

**CLEVELAND COUNTY BOARD OF COMMISSIONERS**

**March 7, 2013**

The Cleveland County Board of Commissioners met in a regular session on this date, at the hour of 10:00 a.m., in the Commission Chamber of the Cleveland County Administrative Offices (*Clerks*

*Note: regular meeting date was changed by resolution at the February 19, 2013 regular meeting).*

**PRESENT:** Ronnie Hawkins, Chairman  
Jason Falls, Vice-Chairman  
Susan Allen, Commissioner  
Johnny Hutchins, Commissioner  
Eddie Holbrook, Commissioner  
Eddie Bailes, County Manager  
Bob Yelton, County Attorney  
Kerri Melton, County Clerk  
Chris Green, Tax Administrator  
Chris Crepps, Finance Director  
Jessica Pickens, *The Shelby Star*  
Matthew Tessener, *The Shelby Star*  
Other individual names on file in the Clerk's Office

**CALL TO ORDER**

Chairman Ronnie Hawkins called the meeting to order. The Pledge of Allegiance was led by Meloni Wray, Board of Elections Deputy Director. Tax Assessor Chris Green, provided the invocation. At the end of the meeting, Ms. Wray, as a special presentation, sang *God Bless America*.

Chairman Hawkins introduced Commissioner Eddie Holbrook who then introduced several visitors from the hospital.

**REGULAR AGENDA**

**DISCUSSION OF HEALTHCARE SYSTEM INTERLOCAL COOPERATION AGREEMENT**

County Attorney Bob Yelton presented a resolution to Commissioners outlining a transaction between Cleveland County and The Charlotte Mecklenburg Hospital Authority. Attorney Yelton outlined the terms of the transaction. He explained this project meets two findings of fact: The transaction achieves a public purpose and it is in the best interests of the citizens of Cleveland County.

**ACTION:** Johnny Hutchins made the motion, seconded by Jason Falls, and unanimously adopted by the Board, *to adopt the following resolution:*

*Number 05-2013*

**RESOLUTION  
OF THE  
CLEVELAND COUNTY BOARD OF COMMISSIONERS  
AT ITS MARCH 7, 2013, MEETING**

**Amended and Restated Interlocal Agreement  
with The Charlotte-Mecklenburg Hospital Authority**

Cleveland County (“County”) and The Charlotte-Mecklenburg Hospital Authority (“Authority”) entered to an Interlocal Agreement dated November 14, 1997 (the “Original Interlocal Agreement”). Pursuant to the Original Interlocal Agreement, County, Authority and Cleveland County Health Care System, a North Carolina nonprofit corporation formerly known as Cleveland Memorial Hospital, Incorporated (“CCHS”) entered into an Amended and Restated Lease Agreement dated November 14, 2000 (as modified by amendments dated November 5, 2002, March 18, 2003, and April 6, 2004, the “Hospital Lease”), whereby County leased to CCHS certain real property in Cleveland County associated with Cleveland Regional Medical Center in Shelby, North Carolina (the “Hospital”), and related hospitals and health care facilities including but not limited to Kings Mountain Hospital and Cleveland Pines Nursing Center (the “Health Care Facilities”). County and Authority entered into the Original Interlocal Agreement for the purpose of providing for and ensuring the continued operation of the Hospital. Capitalized terms used but not defined herein shall have the meanings given such terms in the Amended and Restated Interlocal Agreement (defined below).

The Board of Commissioners has considered a transaction with Authority (the “Transaction”), pursuant to which Authority would continue and enhance the availability of hospital and other health care services for the benefit of the citizens and residents of Cleveland County. The terms of the Transaction include the following:

- (i) County and Authority will execute an Amended and Restated Interlocal Agreement, a copy of which is attached hereto as **Schedule 1** (the “Amended and Restated Interlocal Agreement”) in accordance with Article 20 of Chapter 160A of the General Statutes of North Carolina (which authorizes interlocal cooperation) for the purpose of continuing the operation of a hospital or then-current type of healthcare facility that customarily provides healthcare in comparable communities open to the citizens and residents of Cleveland County;
- (ii) County will convey by special warranty deed to Authority the Hospital Real Estate, the Health Care Facilities Real Estate and the Adjacent Property Real Estate in accordance with N.C. Gen. Stat. §§ 160A-461 and 160A-274(b) and Authority will assume complete operational control of the Hospital and Health Care Facilities;
- (iii) County will quitclaim and release its interest, if any, in the CCHS Real Estate in accordance with N.C. Gen. Stat. §§ 160A-461 and 160A-274(b);
- (iv) On or before the Effective Date (as defined in the Amended and Restated Interlocal Agreement), Authority will pay to County TWENTY-THREE MILLION AND NO/100 DOLLARS (\$23,000,000.00);
- (v) Beginning on the first (1st) day of July, 2013, and continuing on the 1st day of each July through 2037, Authority will pay to County an annual installment in the amount of THREE MILLION AND NO/100 DOLLARS (\$3,000,000.00), and on or before the first (1st) day of July, 2038, Authority will pay to County a final payment in the amount of TWO MILLION TWO HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$2,275,000.00), for an aggregate payment amount of SEVENTY-SEVEN MILLION TWO HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$77,275,000.00), in accordance with the terms of a Promissory Note from Authority to County as described in the Amended and Restated Interlocal Agreement;
- (vi) Authority intends to use the Property, the CCHS Facilities, the CCHS Property and the CCHS Real Estate and any additions thereto or any replacements or substitutions thereof to provide new and improved healthcare services for the benefit of the citizens and residents of Cleveland County as set forth in the Amended and Restated Interlocal Agreement;
- (vii) Authority will assume all liabilities and obligations of CCHS, meaning the known and unknown liabilities of CCHS, fixed or contingent, accrued or pending, including existing long term debt and outstanding revenue bonds issued by the North Carolina Medical Care Commission arising out of the ownership or operation of the Hospital, the Health Care Facilities or the CCHS Facilities (as defined in the Amended and Restated Interlocal Agreement);
- (viii) Authority will use its best efforts to cause a Qualified Nominee to serve on the Board of Advisors for Authority commencing in 2014 and ending in 2017. As used herein, a “Qualified Nominee” shall mean an individual who satisfies the following criteria: (a) recommendation by the current Cleveland Trustee Council or its successor advisory group; (b) reviewed and recommended by the CHS Nominating and Governance Committee in accordance with its usual and customary process; (c) approved and appointed by the CHS Board Chairman; and (d) current or former member of the Cleveland Trustee Council or its successor advisory group, having served in that capacity for a minimum of two (2) years;

- (ix) County will lease back from Authority the Adjacent Property Real Estate for a term of two (2) years for a rent rate of ONE AND NO/100 DOLLAR (\$1.00) per year and otherwise in accordance with the terms and conditions of a lease agreement as described in the Amended and Restated Interlocal Agreement;
- (x) The Hospital Lease will be terminated as of the Effective Date, but may be reinstated under the conditions set forth in the Amended and Restated Interlocal Agreement;
- (xi) For twenty-six (26) years after the Closing Date, if Authority or any of its affiliates or subsidiaries (a) ceases to maintain for the benefit of the citizens and residents of Cleveland County a hospital or then-current type of healthcare facility that customarily provides healthcare in comparable communities, and (b) vacates the Hospital Real Estate, then County shall have the option to require Authority to re-convey the Hospital Real Estate to the County or provide fifty percent (50%) of any net sales proceeds actually received by Authority from the sale of the Hospital Real Estate to a third-party buyer;
- (xii) County will execute that certain Amendment and Assignment of Lease Agreement by and between County, Authority, and Partners Behavioral Health Management.
- (xiii) The Community Trustee Council (“CTC”) will be converted to an Advisory Council, with all existing members of the CTC being the initial members of the Advisory Council, and the Advisory Council including at least two medical staff members of the Hospital and, at County’s option, one sitting member of the Cleveland County Board of Commissioners;
- (xiv) County will waive any and all right it may have arising under N.C. Gen. Stat. § 131E-31 (or any successor statute) to appoint persons to the Board of Commissioners of Authority;
- (xv) All other terms and conditions set forth in the Amended and Restated Interlocal Agreement and related documents.

The Cleveland County Board of Commissioners has reviewed the Amended and Restated Interlocal Agreement and related documents and finds as follows:

- The Transaction constitutes an undertaking to achieve a public purpose; and
- It is in the best interests of the citizens and residents of Cleveland County for the County to consummate the Transaction.

**THE CLEVELAND COUNTY BOARD OF COMMISSIONERS THEREFORE RESOLVES AS FOLLOWS:**

- that the Transaction is authorized and approved; and
- that Ronald J. Hawkins, Chair of the Cleveland County Board of Commissioners, is authorized and directed to execute the Amended and Restated Interlocal Agreement, and any and all other documents necessary and appropriate in order to effectuate the Transaction as soon as practicable.

This 7th day of March, 2013.

**Schedule 1**

**Amended and Restated Interlocal Agreement**

**AMENDED AND RESTATED INTERLOCAL AGREEMENT**

**THIS AMENDED AND RESTATED INTERLOCAL AGREEMENT** (“Agreement”) is entered into on March 7, 2013 (the “Closing Date”), and is effective as of the Effective Date (defined below), by and between **CLEVELAND COUNTY**, a political subdivision of the State of North Carolina (“County”), and **THE CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY, D/B/A CAROLINAS HEALTHCARE SYSTEM**, a North Carolina hospital authority and body corporate and politic organized and operated under the North Carolina Hospital Authorities Act (“Authority” or “CHS”). County and Authority are individually referred to herein as a “Party” and are collectively referred to as the “Parties.”

**BACKGROUND**

Pursuant to an Interlocal Agreement (the “Original Interlocal Agreement”) dated November 14, 1997, by and between County and Authority, the Parties and Cleveland County HealthCare System, a subsidiary of Authority that is a North Carolina nonprofit corporation formerly known as Cleveland Memorial Hospital, Incorporated (“CCHS”), entered into an Amended and Restated Lease Agreement dated November 14, 2000, as amended by a Lease Agreement Addendum dated as of November 5, 2002, a Lease Agreement Addendum dated as of March 18, 2003, and a Lease Agreement Addendum dated as of April 6, 2004 (collectively, as amended, the “Original Hospital Lease”) whereby County leased to CCHS certain real property in Cleveland County associated with the operation of the acute care hospital known as Cleveland Regional Medical Center in Shelby, North Carolina (the “Hospital”), and related hospitals and health care facilities including Kings Mountain Hospital and Cleveland Pines Nursing Center (the “Health Care Facilities”), as more particularly described herein. County and Authority entered into the Original Interlocal Agreement for the purpose of providing for and ensuring the continued operation of the Hospital. During the term of the Original Interlocal Agreement, Authority has made significant improvements to the Hospital and the delivery of health care services in Cleveland County and has made other valuable contributions to the community.

County and Authority are committed to an ongoing plan for enhancing the healthcare services that Authority has delivered through CCHS under the Original Hospital Lease. County and Authority have determined that it is desirable to cause a more complete and comprehensive clinical and operational integration of the Hospital and the Health Care Facilities with other healthcare providers in Authority’s healthcare system so that Authority can make more timely, direct investments in Hospital and other facilities, services and practices to be provided by Authority directly or through its subsidiaries for the benefit of the citizens and residents of Cleveland County. To achieve the desired level of clinical and operational integration of the Hospital and the Health Care Facilities, County and Authority desire for Authority to continue to operate the Hospital and to enhance its involvement in health care services provided for the benefit of the citizens and residents of Cleveland County as more particularly provided herein.

Because County and Authority each constitute a “unit of local government” as defined under N.C. Gen. Stat. § 160A-460(2), the two entities are permitted to enter into an interlocal agreement whereby one entity can carry out any undertaking on behalf of the other. County and Authority desire that Authority provide health care services for the benefit of the citizens and residents of Cleveland County on behalf of County. Further, as authorized by N.C. Gen. Stat. § 160A-274(b), County and Authority desire to enter into an undertaking whereby County conveys certain Property (defined below) to Authority, and Authority assumes complete operational control of the Hospital and the Health Care Facilities as more specifically set forth herein.

County and Authority are entering into this Agreement to document such undertakings and to amend and restate the Original Interlocal Agreement in its entirety. As part of its endeavors under this Agreement, Authority will commit to maintain for the benefit of the citizens and residents of Cleveland County a hospital or then-current type of healthcare facility that customarily provides healthcare in comparable communities. In addition, Authority will endeavor to provide new and improved healthcare services and re-investment in healthcare facilities and infrastructure for the benefit of the citizens and residents of Cleveland County.

This Agreement constitutes undertakings by two units of local government under N.C. Gen. Stat. § 160A-460 to achieve the public purpose of providing healthcare services to the citizens and residents of Cleveland County and is entered into in accordance with N.C. Gen. Stat. §§ 160A-274(b) and 160A-461.

## **AGREEMENT**

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, as of the Effective Date, the Original Interlocal Agreement is amended and restated in its entirety as follows:

1. **Definitions.** For purposes of this Agreement, capitalized terms will have the following meanings:
  - a. “**Adjacent Property Real Estate**” means (i) that certain land adjacent to the Hospital Real Estate containing approximately eight (8) acres, more or less, as more particularly described on **Exhibit A** (the “Adjacent Land”); (ii) easements, benefits, privileges and other rights of County appurtenant to the Adjacent Land or in any way appertaining thereto, and land, if any, lying in the bed of any street or road open or closed adjoining the Adjacent Land; (iii) buildings and improvements located on or in the Adjacent Land, including but not limited to those four (4) buildings currently known as the Health, Mental Health, Employee Wellness and Ollie Harris Buildings (the “Adjacent Buildings”), and all other improvements, including without

- limitation all paved parking areas, entrance roads, utility facilities, drainage facilities, landscaping, signs, lighting equipment and other site improvements (collectively, with the Adjacent Buildings, the “Adjacent Property Improvements”); and (iv) all right, title and interest in any assignable licenses, franchises, approvals, development rights and permits relating to the operation of the Adjacent Land and Adjacent Property Improvements.
- b. “Articles of Restatement” has the meaning given such term in Section 3 of this Agreement.
  - c. “Assets” means Cash, together with all of the furniture, trade fixtures, equipment, tangible and intangible personal property, and all other property associated with the Property, the CCHS Real Estate and the CCHS Property that does not constitute land, buildings, or fixtures in which an interest arises under real property law. For clarity, the term “Assets” means all rights of CCHS in each written and oral agreement, arrangement, contract, license and permit, commitment, lease and option to which CCHS is a party.
  - d. “Bill of Sale” has the meaning given such term in Section 6 of this Agreement.
  - e. “Bill of Sale for Adjacent Property” has the meaning given such term in Section 6 of the Agreement.
  - f. “Cash” means cash, cash equivalents and investments, revenues, moneys on deposit, accounts receivable, and cash collected from accounts receivable (as allowed to be transferred, leased, or assigned under applicable law or regulation) arising out of activities conducted by the Hospital, the Health Care Facilities and the CCHS Facilities through the Effective Date.
  - g. “CCHS Facilities” means any and all facilities located on the CCHS Land.
  - h. “CCHS Property” means the following:
    - i. CCHS and County Assets associated with the CCHS Facilities; and
    - ii. Any and all real or personal property of CCHS or County not included in the definition of CCHS Real Estate that is used in connection with the occupancy and operation of CCHS.
  - i. “CCHS Real Estate” means (i) the land described on **Exhibit B** (“CCHS Land”); (ii) easements, benefits, privileges and other rights, if any, of County appurtenant to the CCHS Land or in any way appertaining thereto, and land, if any, lying in the bed of any street or road open or closed adjoining the CCHS Land; (iii) improvements located on or in the CCHS Land (the “CCHS Buildings”), and all other improvements, including without limitation all paved parking areas, entrance roads, utility facilities, drainage facilities, landscaping, signs, lighting equipment and other site improvements (collectively, with the CCHS Buildings, the “CCHS Improvements”); and (iv) all right, title and interest in any assignable licenses, franchises, approvals, development rights and permits relating to the operation of the CCHS Land and CCHS Improvements.
  - j. “Closing Date” means March 7, 2013.
  - k. “County Lease Agreement” means that certain lease agreement by and between Authority, as landlord, and the County, as tenant, for the Adjacent Property Real Estate, as described in Section 4 of this Agreement.
  - l. “Deeds” mean the Non-Warranty Deed and the Warranty Deed, collectively.
  - m. “Effective Date” means March 11, 2013, provided that the following contingencies have been met: (i) the approval of the North Carolina Local Government Commission becomes final after any applicable appeal period, (ii) the North Carolina Medical Care Commission Executive Committee grants its final approval of the First Supplemental Trust Agreements and the Guaranty Agreements for the CCHS Series 2004A and 2011A Bonds, (iii) Ambac Assurance Corporation delivers its written consent for CCHS to enter into the First Supplemental Trust Agreement for the Series 2004A Bonds, (iv) the delivery of the Bond Trustee’s Certificate determining that the elimination of the County’s obligations with respect to the CCHS Series 2004A and 2011A Bonds under Article VIII of the Original Hospital Lease will not materially and adversely affect the Holders of such Bonds (collectively, the “Closing Contingencies”). If the Closing Contingencies have not been satisfied on March 14, 2013, the Effective Date will be extended until the date upon which the Closing Contingencies are satisfied; provided, however that if the Closing Contingencies have not been satisfied by June 30, 2013, then this

Agreement will terminate automatically unless the Parties agree otherwise in writing. In the event that the Effective Date is any date other than March 11, 2013, then the Parties will enter into an Effective Date Certificate in the form attached hereto as **Exhibit C**.

- n. “**Health Care Facilities**” means all facilities located on the Health Care Facilities Land, including but not limited to Kings Mountain Hospital and Cleveland Pines Nursing Center.
- o. “**Health Care Facilities Property**” means the following:
  - i. CCHS and County Assets associated with the Health Care Facilities; and
  - ii. Any and all real or personal property of CCHS or County not included in the definition of Health Care Facilities Real Estate that is used in connection with the occupancy and operation of the Health Care Facilities.
- p. “**Health Care Facilities Real Estate**” means (i) the land, other than the Hospital Land, leased by County to CCHS pursuant to the Original Lease (the “Health Care Facilities Land”), as more particularly described on **Exhibit D**; (ii) easements, benefits, privileges and other rights of County appurtenant to the Health Care Facilities Land or in any way appertaining thereto, and land (if any) lying in the bed of any street or road open or closed adjoining the Health Care Facilities Land; (iii) improvements located on or in the Health Care Facilities Land (the “Health Care Facilities Buildings”), and all other improvements, including without limitation all paved parking areas, entrance roads, utility facilities, drainage facilities, landscaping, signs, lighting equipment and other site improvements (collectively, with the Health Care Facilities Buildings, the “Health Care Facilities Improvements”); and (iv) all right, title and interest in any assignable licenses, franchises, approvals, development rights and permits relating to the operation of the Health Care Facilities Land and Health Care Facilities Improvements.
- q. “**Hospital**” means the acute care hospital known as Cleveland Regional Medical Center located in Shelby, North Carolina.
- r. “**Hospital Property**” means the following:
  - i. CCHS and County Assets associated with the Hospital; and
  - ii. Any and all other real or personal property of CCHS or County not included in the definition of Hospital Real Estate that is used in connection with the occupancy and operation of the Hospital Improvements.
- s. “**Hospital Real Estate**” means: the (i) land associated with the Hospital (the “Hospital Land”), as more particularly described on **Exhibit E**; (ii) easements, benefits, privileges and other rights of County appurtenant to the Hospital Land or in any way appertaining thereto, and land (if any) lying in the bed of any street or road open or closed adjoining the Hospital Land; (iii) improvements located on or in the Hospital Land (the “Hospital Buildings”), and all other improvements, including without limitation all paved parking areas, entrance roads, utility facilities, drainage facilities, landscaping, signs, lighting equipment and other site improvements (collectively, with the Hospital Buildings, the “Hospital Improvements”); and (iv) all right, title and interest in any assignable licenses, franchises, approvals, development rights and permits relating to the operation of the Hospital Land and Hospital Improvements.
- t. “**Liabilities**” means the known and unknown liabilities of CCHS, fixed or contingent, accrued or pending, including existing long term debt and outstanding revenue bonds issued by the North Carolina Medical Care Commission arising out of the ownership or operation of the Hospital, the Health Care Facilities or the CCHS Facilities.
- u. “**Master Agreement**” has the meaning given such term in Section 3 of this Agreement.
- v. “**Non-Warranty Deed**” means that certain non-warranty deed executed by County, as grantor, to Authority, as grantee, quitclaiming and releasing all right, title and interest, if any, of the County in and to the CCHS Real Estate, as described in Section 6 of this Agreement.
- w. “**Option Period**” has the meaning given such term in Section 6 of this Agreement.
- x. “**Original Hospital Lease**” has the meaning given such term in the Background section of this Agreement.
- y. “**Original Interlocal Agreement**” has the meaning given such term in the Background section of this Agreement.

- z. "Promissory Note" has the meaning given such term in Section 7 of this Agreement.
  - aa. "Property" means the Health Care Facilities, the Health Care Facilities Property, the Health Care Facilities Real Estate, the Hospital, the Hospital Property, and the Hospital Real Estate, collectively.
  - bb. "Qualified Nominee" has the meaning given such term in Section 8 of this Agreement.
  - cc. "Surveys" has the meaning given such term in Section 6 of this Agreement.
  - dd. "Termination Agreement" has the meaning given such term in Section 4 of this Agreement.
  - ee. "Transactions" has the meaning given such term in the Master Agreement.
  - ff. "Warranty Deed" means that certain special warranty deed executed by County, as grantor, to Authority, as grantee, conveying County's fee simple interest in and to the Hospital Real Estate, Health Care Facilities Real Estate and the Adjacent Property Real Estate, as described in Section 6 of this Agreement.
2. **Purpose of the Amended and Restated Interlocal Agreement.** The Parties enter into this Agreement in accordance with Article 20 of Chapter 160A of the General Statutes of North Carolina for the public purpose of continuing the operation of a hospital or the then-current type of healthcare facility that customarily provides healthcare in comparable communities, open to the public of Cleveland County, including the indigent, and free from discrimination based upon race, creed, sex, or national origin. In addition, Authority intends to use the Property, the CCHS Facilities, the CCHS Property and the CCHS Real Estate and any additions thereto or any replacements or substitutions thereof to provide new and improved healthcare and related services for the benefit of the citizens and residents of Cleveland County as set forth in this Agreement.
3. **Master Agreement.** On the Closing Date, County, Authority, and CCHS will execute a Master Agreement substantially in the form of **Exhibit F** and effective as of the Effective Date (the "Master Agreement") pursuant to which: (i) County, Authority and CCHS will terminate the Original Hospital Lease by executing a Termination of Amended and Restated Lease Agreement; (ii) Authority will agree to lease the Adjacent Property Real Estate, conveyed to Authority pursuant to Section 6(a) of this Agreement, back to County for a term of two (2) years at an annual rent rate of ONE AND NO/100 DOLLARS (\$1.00) per year and on the terms and conditions set forth in the County Lease Agreement; (iii) the authorized officers of CCHS will execute Amended and Restated Articles of Incorporation ("Articles of Restatement") for CCHS whereby Authority will have the right to appoint the directors of CCHS, in its sole discretion; and (iv) the authorized officers of CCHS will execute Amended and Restated Bylaws of CCHS whereby an Advisory Council will be established in the place of the Community Trustee Council.
4. **County Consents.** By signing this Agreement, County does the following:
- a. Agrees to the terms and conditions of the Master Agreement and all of the Transactions and documents recited therein and contemplated thereby and consents to CCHS entering into the Master Agreement;
  - b. Agrees that the Original Lease Agreement will be terminated in accordance with the terms of the Termination Agreement, attached hereto as **Exhibit G** (the "Termination Agreement"), and consents to CCHS entering into the Termination Agreement;
  - c. Acknowledges and agrees to the terms of the County Lease Agreement as attached hereto as **Exhibit H** ("County Lease Agreement") and consents to Authority, as landlord, and County, as tenant, entering into the County Lease Agreement as so written and without further consent from or action by County; and
  - d. Consents and agrees that on and after the Effective Date, Authority will have the right to appoint the directors of CCHS, in its sole discretion, as specified in Articles of Restatement, and an Advisory Council will be established in the place of the Community Trustee Council as provided in Amended and Restated Bylaws of CCHS, and consents to CCHS executing such Articles of Restatement and Amended and Restated Bylaws.
5. **Reinstatement of Original Hospital Lease.** The Parties and CCHS agree that if either of the Deeds or the Bill of Sale are declared void, or the conveyances set forth in the Deeds and Bill of Sale are

held to be invalid or improper by any decision of a court of law, agency, tribunal, or administrative body, then in Authority's sole discretion the Original Hospital Lease may be reinstated by written notice of Authority to County, which notice will set forth the date of reinstatement of the Original Hospital Lease. Notwithstanding the foregoing, if the Original Hospital Lease is reinstated, County agrees that (i) the term of the Original Hospital Lease will be extended for a period of twenty-five (25) years so that the Original Hospital Lease will not terminate until at least twenty-five (25) years after the date of reinstatement, (ii) all rent or other sums that would have been payable to the County under the Original Hospital Lease for the time period from the date of termination of the Original Hospital Lease to the date of its reinstatement will be abated in their entirety, and (iii) Authority will receive a rent credit for any funds previously paid by Authority to County under the terms of this Agreement.

6. **Transfer of Property.**

- a. **Deeds.** In accordance with N.C. Gen. Stat. §§ 160A-274(b) and 160A-461, on the Closing Date, County will execute and deliver to Authority for recording in the Cleveland County Public Registry the Warranty Deed in the form attached as **Exhibit I** to convey to Authority all of its right, title, and interest in the Hospital Real Estate, the Health Care Facilities Real Estate and the Adjacent Property Real Estate, and as of the Effective Date Authority will assume complete operational control of the Hospital and the Health Care Facilities as more specifically set forth in the Master Agreement. County will further execute and deliver to Authority for recording in the Cleveland County Public Registry the Non-Warranty Deed in the form attached hereto as **Exhibit J** to quitclaim and release to Authority its interest, if any, in the CCHS Real Estate. The Parties intend for the legal descriptions for the Deeds to be based upon the surveys obtained by Authority (the "Surveys"); provided, however, (i) Authority will have the right to use any reasonable legal descriptions for the Deeds, including but not limited to descriptions by reference to prior recorded deeds, and (ii) if the legal descriptions from the Surveys are not finalized by the Closing Date, the Parties agree to work expeditiously and cooperatively to finalize the legal descriptions as soon as reasonably possible. Notwithstanding anything to the contrary set forth herein, Authority will not record the Deeds until or after the Effective Date.
- b. **Bill of Sale.** On the Closing Date, County will execute and deliver to Authority for recording in the Cleveland County Public Registry the Bill of Sale, in the form attached as **Exhibit K** (the "Bill of Sale"), to transfer to CMHA any interest that it may have, including any reversionary interest, in the Hospital Property, the Health Care Facilities Property and the CCHS Property. Notwithstanding anything to the contrary set forth herein, Authority will not record the Bill of Sale until the Effective Date.
- c. **Bill of Sale for Adjacent Property.** On the Closing Date, County will execute and deliver to Authority for recording in the Cleveland County Public Registry the Bill of Sale for Adjacent Property, in the form attached as **Exhibit L** (the "Bill of Sale for Adjacent Property"), to transfer to CMHA fixtures and other assets as described therein on the Adjacent Property. Notwithstanding anything to the contrary set forth herein, Authority will not record the Bill of Sale for Adjacent Property until the Effective Date.
- d. **County Option.** If at any time during the twenty-six (26) year period after the Closing Date (the "Option Period"), Authority or any of its affiliates or subsidiaries (i) ceases to maintain for the benefit of the citizens and residents of Cleveland County a hospital or then-current type of healthcare facility that customarily provides healthcare in comparable communities, and (ii) vacates the Hospital Real Estate (excluding periods of vacancy of or interruptions to services on the Hospital Real Estate for consecutive periods of eighteen (18) months or less during rebuilding due to casualty events or major renovation/replacement), then County shall have the option, as its sole remedy and exercisable upon at least one hundred eighty (180) days prior written notice delivered to Authority during the Option Period, to require Authority to re-convey the Hospital Real Estate to the County or to pay to County fifty percent (50%) of any net sales proceeds actually received by Authority from the sale of the Hospital Real Estate to a third-party buyer.

7. **Authority's Financial Obligations.**

- a. **Initial Payment.** *On the Effective Date, Authority will pay to County the amount of TWENTY-THREE MILLION AND NO/100 DOLLARS (\$23,000,000.00).*



- b. **Annual Installment.** *Beginning on the first (1<sup>st</sup>) day of July, 2013, and continuing on the 1st day of each July through 2037, Authority will pay to County an annual installment in the amount of THREE MILLION AND NO/100 DOLLARS (\$3,000,000.00). On or before the first (1<sup>st</sup>) day of July, 2038, Authority will pay to County a final payment in the amount of TWO MILLION TWO HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$2,275,000.00). All such annual payments will be made in accordance with the terms of a Promissory Note in the form attached hereto as Exhibit M (the “Promissory Note”) to be delivered by Authority to County on the Effective Date.*
- c. **Liabilities.** *On and after the Effective Date, Authority will assume all of the Liabilities and County will have no obligation with respect to any Liabilities.*

8. **Authority Covenants.**

- a. **Operation of Hospital.** Authority or its subsidiary will maintain for the benefit of the citizens and residents of Cleveland County a hospital facility or the then current type of healthcare facility that customarily provides healthcare in comparable communities.
- b. **New Service Development and Re-Investment in Facilities.** In addition to the investments contemplated in subsection (a) of this Section 8, Authority will endeavor to determine the unmet needs and the feasibility of providing new and improved health care services to the citizens and residents of Cleveland County and will commit to continue to re-invest in health care facilities and infrastructure for the benefit of the citizens and residents of Cleveland County.
- c. **Financial Assistance.** Authority will continue to provide financial assistance to patients of Hospital consistent with industry practices in similar communities.
- d. **Information Technology.** Commencing on the Effective Date, Authority will begin the process of ensuring that Hospital has compatible information technology platforms with other comparable CHS hospitals.
- e. **Medical Staff.** Commencing on the Effective Date, the Medical Staff President of Hospital will have the same rights as other CHS Medical Staff Presidents at comparable facilities.
- f. **Integration of Hospital with CHS.** Authority will operate the Hospital and Health Care Facilities as complete, integral parts of CHS. CCHS may be considered by Authority for inclusion in the bond-obligated group to allow for financing of future capital and programs for the benefit of the citizens and residents of Cleveland County. In addition, the Hospital and Health Care Facilities will be integrated into the CHS strategic process.
- g. **CHS Board of Advisors.** Authority will use its best efforts to cause a Qualified Nominee to serve on the CHS Board of Advisors commencing in 2014 and ending in 2017. As used herein, a “Qualified Nominee” shall mean an individual who satisfies the following criteria:
  - (i) Recommendation by the current Cleveland Trustee Council or its successor advisory group;
  - (ii) Reviewed and recommended by the CHS Nominating and Governance Committee in accordance with its usual and customary process;
  - (iii) Approved and appointed by the CHS Board Chairman; and
  - (iv) Current or former member of the Cleveland Trustee Council or its successor advisory group, having served in that capacity for a minimum of two (2) years.

Notwithstanding the foregoing, County acknowledges and agrees that appointment to the CHS Board of Advisors does not constitute a promise of future appointment to the CHS Board of Commissioners. Any future appointment to the Board of Commissioners would be subject to the normal and customary process.

9. **County Covenants.**

- a. County will ensure that Authority, its subsidiaries and/or affiliates, are not excluded from any bidding of health-related services for County employees.

- b. County will use best efforts to ensure that County employees have access to facilities and programs provided by CHS for the benefit of the citizens and residents of Cleveland County.
  - c. County will make good faith efforts to support the investment and expansion of health facilities and programs by Authority, its subsidiaries and/or affiliates, in Cleveland County.
  - d. County will not cause property owned or controlled by Authority, its subsidiaries and/or affiliates, in Cleveland County to be subject to county property taxes.
10. **Waiver.** County hereby permanently and irrevocably waives any and all right it may have arising under N.C. Gen. Stat. § 131E-31 (or any successor statute) and under this Agreement to appoint persons to the CHS Board of Commissioners.
  11. **Regulatory Assistance.** County will cooperate with Authority in obtaining any local, state or federal licenses, approvals, certificates of need or authorities that Authority deems necessary in connection with the operation of the Hospital, the Health Care Facilities, the CCHS Facilities and/or any new, expanded, renovated or replacement healthcare facilities located in Cleveland County or operated, in whole or in part, for the benefit of the citizens and residents of Cleveland County.
  12. **Good Faith.** Any approvals or action required of or delegated to any party will be so given or carried out in good faith and will not be unreasonably withheld or delayed.
  13. **Duration.** This Agreement will remain in effect indefinitely.
  14. **Amendments.** The Parties may modify or alter this Agreement only by written instrument signed by the Parties.
  15. **Appointment.** Representatives of County and Authority have been appointed and empowered as specified in the notarial statements below to execute this Agreement and each represents that they have the requisite authority to do so.
  16. **Drafting Conventions.** The following principles apply to the interpretation of this Agreement: (i) the captions of each section are provided for convenience only and do not affect the meaning of the Agreement; (ii) the terms “Party” or “Parties” refer only to the named Parties; (iii) any examples provided are not to be construed to limit, expressly or by implication, the matter they illustrate; (iv) the clause “including” and any variations thereof should be construed to mean “including, but not limited to;” and (v) unless otherwise specified, any reference to a statute or regulation means the statute or regulation as amended or supplemented from time to time and any corresponding provisions of successor statutes or regulations.
  17. **Force Majeure.** In the event the Parties are delayed, hindered, or prevented in the performance of any act required by this Agreement by reason of labor dispute, government requirement, acts of God, fires, floods, earthquakes, other natural disasters, epidemics, quarantine restrictions, riots, war, acts of terrorism, governmental actions or any other cause beyond their reasonable control, the performance of such acts shall be excused for the period of delay, and the period for performance shall be extended for the period necessary to complete performance after the end of the period of delay.

### **COMMISSIONERS COMMENTS**

*Commissioner Hutchins* thanked the hospital for their work on this project. “This is a good partnership and a good situation. It will be a win/win for everyone.”

*Vice-Chairman Falls* said his father once told him that once you find someone you share values with, keep them close. “We have someone we can count on. We appreciate what this will culminate in.”

*Commissioner Allen* is excited about the growth this project will bring here. “We look forward to what this will do for the medical community.”

*Commission Holbrook* made note, a goal of the Commissioners has been to add jobs and support education, healthcare and travel & tourism. “This partnership elevates healthcare for this county and the region. It will bring healthcare in Cleveland County into a more regionalized concept.”

*Chairman Hawkins* explained, under the direction of John Young and Brian Gwyn, the hospital has always been very active in the community. He believes if this works the same way it always has, Carolinas Healthcare System will be better for it.

### **ADJOURN**

There being no further business to come before the Board at this time, Eddie Holbrook made a motion seconded by Susan Allen, and unanimously adopted by the Board, *to adjourn. The next regular scheduled meeting will be held on March 19, 2013 in the Commissioners Chamber.*

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*Ronald J. Hawkins, Chairman  
Cleveland County Board of Commissioners*

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*Kerri Melton, Clerk  
Cleveland County Board of Commissioners*