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HAYWOOD CO, NC FEE \$26.00
PRESENTED & RECORDED:

04-03-2012 01:38:27 PM

SHERRI C. ROGERS
REGISTER OF DEEDS
BY DEB SCHAEFER
DEPUTY

BK: RB 821

PG: 358-368

This Document Prepared By and
After Recording Return to:
Leon M. Killian III
Nelson Mullins Riley & Scarborough LLP
Post Office Box 30519
Raleigh, NC 27622-0519

CONDITIONAL WAIVER AND SUBORDINATION OF REVERTER

THIS CONDITIONAL WAIVER AND SUBORDINATION OF REVERTER, made and entered into this *2nd* day of April, 2012 by and among Haywood County, a body politic and corporate and subdivision of the State of North Carolina, whose address is 215 N. Main Street, Waynesville, North Carolina 28786 (the "County" or "Subordinating Party"); Haywood Regional Medical Center, a North Carolina hospital authority, whose address is 262 Leroy George Drive, Clyde, NC 28721 ("HRMC"), and The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas HealthCare System, a North Carolina hospital authority, whose address is 1000 Blythe Boulevard, Charlotte, North Carolina 28203 ("CHS" or "Beneficiary") (collectively, the "Parties").

WITNESSETH:

WHEREAS, by Resolution enacted on April 21, 1997, pursuant to NCGS 131E-17 et seq., as appears of record in the Minutes of the Haywood County Board of Commissioners in Volume 16, beginning at Page 70, the County created the HRMC (the "Resolution"); and

WHEREAS, pursuant to NCGS 131E-19, an Application for Incorporation as a Hospital Authority was duly filed with the Secretary of State of North Carolina on May 28, 1997 (the "Application") and a Certificate of Incorporation of HRMC was issued on May 28, 1997; and

WHEREAS, by Non-Warranty Deed dated August 11, 1997 of record in Book 461, Page 1209 Haywood County Registry (the "Deed"), the County conveyed certain real property to HRMC (the "Property"), which conveyance included the following provision:

“If the Grantee should convey or attempt to convey any part of the property herein conveyed, the title to said premises shall revert to and vest in the Grantor upon assumption by Grantor of all bonded debt, other debts, obligations, and liability in anywise connected with said property” (the “Reverter”); and

WHEREAS, Section 7 of the aforesaid Resolution, included as part of the Application, provided as follows:

“After transfer of hospital facilities and other real property to the Authority, notwithstanding any applicable provision under Chapter 131E, Article 2, no rights of ownership in any hospital facility shall be sold, conveyed, leased, subleased or joint ventured without the authority of the Haywood County Board of Commissioners and in nowise shall G.S.131E-23(e) (6) be construed to permit any sale or transfer or conveyance of real property”; and

WHEREAS, HRMC has entered into a Line of Credit Agreement dated as of January 17, 2012 (as amended, modified, restated or extended, the “LOC Agreement”) with CHS, pursuant to which CHS has made a \$10,000,000 revolving line of credit (the “LOC”) available to HRMC for a term of one year, which is evidenced by a Revolving Credit Note dated as of January 17, 2012 in the amount of \$10,000,000 (as amended, modified, restated or extended, the “Note”); and

WHEREAS, Section 2.3 of the LOC Agreement provides that HRMC shall repay the Note in full upon demand by CHS if, among other things, the Deed of Trust (the “Deed of Trust,” and collectively with the LOC Agreement, the Note and any documents related thereto, the “LOC Documents”) which is attached thereto as Exhibit D, is not executed and delivered by HRMC to CHS within sixty (60) days of the date of the LOC Agreement, or following the occurrence of an event of default; and

WHEREAS, the County, at the request of HRMC, has agreed to grant this conditional waiver and conditional subordination of its rights under the Reverter, pursuant to the terms and conditions in this Agreement;

NOW THEREFORE, in consideration of the nominal consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Recitals. The above Recitals are incorporated herein by reference.
2. Conditional Waiver and Subordination. Provided there is no default or event of default by CHS hereunder or under the LOC Documents, the County hereby agrees that HRMC and CHS shall have a conditional (i) waiver and (ii) subordination of the Reverter. The Reverter shall be waived by the County and made subordinate to the Deed of Trust and the exercise by CHS of its rights under the Deed of Trust upon full and complete satisfaction of the following terms and conditions:

- (a) The Deed of Trust in the form attached as Exhibit D to the LOC Agreement is amended to delete the terms “without further notice” in the fourth paragraph of the second page thereof, and the following is substituted: “subject to the terms and conditions of a Conditional Waiver and Subordination of Reverter recorded of even date herewith” and may be amended to reflect any extension of the term of the LOC; and
- (b) Upon the occurrence of an event of default (and the expiration of all applicable grace and/or cure periods) by HRMC under the LOC Agreement and a declaration of acceleration by CHS, or if the Note is not paid in full on its final due date, CHS shall provide written notice of the event of default and acceleration or the failure to pay the Note upon maturity to HRMC with a copy to the County and to any other person as required under the LOC Agreement, and CHS shall confirm receipt of such notice; and
- (c) Prior to initiation of foreclosure under the Deed of Trust, CHS shall provide written notice to the County that the County shall have a fully assignable option (the “Option”) for a period of six (6) months from and after receipt of such notice, to purchase all ownership rights in the LOC Documents from CHS upon payment of the principal balance and all interest accrued until payment is made (collectively the “Obligations”) by the County to CHS on the Settlement Date. During such six (6) month period, there shall be a forbearance of all legal action permitted to CHS under the LOC Documents. The County may elect to exercise the Option by tendering to CHS its written notice of exercise and its agreement to pay the Obligations on or prior to the end of an additional one (1) year period following the date of exercise of the Option, or upon the settlement of sale of the Property thru foreclosure or otherwise, whichever should occur first (the “Settlement Date”); and
- (d) Should the County exercise its Option to purchase the LOC Documents as provided above, the County shall have the right to direct CHS to exercise the remedies of the Beneficiary under the Deed of Trust, including, but not limited to, foreclosure of the Deed of Trust, and CHS agrees to follow such direction from the County; and
- (e) During the six (6) month Option period, the one year period prior to the Settlement Date, and any additional forbearance period mutually agreed upon by CHS and the County, the County shall make reasonable efforts to assist HRMC in curing the default, including seeking the appropriation of additional funds, re-negotiating the payment of the Obligations with CHS, or refinancing the LOC; and
- (f) Any future sale, lease or conveyance of the Property by any of the Parties hereto shall be subject to the requirements of NCGS 131E-13; and
- (g) The Reverter shall remain unmodified and in full force and effect except as expressly provided herein for the benefit of CHS, or any purchaser of the LOC

Documents from CHS; and


- (h) In the event of the sale or conveyance of the Property through foreclosure or otherwise, the Parties shall cooperate with the County in the orderly dissolution of HRMC with proceeds after satisfaction of the Obligations and other indebtedness to be distributed to the County.
3. Representation and Warranty. County represents and warrants to CHS that it has not previously subordinated all or any portion of the Reverter for the benefit of any other party.
4. Miscellaneous.
- (a) Notices. Any and all notices, elections, demands, requests and responses thereto permitted or required to be given under this Agreement shall be addressed to the Parties at the addresses provided on the signature page of this Agreement.
 - (b) Time of the Essence. Time is of the essence in the interpretation and enforcement of this Agreement.
 - (c) Entire Agreement, Etc. This Agreement expresses the entire understanding of the Parties with respect to the transactions contemplated hereby and supersedes all prior and contemporaneous agreements of any nature with respect to the transactions contemplated hereby. Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated orally or in writing, except as provided below.
 - (d) Consents, Amendments, Waivers, Etc. Except as otherwise expressly set forth in any particular provision of this Agreement, any consent or approval required or permitted by this Agreement to be given by the Beneficiary may be given, and any term of this Agreement or of any other instrument related hereto or mentioned herein, may be amended, and the performance or observance by any party of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) with, but only with, the written specific consent of the Beneficiary. No waiver shall extend to or affect any obligation not expressly waived or impair any right consequent thereon. No course of dealing or delay or omission on the part of Beneficiary in exercising any right shall operate as a waiver thereof or otherwise be prejudicial thereto. No notice to or demand upon the Subordinating Party or any other party shall entitle such party to other or further notice or demand in similar or other circumstances.
 - (e) Counterparts. This document may be signed in any number of separate copies, each of which shall be effective as an original, but all of which taken together shall constitute a single document. An electronic transmission or other facsimile of this document or any related document shall be deemed an original and shall be admissible as evidence of the document and the signer's execution.

- (f) Headings. The headings of the various paragraphs of this Agreement are inserted for convenience only and shall be wholly disregarded when interpreting the meaning or effect of any of the terms hereof.
- (g) Choice of Law. This Agreement shall be construed and enforced in accordance with and subject to the substantive laws of the State of North Carolina.
- (h) Successors and Assigns. All covenants and agreements in this Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their seals the day and year first above written.

ATTEST:


Marty Stamey
County Manager/Clerk to Board

HAYWOOD COUNTY

By: 
Mark S. Swanger
Haywood County Board of Commissioners

215 N. Main Street
Waynesville, NC 28786
Attention: County Manager/Clerk to Board
Telephone: (828) 452-6625
Fax: (828) 452-6715

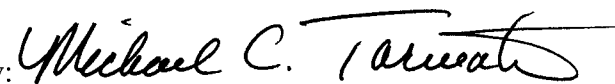
HAYWOOD REGIONAL MEDICAL CENTER

By: _____
Jean Burton
Chair of the Board of Commissioners

By: _____
John M. Poore
President and Chief Executive Officer

262 Leroy George Drive
Clyde, North Carolina 28721
Attention: President and Chief Executive Officer
Telephone: (828) 452-8209
Fax: (828) 452-8341

**THE CHARLOTTE-MECKLENBURG
HOSPITAL AUTHORITY
d/b/a CAROLINAS HEALTHCARE SYSTEM**

By: 
Michael C. Tarwater
Chief Executive Officer

1000 Blythe Boulevard
Charlotte, North Carolina 28203
Attention: Chief Executive Officer
Telephone: (704) 355-2154
Fax: (704) 335-1251

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County Manager/Clerk to Board


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STATE OF NORTH CAROLINA

COUNTY OF HAYWOOD

I, a Notary of said State and County, do hereby certify that MARTY STAMEY, personally appeared before me this day and acknowledged that he is Clerk to the Board of County Commissioners of Haywood County, a body politic and corporate, and that by authority duly given and as the act of the said Board, the foregoing instrument was signed in its name by its Chairman, sealed with its corporate seal and attested by himself as its Clerk.

WITNESS my hand and official seal this the 2 day of April, 2012.

My commission expires:

February 9, 2017

Amanda W. Owens
Notary Public

Amanda W. Owens
Printed Name of Notary Public



STATE OF NORTH CAROLINA

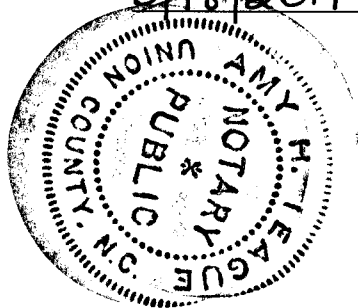
COUNTY OF Mecklenburg

I, the undersigned Notary Public of the County and State, certify that MICHAEL C. TARWATER personally appeared before me this day and acknowledged that he is the Chief Executive Officer of The Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas HealthCare System, a North Carolina hospital authority, and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed.

WITNESS my hand and official seal this the 21 day of March, 2012.

My commission expires:

3/18/2014



Amy H. Teague
Notary Public

Amy H. Teague
Printed Name of Notary Public

STATE OF NORTH CAROLINA

COUNTY OF Haywood

I, the undersigned Notary Public of the County and State, certify that JOHN M. POORE personally appeared before me this day and acknowledged that he is the President and Chief Executive Officer of Haywood Regional Medical Center, a North Carolina hospital authority, and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed.

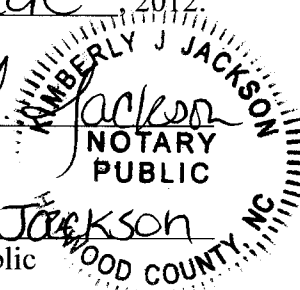
WITNESS my hand and official seal this the 26 day of March, 2012.

My commission expires:

6-30-2014

Kimberly J. Jackson
Notary Public

Kimberly J. Jackson
Printed Name of Notary Public



STATE OF NORTH CAROLINA

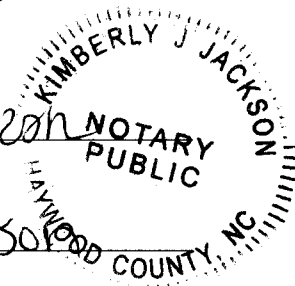
COUNTY OF HAYWOOD

I, a Notary of said State and County, do hereby certify that JEAN BURTON personally appeared before me this day and acknowledged that she is the Chair of the Haywood Regional Medical Center Hospital Authority Board of Commissioners, a North Carolina hospital authority, and that by authority duly given and as the act of such entity, she signed the foregoing instrument in its name on its behalf as its act and deed.

WITNESS my hand and official seal the 26th day of March, 2012.

Kimberly J. Jackson
Notary Public

Kimberly J. Jackson
Printed Name of Notary Public

A circular notary seal for Kimberly J. Jackson, Notary Public, Haywood County, NC. The seal is stamped over the signature and printed name of the notary.

My commission expires:

6-30-2014