interest on all of the Series 1996 Bonds.

SECTION 4.20. Bond Insurer to Receive Secondary Market Disclosure. The Corporation agrees that any information or notice provided to any NRMSIR or SID pursuant to Section 4.19 hereof shall be provided promptly to the Bond Insurer.

SECTION 3.03. Amendment to Section 12.03(a)(vi) of the Lease. Section 12.03(a)(vi) of the Lease is hereby amended in its entirety to provide as follows:

(vi) make such changes to the terms of this Lease as may be necessary to enable the County to issue tax-exempt Bonds at a future date so long as such changes do not adversely affect the ability of the Corporation to pay the principal of and the interest on any Series of Bonds; or

SECTION 3.04 Amendments to Sections 12.09 and 12.10 of the Lease. Sections 12.09 and 12.10 of the Lease are hereby amended in their entirety to provide as follows:

SECTION 12.09. Arbitrage. The County and the Corporation shall take no action, and shall not approve any action of, or the making of any investment or use of the proceeds of any Series of Bonds which were issued as tax-exempt bonds, by the Trustee that would cause such Series to be "arbitrage bonds" within the meaning of Section 148 of the Code and the regulations thereunder as such may be applicable to such Series at the time of such action, investment or use.

SECTION 12.10. Exclusion From Gross Income Covenant. The Corporation covenants that it will not take any action which will, or fail to take any action which failure will, cause interest on any Series of Bonds which were issued as tax-exempt bonds to become

includable in the gross income of the Holders for federal income tax purposes pursuant to the provisions of the Code and regulations promulgated thereunder.

SECTION 3.05 Amendment to Exhibit B of the Lease.  
Exhibit B of the Lease is hereby amended in its entirety to provide as follows:

EXHIBIT B

DESCRIPTION OF THE PROJECT

The Project financed with the proceeds of the Series 1993 Bonds consists of (i) constructing and equipping an approximately 67,340 square foot rehabilitation hospital, (ii) constructing an approximately 465-space parking garage, (iii) renovating and equipping the hospital power plant, (iv) renovating and expanding the hospital telecommunications system, (vi) renovating and expanding a cardiac recovery unit and (vii) acquiring capital equipment for hospital use at New Hanover Regional Medical Center, 2131 South 17th Street, Wilmington, North Carolina 28402.

The Project financed with the proceeds of the Series 1996 Bonds consists of (i) the construction of a new Oncology Center Clinical Laboratory and Outpatient Clinic building with a connecting concourse to the Existing Facilities, (ii) the renovation and addition of public areas, (iii) the renovation of the Emergency Department and the Pediatrics unit, (iv) the purchase of furnishings to be added to the new building, (v) the upgrade and installation of communication and information services, (vi) the construction of a Cardiac Surgery Recovery Unit and (vii) the relocation of the heliport and the construction of the East Parking Area.

## ARTICLE IV

### Miscellaneous

SECTION 4.01. Multiple Counterparts. This Amendment 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 4.02. Severability. If any one or more of the covenants, agreements or provisions of this Amendment 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 Amendment or the Lease, as amended hereby, and this Amendment and the Lease, as amended hereby, shall continue in force to the fullest extent permitted by law.

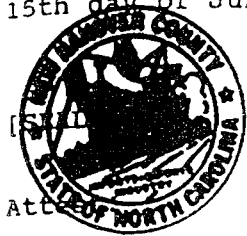
SECTION 4.03. Recordation of Amendment. The Corporation covenants that it will cause this Amendment or a memorandum thereof to be recorded and filed in the office of the New Hanover County Registry of Deeds.

SECTION 4.04. State Law Controlling. This Amendment shall be construed and enforced in accordance with the laws of the State of North Carolina.

SECTION 4.05. Effective Date of This Amendment. Notwithstanding that this Amendment is dated as of June 15, 1996, this Amendment shall take effect when it is fully executed and has been delivered to the parties hereto contemporaneously with the delivery of and payment for the Series 1996 Bonds, and no obligation shall be imposed on the Corporation prior to the effective date of this Lease.

SECTION 4.06. Extension of Term. The term of the Lease shall be extended so that it terminates on the fifth anniversary of the effective date of this Amendment as set forth in Section 4.05 hereof. All other provisions of Section 3.02 of the Lease, including, without limitation, those regarding renewal of the Lease for additional terms, remain unchanged.

IN WITNESS WHEREOF, the County of New Hanover has caused these presents to be signed in its name and on its behalf by the Chairman of its Board of Commissioners and its official seal to be hereunto affixed and attested by the Clerk to said Board, thereunto duly authorized; and New Hanover Regional Medical Center has caused these presents to be signed in its name and on its behalf by its President and its corporate seal to be hereunto affixed and attested by its Secretary, all as of the 15th day of June, 1996.



COUNTY OF NEW HANOVER, NORTH CAROLINA

By *Robert A. Dean*  
Chairman of the Board of Commissioners

*Robin L. Harrell*  
Clerk to the Board  
of Commissioners

NEW HANOVER REGIONAL MEDICAL CENTER

[SEAL]

Attest:

By: *Jim R. Hobbs*  
President

*Frederick Brown*  
Secretary



ACKNOWLEDGMENT OF EXECUTION ON BEHALF  
OF THE COUNTY

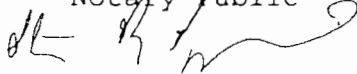
STATE OF NEW YORK            )  
                                  ) ss.:  
COUNTY OF NEW YORK        )

Before me, the undersigned, a Notary Public in and for said County and State on this 11th day of July, 1996, personally appeared ROBERT G. GREER, being and to me known to be the Chairman of the Board of Commissioners for the County of New Hanover, who being by me duly sworn, says that he resides at 1218 Country Club Road, Wilmington, North Carolina 28403, that he knows the seal of said County and that by authority duly given by, and as the act of, said County, the foregoing and annexed First Amendment to Lease Agreement, dated as of June 15, 1996, was signed by him as said Chairman on behalf of said County, and the seal of said County affixed thereto, and personally appeared Lucie F. Harrell, being to me known to be the Clerk to the Board of Commissioners of said County, who, being by me duly sworn, says that she resides at 338 Island Creek Drive, Wilmington, North Carolina 28405, that she knows the seal of said County and that by authority duly given by said County she impressed the official seal of said county upon the foregoing and annexed First Amendment to Lease Agreement in execution thereof for and on behalf of said County and that she attested the same as said Clerk to the Board of Commissioners by affixing her signature thereon in attestation thereof and said Chairman and Clerk to the Board of Commissioners further acknowledged the foregoing and annexed Lease Agreement to be the act and deed of the County of New Hanover, North Carolina.

WITNESS my hand and official seal in the County and State last aforesaid this 11th of July, 1996

1996 JEN M. SARGENT  
Notary Public, State of New York  
No. 01SA5049474  
Qualified in Kings County  
Commission Expires September 18, 1997

Notary Public



[SEAL]

My commission expires: \_\_\_\_\_

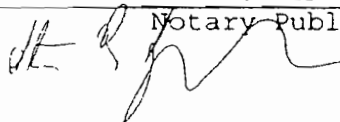
ACKNOWLEDGMENT OF EXECUTION ON BEHALF  
OF THE CORPORATION

STATE OF NEW YORK            )  
                                  ) SS.:  
COUNTY OF NEW YORK        )

Before me, the undersigned, a Notary Public in and for said County and State on this 11th day of July, 1996, personally appeared Jim R. Hobbs, being and to me known to be the President of New Hanover Regional Medical Center, who being by me duly sworn, says that he resides at 4300 Forwalt Place, Wilmington, North Carolina, 28409, that he knows the seal of said Corporation and that by authority duly given by, and as the act of, said Corporation, the foregoing and annexed First Amendment to Lease Agreement, dated as of June 15, 1996, was signed by him as said President on behalf of said Corporation, and the seal of said Corporation affixed thereto, and personally appeared Luther Brown, being to me known to be the Secretary of said Corporation, who, being by me duly sworn, says that he resides at 1944 Brookhaven Road, Wilmington, North Carolina, 28403, that he knows the seal of said Corporation and that by authority duly given by said Corporation he impressed the corporate seal of said Corporation upon the foregoing and annexed First Amendment to Lease Agreement in execution thereof for and on behalf of said Corporation and that he attested the same as said Secretary by affixing his signature thereon in attestation thereof and said President and Secretary further acknowledged the foregoing and annexed First Amendment to Lease Agreement to be the act and deed of the New Hanover Regional Medical Center.

WITNESS my hand and corporate seal in the County and State last aforesaid this 11th day of July, 1996.

STEVEN M. SARGENT  
Notary Public, State of New York  
No. 01SA5049474  
Qualified in Kings County  
Commission Expires September 18, 1997

 Notary Public

[SEAL]

My commission expires: \_\_\_\_\_

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**SECOND AMENDMENT TO LEASE AGREEMENT**

**By and Between**

**COUNTY OF NEW HANOVER, NORTH CAROLINA and NEW HANOVER  
REGIONAL MEDICAL CENTER**

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**Dated as of February 15, 1999**

---

## SECOND AMENDMENT TO LEASE AGREEMENT

**THIS SECOND AMENDMENT TO LEASE AGREEMENT**, dated as of February 15, 1999 (this "Amendment"), is made by and between the **COUNTY OF NEW HANOVER, NORTH CAROLINA**, a political subdivision of the State of North Carolina (the "County"), and **NEW HANOVER REGIONAL MEDICAL CENTER**, a nonprofit corporation organized and existing under the General Statutes of North Carolina (the "Corporation") and amends the Lease Agreement dated as of October 1, 1993 by and between the County and the Corporation as previously amended by the First Amendment to Lease Agreement dated as of June 15, 1996 (the "Lease"),

### WITNESSETH:

WHEREAS, the County proposes to issue the Bonds (as hereinafter defined) in order to finance (i) the repayment of a portion of a loan to the Corporation, the proceeds of which the Corporation used to purchase certain assets known as Cape Fear Hospital and certain related facilities (certain of which assets have been conveyed by the Corporation to the County) and (ii) reimbursement and payment to the Corporation for a portion of the cost of acquiring Cape Fear Hospital and related assets and provision of working capital, and (iii) the renovation and improvement of certain of its health care facilities (collectively, the "Project"); and

WHEREAS, under The State and Local Government Revenue Bond Act, Article 5, as amended, of Chapter 159 of the General Statutes of North Carolina (the "Act"), the County is authorized and empowered to issue revenue bonds for such purposes; and

WHEREAS, the County adopted a Bond Order on October 6, 1993 authorizing the issuance of hospital revenue bonds, which was amended by a First Supplemental Bond Order adopted by the County on February 5, 1999 (as so amended, the "Bond Order"); and

WHEREAS, the County has determined that it is consistent with the purposes of the Act and in the public interest (a) to issue revenue bonds of the County, designated Hospital Revenue Bonds (New Hanover Regional Medical Center Project), Series 1999 (the "Bonds") pursuant to the Bond Order and a Series Resolution adopted by the County on February 5, 1999, for the purposes stated above and (b) to enter into this Amendment; and

WHEREAS, the execution and delivery of this Amendment have been duly authorized by the County and the Corporation; and

WHEREAS, all acts, notices and things required by the constitution and laws of the State and the Bylaws of the Corporation to happen, exist and be performed precedent to and in the execution and delivery of this Amendment have happened, exist and have been performed as so required, in order to make this Amendment a valid and binding agreement in accordance with its terms; and

WHEREAS, each of the parties hereto represents that it is fully authorized to enter into and perform and fulfill the obligations imposed upon it under this Amendment and the Lease, and the parties are now prepared to execute and deliver this Amendment;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration paid by each of the parties to the other, the receipt of which is hereby acknowledged, the County and the Corporation hereby agree as follows:

## ARTICLE I

### Definitions

SECTION 1.01 Definitions. Unless elsewhere defined in this Amendment, all capitalized terms used in this Amendment shall have the meanings ascribed thereto in the Lease. The following terms shall have the following meanings herein and in the Lease as amended hereby:

“Bond Insurer” means Bond Insurer as defined in Section 101 of the Series 1993 Resolution or Section 101 of the Series 1996 Resolution or Section 101 of the Series 1999 Resolution, as applicable.

“Bond Year” means Bond Year as defined in Section 101 of the Series 1993 Resolution or Section 101 of the Series 1996 Resolution or Section 101 of the Series 1999 Resolution, as applicable.

“Corporation” means New Hanover Regional Medical Center, a nonprofit corporation duly incorporated and validly existing under and by virtue of the laws of the State and any successor or successors thereto as lessee under the Lease and all Controlled Affiliates collectively and on a combined or consolidated basis, except where the context clearly implies that the term means New Hanover Regional Medical Center (or any such successor or successors) and all Controlled Affiliates individually.

“Controlled Affiliate” means a corporation the sole member or shareholder of which is the Corporation or another Controlled Affiliate and which operates any portion of the Health Care System.

“Cushion Ratio” means the ratio determined by the following formula: the sum of all cash and liquid investments whether classified as current or non-current assets held by the Corporation for its various purposes, divided by Maximum Annual Debt Service.

“Existing Facilities” means all of the property constituting the New Hanover Regional Medical Center and Cape Fear Hospital as of the time the Series 1999 Bonds are delivered, including the real property described in Exhibit A to this Lease, together with all improvements and personal property therein and thereon existing at the time the Series 1999 Bonds are delivered.

"Insurer Default" means an Insurer Default as defined in Section 101 of the Series 1993 Resolution or Section 101 of the Series 1996 Resolution or Section 101 of the Series 1999 Resolution, as applicable.

"Series 1999 Bonds" means the Bonds so designated by and issued under the Bond Order and the Series 1999 Resolution.

"Series 1999 Resolution" means the Series Resolution adopted by the Board of Commissioners of the County on February 5, 1999.

## ARTICLE II

### Representations

SECTION 2.01 Representations by the County. The County represents that it has the power to enter into the transactions contemplated by this Amendment and to carry out its obligations hereunder; and that by proper action of its Board of Commissioners, the County has been duly authorized to execute and deliver this Amendment. The County further represents that it proposes to issue the Series 1999 Bonds which will mature, bear interest, be redeemable and have the other terms and provisions set forth in the Bond Order and the Series 1999 Resolution.

SECTION 2.02 Representations by the Corporation. The Corporation represents that it is a nonsectarian, nonprofit corporation, no part of the net earnings of which inures to the benefit of any private member or individual; that it has authority to lease the Existing Facilities and operate the Health Care System, and, by proper corporate action, has been duly authorized to execute and deliver this Amendment; and that the execution and delivery of this Amendment, its consummation of the transactions contemplated hereby and fulfillment of or compliance with the terms and conditions of this Amendment, do not conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction, or any agreement or instrument to which the Corporation is now a party or by which it is bound, and do not constitute a default under any of the foregoing, or result in the creation or imposition of any lien or encumbrance of any nature whatsoever upon any of the property or assets of the Corporation under the terms of any instrument or agreement (other than this Amendment and the Bond Order).

## ARTICLE III

### AMENDMENTS TO LEASE

SECTION 3.01 Amendment to Section 4.18 of the Lease. Section 4.18 of the Lease is hereby amended in its entirety to provide as follows:

#### Section 4.18 Spring-in Debt Service Reserve Funds.

(a) The Corporation agrees that if the Long-Term Debt Service Coverage Ratio for any Fiscal Year shall be less than 1.75, as soon as practicable after the end of such Fiscal Year: (i) the Corporation shall fund, by means of a cash deposit, letter of credit or other method acceptable to the Bond Insurer for the Series 1993 Bonds (so long

as an Insurer Default shall not exist), a Debt Service Reserve Fund to be held by the Trustee pursuant to the Series 1993 Resolution for the exclusive benefit of the Holders of the Series 1993 Bonds in an amount equal to the Debt Service Reserve Fund Requirement for the Series 1993 Bonds; and (ii) the Corporation shall fund, by means of a cash deposit, letter of credit or other method acceptable to the Bond Insurer for the Series 1996 Bonds (so long as an Insurer Default shall not exist), a Debt Service Reserve Fund to be held by the Trustee pursuant to the Series 1996 Resolution for the exclusive benefit of the Holders of the Series 1996 Bonds in an amount equal to the Debt Service Reserve Fund Requirement for the Series 1996 Bonds.

(b) The Corporation agrees that if either the Long-Term Debt Service Coverage Ratio for any Fiscal Year shall be less than 1.35 or the Cushion Ratio for any Fiscal Year shall be less than 1.5, within 30 days after such determination is made, the Corporation shall fund, by means of a cash deposit, letter of credit or other method acceptable to the Bond Insurer for the Series 1999 Bonds (so long as an Insurer Default shall not exist), a Debt Service Reserve Fund to be held by the Trustee pursuant to the Series 1999 Resolution for the exclusive benefit of the Holders of the Series 1999 Bonds in an amount equal to the Debt Service Reserve Fund Requirement for the Series 1999 Bonds.

(c) The Debt Service Reserve Fund Requirement for a particular Series of Bonds shall be equal to the lesser of (i) maximum annual debt service on such Series for any Bond Year, (ii) 125% of the average annual debt service on such Series for any Bond Year, and (iii) ten percent of the stated principal amount of such Series (unless such Series has original issue discount or premium that exceeds 2% of the stated redemption price at maturity plus any original issue premium attributable exclusively to underwriter's compensation, in which case the initial offering prices to the public will be used in lieu of the stated principal amount). In the event that the Corporation shall be required to fund any Debt Service Reserve Fund pursuant to the provisions described above, any of the Bond Order, the Series 1993 Resolution, the Series 1996 Resolution, the Series 1999 Resolution and the Lease, as appropriate, shall be amended without the consent of or notice to any of the Holders in order to make any changes therein that are necessary in connection with the establishment and maintenance of such Debt Service Reserve Funds.

(d) If any Debt Service Reserve Fund shall be funded pursuant to paragraphs (a) or (b) above and thereafter the covenant contained therein is satisfied by the Corporation for two consecutive Fiscal Years after the Fiscal Year for which the covenant was not satisfied, then such Debt Service Reserve Fund shall no longer be required to be funded and any funds contained therein shall be released to the Corporation.

SECTION 3.02      Addition of Sections 4.21, 4.22 and 4.23 to the Lease. Article IV of the Lease is hereby amended by adding the following Sections 4.21, 4.22, 4.23 and 4.24:

SECTION 4.21.      Secondary Market Disclosure. The Corporation agrees, for the benefit of the beneficial owners of the Series 1999 Bonds, to provide:

(a) by not later than seven months after the end of each Fiscal Year of the Corporation, beginning with the Fiscal Year ending September 30, 1999, to each nationally recognized municipal securities information repository ("NRMSIR") and to the state information depository for the State of North Carolina ("SID"), if any, the audited financial statements of the Corporation for such Fiscal Year, if available, prepared in accordance with Section 159-39 of the General Statutes of North Carolina, as amended from time to time, or with any successor statute; or if such audited financial statements are not available by seven months after the end of such Fiscal Year, the unaudited financial statements of the Corporation for such Fiscal Year to be replaced subsequently by the audited financial statements of the Corporation to be delivered within 15 days after such audited financial statements become available for distribution;

(b) by not later than seven months after the end of each Fiscal Year, beginning with the Fiscal Year ending September 30, 1999, to each NRMSIR, and to the SID, if any, the financial and statistical data as of a date not earlier than the end of the preceding Fiscal Year for the type of information included under the following headings in Appendix A to the Official Statement dated February 19, 1999 relating to the Series 1999 Bonds, to the extent such items are not included in the financial statements referred to in (a) above:

Utilization, Bid Allocation, Long Term Debt Service Coverage Ratio for the Corporation, Third Party Reimbursement and Sources of Payment;

(c) in a timely manner, to each NRMSIR or to the Municipal Securities Rulemaking Board ("MSRB"), and to the SID, if any, notice of any of the following events with respect to the Series 1999 Bonds, if material:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults;
- (3) unscheduled draws on any debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on any credit enhancements reflecting financial difficulties;
- (5) substitution of any credit or liquidity providers, or their failure to perform;



(6) adverse tax opinions or events affecting the tax-exempt status of the Bonds;

(7) modification to the rights of the beneficial owners of the Bonds;

(8) call of any of the Bonds for redemption, other than mandatory sinking fund redemption;

(9) defeasances of any of the Bonds;

(10) release, substitution or sale of any property securing repayment of the Bonds; and

(11) rating changes; and

(d) in a timely manner, to each NRMSIR or to the MSRB, and to the SID, if any notice of a failure of the Corporation to provide required annual financial information described in (a) or (b) above on or before the date specified.

In the event that the Corporation fails to comply with the undertakings described above, any beneficial owner of the Series 1999 Bonds then outstanding may take action to protect and enforce the rights of all beneficial owners with respect to such undertakings, including an action for specific performance; provided that failure to comply with such undertakings shall not be an event of default under the Lease and shall not result in any acceleration of payment of the Series 1999 Bonds. All actions shall be instituted, had and maintained in the manner provided in this paragraph for the benefit of all beneficial owners of the Series 1999 Bonds.

The Corporation reserves the right to modify from time to time the information to be provided to the extent necessary or appropriate in the judgment of the Corporation, provided that:

(a) any such modification may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, composition, nature or status of the Corporation;

(b) the information to be provided, as modified, would have complied with the requirements of Rule 15c2-12 issued under the Securities Exchange Act of 1934 ("Rule 15c2-12") as of the date of the Official Statement with respect to the Series 1999 Bonds, after taking into account any amendments or interpretations of Rule 15c2-12, as well as any changes in circumstances; and

(c) any such modification does not materially impair the interests of the beneficial owners of the Series 1999 Bonds, as determined either by parties unaffiliated with the Corporation (such as bond counsel), or by the approving vote of the registered owners of a majority in principal amount of the Series 1999

Bonds then Outstanding pursuant to the terms of the Bond Order and the Series 1999 Resolution as they may be amended from time to time.

Any annual financial information containing the modified operating data or financial information is required to explain, in narrative form, the reasons for the amendments and the impact of the change in the type of operating data or financial information being provided.

The undertaking described in this Section will terminate upon payment, or provision having been made for payment in a manner consistent with Rule 15c2-12, in full of the principal of and interest on all of the Series 1999 Bonds.

SECTION 4.22 Controlled Affiliates. The Corporation will cause each of its Controlled Affiliates to comply with the terms and conditions of this Lease and will cause each such Controlled Affiliate to take all actions necessary to allow the Corporation to comply with such terms and conditions.

SECTION 4.23 Information to Bond Insurer for Series 1999 Bonds. For so long as the Bond Insurance for the Series 1999 Bonds remains in effect and there is no Insurer Default with respect thereto, the Corporation will supply the following to the Bond Insurer (at 113 King Street, Armonk, New York 10504, Attention: Manager, Insured Portfolio Management Department):

Annual Documentation: to be submitted within one hundred twenty (120) days of the end of each Fiscal Year:

Audited financial statements for the most recent Fiscal Year.

Quarterly financial statements with comparables for the similar period of the prior Fiscal Year, to be submitted within 60 days of the end of each quarterly period.

Auditor's management letter for the most recent Fiscal Year.

A letter from the Corporation summarizing the letters of various counsel to the Corporation concerning material litigation (if any) and containing a schedule of all material pending litigation.

Insurance consultant reports required pursuant to the Bond Order and Lease.

Utilization Statistics for the most recent Fiscal Year.

Licensed beds

Beds in service

Admissions (excluding newborns)

Patient days (excluding newborns)

Average length of stay (days)

Percentage occupancy (of beds in service)

Emergency Room visits

Outpatient visits

Percentage of revenues by the following payor classes for most recent Fiscal Year:

Medicare	Blue Cross/Commercial
Medicaid	Self-pay
Managed Care	Other

Medicare Case Mix Index for the most recent Fiscal Year.

Other: on request, any other information reasonably necessary for that Bond Insurer to perform monitoring evaluation of the Corporation.

SECTION 4.24      Limitation on Right to Terminate Lease. For so long as the Bond Insurance for the Series 1999 Bonds remains in effect and there is no Insurer Default with respect thereto, the County shall have the right to terminate this Lease only if either (i) the Bond Insurer has given its prior written consent thereto or (ii) the Series 1999 Bonds have been defeased in accordance with Article X of the Series 1999 Resolution.

SECTION 3.03      Amendment of Lease. The following is added at the end of Section 12.03(a) of the Lease: “; or (viii) to make conforming and other changes deemed necessary or appropriate in connection with the delivery of a Replacement Master Agreement pursuant to Section 620 of the Bond Order.”

SECTION 3.04      Amendment to Exhibit A of the Lease. Exhibit A of the Lease is hereby deleted and replaced with Exhibit A hereto.

SECTION 3.05      Amendment to Exhibit B of the Lease. Exhibit B of the Lease is hereby deleted and replaced with Exhibit B hereto.

SECTION 3.06      Amendment to Exhibit C of the Lease. Exhibit C of the Lease is hereby deleted and replaced with Exhibit C hereto.

## ARTICLE IV

### Miscellaneous

SECTION 4.01      Multiple Counterparts. This Amendment 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 4.02      Severability. If any one or more of the covenants, agreements or provisions of this Amendment 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 Amendment or the Lease, as amended hereby,

and this Amendment and the Lease, as amended hereby, shall continue in force to the fullest extent permitted by law.

SECTION 4.03      Recordation of Amendment. The Corporation covenants that it will cause this Amendment to be recorded and filed in the office of the New Hanover County Register of Deeds.

SECTION 4.04      State Law Controlling. This Amendment shall be construed and enforced in accordance with the laws of the State of North Carolina.

SECTION 4.05      Effective Date of This Amendment. Notwithstanding that this Amendment is dated as of February 15, 1999, this Amendment shall take effect when (i) it is fully executed and has been delivered to the parties hereto contemporaneously with the delivery of and payment for the Series 1999 Bonds, (ii) the consent of the Holders of not less than 51% in aggregate principal amount of the Bonds then Outstanding has been obtained as required by Section 12.03 of the Lease and Section 1302 of the Bond Order and (iii) consent of the Bond Insurer, as defined in the Series Resolution adopted October 6, 1993, has been obtained as required by Section 1102 of such Series Resolution. No obligation shall be imposed on the Corporation prior to the effective date of this Amendment.

SECTION 4.06      Extension of Term. The term of the Lease shall be extended so that it terminates on the thirtieth anniversary of the effective date of this Amendment as set forth in Section 4.05 hereof. All other provisions of Section 3.02 of the Lease, including, without limitation, those regarding early termination and regarding renewal of the Lease for additional five-year terms after expiration of the initial term, remain unchanged.

IN WITNESS WHEREOF, the County has caused these presents to be signed in its name and on its behalf by the Chairman of its Board of Commissioners and its official seal to be hereunto affixed and attested by the Clerk to said Board, thereunto duly authorized; and the Corporation has caused these presents to be signed in its name and on its behalf by its President and its corporate seal to be hereunto affixed and attested by its Secretary, all as of the fifteenth day of February, 1999.

[SEAL]

Attest



COUNTY OF NEW HANOVER, NORTH  
CAROLINA

By: William C. Coker  
Chairman of the Board of Commissioners

Quinn T. Haney  
Clerk to the Board of Commissioners

NEW HANOVER REGIONAL MEDICAL  
CENTER

[SEAL]

Attest:

Samela Morini  
Assistant Secretary

By:

[Signature]  
President and Chief Executive Officer

ACKNOWLEDGMENT OF EXECUTION ON BEHALF OF THE COUNTY

STATE OF NORTH CAROLINA    )  
  )        ss.:  
COUNTY OF NEW HANOVER    )

Before me, the undersigned, a Notary Public in and for said County and State on this 15<sup>th</sup> day of February, 1999, personally appeared WILLIAM A. CASTER, being and to me known to be the Chairman of the Board of Commissioners for the County of New Hanover, who being by me duly sworn, says that he resides at 310 Brookshire Lane, Wilmington, North Carolina 28409, that he knows the seal of said County and that by authority duly given by, and as the act of, said County, the foregoing and annexed Second Amendment to Lease Agreement, dated as of February 15, 1999, was signed by him as said Chairman on behalf of said County, and the seal of said County affixed thereto, and personally appeared Lucie F. Harrell, being to me known to be the Clerk to the Board of Commissioners of said County, who, being by me duly sworn, says that she resides at 338 Island Creek Drive, Wilmington, North Carolina, that she knows the seal of said County and that by authority duly given by said County she impressed the official seal of said county upon the foregoing and annexed Second Amendment to Lease Agreement in execution thereof for and on behalf of said County and that she attested the same as said Clerk to the Board of Commissioners by affixing her signature thereon in attestation thereof and said Chairman and Clerk to the Board of Commissioners further acknowledged the foregoing and annexed Second Amendment to Lease Agreement to be the act and deed of the County of New Hanover, North Carolina.

WITNESS my hand and official seal in the County and State last aforesaid this 15<sup>th</sup> of February, 1999.

[SEAL]



Teresa P Elmore  
Notary Public

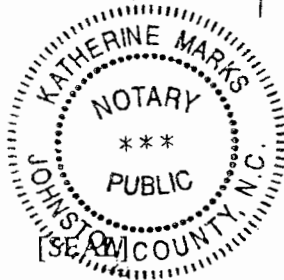
My commission expires: 4/19/2003

ACKNOWLEDGMENT OF EXECUTION ON BEHALF OF THE CORPORATION

STATE OF NORTH CAROLINA    )  
  )  
COUNTY OF Johnston        )    ss.:

Before me, the undersigned, a Notary Public in and for said County and State on this 15<sup>th</sup> day of February, 1999, personally appeared WILLIAM K. ATKINSON, Ph.D. being and to me known to be the President and Chief Executive Officer of New Hanover Regional Medical Center, who being by me duly sworn, says that he resides at 713 Windswept Place, Wilmington, North Carolina 28405, that he knows the seal of said Corporation and that by authority duly given by, and as the act of, said Corporation, the foregoing and annexed Second Amendment to Lease Agreement, dated as of February 15, 1999, was signed by him as said President on behalf of said Corporation, and the seal of said corporation affixed thereto, and personally appeared PAMELA S. MORINE, being to me known to be the Assistant Secretary of said Corporation, who, being by me duly sworn, says that she resides at 101 Windlass Drive, Wilmington, North Carolina 28409, that she knows the seal of said Corporation and that by authority duly given by said Corporation she impressed the corporate seal of said Corporation upon the foregoing and annexed Second Amendment to Lease Agreement in execution thereof for and on behalf of said Corporation and that she attested the same as said Assistant Secretary by affixing her signature thereon in attestation thereof and said President and Assistant Secretary further acknowledged the foregoing and annexed Second Amendment to Lease Agreement to be the act and deed of New Hanover Regional Medical Center.

WITNESS my hand and corporate seal in the County and State last aforesaid this 15<sup>th</sup> day of February, 1999.



Katherine Marks  
Notary Public

My commission expires: 6-17-2002

## EXHIBIT A

### NEW HANOVER REGIONAL MEDICAL CENTER SITE

Those certain tracts or parcels of land lying and being situate in the County of New Hanover, State of North Carolina, and being more particularly described as follows:

TRACT 1: Being all of the property described in the Deed from Edward B. Ward and wife, et al., to New Hanover County recorded September 1, 1962 in Book 704, Page 478 of the New Hanover County Registry; and being all of the property described in the Deed from O.R. Parker and wife to New Hanover County recorded September 1, 1962 in Book 704, Page 479 of the New Hanover County Registry.

EXCEPTING, however, from the property hereinabove described that certain 5.5 acre tract of land described in the Deed of Release from New Hanover Memorial Hospital, Inc. to New Hanover County recorded August 28, 1973 in Book 981, Page 486 of the New Hanover County Registry.

TRACT 2: Being all of the property described in the Deed from New Hanover Memorial Hospital, Inc., to New Hanover County recorded February 28, 1984 in Book 1246, Page 1790 of the New Hanover County Registry.

TRACT 3: Being all of the property described in the Deed from Glen Meade Shopping Center Associates to New Hanover Memorial Hospital, Inc. recorded August 31, 1990 in Book 1509, Page 0823 of the New Hanover County Registry and being the same property described in the Deed from New Hanover Regional Medical Center to New Hanover County recorded October 15, 1993 in Book 1709, Page 663 of the New Hanover Registry.

TRACT 4: Being all of the property described in the Deed from Waverly Development Corporation, et al., to New Hanover Memorial Hospital, Inc. recorded April 21, 1983 in Book 1220, Page 1703 of the New Hanover County Registry and being the same property described in the Deed from New Hanover Regional Medical Center to New Hanover County recorded October 15, 1993 in Book 1709, Page 663, of the New Hanover Registry.

TRACT 5: Being all of Lot 9, as shown on a map entitled "Map of Lot 9 of Wilmington Medical Park and a Dedication of a Portion of the Physician's Drive", recorded in Map Book 37 Page 78 of the New Hanover County Registry, reference to which map is hereby made for a more particular and detailed description, and being the same property described as Tract 1 in the Deed from New Hanover Regional Medical Center to New Hanover County recorded November 2, 1998 in Book 2461, Page 0803 of the New Hanover County Registry.

Subject to the Amended Declaration of Restrictions and Covenants and Reservation of Easements for Wilmington Medical Park, recorded in Book 2235, Page 0653 of the New Hanover County Registry.



TRACT 6: Being all of Lot 4, Block 12, Section 8, Glen Meade Extension, as shown on the map recorded in Map Book 24, Page 18, New Hanover County Registry, reference to which map is hereby made for a more particular description of said property, and being the same property described as Tract 2 in the Deed from New Hanover Regional Medical Center to New Hanover County recorded November 2, 1998 in Book 2461, Page 0803 of the New Hanover County Registry.

### CAPE FEAR HOSPITAL SITE

Those certain tracts or parcels of land lying and being situate in the County of New Hanover, State of North Carolina, and being more particular described as follows:

TRACT 1: Being all of the property described as Tract 1 in the Deed from New Hanover Regional Medical Center to New Hanover County recorded November 2, 1998 in Book 2461, Page 0800 of the New Hanover County Registry.

TRACT 2: Being all of the property described as Tract 2 in the Deed from New Hanover Regional Medical Center to New Hanover County recorded November 2, 1998 in Book 2461, Page 0800 of the New Hanover County Registry.

## EXHIBIT B

### DESCRIPTION OF THE PROJECT

The Project financed with the proceeds of the Series 1993 Bonds consists of (i) constructing and equipping an approximately 67,340 square foot rehabilitation hospital, (ii) constructing an approximately 465-space parking garage, (iii) renovating and equipping the hospital power plant, (iv) renovating and expanding the hospital pneumatic tube system, (v) renovating and expanding the hospital telecommunications system, (vi) renovating and expanding a cardiac recovery unit and (vii) acquiring capital equipment for hospital use at New Hanover Regional Medical Center, 2131 South 17<sup>th</sup> Street, Wilmington, NC 28402.

The Project financed with the proceeds of the Series 1996 Bonds consists of (i) the construction of a new Oncology Center Clinical Laboratory and Outpatient Clinic building with a connecting concourse to the Existing Facilities, (ii) the renovation and addition of public areas, (iii) the renovation of the Emergency Department and the Pediatrics unit, (iv) the purchase of furnishings to be added to the new building, (v) the upgrade and installation of communication and information services, (vi) the construction of a Cardiac Surgery Recovery Unit and (vii) the relocation of the heliport and the construction of the East Parking Area.

The Project financed with the proceeds of the Series 1999 Bonds consists of the renovation and improvement of certain of its facilities.

## EXHIBIT C

### PERMITTED ENCUMBRANCES

#### NEW HANOVER REGIONAL MEDICAL CENTER SITE

##### TRACT 1: (base tract – 37 acres and 14.6 acres)

1. Right-of-way to the State Highway Commission recorded in Book 723, Page 108, of the New Hanover County Registry.
2. Rights-of-way to Carolina Power & Light Company recorded in the New Hanover County Registry in:
  - (a) Book 773, Page 302;
  - (b) Book 903, Page 450;
  - (c) Book 999, Page 182;
  - (d) Book 999, Page 183; and
  - (e) Book 1610, Page 1254.
3. Easements to the City of Wilmington recorded in the New Hanover County Registry in:
  - (a) Book 1040, Page 581; and
  - (b) Book 1342, Page 0787.
4. Stormwater Management Facility Inspection and Maintenance Agreement between New Hanover Regional Medical Center, Inc. New Hanover County, and the City of Wilmington, recorded July 26, 1993, in Book 1685, Page 1093, in the New Hanover County Registry.
5. Stormwater Management Facility Inspection and Maintenance Agreement between New Hanover Regional Medical Center, New Hanover County, and the City of Wilmington, dated July 15, 1996, and recorded August 5, 1996, in Book 2067, Page 0621, in the New Hanover County Registry.

##### TRACT 2: (parking lot tract – 9.360 acres)

1. Right-of-way to Carolina Power & Light Company recorded in Book 672, Page 93, in the New Hanover County Registry.
2. Easement to the City of Wilmington recorded in Book 1141, Page 1460, in the New Hanover Registry.

- 3 Stormwater Management Facility Inspection and Maintenance Agreement between New Hanover Regional Medical Center, New Hanover County, and the City of Wilmington, dated July 15, 1996, and recorded August 5, 1996, in Book 2067, Page 0621, in the New Hanover County Registry.

**TRACT 3:** (2.61 acre – Glen Meade Shopping Center)

1. Rights-of-way to the State Highway Commission recorded in the New Hanover County Registry in:
  - (a) Book 721, Page 484;
  - (b) Book 722, Page 440; and
  - (c) Book 752, Page 613.
2. Rights-of-way to Carolina Power & Light Company recorded in the New Hanover County Registry in:
  - (a) Book 672, Page 93;
  - (b) Book 963, Page 389; and
  - (c) Book 963, Page 390.
- 3 All rights of any tenants in possession of any portion of the property under unrecorded leases of three years or less duration.

**TRACT 4:** (0.506 acres-Delaney Avenue)

1. Right-of-way to Carolina Power & Light Company recorded in Book 672, Page 93, of the New Hanover County Registry.

**TRACT 5:** (Lot 9, Wilmington Medical Park)

1. Declaration of Restrictions and Covenants and Reservation of Easements for Wilmington Medical Park, recorded in Book 1825, Page 0768, in the New Hanover County Registry, as amended by Amended Declaration recorded in Book 2235, Page 0653, in the New Hanover County Registry.
2. Rights-of-way to the City of Wilmington recorded in the New Hanover County Registry as follows:
  - (a) On September 3, 1935, in Book 249, Page 435; and
  - (b) On September 3, 1935, in Book 249, Page 436.
3. Right-of-way to State Highway Commission recorded on March 5, 1964, in Book 721, Page 483, in the New Hanover County Registry.

4. Rights-of-way to Carolina Power & Light Company recorded in the New Hanover County Registry as follows:
  - (a) On May 13, 1966, in Book 789, Page 184;
  - (b) On May 13, 1966, in Book 789, Page 185;
  - (c) On May 13, 1966, in Book 789, Page 186;
  - (d) On May 13, 1966, in Book 789, Page 187;
  - (e) On June 28, 1971, in Book 914, Page 29;
  - (f) On January 4, 1973, in Book 958, Page 829; and,
  - (g) On January 4, 1973, in Book 958, Page 834.
5. Deeds of Easement to the Board of Transportation recorded in the New Hanover County Registry as follows:
  - (a) On December 9, 1976, in Book 1083, Page 683; and
  - (b) On December 9, 1976, in Book 1083, Page 687.
6. Agreement between Barclay Hills Company et als and the City of Wilmington establishing a 30-foot wide utility easement in the vicinity of Silver Stream Branch, recorded December 21, 1972, in Book 957, Page 919, in the New Hanover County Registry.
7. Judgment establishing two 40-foot-wide drainage easements in favor of the City of Wilmington, recorded April 16, 1974, in Book 1001, Page 535, in the New Hanover County Registry. Said easements are also referred to in Resolution recorded August 27, 1973, in Book 981, Page 395, in the New Hanover County Registry.
8. Drainage Easement to the City of Wilmington establishing several drainage easements, including "Easement Number 7", a 60-foot wide drainage easement, and "Easement Number 8", a 40-foot wide drainage easement, both of which affect the subject property, recorded November 12, 1992, in Book 1630, Page 0645 in the New Hanover County Registry.
9. The following public drainage easements shown on the recorded plat of Lot 9 of Wilmington Medical Park recorded in Map Book 37, Page 78, in the New Hanover County Registry:
  - (a) 60-foot wide drainage easement over that portion of the subject property connecting to Canterwood Drive, the same also being identified as "Easement Number 7" in that Drainage Easement recorded in Book 1630, Page 0645, in the New Hanover County Registry;
  - (b) 40-foot-wide drainage easement along the western boundary line of the subject property, approximately half of which effects the subject property; and

- (c) 40-foot wide drainage easement along the eastern boundary line of the subject property, the same also being identified as "Easement Number 8" in the Drainage Easement recorded in Book 1630, Page 0645, in the New Hanover County Registry.

TRACT 6: (Lot 4, Block 12, Section 8, Glen Meade Extension)

1. Right-of-way to Carolina Power & Light Company recorded in Book 672, Page 93, in the New Hanover County Registry.

CAPE FEAR HOSPITAL SITE

TRACT 1: (Tracts 1, 2 & 3, Cape Fear Memorial Hospital)

1. Restrictive Covenants recorded in Book 474, Page 513, as modified by Agreement and Modification Amendments recorded in Book 876, Page 619; Book 1129, Page 1941; Book 1131, Page 617; Book 1433, Page 43; Book 1444, Page 1232; Book 1497, Page 666; and Book 1545, Page 347, New Hanover County Registry.
2. Easements to Carolina Power and Light Company recorded in Book 560, Page 204; Book 607, Page 406; Book 830, Page 427; Book 1151, Page 1549; and Book 1475, Page 1831, New Hanover County Registry.
3. Easements to Southern Bell Telephone and Telegraph Company recorded in Book 539, Page 316; Book 539, Page 309; Book 1595, Page 1649; Book 1595, Page 1642; and Book 1595, Page 1638, New Hanover County Registry.
4. Land leases on building sites as shown on survey dated August 8, 1998, by Robert S. Goslee, as follows:
  - A. Lease in favor of Dr. Dale Caughey, dated January 17, 1977 and Amendment dated January 20, 1986, as to property on which Building A is situated.
  - B. Lease in favor of Dr. Gerald Points, dated August 26, 1976, and Amendment dated January 14, 1986, as to property on which Building B is situated.
  - C. Lease in favor of Hanover Urological Assoc., P.A. as to the property on which Building C is situated.
  - D. Lease in favor of Dr. Robert J. Andrews, dated November 3, 1992, and recorded December 16, 1993, in Book 1730, Page 846, New Hanover County Registry as to property on which Building D is situated.
  - E. Lease in favor of Cape Fear Anesthesiologists, as to property on which Building E is situated.
  - F. Lease in favor of Dr. Helen Sandland, as to property on which Building F is situated.

- G. Lease in favor of Cape Fear OB/GYN, P.A. (Dr. R. M. Shah), dated June 29, 1977 and Amendments dated April 4, 1983 and January 14, 1986, as to property on which Building G is situated.
  - H. Lease in favor of Azalea OB/GYN, as to property on which Building J is situated.
  - I. Lease in favor of Dr. Thomas Pottle, as to property on which Building K is situated.
  - J. Lease in favor of Dr. William Earl Roberson dated October 3, 1986, as to property on which Building L is situated.
  - K. Lease in favor of Dr. Robert F. Wilfong, as to property on which Building M is situated.
  - L. Lease in favor Dr. Thomas L. Blackstone, as to property on which Building N is situated.
- 5. Lease in favor of Cape Fear Foundation, as to property on which building at 210 Spruce Drive is situated.
  - 6. Lease in favor of Robert S. Daugherty, as to property on which building at 5310 Greenleaf Drive is situated.
  - 7. Lease in favor of Cape Fear OB/GYN, as to property on which building at 5219 Wrightsville Avenue is situated.
  - 8. The following matters that are shown on survey dated August 8, 1998, by Robert H. Goslee, Registered Land Surveyor:
    - A. Storm drain lines and sanitary sewer lines crossing subject property, and any easements or rights of way associated therewith.
    - B. Power poles and lights situate upon and power and water lines crossing subject property, and any easements or rights of way associated therewith.
    - C. Fence situate on property lines.
    - D. Southern Bell easements situate along southeastern lot line.
  - 9. Stormwater Management Facility Inspection and Maintenance Agreement between Cape Fear Memorial Hospital, Incorporated and City of Wilmington recorded in Book 1608, Page 273, New Hanover County Registry.
  - 10. Life estate of Marguerite Childs (as to Lot 16, Block B, Section 5, Piney Acres).

**TRACT 2:** (4.64 acres – Oleander Drive)

- 1. Easements to Carolina Power and Light Company recorded in Book 1427, Page 608; Book 1497, Page 491, New Hanover County Registry.

2. The following matters as shown on survey dated August 31, 1998, by Mark A. Stocks, Registered Land Surveyor and on map recorded in Map Book 30, Page 193, New Hanover County Registry:

Utilities situate upon and/or utility lines crossing subject land.

3. Rights of others in and to the continued and uninterrupted flow of ditch, which affect subject property.
4. Rights of others in and to use of 60-foot access easement as shown on survey dated August 31, 1998, by Mark A. Stocks and on map recorded in Map Book 30, Page 193, New Hanover County Registry.
5. Lease to Cape Fear OB/GYN, as to property on which Cape Fear Medical Plaza, Suites B & C on Oleander Drive are situated.



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**THIRD AMENDMENT TO LEASE AGREEMENT**

**By and Between**

**COUNTY OF NEW HANOVER, NORTH CAROLINA and NEW HANOVER  
REGIONAL MEDICAL CENTER**

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Dated as of December 1, 2005

### THIRD AMENDMENT TO LEASE AGREEMENT

**THIS THIRD AMENDMENT TO LEASE AGREEMENT**, dated as of December 1, 2005 (this "Amendment"), is made by and between the **COUNTY OF NEW HANOVER, NORTH CAROLINA**, a political subdivision of the State of North Carolina (the "County"), and **NEW HANOVER REGIONAL MEDICAL CENTER**, a nonprofit corporation organized and existing under the General Statutes of North Carolina (the "Corporation"), and amends the Lease Agreement dated as of October 1, 1993, by and between the County and the Corporation, as previously amended by the First Amendment to Lease Agreement dated as of June 15, 1996 and the Second Amendment to the Lease Agreement dated as of February 15, 1999 (the "Lease"),

#### WITNESSETH:

**WHEREAS**, the County proposes to issue its Variable Rate Hospital Revenue Refunding Bonds (New Hanover Regional Medical Center) Series 2005A-1 and Variable Rate Hospital Revenue Refunding Bonds (New Hanover Regional Medical Center) Series 2005A-2 to currently refund the County's outstanding Hospital Revenue Bonds (New Hanover Regional Medical Center Project) Series 1993 (the "Series 1993 Bonds") and its Variable Rate Hospital Revenue Refunding Bonds (New Hanover Regional Medical Center) Series 2005B-1 and Variable Rate Hospital Revenue Refunding Bonds (New Hanover Regional Medical Center) Series 2005B-2 to advance refund the County's outstanding Hospital Revenue Bonds (New Hanover Regional Medical Center Project) Series 1996 maturing on or after October 1, 2007 (the "Refunded 1996 Bonds"); and

**WHEREAS**, under The State and Local Government Revenue Bond Act, Article 5, as amended, of Chapter 159 of the General Statutes of North Carolina (the "Act"), the County is authorized and empowered to issue revenue bonds for such purposes; and

**WHEREAS**, the County adopted a Bond Order on October 6, 1993 authorizing the issuance of hospital revenue bonds, which was amended by a First Supplemental Bond Order adopted by the County on February 5, 1999 (as so amended, the "Bond Order"); and

**WHEREAS**, the County has determined that it is consistent with the purposes of the Act and in the public interest (a) to issue four series of revenue refunding bonds of the County, designated Variable Rate Hospital Revenue Refunding Bonds (New Hanover Regional Medical Center), Series 2005A-1 and Variable Rate Hospital Revenue Refunding Bonds (New Hanover Regional Medical Center) Series 2005A-2 and Variable Rate Hospital Revenue Refunding Bonds (New Hanover Regional Medical Center) Series 2005B-1 and Variable Rate Hospital Revenue Refunding Bonds (New Hanover Regional Medical Center) Series 2005B-2 (collectively, the "Series 2005 Bonds") pursuant to the Bond Order and a Series Resolution adopted by the County on December 7, 2005, for the purposes stated above and (b) to enter into this Amendment; and

**WHEREAS**, the execution and delivery of this Amendment have been duly authorized by the County and the Corporation; and

**WHEREAS**, all acts, notices and things required by the constitution and laws of the State and the Bylaws of the Corporation to happen, exist and be performed precedent to and in the execution and delivery of this Amendment have happened, exist and have been performed as so required, in order to make this Amendment a valid and binding agreement in accordance with its terms; and

**WHEREAS**, each of the parties hereto represents that it is fully authorized to enter into and perform and fulfill the obligations imposed upon it under this Amendment and the Lease, and the parties are now prepared to execute and deliver this Amendment;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration paid by each of the parties to the other, the receipt of which is hereby acknowledged, the County and the Corporation hereby agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01. Definitions.** Unless elsewhere defined in this Amendment, all capitalized terms used in this Amendment shall have the meanings ascribed thereto in the Lease. The following terms shall have the following meanings herein and in the Lease as amended hereby:

*"Bond Insurer"* means Bond Insurer as defined in Section 101 of the Series 1996 Resolution, Section 101 of the Series 1999 Resolution, or Section 101 of the Series 2005 Resolution, as applicable.

*"Capitalization Ratio"* shall mean the ratio determined by dividing (a) the aggregate principal amount of all Indebtedness of the Corporation then Outstanding plus the proposed Indebtedness (if any) by the Capitalization as defined in the Bond Order including Indebtedness proposed to be issued.

*"Cushion Ratio"* means for purposes of the Series 2005 Bonds, the ratio determined by the following formula: Unrestricted Cash and Investments divided by Maximum Annual Debt Service, and for purposes of the Series 1999 Bonds, means the ratio determined by the following formula: the sum of all cash and liquid investments whether classified as current or non-current assets held by the Corporation for its various purposes divided by Maximum Annual Debt Service; for purposes of the Series 1996 Bonds, means the ratio determined by the following formula: the sum of all cash and liquid investments whether classified as current or non-current assets held by the Corporation for its various purposes divided by Maximum Annual Debt Service.

*"Days of Operating Expenses"* is defined as operating expenses including provision for bad debts minus depreciation and amortization expense divided by the number of days for the applicable period.

*"Existing Facilities"* means all of the property constituting the New Hanover Regional Medical Center and Cape Fear Hospital, including the real property and all

improvements and personal property therein and thereon existing at the time the Series 2005 Bonds are delivered.

*"Insurer Default"* means an Insurer Default as defined in Section 101 of the Series 1996 Resolution or Section 101 of the Series 1999 Resolution or Section 101 of the Series 2005 Resolution, as applicable.

*"Refunded 1996 Bonds"* means the Bonds so designated by and issued under the Bond Order and the Series 1996 Resolution.

*"Series 1996 Resolution"* means the Series Resolution adopted by the Board of Commissioners of the County on May 20, 1996 and amended on June 17, 1996.

*"Series 1999 Bonds"* means the Bonds so designated by and issued under the Bond Order and the Series 1999 Resolution.

*"Series 1999 Resolution"* means the Series Resolution adopted by the Board of Commissioners of the County on February 5, 1999.

*"Series 2005 Bonds"* means the Bonds so designated by and issued under the Bond Order and the Series 2005 Resolution.

*"Series 2005 Resolution"* means the Series Resolution adopted by the Board of Commissioners of the County on December 7, 2005.

*"Unrestricted Cash and Investments"* means the amount of unrestricted and unencumbered cash, cash equivalents, and marketable liquid investments of the Corporation; provided, however, that there shall be excluded therefrom the amounts specified in clauses (A) through (D): (A) the amount of or in any trustee-held funds, debt service funds, debt service reserve funds, construction funds, litigation reserve funds, malpractice funds or other self-insurance or captive insurance funds, pension or retirement funds, and any other funds set aside or reserved in such a manner so as to restrict the funds so that such funds are not available to the Corporation to pay debt service on Indebtedness; (B) any amounts realized from the sale or factoring of receivables during the 90 day period preceding a computation date of Unrestricted Cash and Investments; (C) the principal amount of (i) any borrowed moneys payable in one year or less or (ii) any demand obligations for each case there exists a commitment by a bank, insurance company or other financial institution rated at least "A+" or better by S&P or A1 or better by Moody's which provides refinancing sufficient to pay such obligation when due and any repayment term to such financial institution by the member of the Corporation is at least two years (such facility, a "Qualified Bank Facility"); and (D) any amounts pledged or posted, or required to be pledged or posted, to secure obligations under a swap agreement or in connection with any derivative transaction. For purposes of this definition of Unrestricted Cash and Investments, if marketable securities are loaned pursuant to a security lending program, either the market value of such securities that are loaned or any cash held as collateral under such lending program shall be included as Unrestricted Cash and Investments, but not both such amounts.

## ARTICLE II

### REPRESENTATIONS

**Section 2.01. *Representations by the County.*** The County represents that it has the power to enter into the transactions contemplated by this Amendment and to carry out its obligations hereunder; and that by proper action of its Board of Commissioners, the County has been duly authorized to execute and deliver this Amendment. The County further represents that it proposes to issue the Series 2005 Bonds that will mature, bear interest, be redeemable and have the other terms and provisions set forth in the Bond Order and the Series 2005 Resolution.

**Section 2.02. *Representations by the Corporation.*** The Corporation represents that it is a nonsectarian, nonprofit corporation, no part of the net earnings of which inures to the benefit of any private member or individual; that it has authority to lease the Existing Facilities and operate the Health Care System, and, by proper corporate action, has been duly authorized to execute and deliver this Amendment; and that the execution and delivery of this Amendment, its consummation of the transactions contemplated hereby and fulfillment of or compliance with the terms and conditions of this Amendment, do not conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction, or any agreement or instrument to which the Corporation is now a party or by which it is bound, and do not constitute a default under any of the foregoing, or result in the creation or imposition of any lien or encumbrance of any nature whatsoever upon any of the property or assets of the Corporation under the terms of any instrument or agreement (other than this Amendment and the Bond Order).

## ARTICLE III

### AMENDMENTS TO LEASE

**Section 3.01. *Amendment to Section 4.18 of the Lease.*** Section 4.18 of the Lease is hereby amended in its entirety to provide as follows:

**Section 4.18. *Spring-in Debt Service Reserve Funds.***

(a) The Corporation agrees that if the Long-Term Debt Service Coverage Ratio for any Fiscal Year shall be less than 1.75, as soon as practicable after the end of such Fiscal Year: (i) the Corporation shall fund, by means of a cash deposit, letter of credit or other method acceptable to the Bond Insurer for the Series 1996 Bonds (so long as an Insurer Default shall not exist), a Debt Service Reserve Fund to be held by the Trustee pursuant to the Series 1996 Resolution for the exclusive benefit of the Holders of the Series 1996 Bonds in an amount equal to the Debt Service Reserve Fund Requirement for the Series 1996 Bonds.

(b) The Corporation agrees that if either the Long-Term Debt Service Coverage Ratio for any Fiscal Year shall be less than 1.35 or the Cushion Ratio for any Fiscal Year shall be less than 1.5, within 30 days after such determination is made, the Corporation shall fund, by means of a cash deposit, letter of credit or other method acceptable to the Bond Insurer for the Series 1999 Bonds (so long as an Insurer Default

shall not exist), a Debt Service Reserve Fund to be held by the Trustee pursuant to the Series 1999 Resolution for the exclusive benefit of the Holders of the Series 1999 Bonds in an amount equal to the Debt Service Reserve Fund Requirement for the Series 1999 Bonds.

(c) The Corporation agrees that if (i) the Long-Term Debt Service Coverage Ratio shall be less than 1.75 for two consecutive Fiscal Years, (ii) the Long-Term Debt Service Coverage Ratio shall be less than 1.1., (iii) the Long-Term Debt Service Coverage Ratio shall be less than 1.75 and Days of Operating Expenses shall be less than 150, (iv) the Cushion Ratio shall be less than 1.75, or (iv) Unrestricted Cash and Investments shall be less than 90 days of Operating Expenses, the Corporation shall fund, by means of a cash deposit, letter of credit or other method acceptable to the Bond Insurer for the Series 2005 Bonds (so long as an Insurer Default shall not exist), a Debt Service Reserve Fund to be held by the Trustee pursuant to the Series 2005 Resolution for the exclusive benefit of the Holders of the Series 2005 Bonds in an amount equal to the Debt Service Reserve Fund Requirement for the Series 2005 Bonds.

(d) The Debt Service Reserve Fund Requirement for a particular Series of Bonds shall be equal to the lesser of (i) maximum annual debt service on such Series for any Bond Year, (ii) 125% of the average annual debt service on such Series for any Bond Year, and (iii) ten percent of the stated principal amount of such Series (unless such Series has original issue discount or premium that exceeds 2% of the stated redemption price at maturity plus any original issue premium attributable exclusively to underwriter's compensation, in which case the initial offering prices to the public will be used in lieu of the stated principal amount). In the event that the Corporation shall be required to fund any Debt Service Reserve Fund pursuant to the provisions described above, any of the Bond Order, the Series 1996 Resolution, the Series 1999 Resolution, the Series 2005 Resolution and the Lease, as appropriate, shall be amended without the consent of or notice to any of the Holders in order to make any changes therein that are necessary in connection with the establishment and maintenance of such Debt Service Reserve Funds.

(e) If any Debt Service Reserve Fund shall be funded pursuant to paragraphs (a), (b) or (c) above and thereafter all tests in the covenant contained therein are satisfied by the Corporation for two consecutive Fiscal Years after the Fiscal Year for which the covenant was not satisfied, then such Debt Service Reserve Fund shall no longer be required to be funded and any funds contained therein shall be released to the Corporation.

(f) For Variable Rate Indebtedness (as defined in the Bond Order), the interest rate assumption for establishing the Debt Service Reserve Fund Requirement shall be equal to the greater of the average variable rate for the preceding period and The Bond Buyer Revenue Bond Index plus 50 basis points.

**Section 3.02. Amendment to Section 6.01 of the Lease.** Section 6.01 of the Lease is hereby amended by adding the following paragraph:

"The Corporation may not self-insure against casualty losses to any real or personal property owned, leased or used by it, including plant, property and equipment

without the written consent of the Bond Insurer; provided, however, reasonable deductibles reviewed by the Insurance Adviser shall be permitted."

**Section 3.03. Additions of Sections 4.25, 4.26, 4.27, 4.28, 4.29, 4.30 and 4.31 to the Lease.** Article IV of the Lease is hereby amended by adding the following Sections.

**Section 4.25. Secondary Market Disclosure.** The Corporation agrees, for the benefit of the beneficial owners of the Series 2005 Bonds, to provide:

(a) by not later than seven months after the end of each Fiscal Year of the Corporation, beginning with the Fiscal Year ending September 30, 2005, to each nationally recognized municipal securities information repository ("NRMSIR") and to the state information depository for the State of North Carolina ("SID"), if any, the audited financial statements of the Corporation for such Fiscal Year, if available, prepared in accordance with Section 159-39 of the General Statutes of North Carolina, as amended from time to time, or with any successor statute; or if such audited financial statements are not available by seven months after the end of such Fiscal Year, the unaudited financial statements of the Corporation for such Fiscal Year to be replaced subsequently by the audited financial statements of the Corporation to be delivered within 15 days after such audited financial statements become available for distribution;

(b) by not later than seven months after the end of each Fiscal Year, beginning with the Fiscal Year ending September 30, 2005, to each NRMSIR, and to the SID, if any, the financial and statistical data as of a date not earlier than the end of the preceding Fiscal Year for the type of information included under the following headings in Appendix A to the Official Statement dated December 7, 2005 relating to the Series 2005 Bonds, to the extent such items are not included in the financial statements referred to in (a) above:

- (1) "Facilities and Services" (tables relating to the New Hanover Regional Medical Center therein);
- (2) "Medical Staff";
- (3) "Utilization Statistics";
- (4) "Historical Pro Forma Long-Term Debt Service Coverage Ratio";
- (5) "Third-Party Reimbursement and Sources of Payment"; and

(c) in a timely manner, to each NRMSIR or to the Municipal Securities Rulemaking Board ("MSRB"), and to the SID, if any, notice of any of the following events with respect to the Series 2005 Bonds, if material:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults;

(3) unscheduled draws on any debt service reserves reflecting financial difficulties;

(4) unscheduled draws on any credit enhancements reflecting financial difficulties;

(5) substitution of any credit or liquidity providers, or their failure to perform;

(6) adverse tax opinions or events affecting the tax-exempt status of the Bonds;

(7) modification to the rights of the beneficial owners of the Series 2005 Bonds;

(8) call of any of the Series 2005 Bonds for redemption, other than mandatory sinking fund redemption;

(9) defeasances of any of the Series 2005 Bonds;

(10) release, substitution or sale of any property securing repayment of the Series 2005 Bonds; and

(11) rating changes; and

(d) in a timely manner, to each NRMSIR or to the MSRB, and to the SID, if any notice of a failure of the Corporation to provide required annual financial information described in (a) or (b) above on or before the date specified.

The Corporation may meet the continuing disclosure filing requirements described above (i) solely by transmitting such filing to the Texas Municipal Advisory Council (the "MAC") as provided at <http://www.disclosureusa.org> unless the U.S. Securities and Exchange Commission ("SEC") has withdrawn the interpretive advice in its letter to the MAC dated September 7, 2004, or (ii) by filing the same with any dissemination agent or conduit, including any "central post office" or similar entity, assuming or charged with responsibility for accepting notices, documents or information for transmission to such NRMSIR or SID, to the extent permitted by the SEC or SEC staff or required by the SEC. For this purpose, permission shall be deemed to have been granted by the SEC staff if and to the extent the agent or conduit has received an interpretive letter, which has not been withdrawn from the SEC staff, to the effect that using the agent or conduit to transmit information to the NRMSIRs and the SID will be treated for purposes of SEC Rule 15c2-12(b)(5) as if such information were transmitted directly to the NRMSIRs and the SID.

If the Corporation fails to comply with the undertakings described above, the Trustee or any beneficial owner of the Series 2005 Bonds then outstanding may take action to protect and enforce the rights of all beneficial owners with respect to such undertakings, including an action for specific performance; provided, however, that failure to comply with such undertakings shall not be an event of default under the Lease, the Bond Order or the Series Resolution and shall not



result in any acceleration of payment of the Series 2005 Bonds. All actions shall be instituted, had and maintained in the manner provided in this paragraph for the benefit of all beneficial owners of the Series 2005 Bonds then outstanding.

The Corporation reserves the right to modify from time to time the information to be provided to the extent necessary or appropriate in the judgment of the Corporation, provided that:

(a) any such modification may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, composition, nature or status of the Corporation;

(b) the information to be provided, as modified, would have complied with the requirements of Rule 15c2-12 issued under the Securities Exchange Act of 1934 ("Rule 15c2-12") as of the date of the Official Statement with respect to the Series 2005 Bonds, after taking into account any amendments or interpretations of Rule 15c2-12, as well as any changes in circumstances; and

(c) any such modification does not materially impair the interests of the beneficial owners of the Series 2005 Bonds, as determined either by parties unaffiliated with the Corporation (such as bond counsel), or by the approving vote of the registered owners of a majority in principal amount of the Series 2005 Bonds then Outstanding pursuant to the terms of the Bond Order and the Series 2005 Resolution as they may be amended from time to time.

Any annual financial information containing the modified operating data or financial information is required to explain, in narrative form, the reasons for the amendments and the impact of the change in the type of operating data or financial information being provided.

The undertaking described in this Section will terminate upon payment, or provision having been made for payment in a manner consistent with Rule 15c2-12, in full of the principal of and interest on all of the Series 2005 Bonds.

**Section 4.26 *Information to Bond Insurer for Series 2005 Bonds.*** For so long as the Bond Insurance for the Series 2005 Bonds remains in effect and there is no Insurer Default with respect thereto, the Corporation will supply the following to the Bond Insurer (at 31 West 52<sup>nd</sup> Street, New York, New York 10019, Attention: Managing Director - Surveillance):

(a) Annual Documentation: to be submitted within one hundred twenty (120) days of the end of each Fiscal Year:

Audited financial statements for the most recent Fiscal Year;

Quarterly financial statements with comparables for the similar period of the prior Fiscal Year, to be submitted within 60 days of the end of each quarterly period; and

Auditor's management letter for the most recent Fiscal Year.

(b) A letter from the Corporation summarizing the letters of various counsel to the Corporation concerning material litigation (if any) and containing a schedule of all material pending litigation.

(c) Insurance consultant reports required pursuant to the Bond Order and Lease. Utilization Statistics for the most recent Fiscal Year:

Licensed beds;  
Beds in service;  
Admissions (excluding newborns);  
Patient days (excluding newborns) Average length of stay (days);  
Percentage occupancy (of beds in service) Emergency Room visits; and  
Outpatient visits.

(d) Percentage of revenues by the following payor classes for most recent Fiscal Year:

Medicare Blue Cross/Commercial;  
Medicaid Self-pay; and  
Managed Care Other.

(e) Medicare Case Mix Index for the most recent Fiscal Year.

(f) Upon delivery to the Bond Insurer of the Corporation's audited annual financial statements, the Corporation shall provide a certification reviewed by its Accountants stating that (1) the Corporation is in compliance with the financial covenants (including evidence of such compliance) set forth in the Bond Order and the Lease and (2) no Event of Default has occurred or is continuing under the Bond Order, this Lease and the Series Resolution.

(g) All Material Event Notices delivered to a NRMSIR and SID, if any, shall be delivered promptly to the Bond Insurer.

(h) The Corporation shall deliver to the Bond Insurer a certificate evidencing semi-annual compliance with the Liquidity Covenant described in Section 4.28 of this Lease within 60 days of each April 1 and October 1, commencing April 1, 2006.

(i) Upon reasonable request, any other information reasonably necessary for the Bond Insurer to perform monitoring analyses of the Corporation.

**Section 4.27 Limitation on Right to Terminate or Amend Lease.** For so long as the Bond Insurance Policy for the Series 2005 Bonds remains in effect and there is no Insurer Default with respect thereto, the County shall have the right to terminate or amend this Lease only if either (i) the Bond Insurer has given its prior written consent thereto or (ii) the Series 2005 Bonds are no longer Outstanding in accordance with Article X of the Series 2005 Resolution and the Bond Order.

**Section 4.28. *Liquidity Covenant.*** Failure of the Corporation to maintain Unrestricted Cash and Investments equal to at least 70 Days of Operating Expenses (the "Liquidity Requirement") shall require the Corporation to retain a Management Consultant (as defined under the Bond Order) acceptable to the Bond Insurer. Failure of the Corporation to maintain Unrestricted Cash and Investments equal to at least 50 Days of Operating Expenses shall be an Event of Default under the Lease (whether or not a Management Consultant has been retained). The scope of the Management Consultant's study shall be acceptable to the Bond Insurer and the Bond Insurer shall receive the Management Consultant's reports upon delivery to the Corporation. The Bond Insurer shall have the right to consult privately with the Management Consultant.

The calculation of the Liquidity Covenant shall be performed semi-annually based on: (a) unaudited statements when available (but no later than 60 days after the period-end) and (b) audited annual financial statements when available (but no later than 150 days after the Fiscal Year-end). The computations based upon the audited financial statements shall be conclusive with respect to year-end calculations.

**Section 4.29. *Additional Indebtedness.*** The incurrence of any Indebtedness shall, as a condition to the incurrence thereof, require that there be delivered to the Trustee a certificate of an authorized officer of the Corporation certifying that (i) the Corporation is in compliance with the provisions of the Lease as of the date of incurrence of such Indebtedness and (ii) the Capitalization Ratio of the Corporation does not exceed .65:1.0.

**Section 4.30. *Interest Rate Swaps.*** The Corporation may enter into an interest rate swap obligation agreement ("Swap") without the prior written consent of the Bond Insurer provided that the following conditions are met: (i) the Swap must be entered into as a hedge against swaps outstanding (as in basis swaps or reverse swaps) or against debt then outstanding or debt to be issued or as a means of achieving forward transactions or against assets held at the time of the execution of the Swap, (ii) the Swap shall not contain any leverage element or multiplier component greater than 1.0 times unless there is a matching hedge arrangement that off-sets the exposure from any such element or component, (iii) unless the hedge obligation of the Corporation is insured, the net settlement, breakage or other termination amount of uninsured Swaps then in effect and the Swap to be executed, determined at the time of execution and delivery of the Swap to be executed, will not result in Unrestricted Cash and Investments in an amount equal to less than the Liquidity Requirement, (iv) the swap provider counterparty or its guarantor must have a rating of at least "A" or "A2," and (v) the Swap shall provide that it shall not terminate without the consent of the Corporation for events related to the counterparty.

**Section 4.31. *Reimbursement of Bond Insurer for Series 2005 Bonds.*** The Corporation shall pay or reimburse the Bond Insurer any and all charges, fees, costs and expenses that the Bond Insurer may reasonably pay or incur in connection with (i) the administration, enforcement, defense or preservation of any rights or security in the Series Resolution or the Lease; (ii) the pursuit of any remedies under the Bond Order, the Series Resolution or the Lease or otherwise afforded by law or equity, (iii) any amendment, waiver or other action with respect to, or related to, the Bond Order, the

Series Resolution or the Lease whether or not executed or completed, or (iv) any litigation or other dispute in connection with the Bond Order, the Series Resolution or the Lease or the transactions contemplated thereby, other than costs resulting from the failure of the Bond Insurer to honor its obligations under the Bond Insurance Policy. The Bond Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of the Bond Order, the Series Resolution or the Lease.

## ARTICLE IV

### MISCELLANEOUS

**Section 4.01. *Multiple Counterparts.*** This Amendment 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 4.02. *Severability.*** If any one or more of the covenants, agreements or provisions of this Amendment 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 Amendment or the Lease, as amended hereby, and this Amendment and the Lease, as amended hereby, shall continue in force to the fullest extent permitted by law.

**Section 4.03. *Recordation of Amendment.*** The Corporation covenants that it will cause this Amendment to be recorded and filed in the office of the New Hanover County Register of Deeds.

**Section 4.04. *State Law Controlling.*** This Amendment shall be construed and enforced in accordance with the laws of the State of North Carolina.

**Section 4.05. *Effective Date of This Amendment.*** Notwithstanding that this Amendment is dated as of December 1, 2005, this Amendment shall take effect when (i) it is fully executed and has been delivered to the parties hereto contemporaneously with the delivery of and payment for the Series 2005 Bonds, (ii) consent of the Bond Insurer, as defined in the Series 1996 Resolution, has been obtained as required by Section 1102 of such Series Resolution and (iv) consent of the Bond Insurer, as defined in the Series 1999 Resolution, has been obtained as required by Section 1107 of such Series Resolution. No obligation shall be imposed on the Corporation prior to the effective date of this Amendment.

IN WITNESS WHEREOF, the County has caused these presents to be signed in its name and on its behalf by the Chairman of its Board of Commissioners and its official seal to be hereunto affixed and attested by the Clerk to said Board, thereunto duly authorized; and the Corporation has caused these presents to be signed in its name and on its behalf by its President and its corporate seal to be hereunto affixed and attested by its Secretary, all as of the 1st day of December, 2005.

[SEAL]



Attest:

COUNTY OF NEW HANOVER, NORTH  
CAROLINA

By: Robert M. Green  
Chairman of the Board of  
Commissioners

Shirley L. Schutt  
Clerk to the Board of Commissioners

NEW HANOVER REGIONAL MEDICAL  
CENTER

[SEAL]

Attest:

By: \_\_\_\_\_  
President and Chief Executive Officer

\_\_\_\_\_  
Secretary

IN WITNESS WHEREOF, the County has caused these presents to be signed in its name and on its behalf by the Chairman of its Board of Commissioners and its official seal to be hereunto affixed and attested by the Clerk to said Board, thereunto duly authorized; and the Corporation has caused these presents to be signed in its name and on its behalf by its President and its corporate seal to be hereunto affixed and attested by its Secretary, all as of the 15<sup>th</sup> day of December, 2005.

[SEAL]

COUNTY OF NEW HANOVER, NORTH  
CAROLINA

Attest:

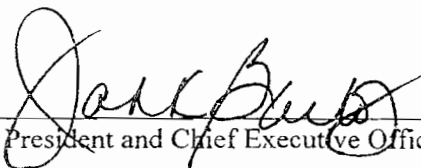
By: \_\_\_\_\_  
Chairman of the Board of  
Commissioners

\_\_\_\_\_  
Clerk to the Board of Commissioners

NEW HANOVER REGIONAL MEDICAL  
CENTER

[SEAL]

Attest:

By:   
President and Chief Executive Officer

  
Secretary

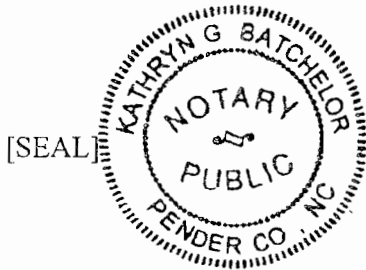
ACKNOWLEDGMENT OF EXECUTION ON BEHALF OF THE CORPORATION

STATE OF NORTH CAROLINA     )  
                                  PENDER                     )ss.:  
COUNTY OF NEW HANOVER     )

Before me, the undersigned, a Notary Public in and for said County and State on this 14<sup>th</sup> day of December, 2005, personally appeared John K. BARTO, JR. being and to me known to be the President and Chief Executive Officer of New Hanover Regional Medical Center, who being by me duly sworn, says that he knows the seal of said Corporation and that by authority duly given by, and as the act of, said Corporation, the foregoing and annexed Third Amendment to Lease Agreement, dated as of December 1, 2005, was signed by him as said President on behalf of said Corporation, and the seal of said corporation affixed thereto, and personally appeared Patricia L. Leonard, being to me known to be the ~~Assistant~~ Secretary of said Corporation, who, being by me duly sworn, says that she knows the seal of said Corporation and that by authority duly given by said Corporation she impressed the corporate seal of said Corporation upon the foregoing and annexed Third Amendment to Lease Agreement in execution thereof for and on behalf of said Corporation and that she attested the same as said ~~Assistant~~ Secretary by affixing her signature thereon in attestation thereof and said President and ~~Assistant~~ Secretary further acknowledged the foregoing and annexed Third Amendment to Lease Agreement to be the act and deed of New Hanover Regional Medical Center.

WITNESS my hand and corporate seal in the County and State last aforesaid this 14<sup>th</sup> day of December \_\_, 2005.

Kathryn G. Batchelor  
Notary Public



My commission expires 3/26/06



FOR REGISTRATION REGISTER OF DEEDS  
REBECCA P. SMITH  
NEW HANOVER COUNTY, NC  
2006 SEP 19 03:20:47 PM  
BK:5081 PG:329-344 FEE:\$56.00

INSTRUMENT # 2006052999

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**FOURTH AMENDMENT TO LEASE AGREEMENT**

**By and Between**

**COUNTY OF NEW HANOVER, NORTH CAROLINA**

**and**

**NEW HANOVER REGIONAL MEDICAL CENTER**

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Dated as of September 1, 2006



## FOURTH AMENDMENT TO LEASE AGREEMENT

**THIS FOURTH AMENDMENT TO LEASE AGREEMENT**, dated as of September 1, 2006 (this "Amendment"), is made by and between the **COUNTY OF NEW HANOVER, NORTH CAROLINA**, a political subdivision of the State of North Carolina (the "County"), and **NEW HANOVER REGIONAL MEDICAL CENTER**, a nonprofit corporation organized and existing under the General Statutes of North Carolina (the "Corporation"), and amends the Lease Agreement dated as of October 1, 1993, by and between the County and the Corporation, as previously amended by the First Amendment to Lease Agreement dated as of June 15, 1996, the Second Amendment to Lease Agreement dated as of February 15, 1999, and the Third Amendment to Lease Agreement dated as of December 1, 2005 (the "Lease"),

### WITNESSETH:

**WHEREAS**, the County proposes to issue its Variable Rate Hospital Revenue Bonds (New Hanover Regional Medical Center Project) Series 2006A (the "Series 2006A Bonds") and its Variable Rate Hospital Revenue Bonds (New Hanover Regional Medical Center Project) Series 2006B (the "Series 2006B Bonds") to finance costs associated with the acquisition, construction and equipping of certain improvements to New Hanover Regional Medical Center, including (i) the construction of a surgery pavilion and related facilities, (ii) the construction of a women's and children's pavilion and related facilities, (iii) the renovation and expansion of the central energy plant to accommodate the expansion of the New Hanover Regional Medical Center campus and (iv) the development of a new loop road, reconfiguration of existing parking lots and site work at the New Hanover Regional Medical Center campus (collectively, the "2006 Project"); together with capitalized interest during construction of the 2006 Project; and

**WHEREAS**, under The State and Local Government Revenue Bond Act, Article 5, as amended, of Chapter 159 of the General Statutes of North Carolina (the "Act"), the County is authorized and empowered to issue revenue bonds for such purposes; and

**WHEREAS**, the County adopted a Bond Order on October 6, 1993 authorizing the issuance of hospital revenue bonds, which was amended by a First Supplemental Bond Order adopted by the County on February 5, 1999, and a Second Supplemental Bond Order adopted by the County on December 7, 2005 (as so amended, the "Bond Order"); and

**WHEREAS**, the County has determined that it is consistent with the purposes of the Act and in the public interest (a) to issue the Series 2006A Bonds and the Series 2006B Bonds (collectively, the "Series 2006 Bonds") pursuant to the Bond Order and a Series Resolution adopted by the County on September 5, 2006, for the purposes stated above and (b) to enter into this Amendment; and

**WHEREAS**, the execution and delivery of this Amendment have been duly authorized by the County and the Corporation; and

**WHEREAS**, all acts, notices and things required by the constitution and laws of the State and the Bylaws of the Corporation to happen, exist and be performed precedent to and in the

execution and delivery of this Amendment have happened, exist and have been performed as so required, in order to make this Amendment a valid and binding agreement in accordance with its terms; and

**WHEREAS**, each of the parties hereto represents that it is fully authorized to enter into and perform and fulfill the obligations imposed upon it under this Amendment and the Lease, and the parties are now prepared to execute and deliver this Amendment;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration paid by each of the parties to the other, the receipt of which is hereby acknowledged, the County and the Corporation hereby agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01. Definitions.** Unless elsewhere defined in this Amendment, all capitalized terms used in this Amendment shall have the meanings ascribed thereto in the Lease. The following terms shall have the following meanings herein and in the Lease as amended hereby:

*"Bond Insurer"* means Bond Insurer as defined in Section 101 of the Series 1996 Resolution, Section 101 of the Series 1999 Resolution, Section 101 of the Series 2005 Resolution, or Section 101 of the Series 2006 Resolution, as applicable.

*"Capitalization Ratio"* shall mean the ratio determined by dividing (a) the aggregate principal amount of all Indebtedness of the Corporation then Outstanding plus the proposed Indebtedness (if any) by the Capitalization as defined in the Bond Order including Indebtedness proposed to be issued.

*"Cushion Ratio"* means for purposes of the Series 2006 Bonds, the ratio determined by the following formula: Unrestricted Cash and Investments divided by Maximum Annual Debt Service; for purposes of the Series 2005 Bonds, the ratio determined by the following formula: Unrestricted Cash and Investments divided by Maximum Annual Debt Service; for purposes of the Series 1999 Bonds, means the ratio determined by the following formula: the sum of all cash and liquid investments whether classified as current or non-current assets held by the Corporation for its various purposes divided by Maximum Annual Debt Service; for purposes of the Series 1996 Bonds, means the ratio determined by the following formula: the sum of all cash and liquid investments whether classified as current or non-current assets held by the Corporation for its various purposes divided by Maximum Annual Debt Service.

*"Days of Operating Expenses"* is defined as operating expenses including provision for bad debts minus depreciation and amortization expense divided by the number of days for the applicable period.

*"Existing Facilities"* means all of the property constituting the New Hanover Regional Medical Center and Cape Fear Hospital, including the real property and all

improvements and personal property therein and thereon existing at the time the Series 2006 Bonds are delivered.

*"Insurer Default"* means an Insurer Default as defined in Section 101 of the Series 1996 Resolution or Section 101 of the Series 1999 Resolution or Section 101 of the Series 2005 Resolution or Section 101 of the Series 2006 Resolution, as applicable.

*"Series 1996 Bonds"* means the Bonds so designated by and issued under the Bond Order and the Series 1996 Resolution.

*"Series 1996 Resolution"* means the Series Resolution adopted by the Board of Commissioners of the County on May 20, 1996 and amended on June 17, 1996.

*"Series 1999 Bonds"* means the Bonds so designated by and issued under the Bond Order and the Series 1999 Resolution.

*"Series 1999 Resolution"* means the Series Resolution adopted by the Board of Commissioners of the County on February 5, 1999.

*"Series 2005 Bonds"* means the Bonds so designated by and issued under the Bond Order and the Series 2005 Resolution.

*"Series 2005 Resolution"* means the Series Resolution adopted by the Board of Commissioners of the County on December 7, 2005.

*"Series 2006 Bonds"* means the Bonds so designated by and issued under the Bond Order and the Series 2006 Resolution.

*"Series 2006 Resolution"* means the Series Resolution adopted by the Board of Commissioners of the County on September 5, 2006.

*"Unrestricted Cash and Investments"* means the amount of unrestricted and unencumbered cash, cash equivalents, and marketable liquid investments of the Corporation; provided, however, that there shall be excluded therefrom the amounts specified in clauses (A) through (D): (A) the amount of or in any trustee-held funds, debt service funds, debt service reserve funds, construction funds, litigation reserve funds, malpractice funds or other self-insurance or captive insurance funds, pension or retirement funds, and any other funds set aside or reserved in such a manner so as to restrict the funds so that such funds are not available to the Corporation to pay debt service on Indebtedness; (B) any amounts realized from the sale or factoring of receivables during the 90 day period preceding a computation date of Unrestricted Cash and Investments; (C) the principal amount of (i) any borrowed moneys payable in one year or less or (ii) any demand obligations for each case there exists a commitment by a bank, insurance company or other financial institution rated at least "A+" or better by S&P or A1 or better by Moody's which provides refinancing sufficient to pay such obligation when due and any repayment term to such financial institution by the member of the Corporation is at least two years (such facility, a "Qualified Bank Facility"); and (D) any amounts pledged or posted, or required to be pledged or posted, to secure

obligations under a swap agreement or in connection with any derivative transaction. For purposes of this definition of Unrestricted Cash and Investments, if marketable securities are loaned pursuant to a security lending program, either the market value of such securities that are loaned or any cash held as collateral under such lending program shall be included as Unrestricted Cash and Investments, but not both such amounts.

## ARTICLE II

### REPRESENTATIONS

**Section 2.01. *Representations by the County.*** The County represents that it has the power to enter into the transactions contemplated by this Amendment and to carry out its obligations hereunder; and that by proper action of its Board of Commissioners, the County has been duly authorized to execute and deliver this Amendment. The County further represents that it proposes to issue the Series 2006 Bonds that will mature, bear interest, be redeemable and have the other terms and provisions set forth in the Bond Order and the Series 2006 Resolution.

**Section 2.02. *Representations by the Corporation.*** The Corporation represents that it is a nonsectarian, nonprofit corporation, no part of the net earnings of which inures to the benefit of any private member or individual; that it has authority to lease the Existing Facilities and operate the Health Care System, and, by proper corporate action, has been duly authorized to execute and deliver this Amendment; and that the execution and delivery of this Amendment, its consummation of the transactions contemplated hereby and fulfillment of or compliance with the terms and conditions of this Amendment, do not conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction, or any agreement or instrument to which the Corporation is now a party or by which it is bound, and do not constitute a default under any of the foregoing, or result in the creation or imposition of any lien or encumbrance of any nature whatsoever upon any of the property or assets of the Corporation under the terms of any instrument or agreement (other than this Amendment and the Bond Order).

## ARTICLE III

### AMENDMENTS TO LEASE

**Section 3.01. *Amendment to Section 4.18 of the Lease.*** Section 4.18 of the Lease is hereby amended in its entirety to provide as follows:

**Section 4.18. *Spring-in Debt Service Reserve Funds.***

(a) The Corporation agrees that if the Long-Term Debt Service Coverage Ratio for any Fiscal Year shall be less than 1.75, as soon as practicable after the end of such Fiscal Year: (i) the Corporation shall fund, by means of a cash deposit, letter of credit or other method acceptable to the Bond Insurer for the Series 1996 Bonds (so long as an Insurer Default shall not exist), a Debt Service Reserve Fund to be held by the Trustee pursuant to the Series 1996 Resolution for the exclusive benefit of the Holders of the Series 1996 Bonds in an amount equal to the Debt Service Reserve Fund Requirement for the Series 1996 Bonds.

(b) The Corporation agrees that if either the Long-Term Debt Service Coverage Ratio for any Fiscal Year shall be less than 1.35 or the Cushion Ratio for any Fiscal Year shall be less than 1.5, within 30 days after such determination is made, the Corporation shall fund, by means of a cash deposit, letter of credit or other method acceptable to the Bond Insurer for the Series 1999 Bonds (so long as an Insurer Default shall not exist), a Debt Service Reserve Fund to be held by the Trustee pursuant to the Series 1999 Resolution for the exclusive benefit of the Holders of the Series 1999 Bonds in an amount equal to the Debt Service Reserve Fund Requirement for the Series 1999 Bonds.

(c) The Corporation agrees that if (i) the Long-Term Debt Service Coverage Ratio shall be less than 1.75 for two consecutive Fiscal Years, (ii) the Long-Term Debt Service Coverage Ratio shall be less than 1.1., (iii) the Long-Term Debt Service Coverage Ratio shall be less than 1.75 and Days of Operating Expenses shall be less than 150, (iv) the Cushion Ratio shall be less than 1.75, or (v) Unrestricted Cash and Investments shall be less than 90 days of Operating Expenses, the Corporation shall fund, by means of a cash deposit, letter of credit or other method acceptable to the Bond Insurer for the Series 2005 Bonds (so long as an Insurer Default shall not exist), a Debt Service Reserve Fund to be held by the Trustee pursuant to the Series 2005 Resolution for the exclusive benefit of the Holders of the Series 2005 Bonds in an amount equal to the Debt Service Reserve Fund Requirement for the Series 2005 Bonds.

(d) The Corporation agrees that if (i) the Long-Term Debt Service Coverage Ratio shall be less than 1.75 for two consecutive Fiscal Years, (ii) the Long-Term Debt Service Coverage Ratio shall be less than 1.1., (iii) the Long-Term Debt Service Coverage Ratio shall be less than 1.75 and Days of Operating Expenses shall be less than 150, (iv) the Cushion Ratio shall be less than 1.75, or (v) Unrestricted Cash and Investments shall be less than 90 days of Operating Expenses, the Corporation shall fund, by means of a cash deposit, letter of credit or other method acceptable to the Bond Insurer for the Series 2006 Bonds (so long as an Insurer Default shall not exist), a Debt Service Reserve Fund to be held by the Trustee pursuant to the Series 2006 Resolution for the exclusive benefit of the Holders of the Series 2006 Bonds in an amount equal to the Debt Service Reserve Fund Requirement for the Series 2006 Bonds.

(e) The Debt Service Reserve Fund Requirement for a particular Series of Bonds shall be equal to the lesser of (i) maximum annual debt service on such Series for any Bond Year, (ii) 125% of the average annual debt service on such Series for any Bond Year, and (iii) ten percent of the stated principal amount of such Series (unless such Series has original issue discount or premium that exceeds 2% of the stated redemption price at maturity plus any original issue premium attributable exclusively to underwriter's compensation, in which case the initial offering prices to the public will be used in lieu of the stated principal amount). In the event that the Corporation shall be required to fund any Debt Service Reserve Fund pursuant to the provisions described above, any of the Bond Order, the Series 1996 Resolution, the Series 1999 Resolution, the Series 2005 Resolution, the Series 2006 Resolution and the Lease, as appropriate, shall be amended without the consent of or notice to any of the Holders in order to make any changes

therein that are necessary in connection with the establishment and maintenance of such Debt Service Reserve Funds.

(f) If any Debt Service Reserve Fund shall be funded pursuant to paragraphs (a), (b), (c) or (d) above and thereafter all tests in the covenant contained therein are satisfied by the Corporation for two consecutive Fiscal Years after the Fiscal Year for which the covenant was not satisfied, then such Debt Service Reserve Fund shall no longer be required to be funded and any funds contained therein shall be released to the Corporation.

(g) For Variable Rate Indebtedness (as defined in the Bond Order), the interest rate assumption for establishing the Debt Service Reserve Fund Requirement shall be equal to the greater of the average variable rate for the preceding period and The Bond Buyer Revenue Bond Index plus 50 basis points.

**Section 3.02. Additions of Sections 4.32, 4.33, 4.34, and 4.35 to the Lease.** Article IV of the Lease is hereby amended by adding the following Sections.

**Section 4.32. Secondary Market Disclosure.** The Corporation agrees, for the benefit of the beneficial owners of the Series 2006 Bonds, to provide:

(a) by not later than seven months after the end of each Fiscal Year of the Corporation, beginning with the Fiscal Year ending September 30, 2006, to each nationally recognized municipal securities information repository ("NRMSIR") and to the state information depository for the State of North Carolina ("SID"), if any, the audited financial statements of the Corporation for such Fiscal Year, if available, prepared in accordance with Section 159-39 of the General Statutes of North Carolina, as amended from time to time, or with any successor statute; or if such audited financial statements are not available by seven months after the end of such Fiscal Year, the unaudited financial statements of the Corporation for such Fiscal Year to be replaced subsequently by the audited financial statements of the Corporation to be delivered within 15 days after such audited financial statements become available for distribution;

(b) by not later than seven months after the end of each Fiscal Year, beginning with the Fiscal Year ending September 30, 2006, to each NRMSIR, and to the SID, if any, the financial and statistical data as of a date not earlier than the end of the preceding Fiscal Year for the type of information included under the following headings in Appendix A to the Official Statement dated the date of distribution thereof relating to the Series 2006 Bonds, to the extent such items are not included in the financial statements referred to in (a) above:

(1) "Facilities and Services" (tables relating to the New Hanover Regional Medical Center therein);

(2) "Medical Staff";

(3) "Utilization Statistics";

- (4) "Historical Pro Forma Long-Term Debt Service Coverage Ratio";
- (5) "Third-Party Reimbursement and Sources of Payment"; and

(c) in a timely manner, to each NRMSIR or to the Municipal Securities Rulemaking Board ("MSRB"), and to the SID, if any, notice of any of the following events with respect to the Series 2006 Bonds, if material:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults;
- (3) unscheduled draws on any debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on any credit enhancements reflecting financial difficulties;
- (5) substitution of any credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions or events affecting the tax-exempt status of the Series 2006 Bonds;
- (7) modification to the rights of the beneficial owners of the Series 2006 Bonds;
- (8) call of any of the Series 2006 Bonds for redemption, other than mandatory sinking fund redemption;
- (9) defeasances of any of the Series 2006 Bonds;
- (10) release, substitution or sale of any property securing repayment of the Series 2006 Bonds; and
- (11) rating changes; and

(d) in a timely manner, to each NRMSIR or to the MSRB, and to the SID, if any notice of a failure of the Corporation to provide required annual financial information described in (a) or (b) above on or before the date specified.

The Corporation may meet the continuing disclosure filing requirements described above (i) solely by transmitting such filing to the Texas Municipal Advisory Council (the "MAC") as provided at <http://www.disclosureusa.org> unless the U.S. Securities and Exchange Commission ("SEC") has withdrawn the interpretive advice in its letter to the MAC dated September 7, 2004, or (ii) by filing the same with any dissemination agent or conduit, including any "central post office" or similar entity, assuming or charged with responsibility for accepting notices, documents or information for transmission to such NRMSIR or SID, to the extent permitted by

the SEC or SEC staff or required by the SEC. For this purpose, permission shall be deemed to have been granted by the SEC staff if and to the extent the agent or conduit has received an interpretive letter, which has not been withdrawn from the SEC staff, to the effect that using the agent or conduit to transmit information to the NRMSIRs and the SID will be treated for purposes of SEC Rule 15c2-12(b)(5) as if such information were transmitted directly to the NRMSIRs and the SID.

If the Corporation fails to comply with the undertakings described above, the Trustee or any beneficial owner of the Series 2006 Bonds then outstanding may take action to protect and enforce the rights of all beneficial owners with respect to such undertakings, including an action for specific performance; provided, however, that failure to comply with such undertakings shall not be an event of default under the Lease, the Bond Order or the Series 2006 Resolution and shall not result in any acceleration of payment of the Series 2006 Bonds. All actions shall be instituted, had and maintained in the manner provided in this paragraph for the benefit of all beneficial owners of the Series 2006 Bonds then outstanding.

The Corporation reserves the right to modify from time to time the information to be provided to the extent necessary or appropriate in the judgment of the Corporation, provided that:

(a) any such modification may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, composition, nature or status of the Corporation;

(b) the information to be provided, as modified, would have complied with the requirements of Rule 15c2-12 issued under the Securities Exchange Act of 1934 ("Rule 15c2-12") as of the date of the Official Statement with respect to the Series 2006 Bonds, after taking into account any amendments or interpretations of Rule 15c2-12, as well as any changes in circumstances; and

(c) any such modification does not materially impair the interests of the beneficial owners of the Series 2006 Bonds, as determined either by parties unaffiliated with the Corporation (such as bond counsel), or by the approving vote of the registered owners of a majority in principal amount of the Series 2006 Bonds then Outstanding pursuant to the terms of the Bond Order and the Series 2006 Resolution as they may be amended from time to time.

Any annual financial information containing the modified operating data or financial information is required to explain, in narrative form, the reasons for the amendments and the impact of the change in the type of operating data or financial information being provided.

The undertaking described in this Section will terminate upon payment, or provision having been made for payment in a manner consistent with Rule 15c2-12, in full of the principal of and interest on all of the Series 2006 Bonds.

**Section 4.33 *Information to Bond Insurer for Series 2006 Bonds.*** For so long as the Bond Insurance for the Series 2006 Bonds remains in effect and there is no Insurer Default with respect thereto, the Corporation will supply the following to the Bond



Insurer (at 31 West 52<sup>nd</sup> Street, New York, New York 10019, Attention: Managing Director - Surveillance):

(a) Annual Documentation: to be submitted within one hundred twenty (120) days of the end of each Fiscal Year:

Audited financial statements for the most recent Fiscal Year;

Quarterly financial statements with comparables for the similar period of the prior Fiscal Year, to be submitted within 60 days of the end of each quarterly period; and

Auditor's management letter for the most recent Fiscal Year.

(b) A letter from the Corporation summarizing the letters of various counsel to the Corporation concerning material litigation (if any) and containing a schedule of all material pending litigation.

(c) Insurance consultant reports required pursuant to the Bond Order and Lease. Utilization Statistics for the most recent Fiscal Year:

Licensed beds;

Beds in service;

Admissions (excluding newborns);

Patient days (excluding newborns) Average length of stay (days);

Percentage occupancy (of beds in service) Emergency Room visits; and

Outpatient visits.

(d) Percentage of revenues by the following payor classes for most recent Fiscal Year:

Medicare Blue Cross/Commercial;

Medicaid Self-pay; and

Managed Care Other.

(e) Medicare Case Mix Index for the most recent Fiscal Year.

(f) Upon delivery to the Bond Insurer of the Corporation's audited annual financial statements, the Corporation shall provide a certification reviewed by its Accountants stating that (1) the Corporation is in compliance with the financial covenants (including evidence of such compliance) set forth in the Bond Order and the Lease and (2) no Event of Default has occurred or is continuing under the Bond Order, this Lease and the Series Resolution.

(g) All Material Event Notices delivered to a NRMSIR and SID, if any, shall be delivered promptly to the Bond Insurer.

(h) The Corporation shall deliver to the Bond Insurer a certificate evidencing semi-annual compliance with the Liquidity Covenant described in Section 4.28 of this Lease within 60 days of each April 1 and October 1, commencing April 1, 2006.

(i) Upon reasonable request, any other information reasonably necessary for the Bond Insurer to perform monitoring analyses of the Corporation.

**Section 4.34 *Limitation on Right to Terminate or Amend Lease.*** For so long as the Bond Insurance Policy for the Series 2006 Bonds remains in effect and there is no Insurer Default with respect thereto, the County shall have the right to terminate or amend this Lease only if either (i) the Bond Insurer has given its prior written consent thereto or (ii) the Series 2006 Bonds are no longer Outstanding in accordance with Article X of the Series 2006 Resolution and the Bond Order.

**Section 4.35. *Reimbursement of Bond Insurer for Series 2006 Bonds.*** The Corporation shall pay or reimburse the Bond Insurer any and all charges, fees, costs and expenses that the Bond Insurer may reasonably pay or incur in connection with (i) the administration, enforcement, defense or preservation of any rights or security in the Series 2006 Resolution or the Lease; (ii) the pursuit of any remedies under the Bond Order, the Series 2006 Resolution or the Lease or otherwise afforded by law or equity, (iii) any amendment, waiver or other action with respect to, or related to, the Bond Order, the Series 2006 Resolution or the Lease whether or not executed or completed, or (iv) any litigation or other dispute in connection with the Bond Order, the Series 2006 Resolution or the Lease or the transactions contemplated thereby, other than costs resulting from the failure of the Bond Insurer to honor its obligations under the Bond Insurance Policy. The Bond Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of the Bond Order, the Series Resolution or the Lease.

## ARTICLE IV

### MISCELLANEOUS

**Section 4.01. *Multiple Counterparts.*** This Amendment 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 4.02. *Severability.*** If any one or more of the covenants, agreements or provisions of this Amendment 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 Amendment or the Lease, as amended hereby, and this Amendment and the Lease, as amended hereby, shall continue in force to the fullest extent permitted by law.

**Section 4.03. *Recordation of Amendment.*** The Corporation covenants that it will cause this Amendment to be recorded and filed in the office of the New Hanover County Register of Deeds.

**Section 4.04. State Law Controlling.** This Amendment shall be construed and enforced in accordance with the laws of the State of North Carolina.

**Section 4.05. Effective Date of This Amendment.** Notwithstanding that this Amendment is dated as of September 1, 2006, this Amendment shall take effect when it is fully executed and has been delivered to the parties hereto contemporaneously with the delivery of and payment for the Series 2006 Bonds. No obligation shall be imposed on the Corporation prior to the effective date of this Amendment.

**Section 4.06. Extension of Term.** The term of the Lease shall be extended so that it terminates on October 2, 2036. All other provisions of Section 3.02 of the Lease, including, without limitation, those regarding early termination and regarding renewal of the Lease for additional five-year terms after expiration of the initial term, remain unchanged.

**Section 4.07. Equity Contribution.** The Corporation shall establish a capital reserve fund, to be held by a local Depository (as defined in the Bond Order) in Wilmington, North Carolina for the benefit of the Corporation, and deposit therein \$28,500,000 to pay a portion of the costs of the Project (as defined in the Series 2006 Resolution), which will not be financed with proceeds of the Series 2006 Bonds.

**Section 4.08. Capitalized Interest.** To the extent that there is insufficient Capitalized Interest during the Capitalized Interest Period (each as defined in the Series 2006 Resolution) to pay interest on the Series 2006 Bonds, the Corporation shall cure such deficiency by providing the Trustee with the necessary amounts to make such payments on the Series 2006 Bonds.

IN WITNESS WHEREOF, the County has caused these presents to be signed in its name and on its behalf by the Chairman of its Board of Commissioners and its official seal to be hereunto affixed and attested by the Clerk to said Board, thereunto duly authorized; and the Corporation has caused these presents to be signed in its name and on its behalf by its President and its corporate seal to be hereunto affixed and attested by its Secretary, all as of the 13th day of September, 2006.



Attest:

COUNTY OF NEW HANOVER, NORTH  
CAROLINA

By: Robert G. Guen  
Chairman of the Board of  
Commissioners

Shirley L. Schult  
Clerk to the Board of Commissioners

NEW HANOVER REGIONAL MEDICAL  
CENTER

[SEAL]

Attest:

By: Jane Davis  
President and Chief Executive Officer

Pete L. L.  
Secretary

ACKNOWLEDGMENT OF EXECUTION ON BEHALF OF THE COUNTY

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Kymberleigh G. Crowell, a Notary Public of New Hanover County and State of North Carolina, do hereby certify that Robert G. Greer ("Signatory"), personally came before me this day and acknowledged that he is Chairman of the New Hanover County Board of Commissioners, a North Carolina Corporation and that he, as Chairman, being authorized to do so, executed the foregoing instrument on behalf of the limited liability company.

I certify that the Signatory personally appeared before me this day, and

(check one of the following)

- ☒ (I have personal knowledge of the identity of the Signatory); or  
☐ (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:

(check one of the following)

- ☐ a driver's license or  
☐ in the form of \_\_\_\_\_); or  
☐ (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 13<sup>th</sup> day of September, 2006.

Kymberleigh G. Crowell

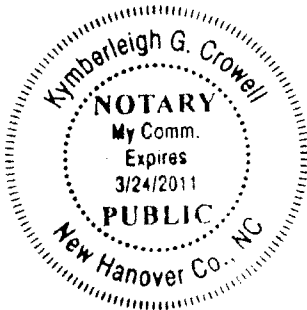
Notary Public

Print Name: Kymberleigh G. Crowell

[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: 3/24/2011

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)



ACKNOWLEDGMENT OF EXECUTION ON BEHALF OF THE CORPORATION

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Barbara Geiger, a Notary Public of New Hanover County and State of North Carolina, do hereby certify that John K. Barto ("**Signatory**"), personally came before me this day and acknowledged that he is the President and Chief Executive Officer of New Hanover Regional Medical Center, a North Carolina nonprofit corporation, and that he, as the President and Chief Executive Officer, being authorized to do so, executed the foregoing instrument on behalf of the limited liability company.

I certify that the Signatory personally appeared before me this day, and  
(check one of the following)

☒ (I have personal knowledge of the identity of the Signatory); or  
☐ (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:

(check one of the following)

☐ a driver's license or  
☐ in the form of \_\_\_\_\_); or  
☐ (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 8<sup>th</sup> day of September, 2006.

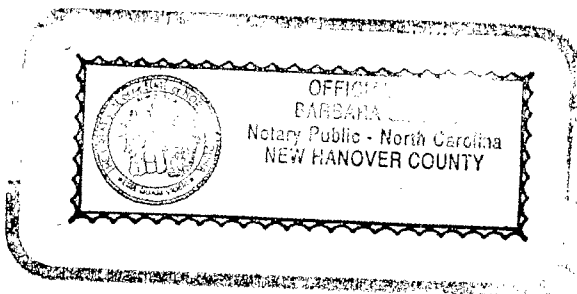
Barbara Geiger  
Notary Public

Print Name: Barbara Geiger

[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: March 19<sup>th</sup>, 2010

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)



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**FIFTH AMENDMENT TO LEASE AGREEMENT**

**By and Between**

**COUNTY OF NEW HANOVER, NORTH CAROLINA**

**and**

**NEW HANOVER REGIONAL MEDICAL CENTER**

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Dated as of October 1, 2008

## **FIFTH AMENDMENT TO LEASE AGREEMENT**

**THIS FIFTH AMENDMENT TO LEASE AGREEMENT**, dated as of October 1, 2008 (this “Amendment”), is made by and between the **COUNTY OF NEW HANOVER, NORTH CAROLINA**, a political subdivision of the State of North Carolina (the “County”), and **NEW HANOVER REGIONAL MEDICAL CENTER**, a nonprofit corporation organized and existing under the General Statutes of North Carolina (the “Corporation”), and amends the Lease Agreement dated as of October 1, 1993, by and between the County and the Corporation, as previously amended by the First Amendment to Lease Agreement dated as of June 15, 1996, the Second Amendment to Lease Agreement dated as of February 15, 1999, the Third Amendment to Lease Agreement dated as of December 1, 2005, and the Fourth Amendment to Lease Agreement dated as of September 1, 2006 (as so amended, the “Lease”).

### **WITNESSETH:**

**WHEREAS**, the County proposes to issue its Variable Rate Hospital Revenue Bonds (New Hanover Regional Medical Center Project) Series 2008A (the “Series 2008A Bonds”) and its Variable Rate Hospital Revenue Bonds (New Hanover Regional Medical Center Project) Series 2008B (the “Series 2008B Bonds,” and together with the Series 2008A Bonds, the “Series 2008 Bonds”) to finance costs associated with (i) reimbursement to the Corporation for payment of a portion of the remaining costs of construction and equipping of a new 100,000 square foot surgical pavilion, (ii) reimbursement to the Corporation for payment of a portion of the remaining costs of construction and equipping of a new 179,000 square foot Women’s and Children’s Center, including intensive care units, labor and delivery facilities, a new nursery and operating rooms, (iii) reimbursement to the Corporation for payment of the costs of acquiring certain information system equipment, (iv) reimbursement to the Corporation for payment of the costs of acquiring certain operating equipment, including, but not limited to, ventilators, ultrasound equipment, infusion pumps, sterilizers, hospital beds and other medical equipment, and (v) reimbursement to the Corporation for payment of the costs constructing and equipping certain facilities improvements, including, but not limited to, elevator upgrades, renovation of existing waiting rooms, labs and storage and other routine capital expenditures (collectively, the “2008 Project”); and

**WHEREAS**, under The State and Local Government Revenue Bond Act, Article 5, as amended, of Chapter 159 of the General Statutes of North Carolina (the “Act”), the County is authorized and empowered to issue revenue bonds for such purposes; and

**WHEREAS**, the County adopted a Bond Order on October 6, 1993 authorizing the issuance of hospital revenue bonds, which was amended by a First Supplemental Bond Order adopted by the County on February 5, 1999, and a Second Supplemental Bond Order adopted by the County on December 7, 2005 (as so amended, the “Bond Order”); and

**WHEREAS**, the County has determined that it is consistent with the purposes of the Act and in the public interest (a) to issue the Series 2008 Bonds pursuant to the Bond Order and a Series Resolution adopted by the County on October 20, 2008, for the purposes stated above and (b) to enter into this Amendment; and



**WHEREAS**, the execution and delivery of this Amendment have been duly authorized by the County and the Corporation; and

**WHEREAS**, all acts, notices and things required by the constitution and laws of the State and the Bylaws of the Corporation to happen, exist and be performed precedent to and in the execution and delivery of this Amendment have happened, exist and have been performed as so required, in order to make this Amendment a valid and binding agreement in accordance with its terms; and

**WHEREAS**, each of the parties hereto represents that it is fully authorized to enter into and perform and fulfill the obligations imposed upon it under this Amendment and the Lease, and the parties are now prepared to execute and deliver this Amendment;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration paid by each of the parties to the other, the receipt of which is hereby acknowledged, the County and the Corporation hereby agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.01. Definitions.** Unless elsewhere defined in this Amendment, all capitalized terms used in this Amendment shall have the meanings ascribed thereto in the Lease. The following terms shall have the following meanings herein and in the Lease as amended hereby:

“*Series 2008 Bonds*” means the Bonds so designated by and issued under the Bond Order and the Series 2008 Resolution.

“*Series 2008 Resolution*” means the Series Resolution adopted by the Board of Commissioners of the County on October 20, 2008.

## **ARTICLE II**

### **REPRESENTATIONS**

**Section 2.01. Representations by the County.** The County represents that it has the power to enter into the transactions contemplated by this Amendment and to carry out its obligations hereunder; and that by proper action of its Board of Commissioners, the County has been duly authorized to execute and deliver this Amendment. The County further represents that it proposes to issue the Series 2008 Bonds that will mature, bear interest, be redeemable and have the other terms and provisions set forth in the Bond Order and the Series 2008 Resolution.

**Section 2.02. Representations by the Corporation.** The Corporation represents that it is a nonsectarian, nonprofit corporation, no part of the net earnings of which inures to the benefit of any private member or individual; that it has authority to lease the Existing Facilities and operate the Health Care System, and, by proper corporate action, has been duly authorized to execute and deliver this Amendment; and that the execution and delivery of this Amendment, its

consummation of the transactions contemplated hereby and fulfillment of or compliance with the terms and conditions of this Amendment, do not conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction, or any agreement or instrument to which the Corporation is now a party or by which it is bound, and do not constitute a default under any of the foregoing, or result in the creation or imposition of any lien or encumbrance of any nature whatsoever upon any of the property or assets of the Corporation under the terms of any instrument or agreement (other than this Amendment and the Bond Order).

### **ARTICLE III**

#### **AMENDMENTS TO LEASE**

**Section 3.01. *Addition of Section 4.36 of the Lease.*** Article IV of the Lease is hereby amended by adding the following Section 4.36:

**Section 4.36. *Secondary Market Disclosure.*** The Corporation agrees, for the benefit of the beneficial owners of the Series 2008 Bonds to provide:

(a) by not later than seven months after the end of each Fiscal Year of the Corporation, beginning with the Fiscal Year ending September 30, 2008 with respect to the Series 2008 Bonds, to each nationally recognized municipal securities information repository ("NRMSIR") and to the state information depository for the State of North Carolina ("SID"), if any, the audited financial statements of the Corporation for such Fiscal Year, if available, prepared in accordance with Section 159-39 of the General Statutes of North Carolina, as amended from time to time, or with any successor statute; or if such audited financial statements are not available by seven months after the end of such Fiscal Year, the unaudited financial statements of the Corporation for such Fiscal Year to be replaced subsequently by the audited financial statements of the Corporation to be delivered within 15 days after such audited financial statements become available for distribution;

(b) by not later than seven months after the end of each Fiscal Year, beginning with the Fiscal Year ending September 30, 2008 with respect to the Series 2008 Bonds, to each NRMSIR, and to the SID, if any, the financial and statistical data as of a date not earlier than the end of the preceding Fiscal Year for the type of information included under the following headings in Appendix A to the Official Statement dated the date of distribution thereof relating to the Series 2008 Bonds, to the extent such items are not included in the financial statements referred to in (a) above:

- (1) "Facilities and Services" (tables relating to the New Hanover Regional Medical Center therein);
- (2) "Medical Staff";
- (3) "Utilization Statistics";
- (4) "Historical Pro Forma Long-Term Debt Service Coverage Ratio";

(5) “Third-Party Reimbursement and Sources of Payment”; and

(c) in a timely manner, to each NRMSIR or to the Municipal Securities Rulemaking Board (“MSRB”), and to the SID, if any, notice of any of the following events with respect to the Series 2008 Bonds, if material:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults;
- (3) unscheduled draws on any debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on any credit enhancements reflecting financial difficulties;
- (5) substitution of any credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions or events affecting the tax-exempt status of the Series 2008 Bonds;
- (7) modification to the rights of the beneficial owners of the Series 2008 Bonds;
- (8) call of any of the Series 2008 Bonds for redemption, other than mandatory sinking fund redemption;
- (9) defeasances of any of the Series 2008 Bonds;
- (10) release, substitution or sale of any property securing repayment of the Series 2008 Bonds; and
- (11) rating changes; and

(d) in a timely manner, to each NRMSIR or to the MSRB, and to the SID, if any notice of a failure of the Corporation to provide required annual financial information described in (a) or (b) above on or before the date specified.

The Corporation may meet the continuing disclosure filing requirements described above either by (a) providing the required information directly to the NRMSIRs and SID, if any, or, to the extent permitted by the United States Securities and Exchange Commission, (b) providing such information electronically to the Municipal Advisory Council of Texas as provided at [www.disclosureusa.org](http://www.disclosureusa.org) for subsequent transmission to the NRMSIRs and SID, if any, or (c) complying with any other procedure that may be authorized by the United States Securities and Exchange Commission.

If the Corporation fails to comply with the undertakings described above, the Trustee or any beneficial owner of the Series 2008 Bonds then outstanding may take action to protect and enforce the rights of all beneficial owners with respect to such undertakings, including an action for specific performance; provided, however, that failure to comply with such undertakings shall not be an event of default under the Lease, the Bond Order or the Series 2008 Resolution and shall not result in any acceleration of payment of the Series 2008 Bonds. All actions shall be instituted, had and maintained in the manner provided in this paragraph for the benefit of all beneficial owners of the Series 2008 Bonds then outstanding.

The Corporation reserves the right to modify from time to time the information to be provided to the extent necessary or appropriate in the judgment of the Corporation, provided that:

(a) any such modification may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, composition, nature or status of the Corporation;

(b) the information to be provided, as modified, would have complied with the requirements of Rule 15c2-12 issued under the Securities Exchange Act of 1934 (“Rule 15c2-12”) as of the date of the Official Statement with respect to the Series 2008 Bonds after taking into account any amendments or interpretations of Rule 15c2-12, as well as any changes in circumstances; and

(c) any such modification does not materially impair the interests of the beneficial owners of the Series 2008 Bonds as determined either by parties unaffiliated with the Corporation (such as bond counsel), or by the approving vote of the registered owners of a majority in principal amount of the Series 2008 Bonds then Outstanding pursuant to the terms of the Bond Order and the Series 2008 Resolution as they may be amended from time to time.

Any annual financial information containing the modified operating data or financial information is required to explain, in narrative form, the reasons for the amendments and the impact of the change in the type of operating data or financial information being provided.

The undertaking described in this Section will terminate upon payment, or provision having been made for payment in a manner consistent with Rule 15c2-12, in full of the principal of and interest on all of the Series 2008 Bonds, as the case may be.

## **ARTICLE IV**

### **MISCELLANEOUS**

**Section 4.01. *Multiple Counterparts.*** This Amendment 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 4.02. *Severability.*** If any one or more of the covenants, agreements or provisions of this Amendment 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 Amendment or the Lease, as amended hereby, and this Amendment and the Lease, as amended hereby, shall continue in force to the fullest extent permitted by law.

**Section 4.03. *Recordation of Amendment.*** The Corporation covenants that it will cause this Amendment to be recorded and filed in the office of the New Hanover County Register of Deeds.

**Section 4.04. *State Law Controlling.*** This Amendment shall be construed and enforced in accordance with the laws of the State of North Carolina.

**Section 4.05. *Effective Date of This Amendment.*** Notwithstanding that this Amendment is dated as of October 1, 2008, this Amendment shall take effect when it is fully executed and has been delivered to the parties hereto contemporaneously with the delivery of and payment for the Series 2008 Bonds. No obligation shall be imposed on the Corporation prior to the effective date of this Amendment.

**Section 4.06. *Extension of Term.*** The term of the Lease shall be extended so that it terminates on October 2, 2038. All other provisions of Section 3.02 of the Lease, including, without limitation, those regarding early termination and regarding renewal of the Lease for additional five-year terms after expiration of the initial term, remain unchanged.

IN WITNESS WHEREOF, the County has caused these presents to be signed in its name and on its behalf by the Chairman of its Board of Commissioners and its official seal to be hereunto affixed and attested by the Clerk to said Board, thereunto duly authorized; and the Corporation has caused these presents to be signed in its name and on its behalf by its President and its corporate seal to be hereunto affixed and attested by its Secretary, all as of the 6th day of November, 2008.



Attest:

COUNTY OF NEW HANOVER, NORTH  
CAROLINA

By: Robert B. Green  
Chairman of the Board of  
Commissioners

Shirley L. Schult  
Clerk to the Board of Commissioners

NEW HANOVER REGIONAL MEDICAL  
CENTER

[SEAL]

Attest:

By: James H. Hutto  
President and Chief Executive Officer

Nancy S. Mark  
Secretary

ACKNOWLEDGMENT OF EXECUTION ON BEHALF OF THE COUNTY

STATE OF NORTH CAROLINA

Pender  
COUNTY OF ~~NEW HANOVER~~

I, Diane N. Morgan, a Notary Public of New Hanover County and State of North Carolina, do hereby certify that Robert G. Greer and Sheila L. Schult ("**Signatories**"), personally came before me this day and acknowledged that they are the Chairman of the Board of Commissioners and Clerk to the Board of Commissioners, respectively, of the County of New Hanover, North Carolina, and that they, as Chairman of the Board of Commissioners and Clerk to the Board of Commissioners, respectively, being authorized to do so, executed the foregoing instrument on behalf of the limited liability company.

I certify that the Signatories personally appeared before me this day, and

(check one of the following)

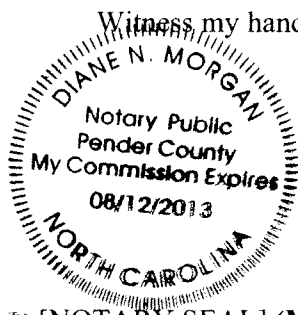
- ☒ (I have personal knowledge of the identity of the Signatories); **or**  
☐ (I have seen satisfactory evidence of the Signatories' identity, by a current state or federal identification with the Signatories' photograph in the form of:

(check one of the following)

- ☐ a driver's license or  
☐ in the form of \_\_\_\_\_); **or**  
☐ (a credible witness has sworn to the identity of the Signatories).

The Signatories acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 3rd day of Nov., 2008.



Diane N. Morgan  
Notary Public

Print Name: Diane N. Morgan  
[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires:

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

**ACKNOWLEDGMENT OF EXECUTION ON BEHALF OF THE CORPORATION**

STATE OF NORTH CAROLINA

COUNTY OF <sup>Pender</sup>NEW HANOVER

I, <sup>Pender</sup>Diane N. Morgan, Notary Public of ~~New Hanover~~ <sup>Pender</sup> County and State of North Carolina, do hereby certify that John K. Barto and Nancy S. Marks ("**Signatories**"), personally came before me this day and acknowledged that they are the President and Chief Executive Officer and Secretary, respectively of New Hanover Regional Medical Center, a North Carolina nonprofit corporation, and that they, as the President and Chief Executive Officer and Secretary, respectively, being authorized to do so, executed the foregoing instrument on behalf of the limited liability company.

I certify that the Signatories personally appeared before me this day, and

*(check one of the following)*

☒ (I have personal knowledge of the identity of the Signatories); or

☐ (I have seen satisfactory evidence of the Signatories' identity, by a current state or federal identification with the Signatories' photograph in the form of:

*(check one of the following)*

☐ a driver's license or

☐ in the form of \_\_\_\_\_); or

☐ (a credible witness has sworn to the identity of the Signatories).

The Signatories acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 6th day of NOV, 2008.



Diane N. Morgan  
Notary Public

Print Name: Diane N. Morgan  
[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: 8-12-2013

☛ [NOTARY SEAL] (MUST BE FULLY LEGIBLE)



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**SIXTH AMENDMENT TO LEASE AGREEMENT**

**By and Between**

**COUNTY OF NEW HANOVER, NORTH CAROLINA**

**and**

**NEW HANOVER REGIONAL MEDICAL CENTER**

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Dated as of June 1, 2009

## **SIXTH AMENDMENT TO LEASE AGREEMENT**

**THIS SIXTH AMENDMENT TO LEASE AGREEMENT**, dated as of June 1, 2009 (this “Amendment”), is made by and between the **COUNTY OF NEW HANOVER, NORTH CAROLINA**, a political subdivision of the State of North Carolina (the “County”), and **NEW HANOVER REGIONAL MEDICAL CENTER**, a nonprofit corporation organized and existing under the General Statutes of North Carolina (the “Corporation”), and amends the Lease Agreement dated as of October 1, 1993, by and between the County and the Corporation, as previously amended by the First Amendment to Lease Agreement dated as of June 15, 1996, the Second Amendment to Lease Agreement dated as of February 15, 1999, the Third Amendment to Lease Agreement dated as of December 1, 2005, the Fourth Amendment to Lease Agreement dated as of September 1, 2006, and the Fifth Amendment to Lease Agreement dated as of October 1, 2008 (as so amended, the “Lease”).

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

**WHEREAS**, the County proposes to convert all of the County’s outstanding Variable Rate Hospital Revenue Bonds (New Hanover Regional Medical Center Project) Series 2006A (the “2006A Bonds”) and all of the County’s outstanding Variable Rate Hospital Revenue Bonds (New Hanover Regional Medical Center Project) Series 2006B (the “2006B Bonds,” and together with the Series 2006A Bonds, the “Series 2006 Bonds”); and

**WHEREAS**, under The State and Local Government Revenue Bond Act, Article 5, as amended, of Chapter 159 of the General Statutes of North Carolina (the “Act”), the County is authorized and empowered to issue revenue bonds for such purposes; and

**WHEREAS**, the County adopted a Bond Order on October 6, 1993 authorizing the issuance of hospital revenue bonds, which was amended by a First Supplemental Bond Order adopted by the County on February 5, 1999, and a Second Supplemental Bond Order adopted by the County on December 7, 2005 (as so amended, the “Bond Order”); and

**WHEREAS**, the County has determined that it is consistent with the purposes of the Act and in the public interest to convert all of the Series 2006 Bonds to the Fixed Rate Mode and to enter into this Amendment; and

**WHEREAS**, the execution and delivery of this Amendment have been duly authorized by the County and the Corporation; and

**WHEREAS**, all acts, notices and things required by the constitution and laws of the State and the Bylaws of the Corporation to happen, exist and be performed precedent to and in the execution and delivery of this Amendment have happened, exist and have been performed as so required, in order to make this Amendment a valid and binding agreement in accordance with its terms; and

**WHEREAS**, each of the parties hereto represents that it is fully authorized to enter into and perform and fulfill the obligations imposed upon it under this Amendment and the Lease, and the parties are now prepared to execute and deliver this Amendment;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration paid by each of the parties to the other, the receipt of which is hereby acknowledged, the County and the Corporation hereby agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.01. Definitions.** Unless elsewhere defined in this Amendment, all capitalized terms used in this Amendment shall have the meanings ascribed thereto in the Lease. The following terms shall have the following meanings herein and in the Lease as amended hereby:

*"Series 2006 Bond Insurer"* means Bond Insurer as defined in Section 101 of the Series 2006 Resolution.

*"Series 2006 Resolution"* means the Series Resolution adopted by the Board of Commissioners of the County on September 5, 2006, as amended by the First Amendment to Series Resolution adopted by the Board of Commissioners of the County on May 18, 2009.

*"Series 2006 Bonds"* means the Bonds so designated by and issued under the Bond Order and the Series 2006 Resolution.

## **ARTICLE II**

### **REPRESENTATIONS**

**Section 2.01. Representations by the County.** The County represents that it has the power to enter into the transactions contemplated by this Amendment and to carry out its obligations hereunder; and that by proper action of its Board of Commissioners, the County has been duly authorized to execute and deliver this Amendment. The County further represents that it proposes to convert all of the Series 2006 Bonds to the Fixed Rate Mode pursuant to the Series 2006 Resolution.

**Section 2.02. Representations by the Corporation.** The Corporation represents that it is a nonsectarian, nonprofit corporation, no part of the net earnings of which inures to the benefit of any private member or individual; that it has authority to lease the Existing Facilities and operate the Health Care System, and, by proper corporate action, has been duly authorized to execute and deliver this Amendment; and that the execution and delivery of this Amendment, its consummation of the transactions contemplated hereby and fulfillment of or compliance with the terms and conditions of this Amendment, do not conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction, or any agreement or instrument to which the Corporation is now a party or by which it is bound, and do not constitute a default

under any of the foregoing, or result in the creation or imposition of any lien or encumbrance of any nature whatsoever upon any of the property or assets of the Corporation under the terms of any instrument or agreement (other than this Amendment and the Bond Order).

### **ARTICLE III**

#### **AMENDMENTS TO LEASE**

**Section 3.01. *Amendment to Section 4.32 of the Lease.*** The second paragraph of Section 4.32(d) is hereby amended and restated to read as follows:

The Corporation may meet the continuing disclosure filing requirements described above by complying with any other procedure that may be authorized or required by the United States Securities and Exchange Commission (the “SEC”). Effective July 1, 2009, Rule 15c2-12 issued under the Securities Exchange Act of 1934, as amended (“Rule 15c2-12”), will require that all of the information described in this Section shall be provided to the MSRB, which will be designated as the sole NRMSIR under Rule 15c2-12, in an electronic format as prescribed by the MSRB and accompanied by such identifying information as prescribed by the MSRB.

**Section 3.02. *Addition of Section 4.37 of the Lease.*** Article IV of the Lease is hereby amended by adding the following Section 4.37:

#### **Section 4.37. *Debt-Service Reserve Fund.***

(a) The Corporation agrees that if the Issuance, Sale and Closing Certificate (as defined in the Series 2006 Resolution) provides that a Debt Service Reserve Fund shall be funded in an amount equal to the Debt Service Reserve Fund Requirement, then the Corporation shall fund, by means of a cash deposit, letter of credit or other method acceptable to the Bond Insurer for the Series 2006 Bonds (so long as an Insurer Default shall not exist), a Debt Service Reserve Fund to be held by the Trustee pursuant to the Series 2006 Resolution for the exclusive benefit of the Holders of the Series 2006 Bonds in an amount equal to the Debt Service Reserve Fund Requirement (as defined in the Series 2006 Resolution) for the Series 2006 Bonds.

(b) If a Debt Service Reserve Fund is funded for the benefit of the Series 2006 Bonds pursuant to Section 4.37(a), the Corporation agrees that if there is any deficiency in the Debt Service Reserve Fund resulting from the withdrawal of moneys therein, then the Corporation shall provide funds to the County to make up any such deficiency over the twelve month period immediately following the month in which the withdrawal is made by monthly deposits of one-twelfth (1/12) of the amount of the deficiency.

**Section 3.03. *Addition of Section 4.38 of the Lease.*** Article IV of the Lease is hereby amended by adding the following Section 4.38:

**Section 4.38. *Funding of Original Issuance Discount.*** In connection with the conversion of the Series 2006 Bonds to the Fixed Rate Mode and, to the extent that the

Series 2006 Bonds are sold at a purchase price that results in a net discount, the County shall pay an amount equal to the net discount to the Trustee, serving as tender agent, on the Conversion Date from funds provided by the Corporation under this Lease.

## **ARTICLE IV**

### **MISCELLANEOUS**

**Section 4.01. *Multiple Counterparts.*** This Amendment 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 4.02. *Severability.*** If any one or more of the covenants, agreements or provisions of this Amendment 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 Amendment or the Lease, as amended hereby, and this Amendment and the Lease, as amended hereby, shall continue in force to the fullest extent permitted by law.

**Section 4.03. *Recordation of Amendment.*** The Corporation covenants that it will cause this Amendment to be recorded and filed in the office of the New Hanover County Register of Deeds.

**Section 4.04. *State Law Controlling.*** This Amendment shall be construed and enforced in accordance with the laws of the State of North Carolina.

**Section 4.05. *Effective Date of This Amendment.*** Notwithstanding that this Amendment is dated as of June 1, 2009, this Amendment shall take effect when (i) it is fully executed and has been delivered to the parties hereto contemporaneously with the conversion of the Rate Determination Method for the Series 2006 Bonds to the Fixed Rate Mode, (ii) consent of the Series 2006 Bond Insurer has been obtained as required by Section 1103 of the 2006 Series Resolution, (iii) consent of MBIA Insurance Corporation has been obtained by the County as required under Section 1103 of the Series Resolution adopted on February 5, 1999 and (iv) consent of RBC Bank (USA) has been obtained as required under Section 4.3(p) of the Reimbursement Agreement dated as of October 1, 2008, among RBC Bank (USA), the County and the Corporation. No obligation shall be imposed on the Corporation prior to the effective date of this Amendment.

IN WITNESS WHEREOF, the County has caused these presents to be signed in its name and on its behalf by the Chairman of its Board of Commissioners and its official seal to be hereunto affixed and attested by the Clerk to said Board, thereunto duly authorized; and the Corporation has caused these presents to be signed in its name and on its behalf by its Executive Vice President and its corporate seal to be hereunto affixed and attested by its Secretary, all as of the 4th day of June, 2009.



Attest:

COUNTY OF NEW HANOVER, NORTH  
CAROLINA

By: Ted Davis Jr.  
Chairman of the Board of  
Commissioners

Shirley L. Schult  
Clerk to the Board of Commissioners

NEW HANOVER REGIONAL MEDICAL  
CENTER

[SEAL]

Attest:

By: \_\_\_\_\_  
Executive Vice President and Chief  
Financial Officer

\_\_\_\_\_  
Secretary

ACKNOWLEDGMENT OF EXECUTION ON BEHALF OF THE COUNTY

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Beverly F. Thomas, a Notary Public of New Hanover County and State of North Carolina, do hereby certify that Ted Davis, Jr. and Sheila L. Schult ("Signatories"), personally came before me this day and acknowledged that they are the Chairman of the Board of Commissioners and Clerk to the Board of Commissioners, respectively, of the County of New Hanover, North Carolina, and that they, as Chairman of the Board of Commissioners and Clerk to the Board of Commissioners, respectively, being authorized to do so, executed the foregoing instrument on behalf of the limited liability company.

I certify that the Signatories personally appeared before me this day, and

(check one of the following)

☒ (I have personal knowledge of the identity of the Signatories); or  
☐ (I have seen satisfactory evidence of the Signatories' identity, by a current state or federal identification with the Signatories' photograph in the form of:

(check one of the following)

☐ a driver's license or  
☐ in the form of \_\_\_\_\_); or  
☐ (a credible witness has sworn to the identity of the Signatories).

The Signatories acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 1<sup>st</sup> day of June, 2009.

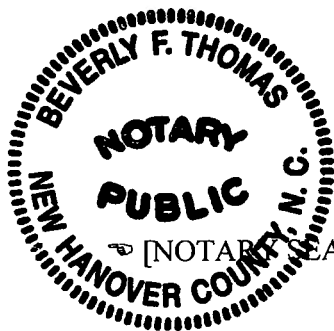
Beverly F. Thomas

Notary Public

Print Name: Beverly F. Thomas

[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: February 21, 2010



[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

IN WITNESS WHEREOF, the County has caused these presents to be signed in its name and on its behalf by the Chairman of its Board of Commissioners and its official seal to be hereunto affixed and attested by the Clerk to said Board, thereunto duly authorized; and the Corporation has caused these presents to be signed in its name and on its behalf by its Executive Vice President and its corporate seal to be hereunto affixed and attested by its Secretary, all as of the 4th day of June, 2009.

[SEAL]

**COUNTY OF NEW HANOVER, NORTH  
CAROLINA**

Attest:


By: \_\_\_\_\_  
Chairman of the Board of  
Commissioners

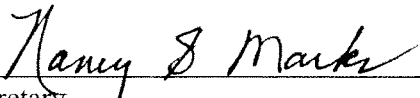
\_\_\_\_\_  
Clerk to the Board of Commissioners

**NEW HANOVER REGIONAL MEDICAL  
CENTER**

[SEAL]

Attest:

By:   
Executive Vice President and Chief  
Financial Officer

  
Secretary



**ACKNOWLEDGMENT OF EXECUTION ON BEHALF OF THE CORPORATION**

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, KATHY A. DIXON, a Notary Public of <sup>Brunswick</sup>~~New Hanover~~ County and State of North Carolina, do hereby certify that Edwin J. Ollie and Nancy S. Marks ("**Signatories**"), personally came before me this day and acknowledged that they are the Executive Vice President and Chief Financial Officer and Secretary, respectively of New Hanover Regional Medical Center, a North Carolina nonprofit corporation, and that they, as the Executive Vice President and Chief Financial Officer and Secretary, respectively, being authorized to do so, executed the foregoing instrument on behalf of the limited liability company.

I certify that the Signatories personally appeared before me this day, and

*(check one of the following)*

☒ (I have personal knowledge of the identity of the Signatories); **or**

☐ (I have seen satisfactory evidence of the Signatories' identity, by a current state or federal identification with the Signatories' photograph in the form of:

*(check one of the following)*

☐ a driver's license or

☐ in the form of \_\_\_\_\_); **or**

☐ (a credible witness has sworn to the identity of the Signatories).

The Signatories acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 2 day of June, 2009.

Kathy A. Dixon  
Notary Public

Print Name: Kathy A. Dixon

[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires:

☞ [NOTARY SEAL] (MUST BE FULLY LEGIBLE)

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**SEVENTH AMENDMENT TO LEASE AGREEMENT**

**By and Between**

**COUNTY OF NEW HANOVER, NORTH CAROLINA**

**and**

**NEW HANOVER REGIONAL MEDICAL CENTER**

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Dated as of September 1, 2011

## SEVENTH AMENDMENT TO LEASE AGREEMENT

**THIS SEVENTH AMENDMENT TO LEASE AGREEMENT**, dated as of September 1, 2011 (this "Amendment"), is made by and between the **COUNTY OF NEW HANOVER, NORTH CAROLINA**, a political subdivision of the State of North Carolina (the "County"), and **NEW HANOVER REGIONAL MEDICAL CENTER**, a nonprofit corporation organized and existing under the General Statutes of North Carolina (the "Corporation"), and amends the Lease Agreement dated as of October 1, 1993, by and between the County and the Corporation, as previously amended by the First Amendment to Lease Agreement dated as of June 15, 1996, the Second Amendment to Lease Agreement dated as of February 15, 1999, the Third Amendment to Lease Agreement dated as of December 1, 2005, the Fourth Amendment to Lease Agreement dated as of September 1, 2006, the Fifth Amendment to Lease Agreement dated as of October 1, 2008 and a Sixth Amendment to Lease Agreement dated as of June 1, 2009 (as so amended, the "Lease").

### WITNESSETH:

**WHEREAS**, the County proposes to issue its Hospital Revenue Refunding Bonds (New Hanover Regional Medical Center) Series 2011 (the "Series 2011 Bonds") to currently refund all or a portion of the County's outstanding Hospital Revenue Bonds (New Hanover Regional Medical Center Project) Series 1999 (the "Series 1999 Bonds"); and

**WHEREAS**, under The State and Local Government Revenue Bond Act, Article 5, as amended, of Chapter 159 of the General Statutes of North Carolina (the "Act"), the County is authorized and empowered to issue revenue bonds for such purposes; and

**WHEREAS**, the County adopted a Bond Order on October 6, 1993 authorizing the issuance of hospital revenue bonds, which was amended by a First Supplemental Bond Order adopted by the County on February 5, 1999, and a Second Supplemental Bond Order adopted by the County on December 7, 2005 (as so amended, the "Bond Order"); and

**WHEREAS**, the County has determined that it is consistent with the purposes of the Act and in the public interest (a) to issue the Series 2011 Bonds pursuant to the Bond Order and an Amended and Restated Series Resolution adopted by the County on August 15, 2011, for the purposes stated above and (b) to enter into this Amendment; and

**WHEREAS**, the execution and delivery of this Amendment have been duly authorized by the County and the Corporation; and

**WHEREAS**, all acts, notices and things required by the constitution and laws of the State and the Bylaws of the Corporation to happen, exist and be performed precedent to and in the execution and delivery of this Amendment have happened, exist and have been performed as so required, in order to make this Amendment a valid and binding agreement in accordance with its terms; and

**WHEREAS**, each of the parties hereto represents that it is fully authorized to enter into and perform and fulfill the obligations imposed upon it under this Amendment and the Lease, and the parties are now prepared to execute and deliver this Amendment;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration paid by each of the parties to the other, the receipt of which is hereby acknowledged, the County and the Corporation hereby agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01. Definitions.** Unless elsewhere defined in this Amendment, all capitalized terms used in this Amendment shall have the meanings ascribed thereto in the Lease. The following terms shall have the following meanings herein and in the Lease as amended hereby:

*"Series 2011 Bonds"* means the Bonds so designated by and issued under the Bond Order and the Series 2011 Resolution.

*"Series 2011 Resolution"* means the Amended and Restated Series Resolution adopted by the Board of Commissioners of the County on August 15, 2011.

## ARTICLE II

### REPRESENTATIONS

**Section 2.01. Representations by the County.** The County represents that it has the power to enter into the transactions contemplated by this Amendment and to carry out its obligations hereunder; and that by proper action of its Board of Commissioners, the County has been duly authorized to execute and deliver this Amendment. The County further represents that it proposes to issue the Series 2011 Bonds that will mature, bear interest, be redeemable and have the other terms and provisions set forth in the Bond Order and the Series 2011 Resolution.

**Section 2.02. Representations by the Corporation.** The Corporation represents that it is a nonsectarian, nonprofit corporation, no part of the net earnings of which inures to the benefit of any private member or individual; that it has authority to lease the Existing Facilities and operate the Health Care System, and, by proper corporate action, has been duly authorized to execute and deliver this Amendment; and that the execution and delivery of this Amendment, its consummation of the transactions contemplated hereby and fulfillment of or compliance with the terms and conditions of this Amendment, do not conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction, or any agreement or instrument to which the Corporation is now a party or by which it is bound, and do not constitute a default under any of the foregoing, or result in the creation or imposition of any lien or encumbrance of any nature whatsoever upon any of the property or assets of the Corporation under the terms of any instrument or agreement (other than this Amendment and the Bond Order).

## ARTICLE III

### AMENDMENTS TO LEASE

**Section 3.01. *Addition of Section 4.39 of the Lease.*** Article IV of the Lease is hereby amended by adding the following Section 4.39:

**Section 4.39. *Secondary Market Disclosure.*** The Corporation agrees, for the benefit of the beneficial owners of the Series 2011 Bonds to provide to the MSRB:

(a) by not later than seven months after the end of each Fiscal Year of the Corporation, beginning with the Fiscal Year ending September 30, 2011 with respect to the Series 2011 Bonds, the audited financial statements of the Corporation for such Fiscal Year, if available, prepared in accordance with Section 159-39 of the General Statutes of North Carolina, as amended from time to time, or with any successor statute; or if such audited financial statements are not available by seven months after the end of such Fiscal Year, the unaudited financial statements of the Corporation for such Fiscal Year to be replaced subsequently by the audited financial statements of the Corporation to be delivered within 15 days after such audited financial statements become available for distribution;

(b) by not later than seven months after the end of each Fiscal Year, beginning with the Fiscal Year ending September 30, 2011 with respect to the Series 2011 Bonds, the financial and statistical data as of a date not earlier than the end of the preceding Fiscal Year for the type of information included under the following headings in Appendix A to the Official Statement dated the date of distribution thereof relating to the Series 2011 Bonds, to the extent such items are not included in the financial statements referred to in (a) above:

(1) "Facilities and Services" (tables relating to the New Hanover Regional Medical Center therein);

(2) "Medical Staff";

(3) "Utilization Statistics";

(4) "Historical Long-Term Debt Service Coverage Ratios";

(5) "Liquidity";

(6) "Debt-to-Capitalization"; and

(7) "Third-Party Reimbursement and Sources of Payment";

(c) in a timely manner not in excess of ten business days after the occurrence of the event, notice of any of the following events with respect to the Series 2011 Bonds:

(1) principal and interest payment delinquencies;

- (2) non-payment related defaults, if material;
  - (3) unscheduled draws on any debt service reserves reflecting financial difficulties;
  - (4) unscheduled draws on any credit enhancements reflecting financial difficulties;
  - (5) substitution of any credit or liquidity providers, or their failure to perform;
  - (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Series 2011 Bonds, or other material events affecting the tax status of the Series 2011 Bonds;
  - (7) modification to the rights of the beneficial owners of the Series 2011 Bonds, if material;
  - (8) call of any of the Series 2011 Bonds for redemption, other than mandatory sinking fund redemption, if material, and tender offers;
  - (9) defeasances of any of the Series 2011 Bonds;
  - (10) release, substitution or sale of any property securing repayment of the Series 2011 Bonds, if material;
  - (11) rating changes;
  - (12) bankruptcy, insolvency, receivership or similar event of the Corporation;
  - (13) the consummation of a merger, consolidation, or acquisition involving the Corporation or the sale of all or substantially all of the assets of the Corporation, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
  - (14) appointment of a successor or additional trustee or the change of name of the trustee, if material; and
- (d) in a timely manner, notice of a failure of the Corporation to provide required annual financial information described in (a) or (b) above on or before the date specified.

The Corporation shall provide the documents referred to above to the MSRB in an electronic format as prescribed by the MSRB and accompanied by identifying information as prescribed by the MSRB. The Corporation may discharge its undertaking described above by transmitting the documents referred to above to any entity and by any method authorized or required by the U.S. Securities and Exchange Commission.

If the Corporation fails to comply with the undertakings described above, the Trustee or any beneficial owner of the Series 2011 Bonds then outstanding may take action to protect and enforce the rights of all beneficial owners with respect to such undertakings, including an action for specific performance; provided, however, that failure to comply with such undertakings shall not be an event of default under the Lease, the Bond Order or the Series 2011 Resolution and shall not result in any acceleration of payment of the Series 2011 Bonds. All actions shall be instituted, had and maintained in the manner provided in this paragraph for the benefit of all beneficial owners of the Series 2011 Bonds then outstanding.

The Corporation reserves the right to modify from time to time the information to be provided to the extent necessary or appropriate in the judgment of the Corporation, provided that:

(a) any such modification may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, composition, nature or status of the Corporation;

(b) the information to be provided, as modified, would have complied with the requirements of Rule 15c2-12 issued under the Securities Exchange Act of 1934 ("Rule 15c2-12") as of the date of the Official Statement with respect to the Series 2011 Bonds after taking into account any amendments or interpretations of Rule 15c2-12, as well as any changes in circumstances; and

(c) any such modification does not materially impair the interests of the beneficial owners of the Series 2011 Bonds as determined either by parties unaffiliated with the Corporation (such as bond counsel), or by the approving vote of the registered owners of a majority in principal amount of the Series 2011 Bonds then Outstanding pursuant to the terms of the Bond Order and the Series 2011 Resolution as they may be amended from time to time.

Any annual financial information containing the modified operating data or financial information is required to explain, in narrative form, the reasons for the amendments and the impact of the change in the type of operating data or financial information being provided.

The undertaking described in this Section will terminate upon payment, or provision having been made for payment in a manner consistent with Rule 15c2-12, in full of the principal of and interest on all of the Series 2011 Bonds.

## ARTICLE IV

### MISCELLANEOUS

**Section 4.01. *Multiple Counterparts.*** This Amendment 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 4.02. *Severability.*** If any one or more of the covenants, agreements or provisions of this Amendment 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 Amendment or the Lease, as amended hereby, and this Amendment and the Lease, as amended hereby, shall continue in force to the fullest extent permitted by law.

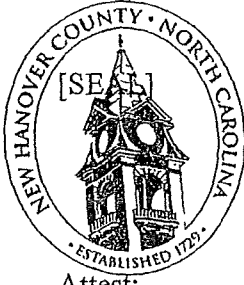
**Section 4.03. *Recordation of Amendment.*** The Corporation covenants that it will cause this Amendment to be recorded and filed in the office of the New Hanover County Register of Deeds.

**Section 4.04. *State Law Controlling.*** This Amendment shall be construed and enforced in accordance with the laws of the State of North Carolina.

**Section 4.05. *Effective Date of This Amendment.*** Notwithstanding that this Amendment is dated as of September 1, 2011, this Amendment shall take effect when it is fully executed and has been delivered to the parties hereto contemporaneously with the delivery of and payment for the Series 2011 Bonds. No obligation shall be imposed on the Corporation prior to the effective date of this Amendment.



IN WITNESS WHEREOF, the County has caused these presents to be signed in its name and on its behalf by the Chairman of its Board of Commissioners and its official seal to be hereunto affixed and attested by the Clerk to said Board, thereunto duly authorized; and the Corporation has caused these presents to be signed in its name and on its behalf by its President and its corporate seal to be hereunto affixed and attested by its Secretary, all as of the \_\_ day of September, 2011.



Attest:

COUNTY OF NEW HANOVER, NORTH  
CAROLINA

By: [Signature]  
Chairman of the Board of  
Commissioners

[Signature]  
Clerk to the Board of Commissioners

NEW HANOVER REGIONAL MEDICAL  
CENTER

[SEAL]

Attest:

By: \_\_\_\_\_  
President and Chief Executive Officer

\_\_\_\_\_  
Secretary

## ARTICLE IV

### MISCELLANEOUS

**Section 4.01. *Multiple Counterparts.*** This Amendment 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 4.02. *Severability.*** If any one or more of the covenants, agreements or provisions of this Amendment 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 Amendment or the Lease, as amended hereby, and this Amendment and the Lease, as amended hereby, shall continue in force to the fullest extent permitted by law.

**Section 4.03. *Recordation of Amendment.*** The Corporation covenants that it will cause this Amendment to be recorded and filed in the office of the New Hanover County Register of Deeds.

**Section 4.04. *State Law Controlling.*** This Amendment shall be construed and enforced in accordance with the laws of the State of North Carolina.

**Section 4.05. *Effective Date of This Amendment.*** Notwithstanding that this Amendment is dated as of September 1, 2011, this Amendment shall take effect when it is fully executed and has been delivered to the parties hereto contemporaneously with the delivery of and payment for the Series 2011 Bonds. No obligation shall be imposed on the Corporation prior to the effective date of this Amendment.

IN WITNESS WHEREOF, the County has caused these presents to be signed in its name and on its behalf by the Chairman of its Board of Commissioners and its official seal to be hereunto affixed and attested by the Clerk to said Board, thereunto duly authorized; and the Corporation has caused these presents to be signed in its name and on its behalf by its President and its corporate seal to be hereunto affixed and attested by its Secretary, all as of the \_\_\_ day of September, 2011.

[SEAL]

COUNTY OF NEW HANOVER, NORTH  
CAROLINA

Attest:

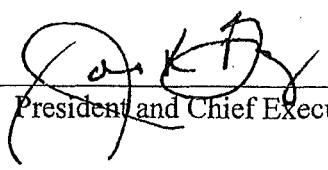
By: \_\_\_\_\_  
Chairman of the Board of  
Commissioners

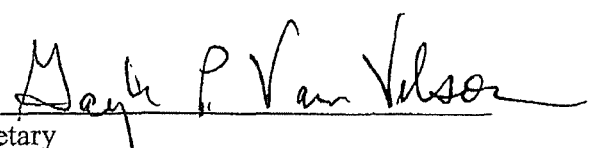
\_\_\_\_\_  
Clerk to the Board of Commissioners

NEW HANOVER REGIONAL MEDICAL  
CENTER

[SEAL]

Attest:

By:  \_\_\_\_\_  
President and Chief Executive Officer

 \_\_\_\_\_  
Secretary

**ACKNOWLEDGMENT OF EXECUTION ON BEHALF OF THE COUNTY**

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Teresa P. Elmore, a Notary Public of New Hanover County and State of North Carolina, do hereby certify that Jonathan Barfield, Jr. and Sheila L. Schult ("Signatories"), personally came before me this day and acknowledged that they are the Chairman of the Board of Commissioners and Clerk to the Board of Commissioners, respectively, of the County of New Hanover, North Carolina, and that they, as Chairman of the Board of Commissioners and Clerk to the Board of Commissioners, respectively, being authorized to do so, executed the foregoing instrument on behalf of the limited liability company.

I certify that the Signatories personally appeared before me this day, and

*(check one of the following)*

☒ (I have personal knowledge of the identity of the Signatories); or

☐ (I have seen satisfactory evidence of the Signatories' identity, by a current state or federal identification with the Signatories' photograph in the form of:

*(check one of the following)*

☐ a driver's license or

☐ in the form of \_\_\_\_\_); or

☐ (a credible witness has sworn to the identity of the Signatories).

The Signatories acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 26 day of Sept, 2011.

Teresa P. Elmore

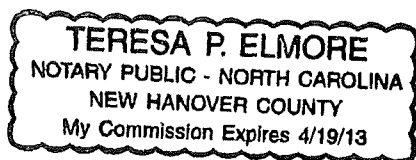
Notary Public

Print Name: Teresa P. Elmore

[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires:

☞ [NOTARY SEAL] (MUST BE FULLY LEGIBLE)



**ACKNOWLEDGMENT OF EXECUTION ON BEHALF OF THE CORPORATION**

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, \_\_\_\_\_, a Notary Public of New Hanover County and State of North Carolina, do hereby certify that John K. Barto and Gayle P. Van Velsor ("**Signatories**"), personally came before me this day and acknowledged that they are the President and Chief Executive Officer and Secretary, respectively of New Hanover Regional Medical Center, a North Carolina nonprofit corporation, and that they, as the President and Chief Executive Officer and Secretary, respectively, being authorized to do so, executed the foregoing instrument on behalf of the limited liability company.

I certify that the Signatories personally appeared before me this day, and

*(check one of the following)*

\_\_\_\_\_ (I have personal knowledge of the identity of the Signatories); **or**

\_\_\_\_\_ (I have seen satisfactory evidence of the Signatories' identity, by a current state or federal identification with the Signatories' photograph in the form of:

*(check one of the following)*

\_\_\_\_\_ a driver's license or

\_\_\_\_\_ in the form of \_\_\_\_\_); **or**

\_\_\_\_\_ (a credible witness has sworn to the identity of the Signatories).

The Signatories acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public

Print Name: \_\_\_\_\_

*[Note: Notary Public must sign exactly as on notary seal]*

My Commission Expires:

☞ [NOTARY SEAL] (**MUST BE FULLY LEGIBLE**)

**ACKNOWLEDGMENT OF EXECUTION ON BEHALF OF THE CORPORATION**

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Brenda L. Wiland, a Notary Public of New Hanover County and State of North Carolina, do hereby certify that John K. Barto and Gayle P. Van Velsor ("**Signatories**"), personally came before me this day and acknowledged that they are the President and Chief Executive Officer and Secretary, respectively of New Hanover Regional Medical Center, a North Carolina nonprofit corporation, and that they, as the President and Chief Executive Officer and Secretary, respectively, being authorized to do so, executed the foregoing instrument on behalf of the limited liability company.

I certify that the Signatories personally appeared before me this day, and

*(check one of the following)*

- ☒ (I have personal knowledge of the identity of the Signatories); or  
☐ (I have seen satisfactory evidence of the Signatories' identity, by a current state or federal identification with the Signatories' photograph in the form of:

*(check one of the following)*

- ☐ a driver's license or  
☐ in the form of \_\_\_\_\_); or  
☐ (a credible witness has sworn to the identity of the Signatories).

The Signatories acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 27<sup>th</sup> day of September, 2011.

Brenda L. Wiland

Notary Public

Print Name: Brenda L. Wiland

[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: 10-25-2012

☞ [NOTARY SEAL] (MUST BE FULLY LEGIBLE)

Tammy Theusch Beasley  
Register of Deeds  
New Hanover County, NC  
Electronically Recorded  
2013 Aug 05 11:24 AM RE Excise Tax:\$0.00  
Book: 5759 Page: 2377 Fee: \$26.00  
Instrument Number:2013028551  
Non-Standard Fee:

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**EIGHTH AMENDMENT TO LEASE AGREEMENT**

By and Between

**COUNTY OF NEW HANOVER, NORTH CAROLINA**

and

**NEW HANOVER REGIONAL MEDICAL CENTER**

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Dated as of July 1, 2013

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Submitted electronically by "Parker Poe Adams & Bernstein LLP"  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the New Hanover County Register of Deeds.

2013028551

## **EIGHTH AMENDMENT TO LEASE AGREEMENT**

*THIS EIGHTH AMENDMENT TO LEASE AGREEMENT*, dated as of July 1, 2013 (this "Amendment"), is made by and between the COUNTY OF NEW HANOVER, NORTH CAROLINA, a political subdivision of the State of North Carolina (the "County"), and NEW HANOVER REGIONAL MEDICAL CENTER, a nonprofit corporation organized and existing under the General Statutes of North Carolina (the "Corporation"), and amends the Lease Agreement dated as of October 1, 1993, by and between the County and the Corporation, as previously amended by the First Amendment to Lease Agreement dated as of June 15, 1996, the Second Amendment to Lease Agreement dated as of February 15, 1999, the Third Amendment to Lease Agreement dated as of December 1, 2005, the Fourth Amendment to Lease Agreement dated as of September 1, 2006, the Fifth Amendment to Lease Agreement dated as of October 1, 2008, the Sixth Amendment to Lease Agreement dated as of June 1, 2009 and the Seventh Amendment to Lease Agreement dated as of September 1, 2011 (as so amended, the "Lease").

### **WITNESSETH:**

*WHEREAS*, the County proposes to issue its Hospital Revenue Refunding Bonds (New Hanover Regional Medical Center) Series 2013 (the "*Series 2013 Bonds*") to currently refund the County's outstanding Variable Rate Hospital Revenue Refunding Bonds (New Hanover Regional Medical Center) Series 2005A-1, Series 2005A-2, Series 2005B-1 and Series 2005B-2 (collectively, the "*Series 2005 Bonds*"); and

*WHEREAS*, under The State and Local Government Revenue Bond Act, Article 5, as amended, of Chapter 159 of the General Statutes of North Carolina (the "*Act*"), the County is authorized and empowered to issue revenue bonds for such purposes; and

*WHEREAS*, the County adopted a Bond Order on October 6, 1993 authorizing the issuance of hospital revenue bonds, which was amended by a First Supplemental Bond Order adopted by the County on February 5, 1999, and a Second Supplemental Bond Order adopted by the County on December 7, 2005 (as so amended, the "*Bond Order*"); and

*WHEREAS*, the County has determined that it is consistent with the purposes of the Act and in the public interest (a) to issue the Series 2013 Bonds pursuant to the Bond Order and a Series Resolution adopted by the County on June 3, 2013, for the purposes stated above and (b) to enter into this Amendment; and

*WHEREAS*, the execution and delivery of this Amendment have been duly authorized by the County and the Corporation; and

*WHEREAS*, all acts, notices and things required by the constitution and laws of the State and the Bylaws of the Corporation to happen, exist and be performed precedent to and in the execution and delivery of this Amendment have happened, exist and have been performed as so required, in order to make this Amendment a valid and binding agreement in accordance with its terms; and

*WHEREAS*, each of the parties hereto represents that it is fully authorized to enter into and perform and fulfill the obligations imposed upon it under this Amendment and the Lease, and the parties are now prepared to execute and deliver this Amendment;

*NOW, THEREFORE*, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration paid by each of the parties to the other, the receipt of which is hereby acknowledged, the County and the Corporation hereby agree as follows:



## ARTICLE I

### DEFINITIONS

**Section 1.01 Definitions.** Unless elsewhere defined in this Amendment, all capitalized terms used in this Amendment shall have the meanings ascribed thereto in the Lease. The following terms shall have the following meanings herein and in the Lease as amended hereby:

"*Series 2013 Bonds*" means the Bonds so designated by and issued under the Bond Order and the Series 2013 Resolution.

"*Series 2013 Resolution*" means the Series Resolution adopted by the Board of Commissioners of the County on June 3, 2013.

## ARTICLE II

### REPRESENTATIONS

**Section 2.01 Representations by the County.** The County represents that it has the power to enter into the transactions contemplated by this Amendment and to carry out its obligations hereunder; and that by proper action of its Board of Commissioners, the County has been duly authorized to execute and deliver this Amendment. The County further represents that it proposes to issue the Series 2013 Bonds that will mature, bear interest, be redeemable and have the other terms and provisions set forth in the Bond Order and the Series 2013 Resolution.

**Section 2.02 Representations by the Corporation.** The Corporation represents that it is a nonsectarian, nonprofit corporation, no part of the net earnings of which inures to the benefit of any private member or individual; that it has authority to lease the Existing Facilities and operate the Health Care System, and, by proper corporate action, has been duly authorized to execute and deliver this Amendment; and that the execution and delivery of this Amendment, its consummation of the transactions contemplated hereby and fulfillment of or compliance with the terms and conditions of this Amendment, do not conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction, or any agreement or instrument to which the Corporation is now a party or by which it is bound, and do not constitute a default under any of the foregoing, or result in the creation or imposition of any lien or encumbrance of any nature whatsoever upon any of the property or assets of the Corporation under the terms of any instrument or agreement (other than this Amendment and the Bond Order).

## ARTICLE III

### AMENDMENTS TO LEASE

**Section 3.01 Amendment of Section 4.25 of the Lease.** Section 4.25 of the Lease is hereby amended in its entirety to read as follows:

**Section 4.25. Secondary Market Disclosure.** The Corporation agrees, for the benefit of the beneficial owners of the Series 2013 Bonds, to provide to the Municipal Securities Rulemaking Board (the "MSRB"):

(a) by not later than seven months after the end of each Fiscal Year of the Corporation, beginning with the Fiscal Year ending September 30, 2013 with respect to the Series

2013 Bonds, the audited financial statements of the Corporation for such Fiscal Year, if available, prepared in accordance with Section 159-39 of the General Statutes of North Carolina, as amended from time to time, or with any successor statute; or if such audited financial statements are not available by seven months after the end of such Fiscal Year, the unaudited financial statements of the Corporation for such Fiscal Year to be replaced subsequently by the audited financial statements of the Corporation to be delivered within 15 days after such audited financial statements become available for distribution;

(b) by not later than seven months after the end of each Fiscal Year, beginning with the Fiscal Year ending September 30, 2013 with respect to the Series 2013 Bonds, the financial and statistical data as of a date not earlier than the end of the preceding Fiscal Year for the type of information included under the following headings in Appendix A to the Official Statement dated the date of distribution thereof relating to the Series 2013 Bonds, to the extent such items are not included in the financial statements referred to in (a) above:

- (1) "Facilities and Services" (tables relating to the New Hanover Regional Medical Center therein);
- (2) "Medical Staff";
- (3) "Utilization Statistics";
- (4) "Historical Long-Term Debt Service Coverage Ratios";
- (5) "Liquidity and Cushion Ratios";
- (6) "Debt-to-Capitalization"; and
- (7) "Third-Party Reimbursement and Sources of Payment";

(c) in a timely manner not in excess of ten business days after the occurrence of the event, notice of any of the following events with respect to the Series 2013 Bonds, if material:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults, if material;
- (3) unscheduled draws on any debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on any credit enhancements reflecting financial difficulties;
- (5) substitution of any credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TBB) or other material notices or determinations with respect to the tax status of the Series 2013 Bonds, or other events affecting the tax status of the Series 2013 Bonds;
- (7) modification to the rights of the beneficial owners of the Series 2013 Bonds, if material;

(8) call of any of the Series 2013 Bonds for redemption, other than mandatory sinking fund redemption, if material, and tender offers;

(9) defeasances of any of the Series 2013 Bonds;

(10) release, substitution or sale of any property securing repayment of the Series 2013 Bonds, if material;

(11) rating changes;

(12) bankruptcy, insolvency, receivership or similar event of the Corporation;

(13) the consummation of a merger, consolidation, or acquisition involving the Corporation or the sale of all or substantially all of the assets of the Corporation, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms;

(14) appointment of a successor or additional Trustee or the change of name of the Trustee; and

(d) in a timely manner, notice of a failure of the Corporation to provide required annual financial information described in (a) or (b) above on or before the date specified.

The Corporation shall provide the documents referred to above to the MSRB in an electronic format as prescribed by the MSRB and accompanied by identifying information as prescribed by the MSRB. The Corporation may discharge its undertaking described above by transmitting the documents referred to above to any entity and by any method authorized or required by the U.S. Securities and Exchange Commission.

If the Corporation fails to comply with the undertakings described above, the Trustee or any beneficial owner of the Series 2013 Bonds then outstanding may take action to protect and enforce the rights of all beneficial owners with respect to such undertakings, including an action for specific performance; provided, however, that failure to comply with such undertakings shall not be an Event of Default under the Lease, the Bond Order or the Series 2013 Resolution and shall not result in any acceleration of payment of the Series 2013 Bonds. All actions shall be instituted, had and maintained in the manner provided in this paragraph for the benefit of all beneficial owners of the Series 2013 Bonds then outstanding.

The Corporation reserves the right to modify from time to time the information to be provided to the extent necessary or appropriate in the judgment of the Corporation, provided that:

(a) any such modification may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, composition, nature or status of the Corporation;

(b) the information to be provided, as modified, would have complied with the requirements of Rule 15c2-12 issued under the Securities Exchange Act of 1934 ("Rule 15c2-12") as of the date of the Official Statement with respect to the Series 2013 Bonds after taking into account any amendments or interpretations of Rule 15c2-12, as well as any changes in circumstances; and

(c) any such modification does not materially impair the interests of the beneficial owners of the Series 2013 Bonds as determined either by parties unaffiliated with the Corporation (such as bond counsel), or by the approving vote of the registered owners of a majority in principal amount of the Series 2013 Bonds then Outstanding pursuant to the terms of the Bond Order and the Series 2013 Resolution as they may be amended from time to time.

Any annual financial information containing the modified operating data or financial information is required to explain, in narrative form, the reasons for the amendments and the impact of the change in the type of operating data or financial information being provided.

The undertaking described in this Section will terminate upon payment, or provision having been made for payment in a manner consistent with Rule 15c2-12, in full of the principal of and interest on all of the Series 2013 Bonds.

#### ARTICLE IV

##### MISCELLANEOUS

*Section 4.01 Multiple Counterparts.* This Amendment 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 4.02 Severability.* If any one or more of the covenants, agreements or provisions of this Amendment 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 Amendment or the Lease, as amended hereby, and this Amendment and the Lease, as amended hereby, shall continue in force to the fullest extent permitted by law.

*Section 4.03 Recordation of Amendment.* The Corporation covenants that it will cause this Amendment to be recorded and filed in the office of the New Hanover County Register of Deeds.

*Section 4.04 State Law Controlling.* This Amendment shall be construed and enforced in accordance with the laws of the State of North Carolina.

*Section 4.05 Effective Date of this Amendment.* Notwithstanding that this Amendment is dated as of July 1, 2013, this Amendment shall take effect when it is fully executed and has been delivered to the parties hereto contemporaneously with the delivery of and payment for the Series 2013 Bonds. No obligation shall be imposed on the Corporation prior to the effective date of this Amendment.


IN WITNESS WHEREOF, the County has caused these presents to be signed in its name and on its behalf by the County Manager and its official seal to be hereunto affixed and attested by the Clerk to its Board of Commissioners, thereunto duly authorized; and the Corporation has caused these presents to be signed in its name and on its behalf by its President and its corporate seal to be hereunto affixed and attested by its Secretary, all as of the 18<sup>th</sup> day of July, 2013.



COUNTY OF NEW HANOVER, NORTH CAROLINA

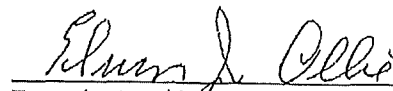
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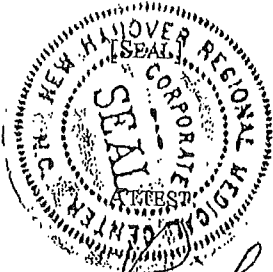
  
County Manager


  
Clerk to the Board of Commissioners

NEW HANOVER REGIONAL MEDICAL CENTER

By:

  
Executive President and Chief Financial Officer



  
Secretary

ACKNOWLEDGMENT OF EXECUTION ON BEHALF OF THE COUNTY

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Beverly F Thomas, a Notary Public of New Hanover County and State of North Carolina, **DO HEREBY CERTIFY THAT** Chris Coudriet and Sheila L. Schult ("*Signatories*"), personally came before me this day and acknowledged that they are the County Manager and Clerk to the Board of Commissioners, respectively, of the County of New Hanover, North Carolina, and that they, as County Manager and Clerk to the Board of Commissioners, respectively, being authorized to do so, executed the foregoing instrument on behalf of said County.

I certify that the Signatories personally appeared before me this day, and

(check one of the following)

☒ (I have personal knowledge of the identity of the Signatories); or

☐ (I have seen satisfactory evidence of the Signatories' identity, by a current state or federal identification with the Signatories' photograph in the form of:

(check one of the following)

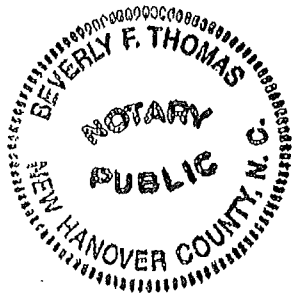
☐ a driver's license or

☐ in the form of \_\_\_\_\_); or

☐ (a credible witness has sworn to the identity of the Signatories).

The Signatories acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

WITNESS my hand and official stamp or seal this 17th day of July, 2013.



Beverly F Thomas  
Notary Public

Print Name: Beverly F Thomas  
[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: Feb 21, 2015

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

ACKNOWLEDGMENT OF EXECUTION ON BEHALF OF THE CORPORATION

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Beverly F Thomas, a Notary Public of New Hanover County and State of North Carolina, **DO HEREBY CERTIFY THAT** Edwin J. Ollie and Richard McGraw ("Signatories"), personally came before me this day and acknowledged that they are the President and Chief Executive Officer and Secretary, respectively of New Hanover Regional Medical Center, a North Carolina nonprofit corporation, and that they, as the President and Chief Executive Officer and Secretary, respectively, being authorized to do so, executed the foregoing instrument on behalf of said Corporation.

I certify that the Signatories personally appeared before me this day, and

(check one of the following)

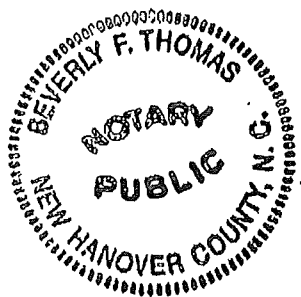
☒ (I have personal knowledge of the identity of the Signatories); or  
☒ (I have seen satisfactory evidence of the Signatories' identity, by a current state or federal identification with the Signatories' photograph in the form of:

(check one of the following)

☒ a driver's license or  
\_\_\_\_\_ in the form of \_\_\_\_\_); or  
\_\_\_\_\_ (a credible witness has sworn to the identity of the Signatories).

The Signatories acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

WITNESS my hand and official stamp or seal this 17th day of July, 2013.



Beverly F Thomas  
Notary Public

Print Name: Beverly F Thomas  
[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: Feb 21, 2015

Ⓢ[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

BK: RB 6069  
PG: 2569 - 2579

RECORDED:

06/28/2017

12:26:46 PM

BY: ANDREA CRESWELL

ASSISTANT

2017020729

NEW HANOVER COUNTY,

TAMMY THEUSCH BEASLEY

REGISTER OF DEEDS

NC FEE \$26.00

EXTX \$0.00

ELECTRONICALLY RECORDED

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**NINTH AMENDMENT TO LEASE AGREEMENT**

By and Between

**COUNTY OF NEW HANOVER, NORTH CAROLINA**

and

**NEW HANOVER REGIONAL MEDICAL CENTER**

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Dated as of June 1, 2017

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Submitted electronically by "Parker Poe Adams & Bernstein LLP"  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the New Hanover County Register of Deeds.





## NINTH AMENDMENT TO LEASE AGREEMENT

**THIS NINTH AMENDMENT TO LEASE AGREEMENT**, dated as of June 1, 2017 (this "Amendment"), is made by and between the **COUNTY OF NEW HANOVER, NORTH CAROLINA**, a political subdivision of the State of North Carolina (the "County"), and **NEW HANOVER REGIONAL MEDICAL CENTER**, a nonprofit corporation organized and existing under the General Statutes of North Carolina (the "Corporation"), and amends the Lease Agreement dated as of October 1, 1993, by and between the County and the Corporation, as previously amended by the First Amendment to Lease Agreement dated as of June 15, 1996, the Second Amendment to Lease Agreement dated as of February 15, 1999, the Third Amendment to Lease Agreement dated as of December 1, 2005, the Fourth Amendment to Lease Agreement dated as of September 1, 2006, the Fifth Amendment to Lease Agreement dated as of October 1, 2008, the Sixth Amendment to Lease Agreement dated as of June 1, 2009, the Seventh Amendment to Lease Agreement dated as of September 1, 2011 and the Eighth Amendment to Lease Agreement dated as of July 1, 2013 (as so amended, the "Lease").

### WITNESSETH:

**WHEREAS**, the County proposes to issue its Hospital Revenue Bonds (New Hanover Regional Medical Center) Series 2017 (the "Series 2017 Bonds") to finance, and reimburse the Corporation for, constructing, equipping and furnishing certain capital improvements to the Corporation's campus and to refund in advance of their maturities certain hospital revenue bonds previously issued; and

**WHEREAS**, under The State and Local Government Revenue Bond Act, Article 5, as amended, of Chapter 159 of the General Statutes of North Carolina (the "Act"), the County is authorized and empowered to issue revenue bonds for such purposes; and

**WHEREAS**, the County adopted a Bond Order on October 6, 1993 authorizing the issuance of hospital revenue bonds, which was amended by a First Supplemental Bond Order adopted by the County on February 5, 1999, and a Second Supplemental Bond Order adopted by the County on December 7, 2005 (as so amended, the "Bond Order"); and

**WHEREAS**, the County has determined that it is consistent with the purposes of the Act and in the public interest (a) to issue the Series 2017 Bonds pursuant to the Bond Order and a Series Resolution adopted by the County on April 3, 2017, for the purposes stated above and (b) to enter into this Amendment; and

**WHEREAS**, the execution and delivery of this Amendment have been duly authorized by the County and the Corporation; and

**WHEREAS**, all acts, notices and things required by the constitution and laws of the State and the Bylaws of the Corporation to happen, exist and be performed precedent to and in the execution and delivery of this Amendment have happened, exist and have been performed as so required, in order to make this Amendment a valid and binding agreement in accordance with its terms; and

**WHEREAS**, each of the parties hereto represents that it is fully authorized to enter into and perform and fulfill the obligations imposed upon it under this Amendment and the Lease, and the parties are now prepared to execute and deliver this Amendment;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration paid by each of the parties to the other, the receipt of which is hereby acknowledged, the County and the Corporation hereby agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01 Definitions.** Unless elsewhere defined in this Amendment, all capitalized terms used in this Amendment shall have the meanings ascribed thereto in the Lease. The following terms shall have the following meanings herein and in the Lease as amended hereby:

“*Series 2017 Bonds*” means the Bonds so designated by and issued under the Bond Order and the Series 2017 Resolution.

“*Series 2017 Resolution*” means the Series Resolution adopted by the Board of Commissioners of the County on May 1, 2017.

## ARTICLE II

### REPRESENTATIONS

**Section 2.01 Representations by the County.** The County represents that it has the power to enter into the transactions contemplated by this Amendment and to carry out its obligations hereunder; and that by proper action of its Board of Commissioners, the County has been duly authorized to execute and deliver this Amendment. The County further represents that it proposes to issue the Series 2017 Bonds that will mature, bear interest, be redeemable and have the other terms and provisions set forth in the Bond Order and the Series 2017 Resolution.

**Section 2.02 Representations by the Corporation.** The Corporation represents that it is a nonsectarian, nonprofit corporation, no part of the net earnings of which inures to the benefit of any private member or individual; that it has authority to lease the Existing Facilities and operate the Health Care System, and, by proper corporate action, has been duly authorized to execute and deliver this Amendment; and that the execution and delivery of this Amendment, its consummation of the transactions contemplated hereby and fulfillment of or compliance with the terms and conditions of this Amendment, do not conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction, or any agreement or instrument to which the Corporation is now a party or by which it is bound, and do not constitute a default under any of the foregoing, or result in the creation or imposition of any lien or encumbrance of any nature whatsoever upon any of the property or assets of the Corporation under the terms of any instrument or agreement (other than this Amendment and the Bond Order).

## ARTICLE III

### AMENDMENTS TO LEASE

**Section 3.01 Amendment of Section 4.12 of the Lease.** Section 4.12 of the Lease is hereby amended in its entirety to read as follows:

**Section 4.12. Accreditation.** As of June 1, 2017, the Health Care System is accredited by The Joint Commission and the Corporation shall use its best efforts to maintain accreditation by The Joint Commission, DNV GL or other reputable accreditation body or entity so long as the Corporation reasonably believes the same to be in the best interest of the Corporation and the Holders. The Corporation shall furnish copies of all correspondence relating to a loss or voluntary relinquishment of such accreditation to the County, the Local Government Commission

and the Trustee, unless such loss or relinquishment is relating to the voluntary replacement of the accreditation body or entity and a new accreditation from such other body or entity is received.

**Section 3.02 Addition of Section 4.40 of the Lease.** Article IV of the Lease is hereby amended by adding the following Section 4.40:

**Section 4.40. Secondary Market Disclosure.** The Corporation agrees, for the benefit of the beneficial owners of the Series 2017 Bonds, to provide to the Municipal Securities Rulemaking Board (the "MSRB"):

(a) by not later than seven months after the end of each Fiscal Year of the Corporation, beginning with the Fiscal Year ending September 30, 2017 with respect to the Series 2017 Bonds, the audited financial statements of the Corporation for such Fiscal Year, if available, prepared in accordance with Section 159-39 of the General Statutes of North Carolina, as amended from time to time, or with any successor statute; or if such audited financial statements are not available by seven months after the end of such Fiscal Year, the unaudited financial statements of the Corporation for such Fiscal Year to be replaced subsequently by the audited financial statements of the Corporation to be delivered within 15 days after such audited financial statements become available for distribution;

(b) by not later than seven months after the end of each Fiscal Year, beginning with the Fiscal Year ending September 30, 2017 with respect to the Series 2017 Bonds, the financial and statistical data as of a date not earlier than the end of the preceding Fiscal Year for the type of information included under the following headings in Appendix A to the Official Statement dated the date of distribution thereof relating to the Series 2017 Bonds, to the extent such items are not included in the financial statements referred to in (a) above:

- (1) "Facilities and Services" (table relating to licensed and staffed beds therein);
- (2) "Medical Staff";
- (3) "Utilization Statistics";
- (4) "Long-Term Debt Service Coverage Ratios";
- (5) "Liquidity and Cushion Ratios";
- (6) "Debt-to-Capitalization"; and
- (7) "Third-Party Reimbursement and Sources of Payment";

(c) in a timely manner not in excess of ten business days after the occurrence of the event, notice of any of the following events with respect to the Series 2017 Bonds, if material:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults, if material;
- (3) unscheduled draws on any debt service reserves reflecting financial difficulties;

- (4) unscheduled draws on any credit enhancements reflecting financial difficulties;
  - (5) substitution of any credit or liquidity providers, or their failure to perform;
  - (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Series 2017 Bonds, or other events affecting the tax status of the Series 2017 Bonds;
  - (7) modification to the rights of the beneficial owners of the Series 2017 Bonds, if material;
  - (8) call of any of the Series 2017 Bonds for redemption, other than mandatory sinking fund redemption, if material, and tender offers;
  - (9) defeasances of any of the Series 2017 Bonds;
  - (10) release, substitution or sale of any property securing repayment of the Series 2017 Bonds, if material;
  - (11) rating changes;
  - (12) bankruptcy, insolvency, receivership or similar event of the Corporation;
  - (13) the consummation of a merger, consolidation, or acquisition involving the Corporation or the sale of all or substantially all of the assets of the Corporation, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms;
  - (14) appointment of a successor or additional Trustee or the change of name of the Trustee; and
- (d) in a timely manner, notice of a failure of the Corporation to provide required annual financial information described in (a) or (b) above on or before the date specified.

The Corporation shall provide the documents referred to above to the MSRB in an electronic format as prescribed by the MSRB and accompanied by identifying information as prescribed by the MSRB. The Corporation may discharge its undertaking described above by transmitting the documents referred to above to any entity and by any method authorized or required by the U.S. Securities and Exchange Commission.

If the Corporation fails to comply with the undertakings described above, the Trustee or any beneficial owner of the Series 2017 Bonds then outstanding may take action to protect and enforce the rights of all beneficial owners with respect to such undertakings, including an action for specific performance; provided, however, that failure to comply with such undertakings shall not be an Event of Default under the Lease, the Bond Order or the Series 2017 Resolution and shall not result in any acceleration of payment of the Series 2017 Bonds. All actions shall be instituted, had and maintained in the manner provided in this paragraph for the benefit of all beneficial owners of the Series 2017 Bonds then outstanding.

The Corporation reserves the right to modify from time to time the information to be provided to the extent necessary or appropriate in the judgment of the Corporation, provided that:

(a) any such modification may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, composition, nature or status of the Corporation;

(b) the information to be provided, as modified, would have complied with the requirements of Rule 15c2-12 issued under the Securities Exchange Act of 1934 ("*Rule 15c2-12*") as of the date of the Official Statement with respect to the Series 2017 Bonds after taking into account any amendments or interpretations of Rule 15c2-12, as well as any changes in circumstances; and

(c) any such modification does not materially impair the interests of the beneficial owners of the Series 2017 Bonds as determined either by parties unaffiliated with the Corporation (such as bond counsel), or by the approving vote of the registered owners of a majority in principal amount of the Series 2017 Bonds then Outstanding pursuant to the terms of the Bond Order and the Series 2017 Resolution as they may be amended from time to time.

Any annual financial information containing the modified operating data or financial information is required to explain, in narrative form, the reasons for the amendments and the impact of the change in the type of operating data or financial information being provided.

The undertaking described in this Section and in Section 4.41 will terminate upon payment, or provision having been made for payment in a manner consistent with Rule 15c2-12, in full of the principal of and interest on all of the Series 2017 Bonds.

**Section 3.03 Addition of Section 4.41 of the Lease.** Article IV of the Lease is hereby amended by adding the following Section 4.41:

**Section 4.41. Quarterly Disclosure.** The Corporation agrees, for the benefit of the beneficial owners of the Series 2017 Bonds, to provide to the MSRB within forty-five (45) days from the end of each of the first three fiscal quarters of each Fiscal Year the unaudited statement of operations and balance sheet, certain financial ratios and operating statistics of the Corporation, Carolina Healthcare Associates, Inc. and Physician Quality Partners LLC for such fiscal quarter that are customarily prepared by the Corporation from time to time. The provisions of this Section are not governed by the requirements of Rule 15c2-12.

## ARTICLE IV

### MISCELLANEOUS

**Section 4.01 Multiple Counterparts.** This Amendment 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 4.02 Severability.** If any one or more of the covenants, agreements or provisions of this Amendment 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 Amendment or the Lease, as amended hereby, and this Amendment and the Lease, as amended hereby, shall continue in force to the fullest extent permitted by law.

**Section 4.03    *Recordation of Amendment.*** The Corporation covenants that it will cause this Amendment to be recorded and filed in the office of the New Hanover County Register of Deeds.

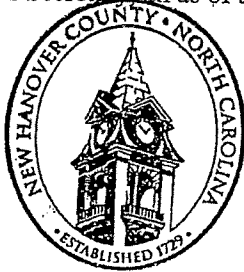
**Section 4.04    *State Law Controlling.*** This Amendment shall be construed and enforced in accordance with the laws of the State of North Carolina.

**Section 4.05    *Effective Date of this Amendment.*** Notwithstanding that this Amendment is dated as of May 1, 2017, this Amendment shall take effect when it is fully executed and has been delivered to the parties hereto contemporaneously with the delivery of and payment for the Series 2017 Bonds. No obligation shall be imposed on the Corporation prior to the effective date of this Amendment.

**Section 4.06    *Extension of Term.*** The term of the Lease shall be extended so that it terminates on October 2, 2047. All other provisions of Section 3.02 of the Lease, including, without limitation, those regarding early termination and regarding renewal of the Lease for additional five-year terms after expiration of the initial term, remain unchanged.

IN WITNESS WHEREOF, the County has caused these presents to be signed in its name and on its behalf by the County Manager and its official seal to be hereunto affixed and attested by the Clerk to its Board of Commissioners, thereunto duly authorized; and the Corporation has caused these presents to be signed in its name and on its behalf by its President and its corporate seal to be hereunto affixed and attested by its Secretary, all as of the 28<sup>th</sup> day of June, 2017.

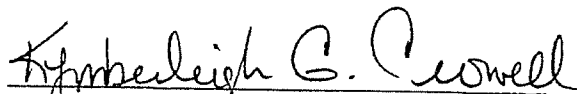
[SEAL]



COUNTY OF NEW HANOVER, NORTH CAROLINA

By:   
County Manager

ATTEST:

  
Clerk to the Board of Commissioners

NEW HANOVER REGIONAL MEDICAL CENTER

[SEAL]

By: \_\_\_\_\_  
Executive Vice President and  
Chief Financial Officer

ATTEST:

\_\_\_\_\_  
Secretary

[SIGNATURE PAGE TO THE NINTH AMENDMENT TO LEASE AGREEMENT]



ACKNOWLEDGMENT OF EXECUTION ON BEHALF OF THE COUNTY

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Beverly F Thomas, a Notary Public of New Hanover County and State of North Carolina, **DO HEREBY CERTIFY THAT** Chris Coudriet and Kymberleigh G. Crowell ("Signatories"), personally came before me this day and acknowledged that they are the County Manager and Clerk to the Board of Commissioners, respectively, of the County of New Hanover, North Carolina, and that they, as County Manager and Clerk to the Board of Commissioners, respectively, being authorized to do so, executed the foregoing instrument on behalf of said County.

I certify that the Signatories personally appeared before me this day, and

(check one of the following)

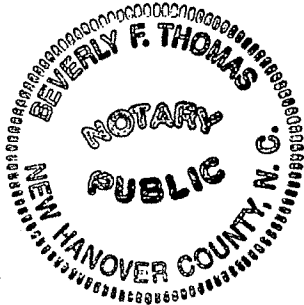
☒ (I have personal knowledge of the identity of the Signatories); or  
☐ (I have seen satisfactory evidence of the Signatories' identity, by a current state or federal identification with the Signatories' photograph in the form of:

(check one of the following)

☐ a driver's license or  
☐ in the form of \_\_\_\_\_); or  
☐ (a credible witness has sworn to the identity of the Signatories).

The Signatories acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

WITNESS my hand and official stamp or seal this 21<sup>st</sup> day of June, 2017.



Beverly F Thomas  
Notary Public

Print Name: Beverly F Thomas  
[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: Feb 21, 2020

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

***IN WITNESS WHEREOF***, the County has caused these presents to be signed in its name and on its behalf by the County Manager and its official seal to be hereunto affixed and attested by the Clerk to its Board of Commissioners, thereunto duly authorized; and the Corporation has caused these presents to be signed in its name and on its behalf by its President and its corporate seal to be hereunto affixed and attested by its Secretary, all as of the 28<sup>th</sup> day of June, 2017.

**COUNTY OF NEW HANOVER, NORTH CAROLINA**

[SEAL]

By: \_\_\_\_\_  
County Manager

ATTEST:

\_\_\_\_\_  
Clerk to the Board of Commissioners

**NEW HANOVER REGIONAL MEDICAL CENTER**

[SEAL]

By: Edmund J. Allie  
Executive Vice President and  
Chief Financial Officer

ATTEST:

Michael D. Allie  
Secretary

[SIGNATURE PAGE TO THE NINTH AMENDMENT TO LEASE AGREEMENT]

ACKNOWLEDGMENT OF EXECUTION ON BEHALF OF THE CORPORATION

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Barbara J. Buckley, a Notary Public of New Hanover County and State of North Carolina, **DO HEREBY CERTIFY THAT** Edwin J. Ollie and Michael O. Wilkinson ("Signatories"), personally came before me this day and acknowledged that they are the Executive Vice President and Chief Financial Officer and Secretary, respectively of New Hanover Regional Medical Center, a North Carolina nonprofit corporation, and that they, in such capacities, being authorized to do so, executed the foregoing instrument on behalf of said Corporation.

I certify that the Signatories personally appeared before me this day, and

(check one of the following)

☒ (I have personal knowledge of the identity of the Signatories); or

☐ (I have seen satisfactory evidence of the Signatories' identity, by a current state or federal identification with the Signatories' photograph in the form of:

(check one of the following)

☐ a driver's license or

☐ in the form of \_\_\_\_\_); or

☐ (a credible witness has sworn to the identity of the Signatories).

The Signatories acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

WITNESS my hand and official stamp or seal this 21<sup>st</sup> day of June, 2017.

BARBARA J. BUCKLEY  
NOTARY PUBLIC

New Hanover County  
North Carolina

My Commission Expires June 14, 2021

Barbara J. Buckley  
Notary Public

Print Name: Barbara J. Buckley  
[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: 6-14-2021

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

**Attachment D**

**Title to Owned Real Property**

[See Attached]

**NHRMC Owned Property 10.24.2019**  
**Updated 12.03.2020**

Item Number	Building Name	Location	City	Use	Year Constructed	Register of Deeds Listed owner	Acreage	Notes
1	Main Hospital	2131 S. 17th St.	Wilmington	Acute Care Hospital	1967	New Hanover County	55.03	Includes Behavioral Health Hospital and Inpatient Rehab Hospital
2	Orthopedic Hospital	5301 Wrightsville Avenue	Wilmington	Acute Care Hospital	1957	New Hanover County	15.69	Includes former physican office park behind Ortho Hospital
3	SEAHEC Revenue Cycle Solutions*	2507 Delaney Dr.	Wilmington	AHEC billing office	1996	New Hanover Regional Medical Center	0.41	Part of Special Warranty Deed that includes items #3; #10-#23; #29
4	Business Center Annex (WOG)	2001 S. 17th St.	Wilmington	Business offices	1980	New Hanover Regional Medical Center	2.82	
5	Cape Fear Heart (Whole Building)	1415 Physicians Drive	Wilmington	Cardiology practice, NHRMC Cardiac Rehab, Cardiac Testing	2014	New Hanover Regional Medical Center	8.24	Parcel also incudes SECU Family House (Item #30)
6	5302 Wrightsville Avenue	5302 Wrightsville Avenue	Wilmington	Empty lot - (corner lot)	Vacant	New Hanover County	0.38	
7	5305-J Wrightsville Avenue	5305-J Wrightsville Avenue	Wilmington	Part of Ortho Campus		New Hanover Regional Medical Center	0	NHRMC owns structure; NH County owns land
8	5313 Wrightsville Avenue	5313 Wrightsville Avenue	Wilmington	Empty lot - (retaining wall on it)	Vacant	New Hanover Regional Medical Center	0.37	
9	Emergency Department North	151 Scott's Hill Medical Drive	Wilmington	Freestanding Emergency Department and H&D	2015	New Hanover Regional Medical Center	26.94	(actual address of parcel is 9110 Market Street)
10	New Hanover County Health Department	2029 S. 17th St.	Wilmington	Health Department	1968	New Hanover Regional Medical Center	5.41	
11	SEAHEC Condominiums*	1803 Savannah Court	Wilmington	Medical Resident Housing	1985	New Hanover Regional Medical Center	0	Part of Special Warranty Deed that includes items #3; #10-#23; #29
12	SEAHEC Condominiums*	1805 Savannah Court	Wilmington	Medical Resident Housing	1985	New Hanover Regional Medical Center	0	Part of Special Warranty Deed that includes items #3; #10-#23; #29
13	SEAHEC Condominiums*	1807 Savannah Court	Wilmington	Medical Resident Housing	1985	New Hanover Regional Medical Center	0	Part of Special Warranty Deed that includes items #3; #10-#23; #29
14	SEAHEC Condominiums*	1809 Savannah Court	Wilmington	Medical Resident Housing	1985	New Hanover Regional Medical Center	0	Part of Special Warranty Deed that includes items #3; #10-#23; #29
15	SEAHEC Condominiums*	1819 Savannah Court	Wilmington	Medical Resident Housing	1985	New Hanover Regional Medical Center	0	Part of Special Warranty Deed that includes items #3; #10-#23; #29
16	SEAHEC Condominiums*	1835 Savannah Court	Wilmington	Medical Resident Housing	1985	New Hanover Regional Medical Center	0	Part of Special Warranty Deed that includes items #3; #10-#23; #29
17	SEAHEC Condominiums*	1837 Savannah Court	Wilmington	Medical Resident Housing	1985	New Hanover Regional Medical Center	0	Part of Special Warranty Deed that includes items #3; #10-#23; #29
18	SEAHEC Condominiums*	1839 Savannah Court	Wilmington	Medical Resident Housing	1985	New Hanover Regional Medical Center	0	Part of Special Warranty Deed that includes items #3; #10-#23; #29
19	SEAHEC Condominiums*	1841 Savannah Court	Wilmington	Medical Resident Housing	1985	New Hanover Regional Medical Center	0	Part of Special Warranty Deed that includes items #3; #10-#23; #29
20	SEAHEC Condominiums*	1849 Savannah Court	Wilmington	Medical Resident Housing	1985	New Hanover Regional Medical Center	0	Part of Special Warranty Deed that includes items #3; #10-#23; #29
21	SEAHEC Condominiums*	1853 Savannah Court	Wilmington	Medical Resident Housing	1985	New Hanover Regional Medical Center	0	Part of Special Warranty Deed that includes items #3; #10-#23; #29
22	SEAHEC Condominiums*	1857 Savannah Court	Wilmington	Medical Resident Housing	1985	New Hanover Regional Medical Center	0	Part of Special Warranty Deed that includes items #3; #10-#23; #29
23	SEAHEC Condominiums*	1861 Savannah Court	Wilmington	Medical Resident Housing	1985	New Hanover Regional Medical Center	0	Part of Special Warranty Deed that includes items #3; #10-#23; #29
24	SEAHEC Condominiums*	1865 Savannah Court	Wilmington	Medical Resident Housing	1985	New Hanover Regional Medical Center	0	Part of Special Warranty Deed that includes items #3; #10-#23; #29
25	Oleander Rehab Center	5220 Oleander Dr.	Wilmington	Outpatient rehab	1984	New Hanover Regional Medical Center	3.63	
26	Medical Mall	2243 S. 17th St.	Wilmington	Outpatient Services	1992	New Hanover County	2.57	
27	Hospital Plaza Parking Lot Driveway	1635 Doctor's Circle	Wilmington	Parking lot	2018	New Hanover Regional Medical Center	0.41	
28	South 16th St. Parking Lot	2026 S. 16th St.	Wilmington	Parking lot	2018	New Hanover Regional Medical Center	1.36	
29	SEAHEC Main*	2511 Delaney Avenue	Wilmington	SEAHEC Main Office	2008	New Hanover Regional Medical Center	0.83	Part of Special Warranty Deed that includes items #3; #10-#23; #29
30	SECU Family House	1523 Physicians Dr.	Wilmington	Temporary lodging for patients' families	2014	New Hanover Regional Medical Center	8.24	
31	NHRMC	2221 JR Kennedy Drive	Wilmington	Warehouse	1959	New Hanover Regional Medical Center	15.78	
32	NHRMC	2201 JR Kennedy Drive	Wilmington	Vacant Land	Vacant	New Hanover Regional Medical Center	19.09	

## **Attachment E**

### **New Hanover Regional Medical Center Foundation, Inc. Officers and Directors**

#### **Directors:**

- Kelly Tinsley
- Linda Sayed
- Will Purvis
- John Gizdic
- Rhonda Amoroso
- Lenwood Sherill Dean Jr. (“Bo”)
- Kim Dickens
- Dr. Bryan Durham
- Dr. Frank Hobart
- Robert Johnson
- Dennis Doll
- Josh Lambeth
- Dr. Michael Jaskolka
- Elizabeth Kuronen
- Sloan Turner
- Steve Wells

#### **Officers:**

- Schorr Davis – Executive Director and Vice President of Development
- Tanya Armour – Director of Philanthropy
- Kristal McHugh – Director of Development

**Attachment F**

**Pender Operating Agreement**

[See Attached]

SECOND AMENDED  
AND RESTATED OPERATING AGREEMENT  
BETWEEN  
PENDER COUNTY,  
PENDER MEMORIAL HOSPITAL  
AND  
NEW HANOVER REGIONAL MEDICAL CENTER



## **SECOND AMENDED AND RESTATED OPERATING AGREEMENT**

THIS **SECOND AMENDED AND RESTATED OPERATING AGREEMENT** (the "Agreement" or "Second Amended and Restated Operating Agreement"), is made and entered into as of the 1st day of December, 2007 by and among PENDER COUNTY ("County"), PENDER MEMORIAL HOSPITAL, INCORPORATED ("PMH") and NEW HANOVER REGIONAL MEDICAL CENTER ("NHRMC").

### **WITNESSETH:**

WHEREAS, County is the owner of the assets comprising the acute care general community hospital known as Pender Memorial Hospital (collectively, such assets and operations are hereinafter referred to as "Hospital");

WHEREAS, pursuant to a Second Amended and Restated Lease Agreement dated November 17, 2004, by and between County and PMH, a copy of which is attached hereto as Exhibit A (the "Lease") and incorporated herein by reference as if fully set forth herein, County has leased the Hospital to PMH, as described in the Lease;

WHEREAS, PMH is an 86-bed critical access hospital located in a medically-underserved area of Southeastern North Carolina;

WHEREAS, PMH provides basic primary care services to residents of Pender County;

WHEREAS NHRMC is tertiary care hospital that offers services not offered by PMH to patients from throughout Southeastern North Carolina;

WHEREAS, the parties entered into an Operating Agreement on or around July 19, 1999 (the "Original Operating Agreement") whereby NHRMC, as sole member of PMH, agreed to provide certain management, operational and financial support services to PMH for the operation of the Hospital;

WHEREAS, the parties entered into an Amended and Restated Operating Agreement on November 18, 2004 ("Amended and Restated Operating Agreement");

WHEREAS, the parties desire to modify and enhance the scope of management and administrative services offered by NHRMC to PMH in order to improve the quality and availability of patient care services offered by PMH to residents of Pender County and surrounding areas; and

WHEREAS, in consideration for the agreements, stipulations and covenants and other good and valuable consideration herein given, the parties do hereby agree to amend and restate the Amended and Restated Operating Agreement to reflect the expanded scope of management and administrative services offered by NHRMC to PMH.

NOW, THEREFORE, the Parties hereby covenant, contract and agree as follows:

1. **DEFINITIONS.** All capitalized terms, not otherwise defined, shall be defined as provided in the Lease.

## 2. TERM AND TERMINATION.

(a) This Agreement shall have a term commencing on July 18, 1999 (the "Commencement Date"), and ending on July 17, 2019 (the "Termination Date"), for a term of twenty (20) years ("Term"). The Term of this Agreement shall be identical in all respects to the term of the Lease. Provided NHRMC is not in default in its obligations under this Agreement including the achievement of the performance parameters set forth in Section 5(a) hereto, NHRMC shall have the option to renew the Term for an additional ten (10) years upon the terms and conditions set forth herein, by delivering notice of such intent at least ninety (90) days before the expiration of the then current Term.

(b) Termination of the Lease for any reason shall automatically terminate this Agreement.

(c) Any of the Parties may terminate this Agreement for cause based upon a material breach, after giving written notice to the breaching party and the latter's failure to cure the breach within one hundred eighty (180) days notice of the breach; provided, however, that a longer period shall be allowed if the breaching party has commenced to cure in good faith within one hundred eighty (180) days notice of the breach but the cure cannot be reasonably effectuated within that time period. The Parties may also terminate this Agreement by their mutual consent in writing at any time during the Term.

(d) NHRMC, at its sole option, may terminate this Agreement upon ninety (90) days prior written notice in the event of the following:

- (1) PMH experiences negative cash flow (without regard to contributions by NHRMC under Section 4(f) hereto) for five consecutive fiscal years, or
- (2) PMH shall fail to maintain positive annual operating margins for five consecutive fiscal years.

The foregoing performance parameters will not be measured until the beginning of the second fiscal year of the Hospital after execution of this Second Amended and Restated Operating Agreement (fiscal year 2009) so that no termination right shall be exercisable prior to fiscal year 2014.. During the ninety (90) day period following notice of termination described above, PMH and NHRMC will negotiate in good faith with the County to determine whether, and upon what terms and conditions, the notifying party may be willing to withdraw its notice of termination and continue this Agreement and Lease term.

(e) Upon termination of the Agreement for any reason (other than for a breach by PMH or the County), the parties agree to amend the Articles of Incorporation and Bylaws of PMH to remove NHRMC (as the sole member of PMH), to remove any restrictions on the authority of the Board of Trustees of PMH to operate the Hospital, and to remove the authority of NHRMC to elect members of the Board of Trustees of PMH. **Also upon termination for any reason (including breach by PMH and the County), the parties agree that upon approval of the New Hanover County Board of Commissioners as required, the Bylaws and any other organizing or governing documents of NHRMC will be amended to remove representatives of Pender County.**

(f) Upon termination of the Agreement for any reason, PMH will reimburse NHRMC for the unamortized value of equipment, furnishing and real estate improvements relating to the Hospital which will be acquired with funds provided by NHRMC from sources other than the Hospital's revenues; provided, however, that NHRMC shall not be reimbursed for its capital contribution to PMH described in Section 4(e)(1) through (3) or for funds advanced pursuant to Section 4(f) hereto. PMH will pay such amounts to NHRMC, in good funds, within ninety (90) days of the termination of this Agreement.

3. LEASE AGREEMENT. The Parties acknowledge and agree that neither would have entered into this Agreement but for the agreement of the other to enter into the Lease, which sets forth the terms of which the Premises owned and used by PMH in the conduct of the business of the Hospital shall be leased by PMH.

4. COVENANTS OF PMH AND NHRMC. PMH and NHRMC agree to comply with the following covenants:

(a) Use of Hospital. PMH shall use the assets comprising the Hospital for the operation of a general community acute care hospital and other reasonably related purposes. PMH shall operate an acute care hospital for the benefit of the community in accordance with the tax-exempt purposes of NHRMC and PMH, serving patients without regard to either ability to pay or payor source, and assuring the quality of care of services provided through the Hospital.

(b) Licensure, Certification and Accreditation. (i) PMH shall maintain in full force and effect at all times during the Term all necessary licenses, certifications, permits and other approvals required by applicable local, state and federal laws with respect to the Hospital, its personnel and all equipment used therein; (ii) the Hospital will, within three (3) years from the commencement of the Term, and at all times thereafter during the Term of this Agreement, be properly accredited by the Joint Commission on Accreditation of Healthcare Organization ("JCAHO"); (iii) PMH will provide to County copies of any such licenses, certifications, accreditations, permits or approvals upon request; (iv) PMH will promptly notify County of any revocation or suspension of, or the imposition of any material restriction to, any such licenses, certificates, accreditations, permits or approvals; (v) PMH will operate the Hospital at all times in material compliance with the terms of such licenses, certificates, accreditations, permits and approvals; and (vi) maintain Section 501(c)(3) status of PMH under the Internal Revenue Code of 1986, as amended.

(c) Governance and Organization of PMH. PMH will be governed by a nine member Board of Directors ("PMH Board") as follows:

- 5 members appointed by the Pender County Board of Commissioners
- 3 members appointed by NHRMC
- 1 member who is the Chief of the Hospital Medical Staff

(d) Governance of NHRMC. Subject to the approval of the New Hanover County Board of Commissioners, the Bylaws of NHRMC have been amended to add two representatives of Pender County. One such representative will be the Chief of the Hospital

Medical Staff and the other will be a member of the PMH Board chosen by the PMH Board.

(e) Capital Contribution.

- (1) Following the Commencement Date of the Original Operating Agreement, NHRMC provided PMH with a cash capital contribution in the amount of \$980,000 to be used by PMH for such capital expenditures and operational expenses as are agreed to by NHRMC and related to the enhancement and addition or programs and services of the Hospital.
- (2) NHRMC, has contributed an additional \$2,000,000 to be used by PMH for such capital expenditures and operational expenses as are agreed to by NHRMC and related to the enhancement and addition or programs and services of the Hospital.
- (3) The capital contributions to be infused under sections (1) and (2) above are provided in support of the mission of PMH and to improve the quality and availability of medical services to the residents of Pender County and surrounding areas. The capital contributions infused by NHRMC shall not be considered a loan and, notwithstanding termination of this Agreement for any reasons, neither PMH nor Pender County shall have any obligation to repay either capital contribution.
- (4) NHRMC shall infuse capital into PMH as part of the NHRMC capital budget process. Such infusion shall be based on priority, need and return on investment when factored in with NHRMC's overall considerations, goals and priorities..

(f) Operating Gains and Deficits.

- (1) NHRMC agrees to fund any annual operating deficit of the Hospital that occurs in any fiscal year in which this Agreement is in effect. Any such funds advanced by NHRMC will not be included in determining termination rights as set forth in Section 2(d) or required rental payments under the Lease.
- (2) All income generated through operations shall be returned to NHRMC on an annual basis, beginning the first quarter of the 2008 fiscal year.

(g) Medical Staff. PMH will maintain an independent medical staff and separate bylaws governing its medical staff. PMH will use reasonable efforts to encourage all Pender County physicians to become credentialed at PMH. In addition, NHRMC physicians will be apprised of the services that can be furnished by PMH if the needs of their respective patients are consistent with such use.

(h) Employees of PMH. All clinical and operational staff shall be employed by PMH, with the sole exception of the Administrator and Financial Officer, as set forth below, **provided however, that PMH and NHRMC may agree in writing to allow specific individuals on a case-by-case basis to work at PMH and remain NHRMC employees. Currently, these individuals include the Pharmacy Director and Director of Pender Home Health.** As of the Commencement Date, all employees of PMH retained their prior employment seniority for benefit purposes, subject to applicable performance and human resources policies of PMH. Within sixty (60) days after the Commencement Date, NHRMC conducted a market survey of pay and benefits of all PMH employees. NHRMC retains the right to reassign PMH personnel and eliminate jobs that are not necessary to the effective operation of PMH.

(i) Managed Care Contracts. NHRMC and PMH shall separately negotiate managed care contracts applicable to each hospital's relevant market and operating costs. Nothing in this Agreement requires NHRMC to include PMH in any managed care contracts that it negotiates.

(j) Home Health Agency. Home health services will remain PMH based. In the event of changes in federal law affecting reimbursement for home health services, NHRMC and PMH will negotiate in good faith regarding the proper structure and location for home health services to maximize reimbursement.

## 5. MANAGEMENT AND ADMINISTRATIVE SERVICES PERFORMED BY NHRMC.

(a) NHRMC shall provide administrative and management services to PMH (the "Management Services") including, but not limited to, the placement of a full-time hospital Administrator (the "Administrator") and Financial Officer to manage PMH and to serve as the primary liaison between PMH and NHRMC. The Administrator, Financial Officer and individuals serving in other positions as approved in Section 4(h) shall be employees of NHRMC and the salary and benefits costs of such employees shall be paid by PMH directly upon presentation of a monthly invoice by NHRMC. PMH shall pay such invoice within thirty (30) days of its receipt of such invoice. In no event is PMH's duty to pay such invoices contingent upon PMH's receipt of its payment from any third party. NHRMC shall have the right to appoint the Administrator and the Financial Officer PMH in its sole discretion.

(b) In addition to the services set forth above, NHRMC also shall provide a full range of Management Services, as needed or requested by PMH, such as the following: (1) Executive Oversight/Administration; (2) Medicare/Medicaid Cost Reports; (3) Professional Consultation; (4) Strategic Services Support; (5) Productivity Data; (6) Management Training/Continuing Education; (7) Risk Management; (8) Health Care Compliance Programs; (9) Marketing; (10) Physician Recruitment /Relations; (11) Medical Staff Education & Development; (12) Professional Services Relief Pool Administration; (13) JCAHO/Regulatory Support; (14) Departmental Operational Assessments; (15) Coding and Reimbursement; (16) Materials Management Support; (17) Business Office Services; (18) Legal Assistance; and (19) Information Systems Support/Information Technology Support. PMH agrees to participate in and remain a member of any service excellence initiative(s) and group purchasing organizations which are recommended by NHRMC.

## 6. PERFORMANCE PARAMETERS

(a) At each annual meeting of the PMH Board, based upon recommendations from PMH management and NHRMC management, the PMH Board will adopt performance parameters designed to achieve the following Goals of the Affiliation:

- (1) To meet the health care needs of the community, including convenient access to health care for all residents, regardless of ability to pay;
- (2) To improve the quality, efficiency and scope of health care provided by PMH;
- (3) To improve the financial strength of PMH;
- (4) To preserve the jobs and to improve the salaries, wages, benefits and working conditions of PMH employees in order to provide an appropriately trained and compensated work force consistent with Section 4(h) herein;
- (5) To retain local ownership;
- (6) To maintain PMH as an acute care community general hospital and a long-term care facility;
- (7) To achieve JCAHO accreditation consistent with Section 4(b) herein;
- (8) To improve the perception of PMH in the community;
- (9) To decrease the number of residents leaving Pender County for health care; and
- (10) To affiliate with a partner with a vested interest in the success of the Hospital.

Such performance parameters will be similar to those used by NHRMC for its New Hanover County hospitals. Such parameters may, without limitation, include: (1) a minimum annual operating margin; (2) an annual increase in the number of inpatient acute admissions; (3) an annual increase in the number of out patient surgical procedures; (4) an annual increase in emergency department procedures; and (5) an acceptable employee turnover rate.

(b) Such performance parameters approved by the PMH Board will be forwarded to the Board of Trustees of NHRMC for their approval. The respective Boards will negotiate in good faith to resolve any disagreements over annual performance parameters.

(c) The failure of PMH and NHRMC to achieve the foregoing performance parameters will not constitute an event of default under the Lease or this Agreement.

(d) The failure of PMH and NHRMC to achieve the following Goals of Affiliation set forth in Section 6(a) will constitute an event of default hereunder: Sections (1),

(4), (5), (6), (7) and (10); notwithstanding the foregoing, NHRMC will not be in default hereunder for failure to achieve Goal #(7) if such failure is due to JCAHO Required Statement of Conditions with respect to conditions existing at the Hospital as of the Commencement Date.

7. COMPENSATION. [Intentionally Deleted]

8. RIGHT OF FIRST REFUSAL.

(a) If the County receives a bona fide written offer to purchase the Hospital during the term of this Agreement, which County desires to accept, County shall notify NHRMC in writing of such offer and describe, in full, the terms and conditions of such offer, following which NHRMC shall have the option to purchase the Hospital and the purchase price shall be the amount of the bona fide purchase offer from the applicable third party. NHRMC's option to purchase the Hospital shall be exercised by written notice from NHRMC to the County within thirty (30) days from the receipt by NHRMC of County's notice of its sale of the Hospital. If NHRMC timely exercises its option to purchase, the transaction between the parties shall be consummated on the later of (1) the timeframe set forth in the bona fide written offer to purchase the Hospital from a third-party; (2) the completion of all necessary regulatory approvals to accomplish the transfer of the Hospital to NHRMC so long as NHRMC makes reasonable efforts to obtain such approvals; or (3) ninety (90) days.

(b) Upon a sale or other transfer of the Hospital, NHRMC shall be reimbursed from the proceeds of such sale or transfer an amount which is the greater of the market value of the amounts expended by NHRMC pursuant to Section 4(e)(4) and 4(f)(1) or the demonstrable increase in the value of the Hospital directly related to, and as a result of, NHRMC's contributions as described in Section 4(e)(4) and 4(f)(1), as evidenced by an independent third party valuation. If NHRMC exercises its option under this section to purchase the Hospital, said reimbursement will be in the form of a reduction of sales price.

9. DIVERSITY. NHRMC and PMH hereby reaffirm their commitment as equal opportunity employers consistent with current state and federal regulations.

10. INDEMNIFICATION.

(a) PMH shall indemnify and hold harmless NHRMC, its directors, officers, agents and employees from and against any and all claims, demands, actions, suits, judgments, costs and expenses (including reasonable attorney's fees actually incurred) which arise or result from (i) the gross negligent or intentional acts or omissions of PMH, its agents (including NHRMC) employees and independent contractors, (ii) the operations of PMH prior to the Commencement Date; (iii) the bad faith of PMH, (iv) the inaccuracy of any material representation or warranty made by PMH. herein, (v) the nonfulfillment of PMH or any of its material obligations hereunder, and (vi) any liability of PMH or the Hospital, including but not limited to liability for medical malpractice matters in excess of available insurance coverage and Medicare/Medicaid cost reporting liabilities, other than those liabilities caused by the gross negligence or intentional or willful misconduct of NHRMC, its agents, employees and independent contractors.

(b) NHRMC shall indemnify and hold harmless PMH, its directors, officers, agents and employees from and against any and all claims, demands, actions, suits, judgments, costs and expenses (including reasonable attorney's fees actually incurred) which arise or result from (i) the gross negligent or intentional acts or omissions of NHRMC, its agents, employees and independent contractors, (ii) the bad faith of NHRMC, (iii) the inaccuracy of all material

representation or warranty made by NHRMC herein, (iv) the nonfulfillment by NHRMC of any of its material obligations hereunder, and (v) any liability of NHRMC, including but not limited to liability for medical malpractice matters in excess of available insurance coverage, other than liabilities caused by the gross negligence or intentional or willful misconduct of PMH, its agents (excluding NHRMC), employees and independent contractors.

11. NOTICES. Each provision of this Agreement or of any applicable governmental laws, ordinances, regulations, or other requirements with reference to the sending, mailing, or delivery of any notice by the County to NHRMC and PMH with reference to the sending, mailing, or delivery of any notice by NHRMC and PMH to the County shall be deemed to be complied with, and any notice or document shall be deemed to be delivered whether actually received or not, when deposited in the United States Mail, postage prepaid, sent by Federal Express or other nationally recognized overnight courier, certified or registered mail, return receipt requested, addressed to the Parties hereto at the respective addresses set out below, or at other such addresses as they have heretofore specified by written notice delivered in accordance therewith:

COUNTY:	Pender County Administrative Building, Box 5 Burgaw, NC 28425
PMH:	Pender Memorial Hospital, Incorporated 507 East Fremont Street Burgaw, NC 28425
NHRMC:	New Hanover Regional Medical Center Attn: Jack Barto, CEO 2131 South 17 <sup>th</sup> Street Wilmington, NC 28402
	Copy: New Hanover Regional Medical Center VP Legal Affairs 2131 South 17 <sup>th</sup> Street Wilmington, NC 28402

County agrees that in the event it gives any notice to PMH under the Lease, it will also send a copy of such notice to NHRMC in accordance with the provisions of this Section 11.

12. ASSIGNMENT. This Agreement shall not be assigned, transferred or delegated, in whole or in part, to anyone other than the Parties by either the County or NHRMC and PMH without the prior written consent of the other Parties; provided, however, that NHRMC may transfer, assign or delegate any portion of its rights or obligations under this Agreement to any other parent, wholly controlled non-profit or charitable affiliate or subsidiary of NHRMC at any time without the consent of the County, but that NHRMC shall remain



ultimately responsible for its rights and obligations under this Agreement.

13. MISCELLANEOUS.

(a) Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

(b) The terms, provisions and covenants and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the Parties hereto and upon their respective heirs, legal representatives, successors and permitted assigns, except as otherwise herein expressly provided. Each party agrees to furnish to the others, promptly upon demand, a resolution, or other appropriate documentation evidencing the due authorization of such party to enter into this Agreement.

(c) The captions inserted in this Agreement are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

(d) This Agreement may not be altered, changed or amended except by an instrument in writing signed by all Parties hereto or their successors in interest.

(e) If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the Term of this Agreement, then and in that event, it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

(f) No party hereto shall have any liability for any incidental or consequential damages of another party hereto, or anyone claiming by, through or under a party hereto, for any reason whatsoever.

(g) This Agreement does not create the relationship of partner or joint venturer between the County and PMH and NHRMC. The County and PMH and NHRMC acknowledge that neither is the agent or employee of the other, and the relationship of independent contractors exists between them.

(h) The laws of the State of North Carolina shall govern the interpretation, the validity, performance and enforcement of this Agreement.

(i) No remedy conferred herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or thereunder or now or hereafter existing as law or in equity or by statute or otherwise.

[SIGNATURES TO FOLLOW ON SUCCEEDING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the day and year first above written.

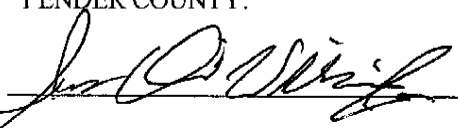
COUNTY:

PENDER COUNTY:

ATTEST:

  
Clerk


[CORPORATE SEAL]

By: 

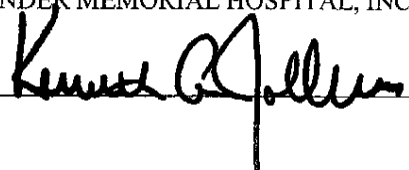
Print Name: James David Williams, Jr.  
Title: Chairman

PENDER MEMORIAL HOSPITAL, INC.

ATTEST:

  
Clerk

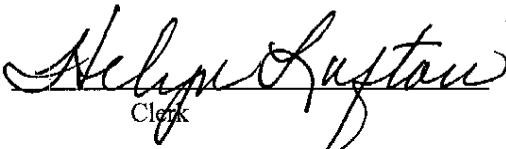
[CORPORATE SEAL]

By: 

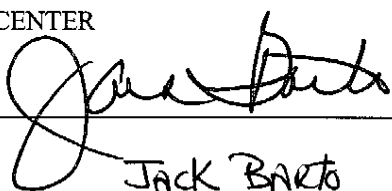
Print Name: Kenneth G. Johnson  
Title: Board Chairman

NEW HANOVER REGIONAL MEDICAL  
CENTER

ATTEST:

  
Clerk

[CORPORATE SEAL]

By:   
Jack Barto

Print Name: President and CEO  
Title: \_\_\_\_\_

**COPY**

March 15, 2017

**FIRST AMENDMENT  
TO  
SECOND AMENDED AND RESTATED OPERATING AGREEMENT  
BY AND AMONG  
PENDER COUNTY,  
PENDER MEMORIAL HOSPITAL, INCORPORATED  
AND  
NEW HANOVER REGIONAL MEDICAL CENTER**

## **FIRST AMENDMENT TO SECOND AMENDED AND RESTATED OPERATING AGREEMENT**

THIS FIRST AMENDMENT TO SECOND AMENDED AND RESTATED OPERATING AGREEMENT ("Amendment") is made and entered into as of the 3rd day of March, 2017 by and among Pender County ("County"), Pender Memorial Hospital, Incorporated ("PMH") and New Hanover Regional Medical Center ("NHRMC"). This Amendment amends the Second Amended and Restated Operating Agreement, dated December 1, 2007, by and among County, PMH and NHRMC ("Agreement"), pursuant to which NHRMC operates Pender Memorial Hospital.

The Parties desire to modify and amend the Agreement in order to improve and enhance the services and relationship among the parties.

The Parties therefore agree as follows:

### **1. Amendment of the Agreement.**

Section 4(b)(ii) of the Agreement is hereby deleted in its entirety and replaced with the following:

*"(ii) at all times during the Term of this Agreement, the Hospital shall be properly accredited by a national accrediting agency approved by the Centers for Medicare and Medicaid Services (e.g., DNV, The Joint Commission, etc.);"*

Section 4(c) of the Agreement is hereby deleted in its entirety and replaced with the following:

*"(c) Governance and Organization of PMH. PMH will be governed by an eleven (11) member Board of Trustees ("PMH Board") as follows:*

- 6 members appointed by Pender County Board of Commissioners;*
- 4 members appointed by NHRMC; and*
- 1 member who is the Chief of the Hospital medical Staff."*

### **2. Miscellaneous.**

(a) Severability. If any portion of this Amendment shall, for any reason, be invalid or unenforceable, such portion shall be ineffective only to the extent of any such invalidity or unenforceability, and the remaining portion or portions shall nevertheless be valid, enforceable and of full force and effect; provided, that if the invalid provision is material to the overall purpose and operation of this Amendment, then this Amendment shall terminate upon the severance of the illegal, invalid or unenforceable provision.

(b) Full Force and Effect. This Amendment is limited as specified and shall not constitute a modification, acceptance or waiver of any other provision of the Agreement. As expressly amended hereby, the Agreement shall continue in full force and effect in accordance with the provisions thereof on the date hereof.

(c) Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature page follows]

The parties are signing this Amendment on the date stated in the introductory clause.

COUNTY:

PENDER COUNTY

ATTEST:

Melissa J. Jacy  
Clerk

[CORPORATE SEAL]



ATTEST:

Jan 3/2018  
Clerk

[CORPORATE SEAL]

ATTEST:

Barbara J. Buckley  
Clerk

[CORPORATE SEAL]

By:

George R. Brown

Print Name:

Title: Chairman

PENDER MEMORIAL HOSPITAL, INCORPORATED

By:

Liswood M. Meadows

Print Name:

Title: Chairman

NEW HANOVER REGIONAL MEDICAL CENTER

By:

John A. Gizdic

Print Name:

John Gizdic

Title: President + CEO



**COPY**

PENDER MEMORIAL HOSPITAL, INC.  
RESOLUTION OF THE BOARD OF TRUSTEES

As of March 15, 2017

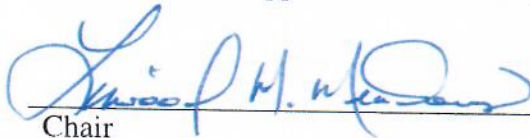
**WHEREAS**, Pender Memorial Hospital, Inc has given proper notice per the bylaws regarding a proposed bylaw change; and

**WHEREAS**, the Board of Trustees of Pender Memorial Hospital, Inc has reviewed the proposed changes to the bylaws as attached hereto and determined them to be in order; and

**WHEREAS**, the Board of Trustees of Pender Memorial Hospital, Inc has reviewed the proposed changes to the Articles of Incorporation as attached hereto and determined them to be in order;

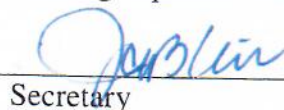
**NOW THEREFORE, IT IS RESOLVED:** the bylaws with the changes as attached shall be and hereby are referred to New Hanover Regional Medical Center Board of Trustee for final approval, and if approved, shall be adopted as the bylaws of Pender Memorial Hospital, Inc.; and

**BE IT FURTHER RESOLVED:** the Articles of Amendment as attached shall be and hereby are referred to New Hanover Regional Medical Center Board of Trustee for final approval, and if approved, shall be adopted

  
Chair

CERTIFICATION OF SECRETARY

I, Jane B Kirk, Secretary of the Pender Memorial Hospital Board of Trustees, hereby certify that the above is a true and correct excerpt from the minutes of the meeting of the Pender Memorial Hospital Board of Trustees held on the 15 day of March, 2017, at which meeting a quorum was present.

  
Secretary

SEAL

**COPY**

NEW HANOVER REGIONAL MEDICAL CENTER  
RESOLUTION OF THE BOARD OF TRUSTEES

As of February 28, 2017

**WHEREAS**, Pender Memorial Hospital, Inc has given proper notice per the bylaws regarding a proposed bylaw change; and

**WHEREAS**, the Board of Trustees of New Hanover Regional Medical Center has reviewed the proposed changes to the bylaws as attached hereto and determined them to be in order; and

**WHEREAS**, it is proper and necessary to also amend the Articles of Incorporation for Pender Memorial Hospital, Inc. for consistency with the proposed bylaws change; and

**WHEREAS**, the Board of Trustees of New Hanover Regional Medical Center has reviewed the proposed changes to the Articles of Incorporation as attached hereto and determined them to be in order;


**NOW THEREFORE, IT IS RESOLVED:** the bylaws with the changes as attached shall be and hereby are approved for adoption as the bylaws of Pender Memorial Hospital, Inc.; and

**BE IT FURTHER RESOLVED:** the Articles of Amendment as attached shall be and hereby are approved for adoption.

  
Chair

CERTIFICATION OF SECRETARY

I, MIKE WILKINSON, Secretary of the New Hanover Regional Medical Center Board of Trustees, hereby certify that the above is a true and correct excerpt from the minutes of the meeting of the NHRMC Board of Trustees held on the 28 day of February, 2017, at which meeting a quorum was present.

  
Secretary

SEAL



## **EXTENSION OF TERM OF AGREEMENT**

**THIS EXTENSION OF TERM OF AGREEMENT** ("Extension of Agreement") is dated as of the ~~11<sup>th</sup>~~ day of June, 2019, and is entered into by and among Pender County ("County"), Pender Memorial Hospital, Incorporated ("PMH") and New Hanover Regional Medical Center ("NHRMC").

### **W H E R E A S**

- A. County, PMH, and NHRMC entered into a certain Second Amended and Restated Operating Agreement (as amended) ("Agreement") on December 1, 2007.
- B. The current term of the Agreement will expire on July 17, 2019.
- C. County, PMH, and NHRMC desire to enter into this Extension of Agreement in order to extend the term of the Agreement for Two (2) years.


Now therefore, in consideration of the mutual promises and covenants herein and other good and valuable consideration, the parties agree as follows:

- 1. This Extension of Agreement shall become effective on July 17, 2019, and shall continue in effect for a term of Two (2) years, subject to earlier termination in accordance with the termination provisions set forth in the Agreement *provided, however*, that the option for renewal by NHRMC pursuant to Section 2(a) of the Agreement shall be void and shall not apply to this Extension of Agreement.
- 2. All other provisions of the Agreement shall remain unchanged and shall remain in full force and effect.
- 3. This Extension of Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any signed counterpart delivered by facsimile or electronic mail transmission is intended by the parties to have, and shall have, for all purposes the same force and effect as an original signed counterpart.


**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties have caused this Extension of Agreement to be executed by their duly authorized officers hereto setting their hands as of the date first written above.

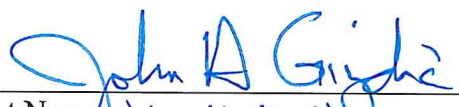
**PENDER COUNTY:**

By:   
Print Name: George R. Brown  
Title: BOCC CHAIRMAN

**PENDER MEMORIAL HOSPITAL, INC.:**

By:   
Print Name: Ruth A. Glaser  
Title: President

**NEW HANOVER REGIONAL MEDICAL CENTER:**

203 By:   
Print Name: John H. Gizdica  
Title: President & CEO

## **Attachment G**

### **Pender Memorial Hospital Officers and Directors**

#### **Directors:**

- Denise Houghton
- Hiram Williams
- Bernadette Silivanch
- Tamara Savage
- Louis “Sonny” Davis
- David Williams
- Heather Davis, DO (Chief of Medical Staff)
- Linwood Meadows
- Tim Baker
- Barbara Biehner
- David Parks
- Ruth Glaser (ex officio)

#### **Officers:**

- Ruth Glaser, President
- Cynthia Faulkner, Chief Nurse Executive
- Heather Davis, DO – Chief Medical Officer

**Attachment H**

**Endowment Formation Documents**

[See Attached]

**ARTICLES OF INCORPORATION  
OF  
NEW HANOVER COMMUNITY ENDOWMENT, INC.**

The undersigned hereby submits these Articles of Incorporation for the purpose of forming a nonprofit corporation under the North Carolina Nonprofit Corporation Act, Chapter 55A of the North Carolina General Statutes, as amended:

1. Name. The name of the corporation is New Hanover Community Endowment, Inc.

2. Charitable Corporation. The corporation is a charitable corporation within the meaning of N.C. Gen. Stat. Section 55A-1-40(4).

3. Purposes. The corporation is formed exclusively for charitable, scientific or educational purposes under Section 501(c)(3) of the Code including supporting the public health needs and social welfare projects in New Hanover County.

In furtherance, but not in limitation, of the foregoing purposes, the corporation shall:

(a) Accept, hold, invest, reinvest, and administer any gifts, grants, bequests, devises, benefits of trusts, and property of any sort, without limitation as to value or amount, and apply the income and principal thereof, as the corporation's board of directors may from time to time determine; and

(b) Alone or in cooperation with other persons, organizations, or institutions, conduct any and all other activities and do any and all acts and things which may be necessary, useful, suitable, or proper in connection with or for the furtherance, accomplishment, or attainment of such purposes as are lawful for a corporation formed under the North Carolina Nonprofit Corporation Act and for a corporation which qualifies for tax-exempt status under Sections 501(c)(3) and 501(a) of the Code.

4. Registered Office and Agent. The street address of the initial registered office of the corporation in the State of North Carolina is 150 Fayetteville Street, Suite 2300, Raleigh, NC 27601, which is located in Wake County. The mailing address of the initial registered office of the corporation is R. Donavon Munford, Jr., P. O. Box 2611, Raleigh, NC 27602-2611. The name of the corporation's initial registered agent at that address is R. Donavon Munford, Jr.

5. Principal Office. The street address of the principal office of the corporation is 150 Fayetteville Street, Suite 2300, Raleigh, NC 27601, which is located in Wake County. The mailing address of the principal office of the corporation is P. O. Box 2611, Raleigh, NC 27602-2611.

6. Incorporator. The name and address of the incorporator is R. Donavon Munford, Jr., 150 Fayetteville Street, Suite 2300, Raleigh, NC 27601.

7. Members. The corporation shall have no members.

8. Liability of Directors. A director of the corporation shall have no personal liability for monetary damages arising out of an action whether by or in the right of the corporation or otherwise for breach of any duty as a director, except for liability with respect to (i) acts or omissions that the director at the time of the breach knew or believed were clearly in conflict with the best interests of the corporation; (ii) any liability under N.C. Gen. Stat. Section 55A-8-32 or 55A-8-33; or (iii) any transaction from which the director derived an improper personal financial benefit. If the North Carolina Nonprofit Corporation Act is amended to authorize corporate action for further eliminating or limiting personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the North Carolina Nonprofit Corporation Act, as so amended.

Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a director of the corporation existing at the time of such repeal or modification.

9. Operation. No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, its directors, officers or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article 3 of these Articles. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except as otherwise provided in Section 501(h) of the Code), and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. Notwithstanding any other provision of these Articles, the corporation shall not carry on any other activities not permitted to be carried on by (a) a corporation exempt from Federal income tax under Sections 501(c)(3) and 501(a) of the Code or (b) a corporation, contributions to which are deductible under Sections 170(c), 2055 and 2522 of the Code.

10. Distribution of Assets Upon Dissolution. Upon the dissolution of the corporation, the board of directors shall, after paying or making provision for the payment of all of the liabilities of the corporation, dispose of all of the assets of the corporation to such organization or organizations organized and operated exclusively for charitable, educational, literary or scientific purposes as shall at the time qualify as an exempt organization or as exempt organizations under Section 501(c)(3) of the Code, exclusively for public purposes as the board of directors shall determine. Any such assets not so disposed of shall be disposed of by the Clerk of Superior Court of New Hanover County, North Carolina to such organization or organizations as the Clerk of the Superior Court of New Hanover County shall determine which are organized and operated exclusively for charitable, educational or scientific purposes and at the time qualify as an exempt organization or as exempt organizations under Section 501(c)(3) of the Code.

11. Private Foundation Provisions. At any time when the corporation is a private foundation as defined in Section 509 of the Code:

(a) The corporation shall distribute such amounts for each taxable year at such time and in such manner as not to subject the corporation to tax on undistributed income or otherwise under Section 4942 of the Code.

(b) The corporation shall not engage in any act of self-dealing as defined in Section 4941(d) of the Code.

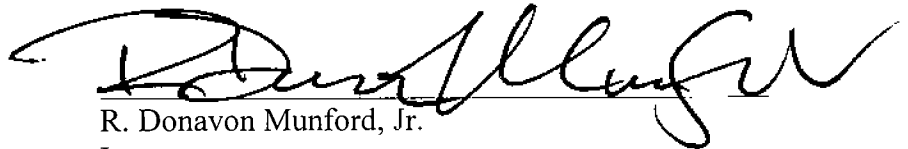
(c) The corporation shall not retain any excess business holdings as defined in Section 4943(c) of the Code.

(d) The corporation shall not make any investment in such manner as to subject the corporation to tax under Section 4944 of the Code.

(e) The corporation shall not make any taxable expenditures as defined in Section 4945(d) of the Code.

References in these Articles of Incorporation to the "Code" mean the federal Internal Revenue Code of 1986 as it may be amended from time to time. References to Sections of the Code include references to corresponding provisions of any subsequent United States tax laws.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of October, 2020.

  
R. Donavon Munford, Jr.  
Incorporator

**BYLAWS OF  
NEW HANOVER COMMUNITY ENDOWMENT, INC.**

**ARTICLE I  
DEFINITIONS**

In these Bylaws, unless otherwise provided, the following terms shall have the following meanings:

(1) "Act" shall mean the North Carolina Nonprofit Corporation Act as codified in Chapter 55A of the North Carolina General Statutes and as amended from time to time;

(2) "Appointing Entity" shall mean either the Controlling Appointing Entity or the Non-controlling Appointing Entity.

(3) "Articles of Incorporation" shall mean the Corporation's Articles of Incorporation, including amended and restated Articles of Incorporation and Articles of Merger;

(4) "Controlling Appointing Entity" shall mean the Successor Local Hospital Board.

(5) "Corporation" shall mean New Hanover Community Endowment, Inc.;

(6) "County" shall mean New Hanover County, North Carolina.

(7) "Distribution" shall mean a direct or indirect transfer of money or other property to or for the benefit of its directors or officers, or to or for the benefit of transferees in liquidation under Article 14 of the Act (other than creditors);

(8) "NHRMC" shall mean New Hanover Regional Medical Center.

(9) "Non-controlling Appointing Entity" shall mean the County.

(10) "Novant" shall mean Novant Health, Inc., a North Carolina nonprofit corporation.

(11) "Novant Board" shall mean Novant's Board of Trustees.

(12) "Successor Local Hospital Board" shall mean the coastal region board, or local board, consisting of seventeen (17) trustees.

(13) "Supermajority Vote" shall mean a vote of approval by at least Sixty-Seven Percent (67%) of the Corporation's board of directors.



Unless the context otherwise requires, any other terms used in these Bylaws shall have the meaning assigned to them in the Act to the extent defined therein.

## **ARTICLE II OFFICES**

**SECTION 1. Principal Office:** The principal office of the Corporation shall be located at [street address], [city], [state] [zip code], or at such other place in the County as may be determined from time to time by the board of directors.

**SECTION 2. Registered Office:** The registered office of the Corporation required by law to be maintained in the State of North Carolina may be, but need not be, identical with the principal office.

**SECTION 3. Other Offices:** The Corporation may have offices at such other places, within the State of North Carolina, as the board of directors may from time to time determine, or as the affairs of the Corporation may require.

## **ARTICLE III PURPOSES**

**SECTION 1. Purposes:** The corporation is formed exclusively for charitable, scientific or educational purposes under Section 501(c)(3) of the Code including supporting the public health needs and certain social welfare projects in New Hanover County.

In furtherance, but not in limitation, of the foregoing charitable purposes, the Corporation shall:

(a) Accept, hold, invest, reinvest, and administer any gifts, grants, bequests, devises, benefits of trusts, and property of any sort, without limitation as to value or amount, and apply the income and principal thereof, as the Corporation's board of directors may from time to time determine; and

(b) Alone or in cooperation with other persons, organizations, or institutions, conduct any and all other activities and do any and all acts and things which may be necessary, useful, suitable, or proper in connection with or for the furtherance, accomplishment, or attainment of such purposes as are lawful for a corporation formed under the North Carolina Nonprofit Corporation Act and for a corporation which qualifies for tax-exempt status under Sections 501(c)(3) and 501(a) of the Code.

**SECTION 2. Policies:** The fundamental policies of the Corporation shall be:

(a) No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its directors, officers or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Section 1 of this Article.

(b) No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except as otherwise provided in Section 501(h) of the Code), and the Corporation shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

(c) The Corporation shall not carry on any activities not permitted to be carried on by (i) a corporation exempt from income tax under Sections 501(c)(3) and 501(a) of the Code, or (ii) a corporation contributions to which are deductible under Sections 170(c), 2055, and 2522 of the Code.

(d) At any time when the Corporation is a private foundation as defined in Section 509 of the Code:

(i) The Corporation shall distribute such amounts for each taxable year at such time and in such manner as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code.

(ii) The Corporation shall not engage in any act of self-dealing as defined in Section 4941(d) of the Code.

(iii) The Corporation shall not retain any excess business holdings as defined in Section 4943(c) of the Code.

(iv) The Corporation shall not make any investment in such manner as to subject the Corporation to tax under Section 4944 of the Code.

(v) The Corporation shall not make any taxable expenditures as defined in section 4945(d) of the Code.

(e) The Corporation shall not engage in any activities that are not in furtherance of the purposes specified in Section 1 of this Article.

## **ARTICLE IV BOARD OF DIRECTORS**

Pursuant to the Articles of Incorporation and Section 55A-8-01 of the Act, all corporate powers shall be exercised by a board of directors.

**SECTION 1. General Powers:** All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed under the direction of, its board of directors.

**SECTION 2. Number of Directors:** The board of directors shall be comprised of Eleven (11) directors, six (6) directors appointed by the Controlling Appointing Entity and five (5) directors appointed by the Non-controlling Appointing Entity. No elected official and no member of the Successor Local Hospital Board shall be allowed to serve as a director until at least Two (2) years after the person has ceased to serve as an elected official or on the Successor Local Hospital Board, as the case may be.

**SECTION 3. Qualifications:** All board members shall be residents of New Hanover County and shall be subject to the satisfaction of applicable governance best practices, core competencies, and diversity considerations. Authorities that appoint members to the board should consider the community demographics and characteristics at large at the time by giving serious and deliberate consideration to the balance of gender, race, and ethnicity in each and every one of its appointees. The appointing authorities will equally consider a range of professional and life experiences of its appointees to include prior service to the community, effective governance for public and private corporations, and stewardship of resources to include all forms of community and organizational assets. Competencies of every board member and candidate should include:

- (1) Demonstrated leadership within the community with complex decision-making experiences.
- (2) Shared governance responsibilities with a demonstrated capacity to work collaboratively with a group that is purposely constructed to represent the community in all manners possible.
- (3) Demonstrated professionalism in the individuals' chosen careers or volunteerism that meets the high standard and conduct of what is expected and becoming for persons serving the public and community at large.
- (4) Commitment to the values and principles of the foundation itself including a commitment to advancing the complicated work of the foundation, the ability to represent positively and effectively the work of the foundation, and a passion for helping solve intractable community problems.
- (5) Diversity that fairly and equitably ensure gender, racial, and ethnicity considerations as well as lived-experiences reflecting different rates of educational attainment, economic prosperity, and social mobility.

**SECTION 4. Term of Directors.** The term for each director will be Three (3) years and each director may serve no more than Three (3) consecutive terms. The term of a director appointed to fill a vacancy shall expire at the time the term he or she is filling would have expired. After a director has served Three (3) consecutive terms, the director must have at least a One (1) year break in service before the director can serve on the board again.

**SECTION 5. Resignation:** A director may resign at any time by communicating his or her resignation to the Corporation. A resignation is effective when it is communicated unless the notice specifies a later effective date or subsequent event upon which it will become effective.

**SECTION 6. Removal:** All directors shall serve to term. However, the board of directors by Supermajority Vote may remove a director with or without cause.

**SECTION 7. Vacancies:** Any vacancy occurring in the board of directors, including, without limitation, a vacancy resulting from the death, resignation, retirement or removal of a director, or from an increase in the number of directors, shall be filled by the Appointing Entity. The term of a director appointed to fill a vacancy shall expire upon the original expiration of the previous director's term; however, such director thereafter may serve up to Three (3) consecutive Three (3) year terms.

**SECTION 8. Chairman of the Board:** There shall be a chairman of the board of directors elected by the directors from their number at any meeting of the board of directors. The chairman shall preside at all meetings of the board of directors at which he or she is so elected and perform such other duties as may be directed by the board of directors.

**SECTION 9. Compensation:** The directors shall not receive any stated salary or compensation for their services as such, but the board of directors may provide for the payment of all expenses incurred by directors in attending meetings of the board and the reimbursement of expenses incurred on behalf of the Corporation.

## **ARTICLE V MEETINGS OF DIRECTORS**

**SECTION 1. Regular Meetings:** A regular, annual meeting of the board of directors shall be held on the third     (date)     in     (month)     of each year, or if that day is a legal holiday, on the next succeeding business day for the purpose of electing directors and officers of the Corporation and for the transaction of such other business as may be properly brought before the meeting. In addition, the board of directors may provide, by resolution, the time and place, either within or without the State of North Carolina, for the holding of additional regular meetings.

**SECTION 2. Special Meetings:** Special meetings of the board of directors may be called only by or at the request of the President or any three directors. Such meetings may be held either within or without the State of North Carolina, as fixed by the person or persons calling the meeting.

**SECTION 3. Notice of Meetings:** Annual and regular meetings of the board of directors may be held as schedule by the Board. Any person or persons calling a special meeting of the board of directors shall, at least five (5) days before the meeting, give notice of the meeting to the board of directors by any usual means of communication, including by telephone, mail, electronic mail, private carrier, facsimile transmission, or other form of wire or wireless communication. Such notice may be oral and need not specific the purpose for which the meeting is called unless required by the Act, the Articles of Incorporation or these Bylaws.

**SECTION 4. Waiver of Notice:** Any director may waive notice of any meeting before or after the date and time stated in the notice. The waiver shall be in writing, signed by the director entitled to the notice and filed with the minutes or corporate records. A director's attendance at or participation in a meeting waives any required notice to him or her unless the director at the beginning of the meeting, or promptly upon arrival, objects to holding the meeting or to transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

**SECTION 5. Quorum:** A majority of the number of directors in office immediately before the meeting begins shall constitute a quorum for the transaction of business at any meeting of the board of directors.

**SECTION 6. Manner of Acting:** The affirmative vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless a different vote is required by the Act, the Articles of Incorporation or these Bylaws. The adoption or modification of policies and procedures regarding the investment or distribution of the Corporation's endowment assets (the "Endowment Assets"), and the termination of an investment manager to invest and manage the Endowment Assets, shall require a Supermajority Vote. Further, the establishment or modification of the Endowment Assets, or the amendment or modification of any governing documents applicable to the Endowment Assets, shall require a Supermajority Vote.

**SECTION 7. Presumption of Assent:** A director of the Corporation who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (a) he or she objects at the beginning of the meeting, or promptly upon his or her arrival, to holding it or transacting business at the meeting; (b) his or her dissent or abstention from the action taken is entered in the minutes of the meeting; or (c) he or she files written notice of his or her dissent or abstention with the presiding officer of the meeting before its adjournment or with the Corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

**SECTION 8. Participation in Meetings:** Any or all of the directors may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting.

**SECTION 9. Action Without Meeting:** Action which may be taken at a board of directors meeting may be taken without a meeting if the action is taken by all members of the board. The action shall be evidenced by one or more written consents signed by each director before or after such action, describing the action taken, and included in the minutes or filed with the corporate records. Such action is effective when the last director signs the consent, unless the consent specifies a different effective date.

**SECTION 10. Committees:** The board of directors may create an Executive Committee and other committees of the board and appoint directors to serve on them. The creation of a committee of the board and appointment of directors to it must be approved by the greater of (a) a majority of the number of directors in office when the action is taken or (b) the number of directors required to take action pursuant to Section 6 of this Article. Each committee of the board must have two or more directors as members, and to the extent authorized by law and specified by the board of directors, shall have and may exercise all of the authority of the board of directors in the management of the Corporation, except that a committee may not: (a) authorize distributions; (b) recommend or approve dissolution or merger or the sale, pledge or transfer of all or substantially all of the Corporation's assets; (c) fill vacancies on any committee of the board of directors; or (d) adopt, amend, or repeal the Articles of Incorporation or Bylaws. Each committee member shall serve at the pleasure of the board of directors. The provisions of this Article V, which govern meetings of the board of directors, shall likewise apply to meetings of any committee of the board of directors.

## **ARTICLE VI OFFICERS**

**SECTION 1. Officers of the Corporation:** The officers of the Corporation shall consist of a President and CEO, a Secretary, a Treasurer, and such Vice Presidents, Assistant Secretaries, Assistant Treasurers, and other officers as the board of directors may from time to time appoint. Any two or more offices may be held by the same person, but no officer may act in more than one capacity where action of two or more officers is required.

**SECTION 2. Appointment and Term:** The officers of the Corporation shall be appointed by the board of directors or by a duly appointed officer authorized by the board of directors to appoint one or more officers or assistant officers. Each officer shall hold office until his or her death, resignation, retirement, removal, disqualification or until his or her successor is appointed and qualifies. The appointment of an officer does not itself create contract rights for either the officer or the Corporation.

**SECTION 3. Compensation of Officers:** The compensation of all officers of the Corporation shall be fixed by or under the authority of the board of directors, and no officer shall serve the Corporation in any other capacity and receive compensation therefor unless such additional compensation shall be duly authorized.

**SECTION 4. Removal:** Any officer may be removed by a vote of a majority of the board of directors at any time with or without cause; but such removal shall not itself affect the officer's contract rights, if any, with the Corporation.

**SECTION 5. Resignation:** An officer may resign from his or her officer position at any time by communicating his or her resignation to the Corporation, orally or in writing. A resignation is effective when it is communicated unless it specifies in writing a later effective date. If a resignation is made effective at a later date that is accepted by the Corporation, the board of directors may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date. An officer's resignation does not affect the Corporation's contract rights, if any, with the officer.

**SECTION 6. Bonds:** The board of directors may by resolution require any officer, agent, or employee of the Corporation to give bond to the Corporation, with sufficient sureties, conditioned on the faithful performance of the duties of his or her respective office or position, and to comply with such other conditions as may from time to time be required by the board of directors.

**SECTION 7. President and CEO:** The President and CEO shall be the principal executive officer of the Corporation and, subject to the control of the board of directors, shall in general supervise and control all of the business and affairs of the Corporation. He or she shall have the authority to sign any contracts, deeds, mortgages, or other instruments which the board of directors has authorized to be executed, except in cases where the signing and execution of such contracts or instruments shall be expressly delegated by the board of directors or by these Bylaws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed; and in general he or she shall perform all duties incident to the office of President and CEO and such other duties as may be prescribed by the board of directors from time to time.

**SECTION 8. Vice Presidents:** In the absence of the President and CEO or in the event of his or her death, inability or refusal to act, the Vice Presidents in the order of their length of service as Vice Presidents, unless otherwise determined by the board of directors, shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon that office. Any Vice President may sign contracts, deeds, mortgages, or other instruments which the board of directors has authorized to be executed, except in cases where the signing and execution of such documents or instruments shall be expressly delegated by the board of directors or these Bylaws to some other officer or agent of the Corporation or shall be required by law to be otherwise signed or executed. A Vice President shall perform such other duties as from time to time may be assigned to him or her by the President or the board of directors.

**SECTION 9. Secretary:** The Secretary shall: (a) keep the minutes of the meetings of the board of directors and of all committees of the board in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the seal of the Corporation and see that the seal of the Corporation is affixed to all documents the execution of which on behalf of the Corporation under its seal is duly authorized; (d) maintain and authenticate the books and records of the Corporation;

(e) attest the signature or certify the incumbency or signature of any officer of the Corporation; and  
(f) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the President or the board of directors.

**SECTION 10. Assistant Secretaries:** In the absence of the Secretary or in the event of his or her death, inability or refusal to act, the Assistant Secretaries in the order of their length of service as Assistant Secretary, unless otherwise determined by the board of directors, shall perform the duties of the Secretary, and when so acting shall have all the powers of and be subject to all the restrictions upon the Secretary. They shall perform such other duties as may be assigned to them by the Secretary, the President, or the board of directors.

**SECTION 11. Treasurer:** The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the Corporation; (b) receive and give receipts for monies due and payable to the Corporation from any source whatsoever, and deposit all such monies in accordance with the provisions of Section 4 of Article VII; (c) maintain appropriate accounting records as required by law; (d) prepare, or cause to be prepared, an annual financial statement in accordance with Section 2 of Article IX; and (e) in general, perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the President or the board of directors.

**SECTION 12. Assistant Treasurer:** In the absence of the Treasurer or in the event of his or her death, inability or refusal to act, the Assistant Treasurers, in the order of their length of service as Assistant Treasurer, unless otherwise determined by the board of directors, shall perform the duties of the Treasurer, and when so acting shall have all the powers of and be subject to all the restrictions upon the Treasurer. They shall perform such other duties as may be assigned to them by the Treasurer, the President, or the board of directors.

## **ARTICLE VII**

### **CONTRACTS, LOANS, CHECKS AND DEPOSITS**

**SECTION 1. Contracts:** The board of directors may authorize any officer or officers, agent or agents, to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

**SECTION 2. Loans:** No loans shall be contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name unless authorized by the board of directors. Such authority may be general or confined to specific instances.

**SECTION 3. Checks and Drafts:** All checks, drafts or other orders for payment of money, issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the board of directors.



**SECTION 4. Deposits:** All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such depositories as may be selected by or under the authority of the board of directors.

**SECTION 5. Fund Distributions:** The Corporation and the officers are prohibited from allowing the Endowment Assets to be used as collateral or to be pledged as any form of security for any type of loan or guarantee. All distributions from the Endowment Assets (“Fund Distributions”) must be made pursuant to and accompanied by a Plan of Accountability to ensure that the Fund Distribution is used in full for the designated purposes (the “Plan of Accountability” or “POA”). The POA shall be accepted, agreed upon and signed by the individual at the recipient organization who will be responsible for the use of the funds and for accounting the funds. The POA shall require that the individual provide an acceptable and complete accounting to the Corporation, submitted and signed under penalty of perjury. Further, the misuse of the funds by any person, or the failure of the responsible person to provide a complete accounting within six (6) months after the end of the year in which the Fund Distribution occurred, may result in both civil and criminal penalties.

The POA is the Corporation’s agreement with the recipient organization that describes the purposes for the use of the funds, the commitments by the officers and other leaders of the recipient organization, the expectations of the Corporation and how the Corporation will verify the proper use of the funds.

**SECTION 6. Unitrust Formula:** The annual Fund Distributions shall be no more than a unitrust amount calculated as follows:

(1) In each calendar year the Fund Distributions shall be no more than a unitrust amount equal to Four Percent (4%) of the average of the net fair market value of the Endowment Assets’ value as of the first business day of the calendar year and of the four preceding calendar years of the Corporation (or such lessor number of preceding years that may exist for each of the first five years of distributions).

(2) The unitrust amount shall be distributed in whatever portions or installments as deemed appropriate by the Corporation.

(3) If any assets are added to the Endowment Assets in the future, the unitrust amount for the year in which the addition is made shall be increased in case of addition by an amount equal to Four Percent (4%) of that proportion of the fair market value of the assets added, valued as of the date or dates of the addition, that the number of days in the period that begins with the day of the addition and ends with the last day of the calendar year bears to the number of days in the calendar year. The net fair market value of the assets for the first business day of the calendar year of any such addition and of the preceding tax year shall each be increased by the amount of the addition for purposes of determining the unitrust amount for years following such year.

(4) If the Corporation holds assets for which a fair market value cannot be readily ascertained, the Corporation shall use valuation methods that it considers reasonable and appropriate in valuing such assets.

(5) Notwithstanding the Unitrust Formula described in this Section 6, Fund Distributions shall never be allowed to decrease the Endowment Assets value below the original value of the Endowment at the time of the initial funding of the Corporation from the County in 2020 and 2021.

## **ARTICLE VIII INDEMNIFICATION**

**SECTION 1. Right to Indemnification:** Any person who at any time serves or has served as a director or officer of the Corporation, or at the request of the Corporation is or was serving as an officer, director, agent, partner, trustee, administrator, or employee of any other foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, shall have the right to be indemnified by the Corporation to the fullest extent permitted by law in the event he or she is made, or is threatened to be made, a party to any threatened, pending or completed civil, criminal, administrative, investigative or arbitral action, suit or proceeding and any appeal therein (and any inquiry or investigation that could lead to such action, suit or proceeding), whether or not brought by or on behalf of the Corporation, seeking to hold him or her liable by reason of the fact that he or she is or was acting in such capacity. The Corporation shall not, however, indemnify any person against liability or expenses the person may incur on account of his or her activities which were, at the time taken, known or believed by the person to be clearly in conflict with the best interests of the Corporation, or if the person received an improper personal benefit. In addition, the Corporation shall not indemnify any person against liability or expenses the person may incur on account of his or her activities if such indemnification would (i) be a taxable expenditure under Section 4945 of the Code (or the corresponding provision of any subsequent United States tax laws), (ii) constitute an act of self-dealing under Section 4941 of the Code (or the corresponding provision of any subsequent United States tax laws) or (iii) jeopardize the Corporation's exemption from taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code (or the corresponding provisions of any subsequent United States tax laws). The board of directors may provide such lawful indemnification for the employees and agents of the Corporation as it deems appropriate and as are consistent with the restrictions expressed in this Section 1.

The rights of those receiving indemnification hereunder shall, to the fullest extent from time to time permitted by law, cover (a) reasonable expenses, including without limitation all attorneys' fees actually and necessarily incurred by him or her in connection with any such action, suit or proceeding, (b) all reasonable payments made by him or her in satisfaction of any judgment, money decree, fine (including an excise tax assessed with respect to an employee benefit plan), penalty, or settlement for which he or she may have become liable in such action, suit or proceeding; and (c) all reasonable expenses incurred in enforcing the indemnification rights provided herein.

Expenses incurred by anyone entitled to receive indemnification under this Section 1 in defending a proceeding may be paid by the Corporation in advance of the final disposition of such proceeding as authorized by the board of directors in the specific case or as authorized or required under any provisions in these Bylaws or by any applicable resolution or contract upon receipt of an undertaking by or on behalf of such person to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the Corporation against such expenses.

**SECTION 2. Payment of Indemnification:** The board of directors of the Corporation shall take all such action as may be necessary and appropriate to authorize the Corporation to pay the indemnification required by this Article VIII, including without limitation, making a determination that indemnification is permissible in the circumstances and a good faith evaluation of the manner in which the claimant for indemnity acted and of the reasonable amount of indemnity due him or her.

**SECTION 3. Binding and Nonexclusive:** Any person who at any time after the adoption of this Article VIII serves or has served in any of the described capacities for or on behalf of the Corporation shall be deemed to be doing or to have done so in reliance upon, and as consideration for, the right of indemnification provided herein. Any repeal or modification of these indemnification provisions shall not affect any rights or obligations existing at the time of such repeal or modification. The rights provided for herein shall inure to the benefit of the legal representatives of any such person and shall not be exclusive of any other rights to which such person may be entitled apart from the provisions of this Bylaw.

The rights granted herein shall not be limited by the provisions contained in Section 55A-8-51 of the Act (or any successor provision).

## **ARTICLE IX GENERAL PROVISIONS**

**SECTION 1. Seal:** The corporate seal of the Corporation shall consist of two concentric circles between which is the name of the Corporation and in the center of which is inscribed "CORPORATE SEAL" or "SEAL;" and such seal, as impressed or affixed on the margin hereof, is hereby adopted as the corporate seal of the Corporation

**SECTION 2. Records and Reports:** All of the Corporation's records shall be maintained in written form or in another form capable of conversion into written form within a reasonable time.

The Corporation shall keep as permanent records minutes of all meetings of the board of directors, a record of all actions taken by the board of directors without a meeting, and a record of all actions taken on behalf of the Corporation by a committee of the board of directors in place of the board of directors. The Corporation shall maintain appropriate accounting records.

The Corporation shall keep a copy of the following records at its principal office: (a) the Articles of Incorporation and all amendments to them currently in effect; (b) these Bylaws and all

amendments to them currently in effect; (c) the annual financial statements described below, prepared during the past three years; and (d) a list of the names and business addresses of its current directors and officers.

The Corporation shall prepare, or cause to be prepared, and maintain at least three (3) years of annual audited financial statements for the Corporation that include a balance sheet as of the end of the fiscal year and statement of operations for that year. The financial statements may be prepared for the Corporation on the basis of generally accepted accounting principles or on such other basis as the Treasurer may deem reasonable.

On a semiannual basis, the Corporation shall present a report with information regarding grants and other distributions made by the Corporation, with such information being made available to the public. In addition, the President and CEO shall hold a meeting at least semiannually to answer questions from the public regarding the Corporation's actions..

**SECTION 3. Fiscal Year:** The fiscal year of the Corporation shall end on December 31 of each year.

**SECTION 4. Severability:** Should any provision of these Bylaws become ineffective or be declared to be invalid for any reason, such provision shall be severable from the remainder of these Bylaws and all other provisions of these Bylaws shall continue to be in full force and effect.

**SECTION 5. Tax Terms:** References in these Bylaws to the "Code" mean the federal Internal Revenue Code of 1986 as it may be amended from time to time. References to Sections of the Code include references to corresponding provisions of any subsequent United States tax laws.

**SECTION 6. Amendments to Bylaws:** These Bylaws may be amended by a majority vote of the board of directors, except any amendment to Article IV of these Bylaws shall require a Supermajority vote of the board of directors.

**Attachment I-1**

**Novant Health Coastal Region, LLC Formation Documents**

[See Attached]

Raleigh, NC 27626-0622  
Form L-01

The mailing address, if different from the street address, of the principal office of the company is:

Number and Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ County: \_\_\_\_\_

b. ☐ The limited liability company does not have a principal office.

7. Any other provisions which the limited liability company elects to include (e.g., the purpose of the entity) are attached.

8. **(Optional):** Listing of Company Officials (See instructions on the importance of listing the company officials in the creation document.

Name	Title	Business Address
_____	_____	_____
_____	_____	_____

9. **(Optional):** Please provide a business e-mail address: \_\_\_\_\_  
The Secretary of State's Office will e-mail the business automatically at the address provided above at no cost when a document is filed. The e-mail provided will not be viewable on the website. For more information on why this service is offered, please see the instructions for this document.

10. These articles will be effective upon filing, unless a future date is specified:

This is the 14 day of September, 2020.

Novant Health Coastal Region, LLC

DocuSigned by:

J. Kevin Griffin

DS8647DA065A475...

Signature

Novant Health, Inc. (Member) by Kevin Griffin, its Senior Vice President

Type or Print Name and Title

The below space to be used if more than one organizer or member is listed in Item #2 above.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type and Print Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type and Print Name and Title

**NOTE:**

1. Filing fee is \$125. This document must be filed with the Secretary of State.

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**OPERATING AGREEMENT**  
**OF**  
**NOVANT HEALTH COASTAL REGION, LLC**

**Dated as of November 12, 2020**

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**OPERATING AGREEMENT  
OF  
NOVANT HEALTH COASTAL REGION, LLC**

**THIS OPERATING AGREEMENT** is entered into as of the 12<sup>th</sup> day of November, 2020 by Novant Health Coastal Region, LLC, a North Carolina limited liability company (the “**Company**”), and Novant Health, Inc. a North Carolina nonprofit corporation (the “**Member**”), as the sole member of the Company, on the following terms and conditions:

**RECITALS**

**WHEREAS**, the Company was formed as a limited liability company on September 15, 2020 under the laws of the State of North Carolina by filing Articles of Organization (the “**Articles**”) for the Company with the North Carolina Secretary of State. The Member now desires to adopt, approve and enter into this Agreement to govern the operation of the Company.

**ARTICLE I  
DEFINITIONS**

As used herein, the following terms shall have the indicated definitions.

“**Act**” means the North Carolina Limited Liability Company Act as set forth at North Carolina General Statutes §57C-1-01 through §57C-10-07, as may be amended from time to time.

“**Agreement**” means this Operating Agreement, as it may be amended from time to time.

“**Articles**” means the Articles of Organization of the Company as filed with the Secretary of State of North Carolina, as the same may be amended or restated from time to time.

“**Capital Contribution**” means the contribution by the Member to the capital of the Company.

“**Code**” means the Internal Revenue Code of 1986, as amended, and any successor provision.

“**Company**” has the meaning set forth in the Preamble to this Agreement.

“**Manager**” is defined in Section 6.1.

“**Member**” has the meaning set forth in the Preamble to this Agreement, or any successor in interest or assign.

“**Membership Interest**” means the ownership interest of the Member in the Company, including any and all rights, powers, benefits, duties or obligations conferred or imposed on the Member under the Act or this Agreement.

“**Net Profits**” and “**Net Losses**” of the Company mean the taxable income and net losses, respectively, of the Company, determined in accordance with the Code and applicable Regulations; provided, however, the Member acknowledges that as a single member limited liability company, the Company’s existence, for tax purposes, shall be ignored. In the event that the determination of Net Profits and Net Losses must be determined in some manner other than as set forth in this definition by virtue of the method of accounting employed by the Member, then Net Profits and Net Losses shall be determined accordingly.

“**Organizer**” means Kevin Griffin, the organizer of the Company.

“**Person**” means any individual, general partnership, limited partnership, corporation, trust, limited liability company or other association or entity.

“**Regulations**” means the regulations (including temporary regulations) of the United States Treasury Department pertaining to the income tax, as amended, and any successor provision.

## **ARTICLE II NAME AND PLACE OF BUSINESS**

The name of the Company is Novant Health Coastal Region, LLC. The registered agent of the Company and the registered office of the Company shall be as set forth in the Articles, or such other agent or place as may hereafter be designated by the Member from time to time as provided by law. The Company’s principal office shall be at such place as the Member may designate from time to time, and the Company shall maintain records there as required by the Act.

## **ARTICLE III BUSINESS, PURPOSES, AND TERM OF COMPANY**

Section 3.1    **Purposes**. Unless otherwise limited by the Company’s Articles, the business and purposes of the Company shall be to engage in any lawful business. Subject to the terms of this Agreement, the Company shall have all powers of a limited liability company, including without limitation, those set forth in Section 57C-2-02 of the North Carolina General Statutes.

Section 3.2    **Term of Company**. The term of the Company shall commence on the effective date of filing the Articles with the Secretary of State of North Carolina. The Managers shall also take such steps as may be necessary in order to effect a filing of the Articles in such other registries as are required by applicable law. The Company shall continue on a perpetual basis until dissolved pursuant to Article VII.

Section 3.3    **Status of the Company**. The Member acknowledges that, although the Company will be a “limited liability company” under North Carolina law, for federal and state income-tax purposes (under applicable provisions of the Code and the Regulations), as long as the Member is the sole Member of the Company, its existence will be ignored and it will not be treated as a separate tax entity. Such treatment refers solely to the federal and state income-tax treatment of the Company, and not to the state law status of the Company as a limited liability

company. The Member shall not be personally obligated to any third party for any debt, obligation or liability of the Company solely by reason of being a member of the Company.

Section 3.4 **Organizer Indemnification.** The Organizer's acts and conduct in connection with the organization of the Company are hereby ratified and adopted by the Company as acts and conduct by and on behalf of the Company and are deemed to be in its best interest. The organizational and other activities for which the Organizer was responsible have been completed, the Organizer is hereby relieved of any further duties and responsibilities in that regard, and the Company and the Member hereby agree to indemnify and hold harmless the Organizer for any loss, liability or expense arising from his or her actions or conduct in his or her capacity as organizer of the Company.

## **ARTICLE IV CAPITAL CONTRIBUTIONS AND MEMBERSHIP**

The Member shall have no duty to make additional contributions to the Company but additional contributions may be made from time to time as the Member shall determine.

## **ARTICLE V ALLOCATION OF NET PROFITS AND NET LOSSES; DISTRIBUTIONS**

Section 5.1 **Allocation of Net Profits and Net Losses.** The Net Profits and Net Losses of the Company shall be allocated exclusively to the Member.

Section 5.2 **Distributions.** Distributions of Company profits and other assets shall be made exclusively to the Member when and as determined by the Member; provided, however, that the Company shall make no distributions to the extent that, immediately after the distribution, the Company's liabilities would exceed the fair market value of its assets.

## **ARTICLE VI MANAGEMENT OF THE COMPANY**

Section 6.1 **Management.** The business and affairs of the Company shall be managed exclusively by the Member who may appoint one or more managers from time to time (the "***Managers***") and the Member may delegate various operations to the Managers. The initial Managers of the Company shall be Rhonda Amoroso, Barb Biehner, Dana Cook, Brian Eckel, Jerome Fennel, Mitch Lamm, Tony McGhee, John Pace, Howard Rockness, Jason Thompson, Neal Beard, Heather Davis, Michael Jaskolka, Bill Smith, David Williams, Thomas Bellamy and Mike Steiner (the "***Initial Managers***"). The Initial Managers' authority shall be limited solely to appointing six managers or trustees of the endowment formed by New Hanover County, North Carolina to hold and administer a portion of the purchase price paid at the closing of the acquisition by a wholly owned subsidiary of the Member of the healthcare businesses owned and operated by New Hanover County, North Carolina and New Hanover Regional Medical Center. The Managers may, but need not, be a member of the Company. In performing management functions for the Company, the Managers may use the title "Manager" or such other title or titles (including, without limitation, the title "President" or "Chief Executive Officer") as the Member shall determine. The Managers shall have exclusive and complete authority and discretion to manage the day-to-day operations and affairs of the Company and to make all decisions

regarding the business of the Company in the ordinary course, except that the Member must provide prior written consent (which shall include consent via an email) to all operational matters other than the expenditure of petty cash. Subject to the foregoing sentence, any action taken by the Managers on behalf of the Company shall constitute the act of and serve to bind the Company. Subject to the foregoing sentence, in dealing with the Managers acting on behalf of the Company, no person shall be required to inquire into the authority of the Managers to bind the Company. The Member may elect a Manager from time to time and may remove a Manager for cause or without cause at any time.

Section 6.2 **Committees.** The Managers shall have the power to establish one or more committees of the Managers, who shall have the authority to act on behalf of the Company with such limitations as the Managers shall agree on and subject to the limitations set forth in Section 6.1. For the avoidance of doubt, the Initial Managers shall have the authority to form one or more committees whose authority shall be limited to the same extent as the Initial Managers in Section 6.1.

Section 6.3 **Actions by Management.** Any action to be taken at a meeting of the Managers, or any action that may be taken at a meeting of the Managers, may be taken without a meeting if the Managers having at least a majority of the votes that are eligible to be cast by all currently appointed Managers sign a consent in writing setting forth the action so taken. A written consent pursuant to this Section 6.3 may be validly and effectively delivered by any Manager by facsimile or other electronic transmission. As soon as practicable following the execution and delivery of a written consent pursuant to this Section 6.3, the Company shall deliver a copy thereof to each Manager that did not sign such consent.

Section 6.4 **Fiduciary Duties.** The Member shall have no fiduciary duties to the Company. In particular (but without limitation), the Member shall have no duty: (a) not to compete with the Company; (b) to disclose business opportunities to the Company; (c) to avoid self-interested transactions with the Company; or (d) to avoid improper personal benefit in respect of the Company.

## **ARTICLE VII DISSOLUTION**

Section 7.1 **Dissolution of the Company.** The Company shall be dissolved, and shall terminate and wind up its affairs, upon the first to occur of the following:

- (a) the determination by the Member to dissolve the Company;
- (b) the entry of a decree of judicial dissolution, as provided in Section 57C-6-02.3 of the Act; or
- (c) an administrative dissolution under Section 57C-6-03(b) of the Act.

Section 7.2 **Winding Up and Distribution of Assets.**

- (a) If the Company is dissolved, the Managers shall wind up the affairs of the Company. Upon the winding up of the Company, subject to the provisions of the Act,

the Managers shall pay or make reasonable provision to pay all claims and obligations of the Company, including all costs and expenses of the liquidation and all contingent, conditional or unmatured claims and obligations that are known to the Managers but for which the identity of the claimant is unknown. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision shall be made in full.

(b) Upon any such dissolution of the Company, the net assets, if any, of the Company available for distribution, and any cash proceeds from the liquidation of any such assets, shall be applied and distributed in the following order, to the extent available:

(i) First, to the Company's creditors, including the Member as creditor (to the extent permitted by law), in satisfaction of liabilities of the Company; and

(ii) Thereafter, to the Member.

## **ARTICLE VIII MISCELLANEOUS**

Section 8.1 **Governing Law And Jurisdiction.** This Agreement, including its existence, validity, construction and operating effect, and the rights of the Member under the Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina (without regard to principles of conflicts of laws).

Section 8.2 **Indemnification and Liability.**

(a) To the maximum extent permitted by applicable law, the Managers shall not be liable to the Company or any other third party: (i) for mistakes of judgment; (ii) for any act or omission suffered or taken by him or her; or (iii) for losses due to any such mistakes, action or inaction.

(b) Except as may be restricted by applicable law, the Managers shall not be liable for, and the Company shall indemnify the Managers against, and agrees to hold the Managers harmless from, all liabilities and claims (including reasonable attorney's fees and expenses incurred in defending against such liabilities and claims) against such Manager, arising from such Manager's performance of his or her duties in conformance with the terms of this Agreement, except to the extent that the liabilities or claims arise from a Manager's bad faith, fraud, misappropriation of Company property or embezzlement.

(c) The Managers may consult with legal counsel or accountants selected by the Managers and, to the maximum extent permitted by applicable law, any action or omission suffered or taken in good faith in reliance and in accordance with the written opinion or advice of any such counsel or accountants (provided such counsel or accountants have been selected with reasonable care) shall be fully protected and justified with respect to the action or omission so suffered or taken.

Section 8.3 **Amendments.** This Agreement may only be amended, modified or supplemented in a writing executed by the Member. No other written or oral agreement, understanding, instrument or writing other than this agreement or any amendment hereto shall constitute part of the operating agreement of the Company.

Section 8.4 **Binding Effect.** The terms, conditions and provisions of this Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, successors, distributees, legal representatives and permitted assigns; provided, however, nothing in this Agreement, expressed or implied, is intended or shall be construed to give to any creditor of the Company or any creditor of the Member or any other person whatsoever, other than the Member and the Company, any legal or equitable right, remedy or claim under or in respect of this Agreement or any term, condition or provision herein contained, such terms, covenants and provisions are and shall be held to be for the sole and exclusive benefit of the Member and the Company.

[Signature page follows.]

**IN WITNESS WHEREOF**, this Agreement is executed the day and year first above written.

**COMPANY:**

**NOVANT HEALTH COASTAL REGION, LLC**

By:  DocuSigned by:  
D58847DA065A475...  
Name: Kevin Griffin  
Title: Senior Vice President

**SOLE MEMBER:**

**NOVANT HEALTH, INC.**

By:  DocuSigned by:  
D58847DA065A475...  
Name: Kevin Griffin  
Title: Senior Vice President

**Attachment I-2**

**Novant Health New Hanover Regional Medical Center, LLC Formation Documents**

[See Attached]





The mailing address, if different from the street address, of the principal office of the company is:

Number and Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ County: \_\_\_\_\_

b. ☐ The limited liability company does not have a principal office.

7. Any other provisions which the limited liability company elects to include (e.g., the purpose of the entity) are attached.

8. **(Optional):** Listing of Company Officials (See instructions on the importance of listing the company officials in the creation document.

Name	Title	Business Address

9. **(Optional):** Please provide a business e-mail address: \_\_\_\_\_  
The Secretary of State's Office will e-mail the business automatically at the address provided above at no cost when a document is filed. The e-mail provided will not be viewable on the website. For more information on why this service is offered, please see the instructions for this document.

10. These articles will be effective upon filing, unless a future date is specified:

This is the 15 day of September, 2020.

Novant Health New Hanover Regional Medical Center, LLC

DocuSigned by:

J. Kevin Griffin

D58847DA085A475...

Signature

Novant Health Coastal Region, LLC (Member) by Kevin Griffin, its Senior Vice President

Type or Print Name and Title

The below space to be used if more than one organizer or member is listed in Item #2 above.

\_\_\_\_\_

\_\_\_\_\_

Signature

Signature

Type and Print Name and Title

Type and Print Name and Title

**NOTE:**

1. Filing fee is \$125. This document must be filed with the Secretary of State.

**OPERATING AGREEMENT  
OF  
Novant Health New Hanover Regional Medical Center, LLC  
(A North Carolina Limited Liability Company)**

**DATED: September 16, 2020**

THE LLC OWNERSHIP INTEREST REPRESENTED BY THE OPERATING AGREEMENT HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE NORTH CAROLINA SECURITIES ACT, OR SIMILAR LAWS OR ACTS OF OTHER STATES IN RELIANCE UPON EXEMPTIONS UNDER THOSE ACTS. THE SALE OR OTHER DISPOSITION OF THE OWNERSHIP INTEREST IS RESTRICTED.

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**OPERATING AGREEMENT  
OF  
NOVANT HEALTH NEW HANOVER REGIONAL MEDICAL CENTER, LLC**

THIS OPERATING AGREEMENT (this “Agreement”) of NOVANT HEALTH NEW HANOVER REGIONAL MEDICAL CENTER, LLC (the “Company”), a limited liability company organized pursuant to the North Carolina Limited Liability Company Act, is executed effective as of the date set forth on the cover page of this Agreement. Novant Health Coastal Region, LLC, a limited liability company, is the only Member of the Company (the “Sole Member”). Exclusively for federal and state tax purposes and pursuant to Treasury Regulations Section 301.7701, the Sole Member and the Company intend the Company to be disregarded as an entity that is separate from the Sole Member. For all other purposes (including, without limitation, limited liability protection for the Sole Member from Company liabilities), however, the Sole Member and the Company intend the Company to be respected as a separate legal entity that is separate and apart from the Sole Member.

**ARTICLE I  
FORMATION OF THE COMPANY**

1.1 *Formation.* The Company was formed on September 16, 2020, upon the filing with the Secretary of State of the Articles of Organization including Articles of Conversion (the “Articles”) of the Company.

1.2 *Name.* The name of the Company is as set forth on the cover page of this Agreement. The Sole Member may change the name of the Company from time to time as it deems advisable, provided appropriate amendments to this Agreement and the Articles and necessary filings under the Act are first obtained.

1.3 *Registered Office and Registered Agent.* The Company’s registered office within the State of North Carolina and its registered agent at such address shall be as the Sole Member may from time to time deem necessary or advisable.

1.4 *Principal Place of Business.* The principal place of business of the Company within the State of North Carolina shall be at such place or places as the Sole Member may from time to time deem necessary or advisable.

1.5 *Purposes and Powers.*

- (a) The purpose of the Company shall be to engage in any lawful business for which limited liability companies may be organized under the Act; provided, however, that the Company shall (i) be operated exclusively for charitable, educational and scientific purposes, (ii) provide health care for the treatment of the sick, afflicted, infirm or injured persons through the erection (or lease), management and operation of a hospital, hospitals, other medical care or other ancillary facilities or through the creation and operation of another or other nonprofit entities, (iii) do or provide for the doing of anything and everything necessary, expedient, incidental or appropriate to the operation of a hospital or provision of health care in all

of its phases, (iv) support Novant Health Coastal Region, LLC (within the meaning of Section 509(a)(3) of the Code) to enable Novant Health, Inc. to better support those tax-exempt organizations within its health system which are designated in its corporate charter as Supported Entities (as defined therein) and (v) not carry on any activities not permitted to be carried on (a) by an organization exempt from federal income tax under Section 501(c)(3) of the Code, or corresponding section of any future federal tax code, or (b) by an organization, contributions to which are deductible under Section 170(c)(2) of the Code, or corresponding section of any future federal tax code.

- (b) Subject to the limitations set forth in Section 1.5(a), the Company shall have any and all powers which are necessary or desirable to carry out the purposes and business of the Company, to the extent the same may be legally exercised by limited liability companies under the Act.

1.6 *Term.* The duration of the Company shall be unlimited, unless the Company is earlier dissolved and its affairs wound up in accordance with the provisions of this Agreement or the Act.

1.7 *Nature of Sole Member's Interest.* The interest of the Sole Member in the Company shall be personal property for all purposes. Legal title to all Company assets shall be held in the name of the Company.

## ARTICLE II DEFINITIONS

The following terms used in this Agreement shall have the following meanings (unless otherwise expressly provided herein):

“*Act*” means the North Carolina Limited Liability Company Act, as the same may be amended from time to time.

“*Agreement*” means this operating agreement, as amended from time to time.

“*Articles*” means the Articles of Organization including Articles of Conversion of the Company filed with the Secretary of State, as amended or restated from time to time.

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time (and any corresponding provisions of succeeding law).

“*Manager*” means the Sole Member.

“*Member*” means a Person who has been admitted as a member of the Company as provided in the Act.

“*Ownership Interest*” means all of the Sole Member’s rights and obligations in the Company.

“*Partnership Representative*” means the person who is designated as the “partnership representative,” as provided in Code Section 6223(a) and the Treasury Regulations.

“*Person*” means an individual, a corporation, a partnership, a limited partnership, a limited liability company, a foreign limited liability company, an unincorporated association, or another entity.

“*Property*” means (i) any and all property acquired by the Company, real and/or personal (including, without limitation, intangible property), and (ii) any and all of the improvements constructed on any real property.

“*Secretary of State*” means the Secretary of State of North Carolina.

“*Sole Member*” means the only Member of the Company, Novant Health Coastal Region, LLC

“*Treasury Regulations*” means the Income Tax Regulations and Temporary Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

### ARTICLE III MANAGEMENT OF THE COMPANY

3.1 *Management by Manager.* The Manager shall be the manager of the Company for all purposes. Except as otherwise expressly provided in this Agreement, the Articles or the Act, all decisions with respect to the management of the business and affairs of the Company shall be made by the Manager. The Manager may delegate and revoke specific management rights to any Person by written action.

3.2 *Indemnification of Manager for Management Services.* The Company shall indemnify the Manager or its authorized delegatee(s) in connection with their services as Manager(s) of the Company to the fullest extent permitted or required by the Act, as amended from time to time, and the Company may advance expenses incurred by such person upon the approval of the Sole Member.

### ARTICLE IV RIGHTS AND OBLIGATIONS OF SOLE MEMBER

4.1 *Name and Address of Sole Member.* The name, address, and Ownership Interest of the Sole Member are reflected in *Schedule I* attached hereto.

4.2 *Limited Liability.* The Sole Member shall not be required to contribute any additional capital to the Company except as set forth in *Schedule I*, nor shall the Sole Member in its capacity as such be bound by, or personally liable for, any expense, liability, or obligation of the Company except to the extent of its interest in the Company and the obligation to return distributions made to it under certain circumstances as required by the Act. The Sole Member

shall be under no obligation to restore a capital account deficit upon the dissolution of the Company or the liquidation of the Sole Member's Ownership Interest.

## ARTICLE V CAPITAL CONTRIBUTIONS AND LOANS

The Sole Member has contributed capital to the Company and owns all of the outstanding Ownership Interests in the Company as set forth on Schedule I attached hereto.

## ARTICLE VI ALLOCATIONS, ELECTIONS, AND REPORTS

All allocations of profit and loss of the Company and all assets and liabilities of the Company shall, *solely* for state and federal tax purposes, be treated as that of the Sole Member pursuant to Treasury Regulations Section 301.7701, but for no other purpose (including, without limitation, limited liability protection for the Sole Member from Company liabilities).

## ARTICLE VII DISTRIBUTIONS

Distributions of assets by the Company shall be made to the Sole Member on such basis and at such time as determined by the Manager; provided, however, that no part of the net earnings of the Company shall inure to the benefit of or be distributable to its trustees, directors, managers, officers or other private persons, except that the Company shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Section 1.5 above.

## ARTICLE VIII DISSOLUTION AND LIQUIDATION OF THE COMPANY

8.1 *Dissolution Events.* The Company will be dissolved upon the happening of any of the following events:

- (a) All or substantially all of the assets of the Company are sold, exchanged, or otherwise transferred (unless the Manager has elected to continue the business of the Company);
- (b) The Sole Member signs a document stating its election to dissolve the Company;
- (c) The entry of a final judgment, order, or decree of a court of competent jurisdiction adjudicating the Company to be bankrupt and the expiration without appeal of the period, if any, allowed by applicable law in which to appeal;



or

- (d) The entry of a decree of judicial dissolution or the issuance of a certificate for administrative dissolution under the Act.

8.2 *Liquidation.* Upon the happening of any of the events specified in Section 8.1 and, if applicable, the failure of the Sole Member to continue the business of the Company, the Sole Member, or any liquidating trustee designated by the Sole Member, will commence as promptly as practicable to wind up the Company's affairs unless the Sole Member or the liquidating trustee (either, the "Liquidator") determines that an immediate liquidation of Company assets would cause undue loss to the Company, in which event the liquidation may be deferred for a time determined by the Liquidator to be appropriate. Assets of the Company may be liquidated or distributed in kind, as the Liquidator determines to be appropriate. The Sole Member will continue to be entitled to Company cash flow and Company profits during the period of liquidation. The proceeds from liquidation of the Company and any Company assets that are not sold in connection with the liquidation will be applied in the following order of priority:

- (a) To payment of the debts and satisfaction of the other obligations of the Company, including, without limitation, debts and obligations to the Sole Member;
- (b) To the establishment of any reserves deemed appropriate by the Liquidator for any liabilities or obligations of the Company, which reserves will be held for the purpose of paying liabilities or obligations and, at the expiration of a period the Liquidator deems appropriate, will be distributed in the manner provided in Section 8.2(c); and, thereafter
- (c) To the Sole Member; provided that the Sole Member is at the time of such distribution an organization organized and operated exclusively for charitable, educational, religious or scientific purposes and qualified as exempt under Section 501(c)(3) of the Code; and further provided that if the Sole Member is not so qualified all of the remaining assets shall be transferred by the Liquidator to one or more organizations that are organizations organized and operated exclusively for charitable, educational, religious or scientific purposes and qualify as exempt under Section 501(c)(3) of the Code.

8.3 *Articles of Dissolution.* Upon the dissolution and commencement of the winding up of the Company, the Manager shall cause Articles of Dissolution to be executed on behalf of the Company and filed with the Secretary of State, and the Manager shall execute, acknowledge, and file any and all other instruments necessary or appropriate to reflect the dissolution of the Company.

## ARTICLE IX MISCELLANEOUS

9.1 *Records.* The records of the Company will be maintained at the Company's principal place of business or at any other place the Manager selects, provided the Company keeps at its principal place of business the records required by the Act to be maintained there.

9.2 *Survival of Rights.* Except as provided herein to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

9.3 *Interpretation and Governing Law.* When the context in which words are used in this Agreement indicates that such is the intent, words in the singular number shall include the plural and vice versa. The masculine gender shall include the feminine and neuter. The Article and Section headings or titles shall not define, limit, extend, or interpret the scope of this Agreement or any particular Article or Section. This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina without giving effect to the conflicts of laws provisions thereof.

9.4 *Severability.* If any provision, sentence, phrase or word of this Agreement or the application thereof to any person or circumstance shall be held invalid, the remainder of this Agreement, or the application of such provision, sentence, phrase, or word to Persons or circumstances, other than those as to which it is held invalid, shall not be affected thereby.

9.5 *Agreement in Counterparts.* This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

9.6 *Partnership Representative.* For purposes of this Agreement, the Manager shall be the Partnership Representative.

9.8 *Creditors Not Benefited.* Nothing in this Agreement is intended to benefit any creditor of the Company. No creditor of the Company will be entitled to require the Sole Member to solicit or accept any loan or additional capital contribution for the Company or to enforce any right which the Company may have against the Sole Member, whether arising under this Agreement or otherwise.

9.9 *Writing.* Any operating agreement, as defined in Section 57D-1-03(23) of the Act, must be in writing.

[Signature Page Follows]



### SCHEDULE I

Name and Address of Sole Member	Ownership Interest
Novant Health Coastal Region, LLC 2085 Frontis Plaza Boulevard Winston Salem, NC 27103	100% _____
TOTAL --	<u>100%</u>

**Attachment J**

**Correspondence with UNC School of Government, the North Carolina Department of State  
Treasurer, and the North Carolina Local Government Commission**

[See Attached]

## Wurtzbacher, Lisa

---

**From:** Millonzi, Kara Anne <Millonzi@sog.unc.edu>  
**Sent:** Monday, September 21, 2020 8:18 PM  
**To:** Wurtzbacher, Lisa  
**Subject:** Re: Follow Up on Discussion of Investment of Proceeds

Hi Lisa – As I understand it, the county wants to establish a nonprofit entity and then contract with that nonprofit entity to expend certain funds the county receives from the sale of the hospital, where the nonprofit entity is not subject to G.S. 159, Art. 3 and other statutory provisions that apply to the county. (I know that is an oversimplification, but I want to make sure that I have a basic understanding of what the county wants to accomplish.)

There is some legal ambiguity in what the county proposes, but I believe there is a potential legal path to accomplish what the county wants to do.

Let's start with the basic premise that the county may establish a nonprofit corporation that benefits the county. This is commonly done by local governments across the state, often to receive certain grant monies that the local government is not eligible to receive directly.

It raises a few important questions in this instance, though. The most important are (1) whether the county has authority to appropriate the proceeds from the sale of the hospital to the nonprofit, and then (2) whether the nonprofit would be treated as board, agency, commission, authority, or institution of county government pursuant to G.S. 159-7, such that the nonprofit would be required to follow the investment and other statutory provisions in the Local Government Budget and Fiscal Control Act.

### **Does the county have authority to appropriate proceeds to the nonprofit?**

The proceeds from the sale of the hospital, even if legally restricted, are public funds and, more specifically, county funds. They must be expended for a public purpose and for a purpose for which the county has statutory authority. Having said that, a county has explicit authority to contract with a private entity to carry out any activity that the county has statutory authority to engage in. So, instead of spending the monies to run programs, provide services, fund capital itself, the county is free to contract with a private entity to engage in these activities on its behalf. [Here](#) is a blog post that gets into some of the details about the authority and also about how the contracts must be structured. Importantly, the contracts between the county and private entity must clearly spell out what the private entity will do in exchange for receiving county funds and the items/activities must all be things the county has statutory authority to do. Furthermore, the contract must require the private entity to provide for a periodic accounting of contract performance to ensure that it is abiding by all the legal requirements.

Although not a perfect analogy, a common example of this is when a county appropriates money to nonprofit fire departments that provide fire services that benefit properties in the county. The county enters into a contractual agreement with the fire department and commits to paying the fire department X amount in exchange for the fire department providing Y services. The fire department is not a governmental entity. It is not subject to the LGBFCA, public records/open meeting laws, or public bidding laws, unless the contract it has with the county government specifies that the fire department must follow these laws. The contract between the fire department and county must specify the particular activities that the fire department will engage in and all of them must be things that the county has statutory authority to do. And the contract must provide for a periodic accounting by the fire department of its contract performance.

Note that the authority to contract with private entity is not unlimited and can't be used to expand a local government's authority or circumnavigate financial, bidding, open government laws. For example, when a county invests funds, it must do so in compliance with G.S. 159-30. If a county were to contract with a private entity to manage its money, the private entity also would have to abide by the investment statute. The difference between this example and the fire department example, is that in the fire department example, once the monies are paid to the fire department, they are not county funds. The monies are paid by the county to a vendor/service providers (fire department) to perform a particular set of services. (Same as when the county contracts with any vendor or contractor.) The fire department is not subject to G.S. 159-30 investment requirements for its own money.

**Would the nonprofit be treated as a board, agency, commission, authority, or institution of county government, and thus be subject to the Local Government Budget and Fiscal Control Act no matter how the contract with the county is structured?**

This is the trickier question to answer. The legislature requires all units of local government and public authorities to comply with the LGBFCA. G.S. 159-7 defines "Unit," "unit of local government," or "local government" as "a municipal corporation that is not subject to the State Budget Act (Chapter 143C of the General Statutes) and that has the power to levy taxes, including a consolidated city-county, as defined by G.S. 160B-2(1), **and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations.**" Even if the contract is structured as a services contract, there is a chance that the court would deem the nonprofit to actually be a part of county for purposes of the LGBFCA because it is a board, agency, commission, authority, or institution of the county. That would mean that the nonprofit would have to follow all the provisions of the LGBFCA, including the investment statute. There are a few reasons why a court might come to this conclusion. First, the county is creating the nonprofit. In most vendor / service contract situations a county is contracting with an existing nonprofit. Second, the county (at least as I understand it) plans to appropriate the full amount under the contract upfront. Most service/vendor contracts are either done on a yearly basis (such as with fire departments) or are done on a reimbursement basis. It starts to look much more like a money management contract, or a scheme designed to circumnavigate the financial/bidding/open government laws, if the monies are paid to the nonprofit upfront.

The legislature has not clearly defined what it means to be a board, agency, commission, authority, or institution of a local government. In looking at the legislative history, it appears that the legislature intended this language to capture all the possible entities that might be part of a local government. Common examples include public health boards, social services boards, and rural fire protection commissions. These are all boards with some independent powers but that are part of county government for budgetary purposes. I'm not aware of case law that specifically addresses whether a nonprofit could be considered a board, agency, commission, authority, or institution of local government (although I have not done an extensive search). Having said that, there is some case law addressing a similar issue that might be instructive. As my colleague Frayda Bluestein details [here](#), in *News & Observer Publishing Co. v. Wake County Hospital System, Inc.*, 55 N.C.App. 1 (1981), the NC Court of Appeals addressed the question about whether a nonprofit was a public agency for purposes of the public records law.

*That case involved a hospital that started out as a public authority and was later transferred to a private, nonprofit corporation – the Wake County Hospital System, Inc. The case arose when the Hospital System settled several lawsuits and refused a request from the newspaper to view the settlements and other hospital records. The question before the court was whether the Hospital System was an agency of county government within the meaning of G.S. 132-1 of the public records act. The court concluded that the Hospital System was subject to the public records act because*

*Wake County exercised significant oversight and control of the Hospital System, and it functioned as an agency of the county rather than as an independent contractor.*

*The decision establishes a few important principles, but no bright line test. Clearly, the corporate structure itself does not determine the outcome. Simply transferring a public function to a private entity does not necessarily avoid the application of the public records law. A court will look at the details of the actual relationship between the government and the private entity. Nine key facts from the News & Observer case are regularly recited as factors to be considered in evaluating this issue. Here they are: The articles of incorporation provided (1) that upon its dissolution, the corporation would transfer its assets to the county; and (2) that all vacancies on the board of directors would be subject to the county's approval. The lease agreement provided (3) that the corporation would occupy premises owned by the county under a lease for \$1.00 a year; (4) that the county commissioners would review and approve the corporation's annual budget; (5) that the county would conduct a supervisory audit of the corporation's books; and (6) that the corporation would report its charges and rates to the county. The operating agreements also provided (7) that the corporation would be financed by county bond orders; (8) that revenue collected pursuant to the bond orders would be revenue of the county; and (9) that the corporation would not change its corporate existence nor amend its articles of incorporation without the county's written consent. See News & Observer, 55 N.C. App. at 11-12.*

*Other cases have reached similar results focusing on the type and extent of control by the government. The markers of control are so much a part of the analysis that in a case where factors indicating significant control originally existed, but were removed by the time the case came to trial, the court held that the public records and open meetings laws did not apply. See Chatfield v. Wilmington Housing Finance & Development, Inc., 166 N.C. App. 703 (2004)(rejecting arguments based on the "governmental function" analysis). .... The court in Chatfield actually based its holding as to the open meetings law on the fact that the nonprofit, under its bylaws, was not appointed by the city, and therefore did not meet the definition of "public body" under the open meetings law. The case leaves open the question of whether the nine factors in the News & Observer case apply to an analysis under the open meetings law.*

Note that these cases only deal with the issue in the context of the public records and open meetings laws. They do not address bidding laws, conflict of interest laws, or, most importantly, the definitions under the LGBFCA. I think it is likely, however, that a court would look to at least some of these same factors in addressing the definitional issue of what constitutes a board, agency, commission, authority, or institution of county government. (And note that a court could deem a nonprofit to be a public agency for some purposes, including public records/open meetings purposes, but hold that it is not an actual board, agency, commission, authority, or institution of county government.)

In summary, although what the county proposes falls into a grey area, I believe that there may be a legal path to accomplishing the county's goal, assuming that the county does not have control over the nonprofit's board or budget and that the contract between the county and nonprofit is structured very carefully to meet the requirements detailed above. I might suggest that the county establish the nonprofit, not to solely benefit the county, but to benefit the ultimate community goal that the county wants to accomplish. The nonprofit board would then be free to make decisions about how to spend the money consistent with that goal, but also consistent with contract provisions with the county, including ensuring that the nonprofit does not engage in activities that the county does not have statutory authority to engage in.

Best,  
Kara



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**From:** "Wurtzbacher, Lisa" <lwurtzbacher@nhcgov.com>  
**Date:** Monday, September 21, 2020 at 10:33 AM  
**To:** "Millonzi, Kara Anne" <Millonzi@sog.unc.edu>  
**Subject:** Re: Follow Up on Discussion of Investment of Proceeds

Kara, that would be fantastic. Our board will likely vote on this early October, so I would love to have your input.

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**From:** Millonzi, Kara Anne <Millonzi@sog.unc.edu>  
**Sent:** Sunday, September 20, 2020 7:41:46 PM  
**To:** Wurtzbacher, Lisa <lwurtzbacher@nhcgov.com>  
**Subject:** Re: Follow Up on Discussion of Investment of Proceeds

Hi Lisa – I am so sorry. I was cleaning out my inbox today and discovered that I never responded to you. I had gotten so behind in emails because of the COVID-19-related volume and I lost a handful that slipped down in my inbox. I think I drafted a response at the time and then did not send it for some reason. In any event, I apologize. It may be too late, but if not I'm happy to look at it again. Let me know and I'll get it done tomorrow (Monday). Best, Kara

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**From:** "Wurtzbacher, Lisa" <lwurtzbacher@nhcgov.com>  
**Date:** Friday, August 14, 2020 at 2:27 PM  
**To:** "Millonzi, Kara Anne" <Millonzi@sog.unc.edu>  
**Subject:** FW: Follow Up on Discussion of Investment of Proceeds

Hi Kara- We are getting fairly far down the road of putting together our Foundation documents and our Board has approved this overall framework. I wanted to check in to see if you had a chance to look over this and if you had a few moments to talk about it?

**Lisa Wurtzbacher | Chief Financial Officer**

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**From:** Wurtzbacher, Lisa  
**Sent:** Wednesday, August 05, 2020 1:10 PM  
**To:** Millonzi, Kara Anne <[Millonzi@sog.unc.edu](mailto:Millonzi@sog.unc.edu)>  
**Subject:** FW: Follow Up on Discussion of Investment of Proceeds

Hi Kara- I hope all is well. I wanted to follow up on this email that I had sent regarding our framework for our potential sale of the County owned hospital. Would you have a moment to talk with me about it? It aligned with what we spoke with you about back in June and I just want to make sure we are on the right path as we are beginning to draft foundation documents, bylaws, etc.

**From:** Wurtzbacher, Lisa  
**Sent:** Tuesday, June 30, 2020 4:51 PM  
**To:** Millonzi, Kara Anne <[Millonzi@sog.unc.edu](mailto:Millonzi@sog.unc.edu)>  
**Cc:** Kelly, Sheryl <[shkelly@nhcgov.com](mailto:shkelly@nhcgov.com)>; Wayne, Martha <[mwayne@nhcgov.com](mailto:mwayne@nhcgov.com)>; Burpeau, Kemp <[KBurpeau@nhcgov.com](mailto:KBurpeau@nhcgov.com)>  
**Subject:** Follow Up on Discussion of Investment of Proceeds

Confidential

Kara- As a follow up to our conversation about the use of a Foundation in receiving proceeds and how that might fall outside of NCGS159-30, I am attaching a document that discusses the framework we are contemplating should our Board vote yes to a sale of the county owned hospital. Would you be able to review the framework to ensure that we don't have any huge gaps in our framework, that the framework provides adequate protection for the corpus from the proceeds, and that the setup of the foundation allows the funds to be invested outside of NCGS 159-30? As we are working on a tight timeframe here (our Board will likely vote on this issue July 13<sup>th</sup>), if you have time to get comments back to us by Monday, that would be extremely helpful. If that isn't going to work, please let me know. I also ask that while we are working through the framework that this be held in confidence. Thanks so much!

## Confidential

### Potential Framework for Use of Proceeds:

- Restrictions for use of proceeds to be detailed in the definitive sale agreement (**is this the right terminology??**) with the buyer
  
- *Proceeds are distributed to the County*
  - County will hold a certain portion of the funds for the following:
    - Stabilization of NHRMC employee benefits
      - Pension bridge for vested employees
      - Retention bonus for employees that remain through closing
      - Wind down costs and trailing issues with insurance
      - **How is this accomplished? Is this a part of the wind down procedures?**
    - NHC revenue stabilization and emergency needs
      - Reserve fund set up to use interest only unless emergency occurs that requires the use of principal
        - Retire non-voter approved debt
        - Cash pool for unexpected emergency spending requirements
        - Revenue replacement during economic downturns
      - Access to principal clearly articulated and requires an affirmative vote of the Board
      - **Can the County legally set up a trust for these funds? Do we want the funds tied up in that manner or just a reserve fund?**
    - Mental and behavioral health and substance abuse initiatives
      - Capital funding for long-term, peer led, residential substance abuse treatment programs
      - Expand access to mental health services independent of state assistance
      - Not to be set up in a trust, but rather be assigned for that purpose
      - Current estimates for long term peer led substance use treatment center for 200 beds is \$25 million
    - **How much needs to be set aside for potential wind down costs?**
  - Remaining proceeds will be utilized for long-term county strategic initiatives as outlined below
  
- *Management/Control of Remaining Proceeds*
  - Non-profit foundation to be created by County prior to Closing
    - Independent tax-exempt nonprofit nonstock corporation
    - Foundation governing board to be appointed by the board of the new hospital system local board and less than a majority to be appointed by County Commissioners
      - If County controls less than a majority of the board, the funds can be invested outside of NC GS 159-30

- County cannot have any budgeting powers over the Foundation
  - Foundation creation documents will note the purpose of the Foundation and restrictions including:
    - Sole purpose of the Foundation is to benefit the County and its residents
    - Interest earnings can be distributed directly to the County for public purposes or other non-profits to carry out the mission and initiatives of the County
    - Foundation to set up an endowment or several endowments that allows only the interest earnings to be spent and to be spent only for public purposes as noted in the Foundation's creation documents
  - Foundation will require a number of staff including President, Fundraising, Grant Evaluations and Reporting, Accounting, HR, and IT
    - Payroll will be paid through the annual allocation from the Trust or other fundraising efforts
  - County will have a grant agreement with the Foundation that it will serve the County in managing and disbursing funds for purposes laid out in the Foundation creation documents.
- 
- *Use of Funds*
    - Interest earned each year to be distributed from the Foundation to the County or other nonprofits to carry out the mission and initiatives of the County
      - Primary, Secondary, and Post-Secondary Education - examples include:
        - High quality universal pre-k
        - Highest per pupil funding in North Carolina
        - Highest average teacher salaries in North Carolina via local supplement
        - Comprehensive, no-cost broadband connectivity county-wide
        - Comprehensive access to modern technology for all learners
        - NHC Teacher Fellows program for traditional and charter school graduates committed to returning to local public schools
        - Access to scholarships for post-secondary education attainment
        - School facilities designed for mid-21<sup>st</sup> Century education delivery
      - Health and Social Equity - examples include:
        - Eradicate food deserts across the county
        - High quality, fair cost physical and mental health clinic access within .5 miles of every county resident
        - NHC health insurance pull to ensure 100 percent coverage of all county lives
        - Funding support to eliminate disparities in health outcomes focused initially on diabetes and obesity

- On-demand, cost effective transit system for dependent and choice riders
- Community Development - examples include:
  - Workforce housing trust fund
  - Small business micro-loan program
  - Minority and Women Owned Business support programs
  - Open space and public water access preservation
- Community Safety - examples include:
  - Next generation 911 services developed and deployed
  - Rapid fire rescue and emergency medical services
  - Modern training, development and outfitting of law enforcement
  - Comprehensive flood, storm surge and wind mitigation investments
  - New Hanover County property insurance pool
- Payroll to Foundation staff and investment manager

## Wurtzbacher, Lisa

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**From:** Sharon Edmundson <Sharon.Edmundson@nctreasurer.com>  
**Sent:** Thursday, September 24, 2020 10:28 AM  
**To:** Wurtzbacher, Lisa; Becky Dzingesleski; Cindy Aiken; Greg Gaskins  
**Cc:** Coudriet, Chris; Copley, Wanda  
**Subject:** RE: NCGS 159-30 Question

Lisa,

Our staff and Division attorney have reviewed your memo and the Letter of Intent, including Exhibit D (accessed via the link you provided). The question you asked is whether the proposed Foundation would be subject to NCGS 159-30, Investment of Idle Funds, which applies to local governments and public authorities. In considering your question, we have assumed that the details of the Foundation, once formed, will be exactly as presented in Exhibit D. We also are assuming that (a) the arrangement will comply with all relevant North Carolina Constitutional and statutory requirements regarding the County's authority and (b) the potential uses of the funds comply with the public purpose requirement.

We disagree with the approach of performing a "component unit" analysis, using the financial reporting GASB standards. The question involves the legal issue of whether the Foundation is a local government as defined in NCGS 159-7(b)(15). That definition, applicable to NCGS Chapter 159, Article 3, includes "**boards, agencies, commissions, authorities and institutions**" of local governments. Our Division attorney researched the existing NC law and prepared a legal analysis. Based on the legal analysis, we do **not** concur with your conclusion that the proposed Foundation would not be required to follow the investment restrictions of NCGS 159-30. Rather it is our opinion that the Foundation, as proposed, could in fact meet the legal definition of a local government and be subject to NCGS 159-30.

Existing NC law provides no interpretation of NCGS 159-7(b)(15). However, we found instructive guidance in cases that examined a similar statutory definition of an "agency" of a sub-division of State government in order to decide if a nonprofit corporation was an agency of a local government. (News & Observer Pub. Co. v. Wake Cty. Hosp. Sys., Inc.; Chatfield v. Wilmington Hous. Fin. & Dev., Inc.; Coats v. Sampson Cty. Mem'l Hosp., Inc.; and others.) The principles gleaned from these cases include:

- examine the totality of the relationship between the government and the nonprofit, and
- evaluate each arrangement in its own context.

In other words, a case by case review of each relationship between a government and the outside entity is required. Our review of the entirety of the details in the documents provided leads us to the conclusion that the Foundation, as proposed, would, more likely than not, be considered a local government for purposes of NCGS 159-30.

Therefore, we suggest, out of an abundance of caution, that you proceed assuming the Foundation must comply with NCGS 159-30.

**Sharon Edmundson, MPA, CPA**

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STATE TREASURER OF NORTH CAROLINA  
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**From:** Wurtzbacher, Lisa <lwurtzbacher@nhcgov.com>

**Sent:** Wednesday, September 2, 2020 3:24 PM

**To:** Sharon Edmundson <Sharon.Edmundson@nctreasurer.com>; Becky Dzingeleski <Becky.Dzingeleski@nctreasurer.com>

**Cc:** Coudriet, Chris <CCoudriet@nhcgov.com>; Copley, Wanda <WCopley@nhcgov.com>

**Subject:** NCGS 159-30 Question

Sharon and Becky-

Thanks for responding to my inquiry regarding the foundation that would be set up if a sale of the county owned hospital is approved by the NHC Board of Commissioners. The vote on sale is expected October 19, 2020. I have prepared a memo that describes the makeup of the foundation as currently proposed. We believe that the way in which the foundation will be structured, it would not fall under NCGS159-30. I appreciate your willingness to review this through your team at the LGC. Please let me know if there are any further questions about the memo. I included everything that I thought would be relevant and important to the issue, but I'd be happy to provide you whatever additional detail is needed. A link to the entire Letter of Intent that our Board of commissioners approved is below. Exhibit D is where it gets into the establishment of the foundation.

<https://news.nhcgov.com/wp-content/uploads/2020/07/Fully-Executed-NHRMC-Letter-of-Intent-7.13.2020.pdf>

Once you and your team have had a chance to review the memo, I'd like to ensure that you concur with our assessment. We can certainly have a call to discuss if needed. Thank you again for your time!

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# NEW HANOVER COUNTY

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**Lisa Wurtzbacher, CPA**

Chief Financial Officer

**Martha G. Wayne, CPA**

Deputy Chief Financial Officer

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### ***Background:***

New Hanover County Board of County Commissioners (Commissioners) have approved a Letter of Intent (LOI) to sell the county owned hospital, New Hanover Regional Medical Center (NHRMC), to Novant Health Inc. (Novant). Included as an exhibit of the LOI is a description of the use of proceeds from the sale.

Following initial allocations of the proceeds for various purposes as described in the exhibit, the remaining proceeds, currently estimated to be \$1.25 billion, will fund a newly established public-benefit community foundation that will be organized as an independent tax-exempt, non-member, non-stock, nonprofit corporation ("Foundation"). This foundation will be established by the Commissioners prior to closing on the sale.

### ***Foundation Details:***

As established in the LOI, the Foundation will be governed by an eleven (11) member board of directors (Foundation Board). The Commissioners will appoint five (5) of those members. The remaining six (6) members will be appointed by the newly formed local Hospital Board (Local Hospital Board). At the end of each term for each member of the Foundation Board, the respective groups (either the Commissioners or the Local Hospital Board depending on which seat on the Foundation Board is being vacated) will appoint the replacement member. The Local Hospital Board making the selection of the 6 members will be comprised of 15 trustees initially designated in the definitive transaction agreement by the mutual agreement among the Commissioners, NHRMC, and Novant. After that time, the Local Hospital Board will be self-perpetuating with the members being nominated and appointed by the then current members, subject to ratification by Novant's Board of Trustees.

Neither New Hanover County nor the Commissioners will have budgeting powers for the Foundation. For informational purposes only, the Foundation will provide the County with an annual report summarizing the Foundation's activities and grants in the prior year. In the event of dissolution of the Foundation, all net assets of the Foundation shall accrue solely to the benefit of the County. The daily operations of the Foundation shall be governed by the Foundation Board. The Foundation will establish an endowment consisting of the initial fund assets and it may also accept donations from other parties. The Foundation will be responsible for managing those assets and its earnings. The Endowment will make annual Unitrust payments not to exceed 4% of the fair market value of the Endowment based on a

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rolling five-year average of the fair market value. Distributions will take the form of grants and other financial support for projects and initiatives of non-profit, governmental or community organizations that are specifically focused on the explicit purposes of the Endowment. The distributions will support community wellbeing that are consistent with the then-current New Hanover County Strategic Plan; however New Hanover County would not have the power or authority to otherwise direct any of the Foundation's distributions or other activities or operations.

As a governmental organization, New Hanover County would be eligible for a grant or funding from the Foundation, along with all other eligible organizations, at the sole discretion of the Foundation. However, any funds distributed to New Hanover County or any other governmental organization would have to be used to supplement, not supplant, existing governmental programs.

**Question:**

North Carolina General Statute 159-30, Investment of Idle Funds, directs the investment of local governments and public authorities. The question remains, would the Foundation, as proposed to be established in the LOI, be considered as a part of the local government and thus subject to this statute?

**Guidance and Analysis:**

*Governmental Accounting Standards Board (GASB) Statement 14 (The Financial Reporting Entity), Statement 39 (Determining Whether Certain Organizations Are Component Units – An Amendment of GASB Statement No. 14) and Statement 61 (The Financial Reporting Entity: Omnibus – An Amendment of GASB Statements No. 14 and No. 34)*

The above standards determine whether an entity is a component unit of the local government and as such a part of the local government unit. If a primary government is financially accountable for an organization, it should be included as a component unit of that primary government. A primary government can be financially accountable for legally separate organizations if its officials appoint a voting majority of an organization's governing body *and* either it is able to impose its will on that organization or there is a potential for the organization to provide specific financial benefits to, or to impose specific financial burdens on, the primary government. Factors to consider when determining if an organization is a component unit of the local government include:

- Is the organization legally separate from the primary government?
- Is the primary government accountable for the organization?
- Is there a fiscal dependency on the primary government and a financial benefit/burden relationship between the primary government and the organization?

To be legally separate from the primary government, one must consider if the organization has the capacity to have a name, does it have the right to sue or be sued in its own name without recourse to the primary government and does it have the right to buy, sell, lease and mortgage property in its own name. The Foundation is proposed to be set up to meet all of these criteria to be a legally separate entity.

To be accountable for the organization, a primary government would have to either hold continuing authority to appoint a voting majority of the organizations governing board or have the ability to unilaterally abolish the organization. As currently proposed, the Foundation will only appoint 45% of the organization's governing board and the Commissioners cannot unilaterally abolish the organization. As such, the County will not be accountable for the Foundation.

For the organization to have a financial burden/benefit relationship with the primary government, the primary government must have legal entitlement to or the ability to access the organizations resources. While the primary government will be entitled to all of the Foundation's assets should it be dissolved, this does not rise to being "entitled to" the organizations resources. The County would not, for example, have the right to require any distributions be made from the Foundation to the County, nor would the County otherwise have any right or authority to acquire, assume, or attach any of the Foundations assets without the Foundation's independent and autonomous consent. The primary government will, though, be eligible to receive certain Foundations resources through any potential grants it may be awarded by the Foundation in the Foundation's sole discretion. However, for the organization to be financially dependent on the primary government, the primary government must have the authority to approve or modify the organization's budget, set rates or charges for the organization or approve bonded debt for the organization. The Commissioners will not have any of those authorities over the Foundation. As such, it does not meet the last criteria.

***Conclusion:***

The Foundation as currently proposed does not meet the qualifications of a component unit of the County and is not a part of the local government unit and as such is not required to follow the investment restrictions of NCGS 150-30.

***Potential Modification of Foundation Setup:***

Further discussions and questions have arisen in regards to the makeup of the Foundation board members.

1) Should the Foundation board members make up of members equally appointed by the County and the Local Hospital Board with the remaining member(s) to be appointed by the Foundation at large (i.e. 4 appointed by the County, 4 appointed by the Local Hospital Board and 3 appointed by the Foundation board members), does this still constitute not appointing a voting majority of the Foundation Board?

**Attachment K**

**Certification**

**The undersigned representative of New Hanover Regional Medical Center hereby certifies that the answers provided herein are true and complete to the best of his/her knowledge.**

Signature: John H. Gizdic

Printed Name: John H. Gizdic

Title: President and CEO

Company: New Hanover Regional Medical Center

Address: 2131 S. 17th Street, Wilmington, North Carolina 28401

Telephone: (910) 667-7000

Date: December 4, 2020