

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 3 June 2013

SUBJECT: Revisions to Articles of Incorporation for Henderson County Hospital Corporation

PRESENTER: Charles Russell Burrell

ATTACHMENT(S): Revised and Restated Articles of Incorporation

SUMMARY OF REQUEST:

Under the terms of the Memorandum of Agreement entered into between the County, Henderson County Hospital Corporation (“the Hospital Corporation”), and the University of North Carolina Health Care System (“UNCHCS”), significant revisions are required to the corporate charter (“the Articles of Incorporation”) of the Hospital Corporation.

Counsel for the Hospital Corporation, for UNCHCS and your county attorney have drafted and revised the attached document. Rather than present only amendments, a new “restated” set of Articles is presented, incorporating the changes. As required in the Memorandum of Agreement, among other things, the attached document:

- Changes the structure of the Board of Directors (“Trustees”) of the Hospital Corporation, creating a body of 15 Trustees, as follows.
 - Four *ex officio* full members: President of UNCHCS, a designated County Commissioner; Hospital Corporation chief executive officer; Hospital Corporation chief of clinical staff
 - Eleven other members, all serving three year terms (except for the first term, which is as is designated below) in three groups:
 - Three Trustees nominated by UNCHCS (one year first term for one, two year first term for one, three year first term for one) and elected by the Board of Commissioners (“BOC”). UNCHCS nominees must be elected by BOC.
 - Three Trustees selected by BOC (one year first term for one, two year first term for one, three year first term for one),
 - Four Trustees nominated by the Hospital Corporation’s then-existing Board, approved by UNCHCS, and elected by BOC (one year first term for two, two year first term for one, three year first term for one). If more than one nominated at a time, must be done as a slate and not as individuals (both by UNCHCS and BOC).
- Changes eligibility for additional terms (no more than two consecutive terms without a one year break for all but the *ex officio* members, with the abbreviated first terms counting toward this limit).
- Removal of any Trustee requires approval of both UNCHCS and BOC.

County staff will present further information on this matter.

BOARD ACTION REQUESTED:

Approval of the Amended and Restated Articles of Incorporation of Henderson County Hospital Corporation.

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

I move that the Board adopt the Amended and Restated Articles of Incorporation of Henderson County Hospital Corporation.

STATE OF NORTH CAROLINA
DEPARTMENT OF THE SECRETARY OF STATE

RESTATED ARTICLES OF INCORPORATION
NONPROFIT CORPORATION

Pursuant to Section 55A-10-06 of the General Statutes of North Carolina, the undersigned corporation does hereby submit these Restated Articles of Incorporation for the purpose of amending and fully restating its Articles of Incorporation.

ARTICLE I

The name of the corporation is HENDERSON COUNTY HOSPITAL CORPORATION.

ARTICLE II

The corporation is a charitable or religious corporation as defined in N.C.G.S. Section 55A-1-40(4), and the purpose for which the corporation is organized is to provide, promote and advance health care and wellness related activities, services and purposes primarily within, and for the benefit of the residents of Henderson County, North Carolina.

ARTICLE III

The street and mailing addresses and county of the registered office of the corporation is:

Number and Street: 800 North Justice Street

City, State, Zip Code: Hendersonville, NC 28791

County: Henderson

ARTICLE IV

The name of the registered agent is: Charles Russell Burrell, whose address is 1 Historic Courthouse Square, Suite 5, Hendersonville, North Carolina 28792.

ARTICLE V

The name and address of each original incorporator was as follows:

Robert D. Eklund	1231 Ashby Lane Hendersonville, NC 28791
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Grady H. Hawkins	204 Sugar Hollow Road
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Hendersonville, NC 28739

Vollie G. Good

231 Balsam Road
Hendersonville, NC 28792

Renee Kumor

3020 Chestnut Road
Hendersonville, NC 28739

Donald G. Ward, III

Route 9, Box 630
Hendersonville, NC 28792

ARTICLE VI

The sole member of the corporation shall be the County Henderson, North Carolina, acting by and through its Board of County Commissioners, which shall have only those rights set forth in these Articles. No other members may be added without the approval of the County of Henderson, North Carolina and the Board of Directors of the corporation. No rights reserved in these Articles to the member may be revised or affected except by amendment to these Articles approved by the County of Henderson, North Carolina and the Board of Directors of the corporation. No membership in the corporation may be transferred without the approval of all member(s) and the Board of Directors of the corporation.

ARTICLE VII

The Corporation shall be governed by a Board of Directors who shall be individually known as ATrustees. There shall be fifteen (15) voting Trustees.

A. Three (3) of the Trustees ("the BOC Trustees") shall be appointed by the Henderson County Board of Commissioners.

B. Three (3) of the Trustees ("the UNCHCS Trustees") shall be nominated by the University of North Carolina Health Care System (UNCHCS), for appointment by the Henderson County Board of Commissioners. The Henderson County Board of Commissioners shall appoint all individuals nominated by UNCHCS to serve as the UNCHCS Trustees.

C. Five (5) of the Trustees ("the HCHC Trustees") shall be nominated by the then-existing Board of Trustees of the Corporation for approval by UNCHCS and appointment by the Henderson County Board of Commissioners. All HCHC Trustee nominees must be approved or disapproved by UNCHCS as a slate. Once a slate of HCHC Trustee nominees is approved by UNCHCS, the slate will then be presented to the Henderson County Board of Commissioners for appointment. All HCHC Trustee nominees presented to the Henderson County Board of Commissioners for appointment must be approved or disapproved by the Henderson County Board of Commissioners as a slate. Should either

UNCHCS or the Henderson County Board of Commissioners disapprove of a slate of HCHC Trustee nominees, the process for nomination and appointment of HCHC Trustees will began again, until a new slate of HCHC Trustees is nominated by the then-existing Board of Trustees of the Corporation and approved by UNCHCS and appointed by the Henderson County Board of Commissioners.

D. Four (4) Trustees who shall be *ex officio* Trustees, with full voting rights and the right to serve on any committee of the Board of DirectorsTrustees. The *ex officio* Trustees shall be as follows:

- (1) The President of UNCHCS the University of North Carolina at Chapel Hill or his/her designee;
- (2) One (1) county commissioner, designated by the Henderson County Board of Commissioners;
- (3) The Chief Executive Officer of Henderson County Hospital Corporation; and
- (4) The Chief of the Medical and Allied Health Staff of Margaret R. Pardee Memorial Hospital.

The terms of office for the Trustees who are not serving *ex officio* shall be three (3) years, and no individual not serving as an *ex officio* Trustee may serve more than two (2) successive three (3) year terms following the date of these Restated Articles of Incorporation. However, service as a Trustee prior to the date of these Restated Articles shall not be counted in this regard.

The terms of office shall be staggered such that no more than one-third (1/3) of the composition of the Board of Directors is subject to appointment in any one year. The appointment and terms of the Board of Directors shall be as follows:

<u>SEAT</u>	<u>TERM IN YEARS (initial/full)</u>	<u>NOMINATING BODY</u>
Seat No. 1	one/three	UNCHCS
Seat No. 2	one/three	BOC
Seat No. 3	one/three	HCHC
Seat No. 4	one/three	HCHC
Seat No. 5	two/three	UNCHCS
Seat No. 6	two/three	BOC
Seat No. 7	two/three	HCHC
Seat No. 8	two/three	UNCHCS
Seat No. 9	three/three	BOC
Seat No. 10	three/three	HCHC
Seat No. 11	three/three	HCHC

The timing and process of appointments shall be as provided in the bylaws of the corporation. At all times, at least seventy-five

(75%) per cent of the composition of the Board of Directors shall be residents of Henderson County, North Carolina.

No Trustee shall be subject to removal except with the consent of the Henderson County Board of Commissioners and the University of North Carolina Health Care System.

No Trustee shall receive pay for service as a Trustee except reimbursement for expenses, subject to approval of the full Board of Directors.

No Trustee may serve concurrently or within one (1) year after service on the Board of Directors on any other board for any entity which competes with the Corporation in the provision of any service.

All appointment and removal authority granted to UNCHCS herein shall immediately terminate upon termination of the management relationship between UNCHCS and the Corporation. If such relationship should terminate, the right to nominate UNCHCS Trustees shall immediately vest in the Board of Commissioners of Henderson County.

ARTICLE VIII

No part of the net earnings of the corporation shall inure to the benefit of or be distributable to its directors, trustees, officers or any other private person, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not carry on other activities not permitted to be carried on by (a) a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or (b) a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue code or the corresponding section of any future tax code.

ARTICLE IX

Upon dissolution or liquidation of the corporation, after paying or adequately providing for the debts and obligation of the corporation, the Trustees shall transfer, deliver and convey all of the corporation's moneys, properties and other assets to the County of Henderson or a governmental entity described under Section 115 of the Internal Revenue Code created by the County of Henderson for exclusively public purposes.

ARTICLE X

The street and mailing addresses and county of the principal office of the corporation is 800 North Justice Street; Hendersonville, Henderson County, North Carolina 28791.

ARTICLE XI

The corporation shall have all of the powers and obligations of a nonprofit corporation pursuant to Chapter 55A of the North Carolina General Statutes except that the corporation shall not have the power, without the express consent of the Henderson County Board of Commissioners, to undertake any of the following:

- a) sell, lease, or otherwise dispose of all or a substantial portion of its assets to an entity not controlled by the corporation, the University of North Carolina Health Care System, or the Henderson County Board of Commissioners; or
- b) discontinue operation of Margaret R. Pardee Memorial Hospital as a community general hospital, providing acute medical care services.

ARTICLE XII

The Board of Directors shall have the authority to adopt bylaws and to amend these Articles, subject only to the provisions of Chapter 55A of the North Carolina General Statutes, and the right to Amend these Articles only pursuant to N.C. Gen. Stat. §55A-10-02. The Henderson County Board of Commissioners shall have the authority to amend these Articles by a majority vote of its members. Notwithstanding anything to the contrary contained herein, the Board of Directors shall not have the authority to adopt any amendment to these Articles which makes any change to Articles VI, VII or XI, without express approval by the Henderson County Board of Commissioners and the University of North Carolina Health Care System so long as UNCHCS is in a management relationship with the Corporation.

ARTICLE XIII

Except to the extent that the North Carolina General Statutes prohibit such limitation or elimination of liability of Trustees for breaches of duty, no Trustee of the corporation shall have any personal liability arising out of an action whether by or in the right of the corporation or otherwise for monetary damages for breach of any duty as a Trustee. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any Trustee of the corporation for or with respect to any acts or omissions of such Trustee occurring prior to such amendment or repeal.

The provision of this article shall not be deemed to limit or preclude indemnification of a Trustee by the corporation for any liability that has not been eliminated by this article.

ARTICLE XIV

These Restated Articles of Incorporation include amendments to and complete restatement of the Articles of Incorporation, filed on April 24, 1998, as those Articles were amended by Amendments filed on February 8, 2001, July 27, 2001, May 3, 2006, September 7, 2006, October 17, 2006, July 9, 2008, April 4, 2011, July 15, 2011 and April 10, 2013. Specifically, Articles I through XIII are deleted in their entirety and replaced with the respective provisions of these Restated Articles of Incorporation.

ARTICLE XV

The period of duration of the corporation shall be perpetual.

ARTICLE XVI

These restated articles will be effective on July 1, 2013, or upon their later filing with the Secretary of State of North Carolina.

This the _____ day of _____, 2013.

HENDERSON COUNTY HOSPITAL CORPORATION

President, Board of Directors

CHARLES D. MESSER
Chairman
Henderson County Board of Commissioners