

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 16 February 2011

SUBJECT: Sublease of a medical office leased by Henderson County Hospital Corporation

PRESENTER: Charles Russell Burrell

ATTACHMENT(S): Draft Sub-Lease

SUMMARY OF REQUEST:

Henderson County Hospital Corporation seeks your permission to sublease a medical office to Dr. Daniel J. Smith of Western Carolina Dermatology. Under the terms of your lease with the Corporation, and under the terms of the 2001 \$15,300,000.00 financing, sub-leases of property must either have an opinion from bond counsel to allow interest payments to remain non-taxable, or the Corporation must instead have the approval of the Board of Commissioners. In order to save the estimated \$1,200.00 bond counsel fee, the Corporation seeks your approval.

The lease is for one day per week of a roughly 2,600 square foot office suite in the medical office building located at 705 Sixth Avenue West, at a monthly rental rate of \$510.00, for three years.

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Approval of the draft sub-lease.

If the Board is so inclined, the following motion is suggested:

I move that the Board approve the sublease between Henderson County Hospital Corporation and Dr. Daniel J. Smith.

STATE OF NORTH CAROLINA

SUB-LEASE AGREEMENT

COUNTY OF HENDERSON

THIS Sub-Lease Agreement made and entered into in Henderson County, North Carolina on the ____ day of _____ 20__, by and between HENDERSON COUNTY HOSPITAL CORPORATION, referred to as "Landlord") and DANIEL J. SMITH, MD referred to as "Tenant."

The Landlord and the Tenant, for and in consideration of the keeping by the parties of their respective obligations hereinafter contained, as well as for ONE DOLLAR (\$1.00) and other valuable considerations paid in hand simultaneously with the execution and delivery of this Sub-Lease, receipt whereof is hereby acknowledged, agree as follows:

The Landlord hereby leases to the Tenant the real property and improvements described as Suite ____ of the Medical Office Building located at 705 Sixth Avenue West, Hendersonville, Henderson County, North Carolina, and containing 2601 square feet within said building, hereinafter referred to as the leased property. The Tenant will have exclusive use of said property on Wednesday of each week. Tenant understands that said property made be utilized by a third party on all other days. Tenant agrees not to undertake any activity that would interfere with any other Tenant's or the Landlord's use of this space on days of each week other than Wednesday. The Landlord, its successors, assigns, agents, and employees, reserves the right of access to and the use of the hallways, stairways, elevators, and fixed equipment within the Medical Office Building The Tenant shall also have the right to the non-exclusive use of the parking areas and sidewalks which are located adjacent to the Medical Office Building.

Condition of Property: Neither the Landlord nor its agents have made any representations with respect to the building, the land upon which it is erected, or the leased property except as expressly set forth herein and no rights, easements, or licenses are acquired by the Tenant by implication or otherwise except as expressly set forth in the provisions of this Sub-Lease. The taking of possession of the leased property by the Tenant shall be conclusive evidence that the Tenant accepts the same "as is," and that the leased property and the building of which the same form a part were in good condition at the time possession was taken.

Term of Sub-Lease: The term of this Sub-Lease shall be 3 years, commencing on _____, 20__, and ending on _____, 20__, both dates inclusive unless sooner terminated as herein provided. The term of this Agreement shall be automatically renewed for subsequent and successive terms of one (1) year each unless either party shall given notice of its intention to terminate this Sub-Lease. Such notice must be delivered in writing to the other party at least thirty (30) days prior to the end of the then current terms. Each extended term shall be upon the same terms, covenants, and conditions as contained in this Sub-Lease, except during the first extended term the basic rent shall be \$12.50 per square foot per annum and the basic rent shall be subject to annual inflationary increases based on the percentage change in the Consumer Price Index during the most recent twelve (12) month period.

Fixed Rent and Net Lease Provisions: The Tenant shall pay to the Landlord the annual rent of \$6,120 in lawful money of the United States, in equal monthly installments of \$510 in advance, on the first day of each month throughout the term of this Sub-Lease. The rent payable shall be increased as provided in the foregoing paragraph during any extensions or renewals of the term. The rent shall be payable at the office of the Landlord or at such other place as the Landlord may designate in writing.

It is the intention of the Landlord and the Tenant that the rent herein specified shall be net to the Landlord in each year during the term of this Sub-Lease, that all costs, expenses, and obligations of every kind relating to the leased property (except as otherwise specifically provided in this Sub-Lease) which may arise or become due during the term of this Sub-Lease shall be paid by the Tenant, and that the Landlord shall be indemnified by the Tenant against such costs, expenses, and obligations.

Security Deposit: The Tenant shall deposit with the Landlord the sum of \$510.00 to secure the faithful performance of the Tenant's promises and duties contained herein. Any interest earned upon this security deposit, whether the security deposit is deposited in a trust account or held otherwise, shall accrue to the benefit of the Landlord or as the Landlord directs, and the Landlord shall not be required to pay any interest of any kind upon the security deposit to the Tenant. Upon any termination of the Tenancy herein created, the Landlord may deduct from the security deposit an amount sufficient to pay (1) any damages sustained by the Landlord as a result of the Tenant's nonpayment of rent or nonfulfillment of the initial term of any renewal periods including the Tenant's failure to enter into possession; (2) any damages to the premises for which the Tenant is responsible; (3) any unpaid bills which become a lien against the premises due to the Tenant's occupancy; and (4) any cost of re-renting the premises. At the expiration of this Sub-Lease, the Landlord shall return said security deposit to Tenant minus any deductions which are allowed under the terms and conditions of this provision.

Restrictions on Use: The Tenant may use and occupy the leased property only for the provision of medical care and ancillary services or activities, including medical offices or clinics. The Tenant shall not use or knowingly permit any part of the leased property to be used for any unlawful purpose. The Tenant shall indemnify the Landlord against all costs, expenses, liabilities, losses, damages, injunctions, suits, fines, penalties, claims, and demands, including reasonable counsel fees, arising out of any violation of or default in these covenants.

Nothing herein contemplates or requires the referral of any patient by any agent or employee of Tenant to the Landlord for the provision of any service.

Covenants of Quiet Enjoyment: The Tenant, upon paying the basic rent and all additional rent and other charges herein provided for, and performing all the other terms of this Sub-Lease, shall quietly have and enjoy the leased property during the term of this Sub-Lease without hindrance or molestation by anyone claiming by or through the Landlord, subject however, to the reservations and conditions of this Sub-Lease and deeds of trust or mortgages upon this property, if any, to which this Sub-Lease is subordinated.

Repair and Maintenance: Landlord shall be responsible for major repairs to said Leased Premises and building equipment, unless the damages are caused by the negligence of the Tenant and in that event the Tenant shall be responsible. Tenant shall be responsible for any minor repairs to the Leased Premises, which may include but are not limited to repairs of all faucets, bathroom fixtures, broken window panes, door latches, and doors. For the purpose of distinguishing between major repairs and minor repairs, major repairs will be deemed to be repairs that cost in excess of Two Hundred Dollars (\$200) and minor repairs shall be deemed to be repairs that cost Two Hundred Dollars or less. Annual cumulative minor repair expenses will not exceed the sum of Twenty Five Hundred Dollars (\$2,500) per year through no fault of Tenant, then such expenses will be the responsibility of the Landlord. Upon termination of this Sub-Lease, the Leased Premises shall be returned to Landlord in as good a condition as they were in at the inception of this Sub-Lease, normal wear and tear excepted.

Compliance with Law: The Tenant shall throughout the term of this Sub-Lease, at its sole expense, promptly comply with all laws and regulations of all federal, state, and municipal governments and appropriate departments, commissions, boards and officers thereof, and the orders and regulations of the National Board of Fire Underwriters, or any other body now or hereafter exercising similar functions, which may be applicable to the leased property, the fixtures and equipment therein, and the sidewalks and curbs adjoining the leased property. The Tenant shall comply with the requirements of all policies of public liability, fire, and all other types of insurance at any time in force with respect to the building and other improvements on the leased property.

Surrender Upon Termination: At the expiration of the Sub-Lease term or the sooner termination of the Sub-Lease term, the Tenant shall surrender the leased property in as good condition as it was in at the beginning of the term, reasonable use and wear and damages by the elements excepted.

Tenant's Right to Alter and Improve: No alteration, addition, or improvement to the leased property shall be made by the Tenant without the written consent of the Landlord. Any alteration, addition, or improvement made by the Tenant after such consent shall have been given, and any fixtures installed as part thereof, shall at the Landlord's option become the property of the Landlord upon the expiration or other sooner termination of this Lease; provided, however, that the Landlord shall have the right to require the Tenant to remove such fixtures at the Tenant's cost upon such termination of this Sub-Lease.

Utilities and Other Services: The Landlord shall furnish electrical, water, heat and air conditioning service to the leased property. Except when due to the negligence of the Landlord, the Landlord shall not be liable for any failure of water supply or electric current or of any service by any utility; for injury to person (including death) or damage to property resulting from steam, gas, electricity, water, rain, or snow which may flow or leak from any part of the leased property, or from any pipes, appliances, or plumbing works, from the street or subsurface, or from any other place; or for interference with light or other easements, however caused. The Tenant shall pay all charges for telephone, cable and Internet service used in or about or supplied to the leased property, and shall indemnify the Landlord against any liability on such account.

Landlord's Rights: Tenant's Default: If the leased property shall be deserted or vacated, or if proceedings are commenced against the Tenant in any Court under a bankruptcy act or for the appointment of a trustee or receiver of the Tenant's property either before or after the commencement of the Sub-Lease term, or if there shall be a default in the payment of rent or any part thereof for more than five (5) days after written notice of such default by the Landlord, or if there shall be default in the performance of any other covenant, agreement, condition, rule, or regulation herein contained or hereafter established on the part of the Tenant for more than twenty (20) days after written notice of such default by the Landlord, this Sub-Lease (if the Landlord so elects) shall thereupon become null and void, and the Landlord shall have the right to re-enter or repossess the leased property, either by force, summary proceedings, surrender, or otherwise, and dispossess and remove therefrom the Tenant, or other occupants thereof, and their effects, without being liable to any prosecution therefor. In such case, the Landlord may, at its option, relet the leased property or any part thereof, as the agent of the Tenant, and the Tenant shall pay the Landlord the difference between the rent hereby reserved and agreed to be paid by the Tenant for the portion of the term remaining at the time of re-entry or repossession and the amount, if any, received or to be received under such reletting for such portion of the term. The Tenant hereby expressly waives the service of notice of intention to re-enter or of instituting legal proceedings to that end.

No failure by the Landlord to insist upon the strict performance of any term or condition of this Sub-Lease or to exercise any right or remedy available on a breach thereof, and no acceptance of full or partial rent

during the continuance of any such breach shall constitute a waiver of any such breach or of any such term or condition. No term or condition of this Sub-Lease required to be performed by the Tenant, and no breach thereof, shall be waived, altered, or modified, except by a written instrument executed by the Landlord. No waiver of any breach shall affect or alter any term or condition in this Sub-Lease, and each such term or condition shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

Landlord's Right to Perform: If the Tenant shall default in the performance of any covenant or condition in this Sub-Lease required to be performed by the Tenant, the Landlord may, after thirty (30) days' notice to the Tenant, or without notice if in the Landlord's opinion an emergency exists, perform such covenant or condition for the account and at the expense of the Tenant. If the Landlord shall incur any expense, including reasonable attorneys' fees, in instituting, prosecuting, or defending any action or proceeding instituted by reason of any default of the Tenant, the Tenant shall reimburse the Landlord for the amount of such expense. Should the Tenant, pursuant to this Sub-Lease, become obligated to reimburse or otherwise pay the Landlord any sum of money in addition to the specific rent, the amount thereof shall be deemed additional rent and may, at the option of the Landlord, be added to any subsequent installment of the specific rent due and payable under this Sub-Lease, in which event the Landlord shall have the remedies for default in the payment thereof provided by this Sub-Lease. The provisions of this paragraph shall survive the termination of this Sub-Lease.

Landlord's Right of Access: The Landlord and its representatives may enter the leased property, at any reasonable time, for the purpose of inspecting the leased property, performing any work which the Landlord elects to undertake made necessary by reason of the Tenant's default under the terms of this Sub-Lease, exhibiting the leased property for sale, lease, or mortgage financing, or posting notices of non-responsibility under any mechanic's lien law.

Tenant's Right to Perform: If the Landlord defaults in the observance or performance of any term or covenant required to be performed by it under this Sub-Lease, the Tenant, after not less than thirty (30) days' notice to the Landlord may, but shall not be obligated to, remedy such default and in connection therewith may pay expenses and employ counsel, provided that the Tenant shall have the right to remedy such default without notice in the event of an emergency. All sums expended or obligations incurred by the Tenant in connection therewith shall be paid by the Landlord to the Tenant upon demand, and if the Landlord fails to reimburse the Tenant, the Tenant may, in addition to any other right or remedy that the Tenant may have, deduct such amount from subsequent installments of basic rent or additional rent which from time to time thereafter become due to the Landlord.

Fire or Other Casualty Losses: In the event fire or other casualty loss should occur and the Leased Premises can be repaired or refurbished for occupancy by the Landlord within sixty (60) days from the date of occurrence in the opinion of Landlord, then this Sub-Lease shall remain in full force and effect and the rental due will be abated during the time that the Leased Premises are not occupied by Tenant. However, in the event that the Leased Premises cannot be repaired or refurbished within sixty (60) days, then either Tenant or Landlord, at their option, shall have the right to terminate this Sub-Lease. If not terminated, the monthly rental will be abated during the vacancy period.

Insurance:

A. The Tenant shall keep the leased property insured throughout the term of this Sub-Lease against the following:

1. Claims for personal injury or property damage, under a policy of general public liability insurance, with such limits as may reasonably be requested by the Landlord from time to time, but not less than \$1,000,000.00 in respect of bodily injury, and \$1,000,000.00 for property damage.

B. All insurance provided for in this Sub-Lease shall be effected under enforceable policies issued by insurers of recognized responsibility licensed to do business in this state. At least fifteen (15) days prior to the expiration date of any policy the original renewal policy for such insurance shall be delivered by the Tenant to the Landlord. With fifteen (15) days after the premium on any policy shall become due and payable, the Landlord shall be furnished with satisfactory evidence of its payment.

C. Premiums on all insurance policies in force at the commencement or the expiration or earlier termination of this Sub-Lease shall be apportioned between the Landlord and the Tenant as of the date of such commencement or termination.

D. If the Tenant provides any insurance required by this Sub-Lease in the form of a blanket policy, the Tenant shall furnish satisfactory proof that such blanket policy complies in all respects with the provisions of this Sub-Lease and that the coverage thereunder is at least equal to the coverage which would be provided under a separate policy covering only the leased property.

Throughout the term of this Sub-Lease the Tenant shall pay all premiums for insurance coverage on the leased property, including fire and windstorm insurance, in such amounts and with such companies, as now maintained by the Landlord.

Condemnation: If the leased property, or any part thereof, is taken by eminent domain, this Sub-Lease shall expire on the date when the leased property shall be so taken, and the rent shall be apportioned as of that date. No part of any award shall belong to the Tenant.

Rights to Assign and Sublease: The Tenant shall not assign, mortgage, or encumber this Sub-Lease, nor sublet or permit the leased property or any part thereof to be used by others without the prior written consent of the Landlord in each instance. If this Sub-Lease is assigned, or if the leased property or any part thereof is sublet, or occupied by anybody other than the Tenant, the Landlord may, after default by the Tenant, collect rent from the assignee, subtenant, or occupant, and apply the net amount collected to the rent herein reserved. No such assignment, subletting or occupancy shall operate as a release of the Tenant from the further performance by the Tenant of the covenants in this Sub-Lease. The consent by the Landlord to an assignment or subletting shall not be construed to relieve the Tenant from obtaining the consent in writing of the Landlord to any further assignment or subletting.

Landlord's Exoneration - Exception for Negligence: The Landlord shall not be liable for injury or damage to person or property occurring within the leased property, unless caused by or resulting from the negligence of the Landlord or any of the Landlord's agents, servants, or employees in the operation or maintenance of the leased property or the building containing the leased property.

Indemnification of Landlord: The Tenant shall indemnify the Landlord against all liabilities, expenses, and losses incurred by the Landlord as a result of:

- A. failure by the Tenant to perform any covenant required to be performed by the Tenant hereunder;
- B. any accident, injury, or damage which shall happen in or about the leased property or appurtenances, or on, or under the adjoining streets, sidewalks, curbs, or vaults, or resulting from the condition, maintenance, or operation of the leased property or of the adjoining streets, sidewalks, curbs, or vaults caused by Tenant's negligence;
- C. failure by Tenant to comply with any requirements or any governmental authority; and

Notices and Certificates: Any notice under this Sub-Lease must be in writing and must be sent by registered or certified mail to the last address of the party to whom the notice is to be given, as designated by such party in writing. The Landlord hereby designates its address is: c/o Jennifer Hoots, 800 Justice Street, Hendersonville, NC 28791. The Tenant hereby designates its address as _____.

Payment of Rent - No Notice or Demand: The Tenant shall pay the rent herein reserved at the time and place herein specified without notice of demand.

Miscellaneous:

- A. This Sub-Lease shall be governed by, construed, and enforced in accordance with the laws of the State of North Carolina.
- B. In construing this Sub-Lease, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural in any place in which the context so requires.
- C. The covenants, terms, conditions, provisions, and undertakings in this Sub-Lease, or in any renewals thereof, shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the respective parties hereto, as if they were in every case named and expressed, and shall be construed as covenants running with the land; and wherever reference is made to either of the parties hereto, it shall be held to include and apply also to the heirs, executors, administrators, successors, and assigns of such party, as if in each and every case so expressed.
- D. The parties agree to execute and deliver any instruments in writing necessary to carry out any agreement, term, condition, or assurance in this Sub-Lease whenever occasion shall arise and request for such instruments shall be made.
- E. The specified remedies to which the Landlord may resort under the terms of this Sub-Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which the Landlord may be lawfully entitled in case of any breach or threatened breach by the Tenant of any provision or provisions of this Sub-Lease.
- F. The parties hereto state that they have not created and do not intend to create by this Sub-Lease a joint venture or partnership relation between them.
- G. This Sub-Lease contains the entire agreement between the parties and cannot be changed or terminated orally.
- H. If any provision of this Sub-Lease shall be declared invalid or unenforceable, the remainder of the Sub-Lease shall continue in full force and effect.

Counterparts: This Agreement executed this _____ day of _____, 20____, in counterparts with an executed counterpart being retained by each party hereto.

HENDERSON COUNTY HOSPITAL CORPORATION

BY: _____ (SEAL)

DANIEL L. SMITH, MD

BY: _____ (SEAL)