

January 20, 2021

VIA EMAIL

Mr. Blake Thomas, Esq.
Deputy General Counsel
N.C. Department of Justice
bthomas@ncdoj.gov

Re: **Response to Supplemental Information Request Regarding the Transfer of Assets of New Hanover Regional Medical Center**

Dear Mr. Thomas:

This letter is to respond to your office's request for clarification of certain terms regarding the transfer of assets of New Hanover Regional Medical Center ("NHRMC"). Capitalized terms used, but not specifically defined herein, have the meanings set forth in that certain Asset Purchase Agreement by and among New Hanover County (the "County"), NHRMC, Novant Health New Hanover Regional Medical Center, LLC ("NHNHRMC"), and, solely for purposes of Section 5.28, Novant Health, Inc. ("Novant Health"), dated October 5, 2020 (the "Asset Purchase Agreement").

Responses to Request for Supplemental Information

1. **Protections of N.C.G.S. Chapter 55A.** 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 Novant Health Coastal Region, LLC ("NHCR"), a wholly-owned subsidiary of Novant Health, and the membership interests of NHNHRMC, a wholly-owned subsidiary of NHCR (together with NHCR, the "Buyer LLCs"), are each, directly or indirectly, assets owned by Novant Health, Inc., a North Carolina nonprofit corporation. NHRMC, the County, and NHNHRMC acknowledge that Novant Health's direct or indirect ownership in the Buyer LLCs (and therefore the assets owned by the Buyer LLCs) would be subject to the same restrictions applicable to any other assets of a North Carolina nonprofit corporation set forth in N.C.G.S. §§ 55A-11-02 and 55A-12-02.

2. **Transition Stabilization Escrow.** NHRMC, the County, and NHNHRMC acknowledge and agree that, to the extent there are any remaining funds in the NHRMC Transition Stabilization Escrow Amount after payment of the various expenses specifically enumerated in the Asset Purchase Agreement, such residual amount will be transferred to the New Hanover Regional Medical Center Foundation, Inc.

3. **Promoting Health Equity (Section 5.12(a) of Asset Purchase Agreement).** NHRMC, the County, and NHNHRMC acknowledge and agree that the "reasonable best efforts" clause in Section 5.12(a) of the Asset Purchase Agreement only applies to the "expand" verbiage (and not to the "maintaining" existing levels of charity care clause). Section 5.12(a) of the Asset Purchase Agreement is copied below and the relevant language is bolded and italicized for emphasis.

"Subject to changes in applicable Law, *Buyer shall use reasonable best efforts* to expand, and in any event shall maintain, the Healthcare Businesses' policies on charity and indigent care, as such policies are in existence as of the Closing, and shall 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 the Healthcare Businesses, consistent with Buyer's policies on charity care."

4. **Local Board Governance Regarding Lease Extension.** NHRMC, the County, and NHRMC acknowledge and agree, in addition to the power to approve the termination or amendment (other than with respect to extension of the term) of the Pender MSA or any successor agreement thereto pursuant to Section 5.20(c)(xv) of the Asset Purchase Agreement, the Local Board's Reserved Powers will also include the power to approve any amendment to, extension of, election of non-renewal of, or termination of the Pender MSA (as defined in the Asset Purchase Agreement).

5. **Right of First Refusal (Section 5.22 of the Asset Purchase Agreement).** NHRMC, the County, and NHRMC acknowledge and agree that each of NHRMC and the County, respectively, shall have the right to exercise the right of first refusal set forth in Section 5.22 of the Asset Purchase Agreement.

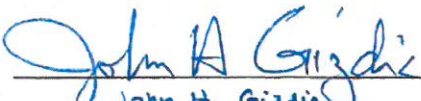
6. **Agreement Not to Interfere with the Healthcare Businesses (Section 9.10 of the Asset Purchase Agreement).** NHRMC, the County, and NHRMC acknowledge and agree that Section 9.10(a) of the Asset Purchase Agreement does not prohibit or apply to (i) direct care provided by the County out of the Mental and Behavioral Health and Substance Use Disorder Treatment Fund consistent with Exhibit C to the Asset Purchase Agreement, (ii) vaccinations provided by the County, or (iii) any funds received in respect of a settlement coordinated with National MDL #2804 (In re National Prescription Opiate Litigation).

[Signature pages follow]


Sincerely,

NEW HANOVER REGIONAL MEDICAL CENTER

JA


By: 
Name: John H. Gizdic
Title: President/CEO

NEW HANOVER COUNTY

By: 
Name: Chris Coudriet
Title: County Manager


Acknowledged and agreed by:

NORTH CAROLINA DEPARTMENT OF JUSTICE

By: 
Name: Blake Thomas
Title: Deputy General Counsel

Acknowledged and agreed by:

**NOVANT HEALTH NEW HANOVER REGIONAL
MEDICAL CENTER, LLC**

By: 
Name: Carl S. Armato
Title: President & CEO