

**REQUEST FOR BOARD ACTION**

**HENDERSON COUNTY  
BOARD OF COMMISSIONERS**

**MEETING DATE:** July 20, 2011

**SUBJECT:** Henderson County Hospital Corporation Management Agreement

**PRESENTER:** Russ Burrell

**ATTACHMENT(S):** Yes  
1. Copy of Executed Management Agreement

**SUMMARY OF ANNOUNCEMENT:**

The Management Agreement involving Henderson County Hospital Corporation and UNC Health Care has been completed and executed.

County staff will present further information on this matter.

**BOARD ACTION REQUESTED:**

No specific Board Action is requested.

**Suggested Motion:**

*No motion suggested.*

## MANAGEMENT SERVICES AGREEMENT

THIS MANAGEMENT SERVICES AGREEMENT ("Agreement") is made and entered into by and between Henderson County Hospital Corporation d/b/a Margaret R. Pardee Memorial Hospital ("HCHC"), a North Carolina not for profit corporation, and the University of North Carolina at Chapel Hill Hospitals ("UNCH"), effective as of June 22, 2011 (the "Effective Date").

### WITNESSETH:

WHEREAS, HCHC was created by Henderson County to provide for the operation of a community hospital in Henderson County, North Carolina doing business as Margaret Pardee R. Memorial Hospital ("Pardee Hospital"), that is dedicated to serving the health care needs of Henderson County citizens;

WHEREAS, Henderson County is the sole member of HCHC, which leases and operates Pardee Hospital and whose Board of Directors is appointed solely by the Henderson County Board of Commissioners;

WHEREAS, UNCH is a component of the University of North Carolina Health Care System, whose mission as mandated by the State of North Carolina is to provide care to all North Carolinians, to educate physicians and other health care providers, and to render other services designed to promote the health and well-being of North Carolina's citizens;

WHEREAS, the missions of HCHC and UNCH are consistent and compatible;

WHEREAS, HCHC and UNCH desire to work together on health care programs over a period of several years serving the citizens of Henderson County and the surrounding region;

WHEREAS, HCHC has a need for certain management services and desires to arrange for such services to be provided by UNCH, and UNCH is willing to provide such services, under the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### 1. ENGAGEMENT

(a) Services of UNCH. HCHC hereby engages UNCH to provide those services set forth on Exhibit A, attached hereto and incorporated into the terms of this Agreement (the "Services"). UNCH shall apply reasonable business judgment in making decisions regarding the Services. UNCH shall have all rights and powers to conduct and effectively manage the day to day operations of Pardee Hospital and HCHC's affiliated operations, consistent with the authority granted pursuant to this Agreement. For purposes of this Agreement, Pardee Memorial Hospital Foundation Inc. shall not be treated as an affiliated

operation of HCHC. UNCH hereby agrees that, throughout the term of this Agreement, the administration of HCHC operations shall comply with applicable laws and contractual requirements to allow UNCH to perform all Services contemplated under this Agreement. HCHC agrees to provide to UNCH all of its applicable policies and procedures, as well as any future amendments, to enable UNCH to carry out its duties under this Agreement. UNCH agrees to abide by such policies and procedures, to the extent provided to UNCH by HCHC, and to the extent such policies and procedures are consistent with applicable laws and regulations. UNCH shall make recommendations to the HCHC Board of Directors as needed regarding such policies and procedures, or any other matter related to HCHC operations. Notwithstanding anything stated herein, UNCH shall not be obligated to perform any Services if HCHC breaches this Agreement.

(b) Relationship Between HCHC and Henderson County. UNCH and HCHC specifically acknowledge the existence of and agree to abide by the provisions of Article VIII of the HCHC Articles of Incorporation. Consistent with Article VIII, the parties will, in a manner reasonably designed to allow adequate time for Henderson County's Board of Commissioners to express its views, keep the Henderson County Board of Commissioners informed of all matters not in the ordinary course of business that can reasonably be expected to have a substantial and material impact on the financial performance or operations of HCHC.

(c) Time and Attention to Duties. UNCH shall devote the time and attention of its personnel, as UNCH and HCHC mutually shall determine to be reasonably necessary, to the faithful performance of UNCH's duties hereunder. UNCH may engage any other person or entity to perform any particular Service and may delegate any of its responsibilities hereunder, subject in each case to the conditions and limitations set forth herein.

(d) Records and Reports. UNCH shall have the following responsibilities with respect to HCHC's records and reports:

(i) UNCH shall arrange for the establishment and maintenance of a comprehensive system of records, books and accounts for HCHC, in a manner conforming to the directives of all applicable third-party payors. These books and business records shall be considered to be the property of HCHC, however all operating protocols, information systems, and other proprietary business systems or information developed or provided by UNCH shall remain the exclusive property of UNCH. All records, books and accounts will be subject to examination and copying at reasonable hours by any authorized representatives of HCHC. To the extent information is maintained at another site, all books and records shall be available at HCHC's offices upon request.

(ii) Both parties shall furnish or cause to be furnished to the other such information as reasonably may be requested from time to time with respect to HCHC's financial, physical, or operational condition.

(iii) UNCH shall furnish or cause to be furnished to HCHC monthly operating, management, and financial statements within twenty (20) days after the end of each month, and information for quarterly tax returns within thirty (30) days after the end of each

quarter, unless delayed by circumstances beyond its control. The parties agree that, during a mutually acceptable transition period, the financial reports may not be available for a period of thirty (30) days after the end of the month. UNCH's provision of year-end financial statements shall be subject to reasonable timeframes established by HCHC and agreeable to UNCH, whose agreement shall not be unreasonably withheld.

(iv) UNCH shall prepare or cause to be prepared for HCHC, in a timely manner, proposed budgets and internal financial reports and shall supervise the preparation and timely submission of such other reports or statements as may be required by city, state and federal statutes, regulations and requirements.

(v) Any billing and collections conducted by UNCH on behalf of HCHC shall be conducted under the name of HCHC doing business as Pardee Hospital, or such other "doing business as" name as HCHC may utilize in regard to its ancillary operations.

(e) Employees. UNCH shall assist HCHC in determining qualifications and duties of the personnel to be regularly employed in the management and operation of HCHC, including but not limited to the personnel set forth in Exhibit B, attached hereto and incorporated into the terms of this Agreement. All personnel listed in Exhibit B shall be employees of UNCH and shall be hired, paid, and discharged by UNCH, unless otherwise stated in Exhibit B. Regardless of whether the personnel listed in Exhibit B are employees of UNCH or HCHC, the terms of employment of such personnel, including compensation and assignment at HCHC, shall be at the continuing pleasure of the HCHC Board of Directors. In the event HCHC terminates this Agreement prior to the end of a term, HCHC agrees to reimburse UNCH for any severance expenses and recruitment costs incurred by UNCH with respect to the personnel listed in Exhibit B due to such termination. The additional terms of Exhibit B shall apply to such personnel.

(f) Control over Operations. The HCHC Board of Directors will retain control and direction of its assets and operations, including Pardee Hospital, and this Agreement shall not constitute a delegation of any powers, duties or responsibilities vested in the HCHC Board of Directors. Notwithstanding any other provision in this Agreement, HCHC shall remain responsible for compliance with respect to all applicable provisions of federal, state and local laws, rules, regulations and ordinances and standards of accreditation, including but not limited to those regarding the establishment and operation of health care facilities in North Carolina, and UNCH shall assist HCHC with respect to these obligations. HCHC, acting through its officers, retains the ultimate authority over the overall policy, operation and assets of its facilities and their operation. HCHC shall remain the holder of all of its licenses, contracts, and accreditation certificates. The Chief Executive Officer (CEO) employed by UNCH, but assigned to Pardee Hospital, will report to the HCHC Board of Directors, with oversight provided by the President of UNCH. The HCHC Board of Directors shall have authority to issue directives to the CEO and to place limitations on the authority of the CEO, in consultation with the President of UNCH. The Chief Financial Officer (CFO) employed by Pardee Hospital will report to the CEO of Pardee Hospital, with oversight by the President and Chief Financial Officer of UNCH. The scope of, and limitations on, the duties of the CEO and CFO will be mutually agreed upon by the HCHC Board of Directors and UNCH. UNCH shall be entitled to rely on communications from the Chairperson of the HCHC Board of Directors and the Chairperson's designees regarding

HCHC operations. HCHC will reasonably cooperate with UNCH in the administration of HCHC operations.

(g) Joint Planning Session and Oversight. UNCH, HCHC, and the Henderson County Board of Commissioners shall meet at least bi-annually in joint session to discuss matters related to Pardee's fiscal operations, future operations, and other issues that may be material to HCHC and the Henderson County Board of Commissioners.

(h) Expenses Related to Services. Reasonable out-of-pocket business expenses incurred by personnel of UNCH set forth in Exhibit B in performing Services hereunder shall be subject to HCHC's policies and shall be paid directly by UNCH and reimbursed to UNCH by HCHC pursuant to Exhibit C. HCHC shall be responsible for all costs and expenses associated with the operation of HCHC's facilities and business, and UNCH shall only be responsible to pay costs and expenses on behalf of HCHC that are specifically set forth in this Agreement.

(i) Force Majeure. Neither party shall be obligated to perform any of its obligations pursuant to this Agreement that it is prevented from performing by law, act of God, war, strike, labor unrest, unavailability of supplies or services, or similar events beyond the party's reasonable control, for the period of time the applicable event continues, but not including any obligation it is prevented from performing due to the party's own negligence, malfeasance, or where non-performance is caused by the usual and natural consequences of external forces or where the intervening circumstances are specifically contemplated. To the extent practicable, the party prevented from performing any obligations pursuant to this subsection (i) shall provide notice to the other party immediately upon the happening of such event that prevents performance, including a list of the obligations the party will be prevented from performing and the anticipated timeframe in which the party will be prevented from performing.

(j) Incidental Services. UNCH shall perform for and on behalf of HCHC such other services incidental to the Services or as may from time to time be reasonably necessary in connection with the orderly and successful operation of Pardee Hospital.

(k) Independent Contractor. Nothing herein shall be construed as giving HCHC control over, or the right to control, the judgment or actions of UNCH or individuals performing services on behalf of UNCH with respect to Services rendered hereunder, and UNCH shall at all times act as and be deemed to be an independent contractor, subject to the contractual conditions, obligations and limitations set forth herein. This Agreement shall not be construed as creating a partnership or joint venture. Except as explicitly set forth herein, neither party shall hold itself out as or act as an agent of the other party, nor have the power to obligate the other party with respect to third parties in any way; provided, however, that the personnel listed in Exhibit B shall have such powers as shall be delegated to them by HCHC.

Nothing herein shall be construed as giving UNCH control over or any right to control the governance of HCHC and the HCHC Board of Directors, including but not limited to the independent actions of the HCHC Board of Directors to adopt and apply Bylaws, oversee the

medical staff at Pardee Hospital and make all decisions related to credentialing of providers at Pardee Hospital and other HCHC facilities.

(l) Disclosure of Conflicts of Interest; Business Opportunities. UNCH shall identify to HCHC in writing any contractual or financial relationships of UNCH and its affiliates with any hospitals or health care providers who provide services in competition with or in overlapping service areas with HCHC that might create a conflict of interest in UNCH's provision of the Services identified herein (a "Conflict of Interest Transaction"). UNCH shall not enter into any Conflict of Interest Transactions during the term of this Agreement without the prior written consent of HCHC. UNCH shall present to HCHC for consideration any educational or health care business opportunities in the HCHC service area that are identified by UNCH, and UNCH shall facilitate pursuit of any such opportunities by HCHC if so requested by HCHC, consistent with the terms of this Agreement. Such opportunities may include, without limitation, educational opportunities such as participation in the development of a medical school in western North Carolina, and health care business opportunities, such as joint ventures with other health care providers.

2. COMPENSATION

In consideration of providing the Services set forth in Exhibit A and the personnel set forth in Exhibit B, HCHC shall pay to UNCH those amounts set forth in Exhibit C, attached hereto and incorporated into the terms of this Agreement, in accordance with the provisions therein.

3. LICENSE TO USE NAME/LOGO

UNCH, on its behalf and on behalf of The University of North Carolina Health Care System, hereby grants to HCHC a non-exclusive license to use the names "The University of North Carolina Health Care System," "UNC Health Care System," "The University of North Carolina Hospitals at Chapel Hill," or "UNC Hospitals," and related logos in connection with UNCH's management of Pardee Hospital. Any use of such names shall be subject to the prior approval of both UNCH and the HCHC Board of Directors. This license grant is part of the consideration provided by UNCH in this Agreement, for which UNCH is receiving fair market value consideration, as itemized in Exhibit C. This license shall automatically terminate upon the termination of this Agreement

4. TERM; TERMINATION

(a) Term. This Agreement shall commence as of the Effective Date and shall terminate on the tenth anniversary of the Effective Date. This Agreement may be renewed by written agreement of the parties.

(b) Termination. Either party may terminate this Agreement without cause at any time after one (1) year from the Effective Date as follows:

- (i) UNCH may terminate upon at least one hundred (180) days prior written notice;
- (ii) HCHC may terminate upon at least sixty (60) days prior written notice;

(iii) Upon material breach of this Agreement by the non-breaching party, provided that the non-breaching party first shall have provided to the breaching party written notice of such breach and a thirty (30) day period in which to cure such breach. If at the end of the thirty (30) day cure period, the breaching party has not substantially cured the breach, the non-breaching party may provide the breaching party with written notice declaring this Agreement to be terminated thirty (30) days after receipt of such written notice by the breaching party;

(iv) Immediately by one party upon the dissolution, insolvency, or filing for bankruptcy of the other party; or

(v) Immediately if any license, permit, accreditation or approval required for the operation of HCHC cannot be obtained, in the opinion of UNCH, or is at any time suspended, terminated or revoked.

(c) Conditions of Termination. Upon termination of this Agreement pursuant to the provisions of subsection 4(b) above, all obligations of UNCH to provide further Services hereunder shall be deemed immediately terminated, and UNCH shall cooperate with HCHC and its representatives to ensure that records, documents, and other such materials are appropriately returned to HCHC in a format accessible to HCHC. After the effective date of termination, HCHC shall compensate UNCH on a reasonable hourly basis for UNCH's assistance in completing any Services begun hereunder, if requested by HCHC and as mutually agreed by the parties, in transitioning management back to HCHC or to a third party. Any obligations of HCHC to pay fees to UNCH hereunder that arose prior to the termination of this Agreement shall survive the termination of this Agreement, and HCHC shall be fully responsible for all such fees. HCHC shall pay all fees earned and accrued through the date of termination of this Agreement to UNCH in the manner specified in Exhibit C. If UNCH used a particular computer system or software in providing Services, UNCH shall cooperate with HCHC during the management transition back to HCHC or to a third party to make information from such system or software available to HCHC in an accessible format, provided however that, to the extent HCHC or any third party management company desires the electronic transfer of data or information from UNCH, HCHC shall be responsible for any costs to UNCH to effectuate such transfer in the format desired.

(d) HCHC's Continuing Use of Policies, Protocols, and Materials. To the extent UNCH implements at HCHC during the term of this Agreement any business or operating protocols or policies to which UNCH owns all rights, title, and interest, including educational or training programs and materials (collectively, "Policies, Protocols, and Materials"), HCHC shall have an unlimited license after termination of this Agreement to continued use of such Policies, Protocols, and Materials, without further compensation to UNCH; provided, however, to the extent UNCH utilizes any Policies, Protocols, and Materials to which UNCH does not own all

rights, title, and interest and/or that are licensed to UNCH and its affiliated entities by third parties and are nontransferable to HCHC after termination of this Agreement, HCHC's use of such Policies, Protocols, and Materials shall immediately cease upon termination of this Agreement, and HCHC may take no further action with respect to such Policies, Protocols, and Materials that could cause UNCH to be in breach of any third party licensing agreement. Under no circumstances is UNCH obligated to provide an unlimited license to HCHC after termination of this Agreement for Policies, Protocols, and Materials to which UNCH does not own all rights, title, and interest.

## 5. CONFIDENTIALITY

(a) Definition. For purposes of this Section, the term "Trade Secrets" shall mean all information, documentation, and materials, including without limitation, financial information such as books, records, financial statements, contracts, patient information, and other information concerning the business and operation of a party and its operating units that may be disclosed or made available from any source and in any form, including paper record, oral communication, audio recording, and electronic display, by such party and its operating units to the other party that derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use, and that is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. "Trade Secrets" under this Section shall include information protected by N.C. Gen. Stat. § 66-152 et seq., and other confidential information described below.

Notwithstanding the foregoing, "Trade Secrets" shall not include information that: (a) as of the date of disclosure is already known to the receiving party; (b) is or becomes part of the public domain, through no act or fault of the receiving party; (c) is lawfully disclosed to the receiving party by a third party that is not obligated to maintain and preserve such information as confidential and proprietary; or (d) is independently developed by or for the receiving party without the benefit of the Trade Secrets of the disclosing party. The nondisclosure obligation of this Section shall not apply to the extent disclosure is required by law, regulatory or accrediting agencies or a court of competent jurisdiction.

(b) Confidentiality. Each party acknowledges and agrees that all Trade Secrets of the disclosing party are confidential to and the sole and exclusive property of the disclosing party or of the disclosing party's patients, as appropriate, and that any unauthorized disclosure or use of such information will cause irreparable harm, injury, and loss to the disclosing party or patients, as appropriate. Each party agrees to hold the Trade Secrets of the other party in strictest confidence and (a) to use any Trade Secrets of the other party solely for the purposes required in connection with the business relationship of the parties; (b) not to disclose any Trade Secrets of the other party to any person or entity other than its agents, employees, or representatives who have a need to know such information for the permissible purposes hereunder and in accordance with its obligations under state and federal law; (c) not to reproduce, distribute or otherwise disseminate Trade Secrets of the other party, and to protect Trade Secrets of the other party from disclosure by others; and (d) to return the Trade Secrets of the other party, including all copies and records thereof, to the disclosing party upon its request, or upon the termination of the



business relationship of the parties, whichever occurs first. Each party agrees that it shall not be a breach of this Section for a party to disclose information regarding the other party to the party's governing Boards in connection with the oversight responsibilities of such Boards.

Each party agrees that the obligations contained in this Section will be honored by its agents, employees, and representatives, and by any subsidiary company, parent company, or company related to such party by common ownership, and its agents, employees, and representatives. Each party agrees to require each of its employees or agents to retain all proprietary information of the other party, including all patient information, in strict confidence.

(c) Other Confidential Information. In the event any of the information considered and treated as confidential by a party and disclosed during the course of the parties' business relationship does not qualify as statutorily protected Trade Secrets, then the parties acknowledge and agree that such information shall nonetheless remain confidential and shall not be disclosed by the receiving party to any other party during the term of the parties' business relationship and for a period of three (3) years following the termination of the business relationship, absent the express written consent of the disclosing party; provided, however, that patient information shall not be disclosed at any time following the execution of this Agreement.

(d) Survival. The obligations of the parties under this Section shall survive the expiration, termination, or cancellation of this Agreement and/or the business relationship of the parties, and shall continue to bind the parties, their agents, employees, representatives, successors, and assigns as set forth herein.

(e) Breach. In the event of any actual or threatened breach or violation of this Section, the disclosing party shall have full rights to seek injunctive relief, in addition to any other rights and remedies it may have.

## 6. COMPLIANCE WITH LAWS

(a) Each party shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and the performance of this Agreement, including those of federal, state, and local agencies having jurisdiction and/or authority.

(b) It is the intent of UNCH and HCHC to comply with federal and state antitrust laws and to conduct their activities pursuant to this Agreement in accordance with such laws. To the extent applicable, UNCH and HCHC will take such steps as are necessary to comply with such laws.

(c) UNCH shall have the authority to receive, create, access and possess Protected Health Information, as such term is defined by the Health Insurance Portability and Accountability Act and the regulations promulgated thereunder ("HIPAA"), related to patients of HCHC. UNCH shall maintain the privacy and security of such Protected Health Information in the manner required of HCHC by applicable law, including without limitation HIPAA, as such may be amended from time to time. The parties shall enter into a HIPAA-compliant Business

Associate Agreement, which is attached hereto as Exhibit G and incorporated herein by reference.

7. INSURANCE

(a) At all times during the term of this agreement, UNCH and HCHC each at its own expense shall secure and maintain commercial general liability insurance covering itself and its respective employees. Such coverage provided by UNCH and HCHC may be afforded via commercial insurance, self-insurance, or some combination thereof, at limits of at least \$1,000,000 per occurrence. Such coverage shall be primary and non-contributory. Each party shall provide a certificate of insurance evidencing such coverage upon request of the other party.

(b) At all times during the term of this agreement, UNCH and HCHC each at its own expense shall secure and maintain professional liability (medical malpractice) insurance covering itself and its respective employees. Such coverage provided by UNCH and HCHC may be afforded via commercial insurance, self-insurance, or some combination thereof at limits of at least \$3,000,000 per claim/occurrence and \$7,000,000 in the aggregate. Such coverage shall be primary and non-contributory. Each party shall provide a certificate of insurance evidencing such coverage upon request of the other party. Such coverage shall be either (1) on an occurrence basis or (2) on a claims-made basis. If the coverage is on a claims-made basis, both UNCH and HCHC hereby agree that, prior to the effective date of termination of their respective current insurance coverage, both parties shall, at their respective expense, either renew or procure replacement policies annually thereafter having a retroactive date no later than the Effective Date or purchase tail coverage in the above stated amounts for all claims arising out of incidents occurring prior to termination of the respective party's current coverage or prior to termination of this Agreement.

(c) UNCH and HCHC each shall secure and maintain at all times during the term, at its respective sole expense, workers' compensation/employers liability insurance covering its respective employees. Such coverage provided by UNCH and HCHC may be afforded via commercial insurance or self-insurance at the following limits:

Limits:	Workers' Compensation -	Statutory limits
	Employers Liability -	\$1,000,000 each accident; \$1,000,000 disease policy limit; \$1,000,000 disease each employee.

Such coverage shall be primary and non-contributory. Each party shall provide a certificate of insurance evidencing such coverage upon request of the other party.

(d) UNCH and HCHC each shall secure and maintain at all times during the term at their respective sole expense automobile liability insurance covering themselves and their respective employees for whom such coverage is necessary or appropriate in the course of business operations. Such coverage provided by UNCH and HCHC may be afforded via commercial insurance, self-insurance, or some combination thereof at limits of at least

\$1,000,000 per occurrence. Such coverage shall be primary and non-contributory. Each party shall provide a certificate of insurance evidencing such coverage upon request of the other party.

(e) HCHC shall secure and maintain at all times during the term, at its sole expense, directors' and officers' liability insurance covering its directors and officers, including coverage for the personnel of UNCH listed in Exhibit B. Such coverage provided by HCHC may be afforded via commercial insurance or self-insurance at limits of at least \$1,000,000 per claim/occurrence and \$3,000,000 in the aggregate. Such coverage shall be primary and non-contributory. HCHC shall provide a certificate of insurance evidencing such coverage upon request of UNCH.

(f) HCHC shall maintain a fidelity bond covering all employees with access to the cash assets of HCHC, including the personnel of UNCH listed in Exhibit B.

(g) As to each policy identified in this Section 7 to be maintained by HCHC, such policy shall (i) name UNCH and its agents and employees as additional insureds; and (ii) provide that no cancellation thereof or material change therein shall be effective until at least thirty (30) days after receipt by UNCH of written notice to such effect. UNCH has had an opportunity in advance to review the current coverage maintained by HCHC, and HCHC shall not make material changes to such coverage without the advance written notice to UNCH required herein.

## 8. NON-SOLICITATION

(a) The parties acknowledge that personnel are a significant asset to the parties, and that each party will gain knowledge of the employees of the other party through performance of this Agreement. Accordingly, UNCH and HCHC each agree that, except as shall be mutually agreed between the parties, during the term of this Agreement (including any renewals) and for a period of one (1) year following the date upon which this Agreement or any renewal of this Agreement is terminated for any reason, it shall not solicit for employment any employees of the other party who become known to such party through this Agreement. Nothing herein shall prevent an employee of a party from applying for a posted position with the other party or any of its affiliates.

(b) The parties acknowledge and agree that the recruitment of senior-level employees is a lengthy and expensive process, and further that the solicitation by either party of the other party's senior-level employees will result in economic damage to the non-soliciting party. Both parties further agree and acknowledge that the economic damages that the non-soliciting party would suffer as a result of the other party's breach of this Section 8 are difficult to ascertain on the date hereof because of their indefiniteness and uncertainty; notwithstanding this, the parties acknowledge and agree that \$100,000 is a reasonable approximation of the damages that the non-soliciting party would suffer as a result of the other party's solicitation of its senior-level employees, including but not limited to the Chief Executive Officer, which damages would include, but not be limited to administrative costs associated with recruiting a replacement and training such replacement. Each party agrees that \$100,000 is reasonable and that it will pay the other party the full amount if it breaches this Section 8.

(c) Notwithstanding anything to the contrary, herein, the parties acknowledge that HCHC, prior to the execution of this Agreement, recruited an individual whom UNCH will employ as CEO, pursuant to the terms of this Agreement, and whom initially will serve as the CEO of HCHC, as contemplated by this Agreement. If this Agreement is terminated within the first year following the Effective Date, the right of HCHC to employ such individual to continue to serve as the CEO of HCHC, with or without the consent of UNCH, is not subject to the provisions of this Section 8, and HCHC may so employ this individual without limitation or sanction.

9. CERTIFICATE OF NEED OPPORTUNITIES

During the term of this Agreement, UNCH shall review the State Medical Facilities Plan on behalf of HCHC and shall advise the HCHC Board of Directors of potential Certificate of Need ("CON") opportunities that may be available to HCHC.

10. REPRESENTATIONS OF THE PARTIES

(a) Representations of UNCH. UNCH hereby makes material representations as follows:

(i) UNCH is an agency of the State of North Carolina with full power and authority necessary to enable it to own, lease or otherwise hold its properties and assets and to carry on its operations as presently conducted.

(ii) UNCH has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement. The execution and delivery by UNCH of this Agreement and the performance of its obligations hereunder have been duly and validly authorized by all necessary action on its part. This Agreement has been duly executed and delivered by UNCH and constitutes the legal, valid and binding obligation of UNCH, enforceable against UNCH in accordance with its terms.

(iii) To the knowledge of UNCH, there is no requirement applicable to UNCH to make any filing with, or to obtain any permit, authorization, consent or approval of, any governmental authority as a condition to the performance of the Services, other than the approval of the UNC Health Care System Board of Directors, which has so approved.

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(iv) To its knowledge, UNCH is in material compliance with all laws or regulations applicable to it and is not aware of any pending, threatened or unasserted claims to the contrary. UNCH has not received any written communication from a governmental authority that alleges that it is not in compliance with any law applicable to the performance of the Services.

(v) To the knowledge of UNCH, UNCH has never been charged with any violation of any law involving fraudulent or abusive practices relating to its participation in state or federally sponsored reimbursement programs, including but not limited to fraudulent billing practices. Neither UNCH nor, to the knowledge of UNCH, any officer or director of UNCH, has engaged on behalf of UNCH in any of the following: (i) knowingly and willfully

making or causing to be made a false statement or representation of a material fact in any application for any benefit or payment under any Federal Health Care Program, as that term is defined at 42 U.S.C. § 1320a-7b(f) ("FHCP") (part of the federal "fraud and abuse" provisions); (ii) knowingly and willfully making or causing to be made any false statement or representation of a material fact for use in determining rights to any benefit or payment under any FHCP; (iii) failing to disclose knowledge of the occurrence of any event affecting the initial or continued right to any benefit or payment by a claimant under any FHCP on its/his/her own behalf or on behalf of another, with intent to secure such benefit or payment fraudulently; (iv) knowingly and willfully soliciting or receiving any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind or offering to pay such remuneration (A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by any FHCP, or (B) in return for purchasing, leasing or ordering or arranging for or recommending the purchasing, leasing or ordering of any good, facility, service, or item for which payment may be made in whole or in part by any FHCP.

(vi) There are no lawsuits, claims, or legal, administrative or arbitration proceedings or investigations pending, or to the knowledge of UNCH, threatened, by or against UNCH that would affect the performance of the Services, or that seek to enjoin the consummation of the transactions contemplated herein.

(vii) UNCH is exempt from filing, or has filed or caused to be filed on a timely basis, all tax returns and all reports with respect to taxes that are or were required to be filed pursuant to applicable legal requirements, including those related to unrelated business income. Any such tax returns and reports filed by UNCH are true, correct and complete in all material respects. UNCH has paid, or made provision for the payment of, all taxes that have or may have become due for all periods covered by the tax returns or otherwise, or pursuant to any assessment received by UNCH. All taxes that UNCH is or was required to withhold, deduct or collect have been timely withheld, deducted and collected and, to the extent required, have been paid to the proper governmental body or other person.

(viii) Exhibit H contains a complete list of all of UNCH's affiliated entities, including without limitation any parent corporations, affiliates of a parent corporation, subsidiaries, joint ventures, whether via ownership or contract, and ownership interests, whether whole or partial, in any other legal entities.

(b) Representations of HCHC. HCHC hereby makes material representations as follows:

(i) HCHC is a North Carolina non-profit corporation that leases its facilities from Henderson County. HCHC has full power and authority necessary to enable it to lease or otherwise hold properties and assets and to carry on the operation of a hospital. HCHC does not have the authority to own real property without the express consent of the Henderson County Board of Commissioners but does have the authority to own personal property without limitation.

(ii) HCHC has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, subject to approval by the Henderson County Board of Commissioners. The execution and delivery by HCHC of this Agreement and the performance of its obligations hereunder have been duly and validly authorized by all necessary action on its part, including but not limited to approval and authorization by the Henderson County Board of Commissioners. This Agreement has been duly executed and delivered by HCHC and constitutes the legal, valid and binding obligation of HCHC, enforceable against HCHC in accordance with its terms.

(iii) Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with the terms and conditions of this Agreement conflict with or result in a breach of any terms, conditions, or provisions of any restrictions or agreements to which HCHC is now a party or to which HCHC's facilities or assets are subject.

(iv) Exhibit D contains a complete and accurate list of each governmental authorization that is held by HCHC or that otherwise relates to Pardee Hospital or HCHC's affiliated operations (the "Governmental Authorizations"). Each Governmental Authorization is valid and in full force and effect. Except as set forth in Exhibit E, HCHC is, and at all times since January 1, 2008, has been, in material compliance with all of the terms and requirements of each Governmental Authorization. Except as set forth in Exhibit E, HCHC has not received, at any time since January 1, 2008, any notice or other communication (whether oral or written) from any governmental body or any other person regarding (A) any actual, alleged, possible or potential violation of or failure to comply with any term or requirement of any Governmental Authorization or (B) any actual, proposed, possible or potential revocation, withdrawal, suspension, cancellation, termination of or modification to any Governmental Authorization. The Governmental Authorizations collectively constitute all of the governmental authorizations necessary to permit HCHC to lawfully conduct and operate Pardee Hospital and its affiliated operations in the manner in which HCHC currently conducts and operates such businesses. Except as set forth on Exhibit D, to the knowledge of HCHC, there is no requirement applicable to HCHC to make any filing with, or to obtain any permit, authorization, consent or approval of, any governmental authority as a condition to the consummation of this Agreement.

2.

(v) To its knowledge, HCHC is in material compliance with all laws or regulations applicable to it and no facts or circumstances exist that, with or without the passing of time or the giving of notice or both, might reasonably serve as the basis for any claim that HCHC is not in material compliance with any law or regulation applicable to it. Except as set forth in Exhibit E, HCHC is not aware of any pending, threatened or unasserted claims to the contrary, and HCHC has not received any written communication from a governmental authority that alleges that it is not in compliance with any law. Upon request, HCHC shall disclose to UNCH in writing any direct or indirect financial relationships between HCHC and any physician or other person or entity in a position to make or influence referrals to HCHC.

(vi) To the knowledge of HCHC, HCHC has never been charged with any violation of any law involving fraudulent or abusive practices relating to its participation in state or federally sponsored reimbursement programs, including but not limited to fraudulent

billing practices. To its knowledge, HCHC has properly and legally billed all intermediaries and third party payors for services rendered and has maintained its records to reflect such billing practices. No funds with respect to HCHC are now, or to the knowledge of HCHC will be, withheld by any Medicare intermediary or third party payor, other than in the usual course of business. To the knowledge of HCHC, neither HCHC nor any officer or director of HCHC, has engaged in any of the following: (i) knowingly and willfully making or causing to be made a false statement or representation of a material fact in any application for any benefit or payment under any FHCP; (ii) knowingly and willfully making or causing to be made any false statement or representation of a material fact for use in determining rights to any benefit or payment under any FHCP; (iii) failing to disclose knowledge of the occurrence of any event affecting the initial or continued right to any benefit or payment by a claimant under any FHCP on its/his/her own behalf or on behalf of another, with intent to secure such benefit or payment fraudulently; (iv) knowingly and willfully soliciting or receiving any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind or offering to pay such remuneration (A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by any FHCP, or (B) in return for purchasing, leasing or ordering or arranging for or recommending the purchasing, leasing or ordering of any good, facility, service, or item for which payment may be made in whole or in part by any FHCP.

(vii) HCHC is exempt from filing, or has filed or caused to be filed on a timely basis, all tax returns and all reports with respect to taxes that are or were required to be filed pursuant to applicable legal requirements. All tax returns and reports filed by HCHC are true, correct and complete in all material respects. HCHC has paid, or made provision for the payment of, all taxes that have or may have become due for all periods covered by the tax returns or otherwise, or pursuant to any assessment received by HCHC. All taxes that HCHC is or was required to withhold, deduct or collect have been timely withheld, deducted and collected and, to the extent required, have been paid to the proper governmental body or other person.

(viii) Except as set forth in Exhibit E, there are no lawsuits, actual claims, or legal, administrative or arbitration proceedings or investigations pending, or to the knowledge of HCHC, actually threatened, by or against or affecting HCHC, or seeking to enjoin the consummation of the transactions contemplated herein.

(ix) Exhibit F contains a complete list of all of HCHC's affiliated entities, including without limitation any parent corporations, affiliates of a parent corporation, subsidiaries, joint ventures, whether via ownership or contract, and ownership interests, whether whole or partial, in any other legal entities.

(c) Statements of Both Parties

(i) HCHC and UNCH each agree that they shall continue to operate their respective hospitals in accordance with their existing missions and in furtherance of providing high quality medical care to, and otherwise benefiting, the communities they serve;

(ii) Pardee Hospital will be managed, operated and maintained as a Community General Hospital, as defined in N.C.G.S. § 131E-6(2), and HCHC will provide the same or similar programs and services as are provided by other Community General Hospitals in similarly situated and similar sized communities in the State of North Carolina;

(iii) Pardee Hospital will be managed, operated and maintained in a manner that will preserve the tax-exempt, Section 115 status of HCHC;

(iv) Pardee Hospital will provide care in accordance with its charity care and non-discrimination policies;

(v) Pardee Hospital will be operated primarily for the benefit of the community it serves; and

(vi) Nothing in this Agreement shall be construed to be a warranty by UNCH with respect to the profitability of HCHC's operations or to constitute UNCH as a guarantor of any obligations of HCHC.

#### 11. LIABILITY/RESPONSIBILITY OF THE PARTIES

(a) No Assumed Liability. UNCH shall neither assume nor become liable for the payment or performance of any liabilities of HCHC of any nature whatsoever, whether related to or arising out of the operation of HCHC or its facilities, including without limitation: (a) any liability based upon any act or omission of HCHC or any of its representatives; (b) any indebtedness of HCHC or any of its representatives; (c) any liabilities relating to any breach of contract, breach of warranty, tort, infringement, or violation of law by HCHC or any of its representatives; (d) any liability for lawsuits, claims, or legal, administrative or arbitration proceedings or investigations relating to HCHC or any of its representatives. HCHC shall neither assume nor become liable for the payment or performance of any liabilities of UNCH of any nature whatsoever, whether related to or arising out of the operation of UNCH or its facilities, including without limitation: (a) any liability based upon any act or omission of UNCH or any of its representatives; (b) any indebtedness of UNCH or any of its representatives; (c) any liabilities relating to any breach of contract, breach of warranty, tort, infringement, or violation of law by UNCH or any of its representatives; (d) any liability for lawsuits, claims, or legal, administrative or arbitration proceedings or investigations relating to UNCH or any of its representatives.

(b) Indemnification. To the extent permitted by law, each party agrees that it shall indemnify the other party, including the other party's officers, directors, employees, successors and assigns, for any and all liability, claims, and costs of whatsoever kind and nature, including without limitation attorneys' fees, arising out of or from: (i) any breach of any of the representations or warranties of the indemnifying party contained in or made pursuant to this Agreement or other document delivered by the indemnifying party pursuant to this Agreement, and (ii) any failure by the indemnifying party to perform or observe, or to have performed or observed, in full, any covenant, agreement, obligation or condition to be performed or observed by it pursuant to this Agreement. HCHC agrees that it shall indemnify UNCH, including UNCH's officers, directors, employees, successors and assigns, for any and all liability arising



from or related to the lease, ownership, or operation of Pardee Hospital or any other asset, facility or other operations of HCHC, except as to any liability arising out of or resulting from the negligence or misconduct of UNCH or any of its officers, agents or employees. The requirements of this Section will survive the expiration or termination of this Agreement.

12. MEDICARE RECORD ACCESS

In compliance with 42 U.S.C. § 1395x(v)(1)(I) and implementing regulations, UNCH agrees, until the expiration of four (4) years after the services are furnished under this Agreement, to allow the Secretary of the Department of Health and Human Services and the Comptroller General access to this Agreement, all applicable purchase orders, and to the books, documents and records of UNCH necessary to verify the nature and extent of the costs of this Agreement. UNCH further agrees that if any of the duties of this Agreement are carried out by a subcontractor of UNCH pursuant to a subcontract with a cost in excess of \$10,000 within a period of twelve (12) months, such subcontract will contain a clause to the effect that, until the expiration of four (4) years after the services are furnished under such subcontract, the Secretary of the Department of Health and Human Services and the Comptroller General will have access to such subcontract and to the books, documents and records of the subcontractor necessary to verify the nature and extent of the costs of such subcontract. This Section will survive the expiration or termination of this Agreement.

13. CHANGES IN LAWS

If there is a change in Medicare, Medicaid or other federal or state statutes or regulations or in the interpretation thereof, that renders any of the material terms of this Agreement unlawful or unenforceable, this Agreement shall be amended by the parties hereto as a result of good faith negotiations to the least extent necessary in order to carry out the original intention of the parties in compliance with such law or regulation. In the event such law or regulation is subsequently amended or interpreted in such a way to make any provision of this Agreement that was formerly invalid valid, such provision shall be considered valid from the effective date of such interpretation or amendment.

UNCH and HCHC further agree that the compensation set forth herein represents fair market value as a result of arms-length negotiation and does not take into account the volume or value of any referrals or other business generated between the parties. The benefits hereunder do not require, are not payment for, and are not in any way contingent upon, the referral (as that term is defined at 42 U.S.C. § 1395nn or 42 U.S.C. § 1320a-7b), admission, or any other arrangement for the provision of any item or service offered by either party to patients of the other party in any facility or health care operation controlled, managed, or operated by the parties. This Agreement is not intended to influence the judgment of any physician or other health care provider in choosing a medical facility appropriate for the proper care of his or her patients. The parties hereby support a patient's right to select the medical facility of his her choice.

14. NOTICES

All notices or other communications required or permitted hereunder shall be in writing and shall be deemed sufficiently given if sent by certified mail, express mail service, or overnight delivery service, postage pre-paid, addressed as set forth below or to other such address as shall be furnished in writing by a party, and such notice or communication shall be deemed to have been given upon receipt.

If to HCHC: Henderson County Hospital Corporation  
Attn: Chairman, Board of Directors  
800 N. Justice Steet  
Hendersonville, NC 28791

If to UNCH: University of North Carolina Hospitals  
Attn: Legal Department  
101 Manning Drive  
4<sup>th</sup> Floor Med Wing E  
Chapel Hill, NC 27514

15. MISCELLANEOUS

(a) This Agreement may be amended only in writing by mutual agreement of the parties.

(b) No party may assign this Agreement without the written agreement of the other party; however, UNCH may delegate Services to be performed hereunder to its affiliates, parent, or other related entities without the prior written consent or approval of HCHC. This Agreement shall be binding upon and inure to the benefit of the parties, their successors in interest and permitted assigns.

(c) This Agreement and any documents incorporated specifically by reference herein represent the entire agreement between the parties and supersede all prior oral or written statements or agreements.

(d) All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive this Agreement's expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or state statutes of limitation.

(e) In the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement will remain in full force and effect.

(f) In the event that a party waives any provision of this Agreement, it will not be deemed to have waived that provision at any other time or to have waived any other provision.

(g) This Agreement shall be governed by the laws of the State of North Carolina.

(h) This Agreement is entered into by and between UNCH and HCHC solely for their benefit and shall not create rights in any third party beneficiary. However, the Henderson County Board of Commissioners ("BOC") joins in the execution of this Agreement for the limited purposes of evidencing the BOC's grant of authority allowing HCHC to enter into this Agreement.

(i) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized agents effective as of the date first above written.

HENDERSON COUNTY HOSPITAL  
CORPORATION

By: 

Title: CHAIRMAN

UNIVERSITY OF NORTH CAROLINA AT  
CHAPEL HILL HOSPITALS

By: 

Title: President

COUNTY OF HENDERSON

By: 

Title: CHAIRMAN

## EXHIBIT A

### SERVICES

#### Services

The following services and services incidental to the following services (“Services”) will be included as part of the management fee or carried out under the supervision of the CEO employed by UNCH but assigned to Pardee Hospital, and/or the CFO, employed by Pardee Hospital but with dotted line reporting to the CFO of UNC Hospitals (hereinafter, “CEO” and “CFO”), as more fully described below:

- Supervision of the business office functions: accounting, patient billing, accounts payable, purchasing, etc.
- Preparation of the operating and capital budgets
- Preparation of monthly and annual financial reports
- Analysis of business office operations
- Monthly management report from UNCH, including such specific information as may be reasonably requested by HCHC from time to time
- Access to purchasing agreements with UNC Hospitals’ Group Purchasing Organization and other locally negotiated purchasing agreements
- Managed care contracting consultation and negotiation to the extent in compliance with applicable laws, including antitrust
- Consultation on CON development
- Development of a physician recruitment and retention plan
- Access for HCHC staff to UNCH Human Resources Development and Nursing Practice Education and Research programs that are provided at no cost to UNCH employees. HCHC will pay the UNCH staff rate for those programs that require a registration fee.
- Board of Directors education programs
- The UNCH Fiscal Staff will conduct an in-depth analysis of the processes, policies, and information systems in use in the HCHC business office to identify any modifications suggested by a change in management and the costs associated with those changes. Opportunities for streamlining operations will also be evaluated and discussed with the HCHC Board of Directors.
- Development of a productivity monitoring system.

#### Additional Services

The following additional services (“Additional Services”) will be available from UNCH upon request by HCHC as part of this proposed contract at cost plus 10%\*:

- Marketing
- Information technology consultation services

- Development of cost accounting and decision support systems
- Quality improvement advice and consultation
- Clinical support services consultation
- Strategic and facility planning services
- Supply chain consultation
- Other services can be evaluated on a case by case basis

\*The additional 10% covers additional staffing and other expenses required for UNCH to cover needs associated with this Agreement. UNCH shall provide to HCHC an estimate detailing the cost to UNCH of each such item in advance of providing such service.

### Limitation on Services

Services not specifically described are not included as part of this Agreement.

### Detailed Description of Services

Hospital Operations: The CEO employed by UNCH but assigned to Pardee Hospital (hereinafter, the "CEO") will provide administrative oversight to all business, administrative and executive functions of Pardee Hospital, consistent with and subject to the policies, procedures and objectives and periodic directives of the HCHC Board of Directors. The CEO will report to the HCHC Board of Directors as requested but no less than monthly regarding the status of operations of Pardee Hospital.

These duties of the CEO include, but are not limited to, the following:

1. Insures preparation of administrative and financial reports for presentation to the HCHC Board of Directors,
2. Manages Pardee Hospital Department Heads, including the CFO (employed by Pardee Hospital and with dotted line reporting to the UNCH CFO),
3. Maintains open lines of communication with the medical staff regarding all matters relating to Pardee Hospital,
4. Facilitates resolution of questions and problems relating to HCHC operations,
5. Stays abreast of all public policy, economic developments and other issues pertaining to HCHC operations,
6. Oversees all accreditation and compliance efforts,
7. Negotiates professional service contracts,
8. Develops and maintains open communication with other health care providers in Henderson County and the region,
9. Represents Pardee Hospital at local, regional and statewide meetings of health care providers and policy makers, and
10. Represents Pardee Hospital to the public.
11. Ensures effective quality and compliance programs that are consistent with current health care laws and regulations and that reflect expected changes due to health care reform and changes in reimbursement methodologies.

12. Fulfills those duties assigned by the HCHC Board of Directors, including but not limited to those duties set out in the HCHC Board of Directors Bylaws, as the same may be amended from time to time.
13. Assures that appropriate hospital departments are established and that necessary inter- and intra-departmental meetings occur.
14. Prepares reports for the Board of Directors and Medical and Allied Health Staff as appropriate, including (1) general activities and performance within the hospital, (2) federal and state regulations and local developments that affect hospital operations, and (3) actual or potential liabilities arising from federal and state regulations or otherwise and measures taken to avoid or address such liabilities.
15. Maintains policies to prevent hospital employee conflicts of interest in any financial aspect of hospital business.
16. Presents operating and capital budgets to HCHC, as well as other projections including but not limited to annual compensation plans, which include salaries, bonuses, awards, benefits, changes in staffing, and other amenities; presents to HCHC any changes in the financial forecast, including reductions in force.
17. Makes purchases of approved and budgeted capital equipment, and has authority to make unbudgeted purchases of capital equipment consistent with HCHC policies and procedures as approved by the HCHC Board, except in the event a patient emergency requires such expenditure, in which case approval shall be sought as soon as practicable after such emergency.

Financial Management: The CFO will provide, at a minimum, supervision of the business office functions such as accounting, patient billing, medical information management, accounts payable and purchasing and will be responsible for the preparation of the operating and capital budgets. Monthly financial reports, including monthly revenues and expenses, and an annual financial report will be provided to the HCHC Board of Directors. The CFO will coordinate audit activity with an independent public accounting firm to be selected by the HCHC Board of Directors.

Purchasing Agreements: As an affiliate hospital, after signing a Group Purchasing Organization (“GPO”) Participation Agreement, HCHC will have access to the UNC Health Care System’s purchasing agreements with the UNCH’s GPO and other locally negotiated purchasing agreements. The UNCH Purchasing Department will offer assistance in accessing both GPO and locally negotiated purchasing agreements to afford HCHC the opportunity to make an informed decision regarding its willingness to access such agreements. This assistance will include the UNCH Purchasing Department facilitating discussions with suppliers to extend UNCH pricing to HCHC, if applicable and if HCHC is eligible, in support of the cost savings opportunities available to it.

Managed Care Contracting Consultation: The management team for the managed care office will evaluate, negotiate and execute managed care contracts with insurance companies, managed care organizations, employers, and other payers. The managed care office staff will participate in all areas of non-government reimbursement as legally permitted.

Physician Recruitment: The CEO will work with the HCHC Board of Directors and medical staff to develop a recruitment program to attract physicians to HCHC’s service area and to retain physicians who already have privileges at Pardee Hospital.

Staff Education: The UNCH Human Resources Development Department and the Nursing Practice Education and Research Department have extensive educational offerings covering clinical and management topics. These programs will be made available to HCHC staff in Chapel Hill or at other scheduled venues as space permits. On occasion, off-site programs are presented that require a registration fee. In those instances, HCHC employees will pay the UNCH employee rate.

Board Education: Programs will be made available to the HCHC Board of Directors on the following topics:

- Health care trends and issues
- Board orientation and responsibilities
- Managed care
- Other program content as appropriate

## EXHIBIT B

### PERSONNEL

UNCH will provide a full time CEO for Pardee Hospital for the management of the day-to-day operations of the hospital. The CEO will be an employee of UNCH assigned to Pardee Hospital and will report to the HCHC Board of Directors, and to the President of UNCH who will provide oversight of the CEO.

Pardee Hospital will employ a full time Chief Financial Officer (CFO) for the management of the fiscal operation of Pardee Hospital, who shall report to the CEO for Pardee Hospital, with dotted line reporting to the CFO of UNCH, unless and until such time as Pardee Hospital desires that UNCH provide a full time CFO employed by UNC Hospitals but assigned to Pardee Hospital or until such time as the CFO employed by Pardee is terminated or otherwise terminates his employment. The CFO will consult regularly with the UNCH CFO and other members of the UNCH Fiscal Services staff.

All other staff will remain employees of HCHC, subject to the day-to-day supervision and management of the CEO.

The appropriate committee of the HCHC Board of Directors will participate in the decisions related to the recruitment of the CEO, and will have final approval of the candidate(s) recommended by UNCH. UNCH agrees that it shall present candidates to the HCHC Board of Directors and the Board will notify UNCH of its decision regarding the candidates within ten (10) days of initial presentation to the Board.

The CEO and the CFO will have annual performance reviews prepared by UNCH in consultation with the appropriate committee of the HCHC Board of Directors. HCHC and UNCH will mutually determine performance measures for the CEO and the CFO. In the event the CEO does not meet previously established performance standards, HCHC may request, and UNCH will reassign the individual outside of HCHC within thirty days of written request by HCHC. Likewise, if the CEO meets or exceeds performance standards, HCHC agrees to allow such individual to receive performance bonuses, as recommended by UNCH and approved by HCHC. If the CFO does not meet previously established performance standards, UNCH may recommend such action as may be appropriate and, in the event the CFO meets or exceeds performance standards, UNCH may recommend that such individual receive a performance bonus. Unless the CFO is employed by UNCH, HCHC, in its sole discretion, shall have the option of acting upon UNCH's recommendations with regard to the CFO. If the CFO is employed by UNCH, treatment of the CFO with respect to established performance standards shall be the same as that of the CEO.

UNCH will not remove the CEO from his or her assignment at HCHC without the prior written consent of HCHC.



EXHIBIT C  
COMPENSATION

HCHC will reimburse UNCH for the salaries and benefits of the personnel listed in Exhibit B. Any increases in salaries or benefits above standard UNCH increases, including performance bonuses, shall require approval of HCHC's Board of Directors. HCHC also will reimburse UNCH for all relocation expenses, severance expenses and interim living expenses for such personnel, as needed and as mutually agreed upon by UNCH and HCHC. All other staff will be employees of and directly compensated by HCHC.

In addition to the salary of the CEO, and the CFO to the extent UNCH directly employs him or her (see Exhibit B), HCHC will pay UNCH:

1. A management fee of \$170,000 for the first year of the term of this Agreement. This fee will increase each subsequent year of the term by a percentage equal to the increase in the Consumer Price Index-U, Medical Care Services, as published by the Bureau of Labor Statistics at bls.gov, with any such annual increases not to exceed five percent (5%) of the then-current fees.
2. A fee of \$10,000 for the use of the names "The University of North Carolina Health Care System," "UNC Health Care System," "The University of North Carolina Hospitals at Chapel Hill," or "UNC Hospitals" and related logos.
3. For Additional Services as set forth in Exhibit A, actual cost plus 10%. UNCH shall exercise reasonable efforts to provide such Additional Services at the lowest available cost.

All amounts owed to UNCH by HCHC shall be prorated for any partial periods, if necessary, and paid on a monthly basis on the first day of each month. UNCH shall have the right to charge HCHC interest per annum at the rate of Wall Street Journal Prime Rate plus one (1) percent on all fees and reimbursable expenses not paid when due.

EXHIBIT D

GOVERNMENTAL AUTHORIZATIONS

1. Licensure as an Acute Care Hospital, with general acute and psych beds, by the North Carolina Department of Health and Human Services - Division of Health Service Regulation, license number H0161.
2. Licensure to provide Home Care , issued by the North Carolina Department of Health and Human Services – Division of Health Service Regulation.

EXHIBIT E

ACTUAL OR POTENTIAL PROCEEDINGS AGAINST HCHC

- a) Family member of patient alleges injuries sustained when patient's stretcher tipped over and family member tried to break the fall. Request for compensation has been received directly from patient.
- b) Patient fell in room and sustained hip fracture, requiring surgery and extended hospital stay. Family has made request for assistance.
- c) Patient's bowel perforated during surgery, resulting in additional complications. An employee of a law firm has contacted HCHC with request for some compensation although no specific demand has been received.
- d) *Wankel v. Henderson County Hospital Corporation* is pending in the Superior Court for Henderson County although all issues have been settled by agreement of the parties. The parties are waiting on a conditional payment letter from CMS to consummate the settlement agreement.
- e) Patient expired as a result of complications of aspiration pneumonia. Family members have expressed an intent to file an action.
- f) *Ingram v. Henderson County Hospital Corporation, et al.* was initiated on May 11, 2011, and the carrier is providing a defense. This patient alleges multisystem organ failure, following two (2) visits to the Emergency Department, resulting in multiple amputations of fingers and both legs.
- g) Patient's interim guardian alleges infection following surgery. A request was made that HCHC waive its charges.
- h) Former employee alleges wrongful termination in October 2009. No claim was filed with the EEOC. Claim has been formally denied by HCHC.
- i) HCHC has self-reported an issue related to inadvertent employment of excluded individual.
- j) Office of Civil Rights has contacted HCHC pertaining to a physician (not employed by HCHC) accessing medical records without authorization and not in the course of treatment. HCHC has appropriately followed up internally.

EXHIBIT F

AFFILIATES OF HCHC

Henderson County Urgent Care Centers, Inc.

EXHIBIT G

BUSINESS ASSOCIATE AGREEMENT

**BUSINESS ASSOCIATE AGREEMENT**

This Agreement is made effective the 22nd of June, 2011, by and between HENDERSON COUNTY HOSPITAL CORPORATION, hereinafter referred to as "Covered Entity", and THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL HOSPITALS, hereinafter referred to as "Business Associate", (individually, a "Party" and collectively, the "Parties"). This Agreement supersedes any previously executed Business Associate Agreement between the parties.

WITNESSETH:

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as "the Administrative Simplification provisions," direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Security and Privacy Rule"); and

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby Business Associate will provide certain services to Covered Entity, and, pursuant to such arrangement, Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Security and Privacy Rule ( herein referred to as the "Management Services Agreement"); and

WHEREAS, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under such arrangement;

THEREFORE, in consideration of the Parties' continuing obligations under the Arrangement Agreement, compliance with the HIPAA Security and Privacy Rule, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Security and Privacy Rule and to protect the interests of both Parties.

I. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Section shall have the definitions set forth in the HIPAA Security and Privacy Rule. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Security and Privacy Rule, as amended, the HIPAA Security and Privacy Rule shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Security and Privacy Rule, but are nonetheless permitted by the HIPAA Security and Privacy Rule, the provisions of this Agreement shall control.

The term "Protected Health Information" means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. "Protected Health Information" includes without limitation "Electronic Protected Health Information" as defined below.

The term "Electronic Protected Health Information" means Protected Health Information which is transmitted by Electronic Media (as defined in the HIPAA Security and Privacy Rule) or maintained in Electronic Media.

Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

## II. CONFIDENTIALITY AND SECURITY REQUIREMENTS

(a) Business Associate agrees:

(i) to use or disclose any Protected Health Information solely: (1) for meeting its obligations as set forth in any agreements between the Parties evidencing their business relationship, or (2) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under this Agreement, the Arrangement Agreement (if consistent with this Agreement and the HIPAA Security and Privacy Rule), or the HIPAA Security and Privacy Rule, and (3) as would be permitted by the HIPAA Security and Privacy Rule if such use or disclosure were made by Covered Entity;

(ii) to account for certain disclosures of Protected Health Information as required by Section 164.528 of the HIPAA Security and Privacy Rule. A copy of Covered Entity's policy regarding accounting of disclosures is available upon request;

(iii) to provide appropriate HIPAA training to its personnel, who have not previously received such training, within thirty days of the date of this agreement

(iv) at termination of this Agreement, the Management Services Agreement (or any similar documentation of the business relationship of the Parties), or upon request of Covered Entity, whichever occurs first, if feasible, Business Associate will return or destroy all Protected Health Information received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information, or if such return or destruction is not feasible, Business Associate will extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible; and

(v) to ensure that its agents, including a subcontractor, to whom it provides Protected Health Information received from or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Business Associate with respect to such information, and agrees to implement reasonable and appropriate safeguards to protect any of such information which is Electronic Protected Health Information. In addition, Business Associate agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement.

(b) Notwithstanding the prohibitions set forth in this Agreement, Business Associate may use and disclose Protected Health Information as follows:

(i) if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met:

(A) the disclosure is required by law; or

(B) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(ii) for data aggregation services, if to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship. For purposes of this Agreement, data aggregation services means the combining of Protected Health Information by Business Associate with the protected health information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

(c) Business Associate will implement appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted in this Agreement. Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Security and Privacy Rule.

(d) The Secretary of Health and Human Services shall have the right to audit Business Associate's records and practices related to use and disclosure of Protected Health Information to ensure Covered Entity's compliance with the terms of the HIPAA Security and Privacy Rule.

(e) Business Associate shall report to Covered Entity any use or disclosure of Protected Health Information which is not in compliance with the terms of this Agreement, as well as any Security Incident, of which it becomes aware within forty-eight (48) hours of such discovery. For purposes of this Agreement, "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. In addition, Business Associate

agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement, as well as to provide complete cooperation to Covered Entity should Covered Entity elect to review or investigate such noncompliance or Security Incident. Business Associate shall indemnify and hold harmless Covered Entity for any injury or damages arising from any noncompliance or Security Incident attributable to the negligence of Business Associate, including the failure to execute the terms of this Agreement.

### III. AVAILABILITY OF PHI

Business Associate agrees to make available Protected Health Information to the extent and in the manner required by Section 164.524 of the HIPAA Security and Privacy Rule. Business Associate agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Security and Privacy Rule. In addition, Business Associate agrees to make Protected Health Information available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Security and Privacy Rule (see Section II(a)(ii) above).

### IV. TERMINATION

Notwithstanding anything in this Agreement to the contrary, Covered Entity shall have the right to terminate this Agreement and the Management Services Agreement immediately if Covered Entity determines that Business Associate has violated any material term of this Agreement. If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement and, where practicable, Covered Entity gives written notice to Business Associate of such belief within a reasonable time after forming such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then Covered Entity shall have the right to terminate this Agreement and the Arrangement Agreement immediately.

### V. MISCELLANEOUS

Except as expressly stated herein or the HIPAA Security and Privacy Rule, the parties to this Agreement do not intend to create any rights in any third parties. The obligations of Business Associate under this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Arrangement Agreement and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the laws of the State of North Carolina. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.



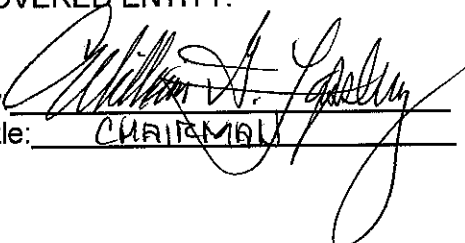
The parties agree that, in the event that any documentation of the arrangement pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of Protected Health Information.

In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Security and Privacy Rule, such party shall notify the other party in writing, For a period of up to thirty days, the parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the HIPAA Security and Privacy Rule, then either party has the right to terminate upon written notice to the other party.

The parties acknowledge that the American Recovery and Reinvestment Act of 2009 ("ARRA") requires the Secretary of Health and Human Services to promulgate regulations and interpretative guidance that are not available at the time of executing this Business Associate Agreement. In the event Covered Entity determines in good faith that any such regulation or guidance adopted or amended after the execution of this Business Associate Agreement shall cause any paragraph or provision of this Business Associate Agreement to be invalid, void or in any manner unlawful, or shall subject either party to penalty, then the parties agree to renegotiate in good faith to amend this Business Associate Agreement to comply with the change in law, regulation or interpretative guidance.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

COVERED ENTITY:

By:   
Title: CHAIRMAN

BUSINESS ASSOCIATE:

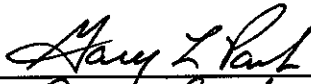
By:   
Title: President

EXHIBIT H

LIST OF UNCH's AFFILIATED ENTITIES