

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 6 September 2005

SUBJECT: Draft Amendment to Henderson County Hospital Corporation lease

ATTACHMENT(S): Amendment to Lease Agreement

SUMMARY OF REQUEST:

Henderson County Hospital Corporation (“HCHC”), operator of Margaret R. Pardee Memorial Hospital, desires to modify its lease from the County for Pardee Hospital. The sole change desired is a clarification of the definition of a “purchase money Lien”. A “purchase money Lien” is a type of lien which is permitted by the terms of the lease to be incurred by HCHC. The new definition reads as follows:

For purposes of this Lease Agreement a “purchase money Lien” shall be defined to include a lien (i) created at the time an item of personal property is purchased by the Hospital Corporation; (ii) in an amount which does not exceed the purchase price of the property; (iii) which secures monies loaned for the purchase of the property; and (iv) in which the secured party is any entity, not necessarily the vendor of the property, actually loaning or advancing the monies used for the purchase of the personal property.

Without the clarification, a “purchase money Lien” may technically be only granted in favor of the actual seller of the item purchased, and not, for example, in favor of a related entity dedicated to the financing of sales of the seller’s products.

By way of example only, under the current definition, if HCHC wished to finance the purchase of a vehicle from *Car Dealership, Inc.*, a dealer of Auto brand automobiles, made by the *Auto Division* of the *Large Motors Corporation*, HCHC could only grant a lien on the title in favor of *Car Dealership, Inc.*, and not in favor, using this example, of *Large Motors Acceptance Corporation*, an affiliate of *Large Motors Corporation* which *Auto Division* dealers use to finance customer purchases of Auto brand vehicles. While this example likely bears no relationship to any plans of HCHC, the principle is the same for purchases of “big ticket” medical equipment, as well. The draft amendment would resolve this potential problem, as many medical equipment manufacturers do not directly finance the purchase of their devices, relying instead on third parties.

The proposed Amendment would allow liens to be created in favor of any entity so long as it is created at the time of the purchase of an item, so long as the lien amount is not greater than the purchase amount of the item, and so long as the lien secures money actually loaned for the purchase of the item by the party secured by the lien.

BOARD ACTION REQUESTED:

You are requested to adopt the resolution below.

Representatives of Henderson County Hospital Corporation will be present and prepared if requested to give further information on this matter.

PROPOSED RESOLUTION (if the Board is so inclined):

Whereas, a Lease Agreement exists between the County of Henderson and Henderson County Hospital Corporation; and,

Whereas, it would be advantageous to both the County of Henderson and Henderson County Hospital Corporation that its lease be amended as shown on the attached draft Amendment to Lease Agreement, which is incorporated herein by reference;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The County of Henderson consents to the modification of the Lease Agreement between itself and Henderson County Hospital Corporation as shown on the attached draft Amendment to Lease Agreement.
2. The Chairman of the Henderson County Board of Commissioners, the County Manager and the County Attorney are hereby directed to take whatever actions are necessary to bring about the amendment of the Lease Agreement between the County of Henderson and Henderson County Hospital Corporation in accord with the attached draft Amendment to Lease Agreement.
3. This resolution is effective upon adoption.

DRAFT

STATE OF NORTH CAROLINA

AMENDMENT TO LEASE AGREEMENT

COUNTY OF HENDERSON

THIS AMENDMENT TO LEASE AGREEMENT (the "Lease") is dated as of September ___, 2005, and is entered into by and between the COUNTY OF HENDERSON, NORTH CAROLINA, a public body politic and a political subdivision of the State of North Carolina, as lessor (the "County"), and the HENDERSON COUNTY HOSPITAL CORPORATION, a nonprofit corporation organized under the provisions of Chapter 55A of the North Carolina General Statutes, as amended (the "Hospital Corporation");

WITNESSETH:

WHEREAS, the County and the Hospital Corporation entered into a Lease Agreement dated November 1, 1998;

WHEREAS, the County and the Hospital Corporation restated and amended the Lease Agreement by that Amended and Restated Lease Agreement dated September 1, 2001; and

WHEREAS, the County and the Hospital Corporation now wish to amend a certain provision of the Lease Agreement as restated in the Amended and Restated Lease Agreement for the purpose of clarification and in so doing enter into this Amendment to Lease Agreement;

NOW THEREFORE, for and in consideration of the mutual promises herein contained, the parties hereto hereby agree as follows:

1. The definition of a "Permitted Lien" contained in Article I is deleted in its entirety and in its place the following is added:

"Permitted Liens," means the following:

- (a) Any encumbrance on title to any Property created by this Lease.
- (b) Liens arising by reason of good faith deposits in connection with leases of real estate, bids or contracts (other than contracts for the payment of money), deposits to secure public or statutory obligations, Liens to secure, or in lieu of, surety, stay or appeal bonds, and deposits as security for the payment of taxes or assessments or other similar charges.
- (c) Any Lien arising by reason of deposits with, or the giving of any form of security to, any governmental agency or any body created or approved by law or governmental regulation for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license, or to

enable the maintenance of self-insurance or participation in any funds established to cover any insurance risks or in connection with workers compensation, unemployment insurance, pension or profit sharing plans or other social security, or to share in the privileges or benefits required for companies participating in such arrangements.

(d) Any judgment lien so long as such judgment is being contested in good faith and execution thereon is stayed, or provision for payment of the judgment has been made in accordance with applicable law or by the deposit with a trustee of cash, security or other property.

(e) (1) Rights reserved to or vested in any municipality or public authority by the terms of any right, power, franchise, grant, license, permit or provision of zoning or other law, affecting any Property; (2) any liens on any Property for taxes, assessments, levies, fees, water and sewer rents, and other governmental and similar charges and any liens of mechanics, materialmen, laborers, suppliers or vendors for work or services performed or materials furnished in connection with such Property, that are not due and payable or that are not delinquent, the amount or validity of which are being contested and execution thereon is stayed or, with respect to liens of mechanics, materialmen, laborers, suppliers or vendors that have been due for less than 90 days; and (3) easements, rights-of-way, servitudes, restrictions, oil, gas or other mineral reservations and other minor defects, encumbrances, and irregularities in the title to any Property as normally exist on Property of a character of the Leased Property and either are shown on title policies obtained contemporaneously with the purchase of such Property or that do not materially impair the use of such Property for the purposes intended.

(f) Any Lien existing on November 1, 1998, provided that no such Lien may be increased, extended, renewed or modified to apply to any Property not subject to such Lien on such date or to secure Indebtedness not outstanding on such date, unless such Lien as extended, renewed or modified otherwise qualifies as a Permitted Lien.

(g) Any Lien, including a mortgage, in favor of a creditor or a trustee on the proceeds of Indebtedness and any earnings thereon prior to the application of such proceeds and such earnings.

(h) Liens on moneys deposited by patients or others as security for or as prepayment for the cost of patient care.

(i) Liens on Property received through gifts, grants or bequests, such Liens being due to restrictions on such gifts, grants or bequests of Property or the income thereon.

(j) Liens on Property due to rights of third party payors for recoupment of amounts paid.

(k) Rights of the United States of America under Title 42, United States Code Section 291.

(l) Any Lien arising by reason of any escrow established to pay debt service with respect to Indebtedness.

(m) Any purchase money Lien on personal property. **For purposes of this Lease Agreement a “purchase money Lien” shall be defined to include a lien (i) created at the time an item of personal property is purchased by the Hospital Corporation; (ii) in an amount which does not exceed the purchase price of the property; (iii) which secures monies loaned for the purchase of the property; and (iv) in which the secured party is any entity, not necessarily the vendor of the property, actually loaning or advancing the monies used for the purchase of the personal property.**

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to Lease Agreement to be executed as a document under seal, by their duly authorized officers, all as of the date first above written.

COUNTY OF HENDERSON, NORTH
CAROLINA

[SEAL]

By: _____
William L. Moyer, Chairman
Board of Commissioners

ATTEST:

By: _____
Elizabeth W. Corn, Clerk
Board of Commissioners

CORPORATION HENDERSON COUNTY HOSPITAL

[SEAL]

By: _____
Ron Stephens, Chairman
Board of Directors

ATTEST:

By: _____

P. Betty Strickland
Secretary

STATE OF NORTH CAROLINA

HENDERSON COUNTY

I, _____, a Notary Public of said State and County, do hereby certify that William L. Moyer and Elizabeth W. Corn personally came before me this day and acknowledged that they are the Chairman and Clerk, respectively, of the Board of County Commissioners of the County of Henderson, North Carolina, and that by authority duly given and as the act of the County of Henderson, North Carolina, the foregoing instrument was signed in the County's name by the Chairman of its Board of Commissioners, sealed with its corporate seal and attested by the Clerk of such Board.

Witness my hand and official seal, this _____ day of September, 2005.

Notary Public

My commission expires:

STATE OF NORTH CAROLINA

HENDERSON COUNTY

I, _____, a Notary Public of said State and County, do hereby certify that Ron Stephens and P. Betty Strickland personally came before me this day and acknowledged that they are the Chairman and Secretary respectively, of the Henderson County Hospital Corporation, and that by authority duly given and as the act of such Board, the foregoing instrument was signed in the corporation's name by the Chairman, sealed with its corporate seal and attested by its Secretary.

Witness my hand and official seal, this _____ day of September, 2005.

Notary Public

My commission expires: