

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 28 August 2013

SUBJECT: Document approval relating to Henderson County Hospital Corporation Revenue Bond Refunding (Refinancing)

PRESENTER: Charles Russell Burrell

RELATED DOCUMENTS: (listed below)

SUMMARY OF REQUEST:

As approved by this Board's action on July 17, 2013, the process of negotiation among the County, the Hospital Corporation, bond counsel, counsel for the lender (First Citizens Bank & Trust), UNC Health Care System, and others has been completed. The following documents are presented for the Board's consideration and approval:

- 1) Restated Articles of Incorporation for Henderson County Hospital Corporation ("the Articles")
- 2) Amended and Restated Lease Agreement ("the Lease")
- 3) Bond Order ("the Bond Order")
- 4) Amended Management Agreement with UNC Health Care System ("the Management Agreement")
- 5) Memorandum of Understanding and Agreement ("the MOU")

The great bulk of the changes in the Articles, the Lease and the Management Agreement were as a result of the mandates in the MOU.

County staff will present further information on this matter.

BOARD ACTION REQUESTED:

Approval of the Articles, the Lease, the Bond Order and the Management Agreement.

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

I move that the Board approve the Articles, the Lease, the Management Agreement and the Bond Order, and further direct the Chair and staff to execute these documents and related documents as required.

**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: Jay Kirby, whose address is 800 N. Justice Street; Hendersonville, North Carolina 28791.

ARTICLE V

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

Robert D. Eklund	1231 Ashby Lane Hendersonville, NC 28791
Grady H. Hawkins	204 Sugar Hollow Road 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. No other members may be added without the approval of the County of Henderson, North Carolina. 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. No membership in the corporation may be transferred without the approval of all member(s). The membership of the County of Henderson, North Carolina is not subject to termination or transfer.

ARTICLE VII

The Corporation shall be governed by a Board of Directors who shall be individually known as Trustees. 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. Only one of the individuals appointed pursuant to this sub-paragraph may be a sitting member of 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 begin 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 shall be *ex officio* Trustees, with full voting rights and the right to serve on any committee of the Board of Trustees. The *ex officio* Trustees shall be as follows:

- (1) The President of UNCHCS 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 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.

All Trustees shall remain in office and have full authority to vote on all matters until their successor is appointed as provided herein above.

Any Trustee shall be subject to removal with the consent of both 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 authority granted to UNCHCS herein shall immediately terminate and the *ex officio* seat on the Board of Directors for the President of UNCHCS and/or his designee shall cease to exist 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, and the number of Trustees on the Board of Directors shall be fourteen (14).

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, or the Henderson County Board of Commissioners;

b) discontinue operation of Margaret R. Pardee Memorial Hospital as a community general hospital, providing acute medical care services; or

c) hold title to real property other than (1) as a lessee; (2) for a period of time reasonably necessary to consummate a like kind exchange for the benefit of an unrelated entity with whom there is a contract for purchase of such property; or (3) as a tenant in common only with the University of North Carolina Health Care System so long as the corporation's ownership is proportional to its contribution of the cost of the real property.

(d) create or cause to be created, or enter into an agreement with, a wholly-owned subsidiary of the corporation whose articles of incorporation or other controlling document does not require that upon dissolution thereof all assets revert to the corporation or the County Board; or create or cause to be created a partially-owned subsidiary of the corporation or other controlling document for non-incorporated entities does not require that upon dissolution thereof, assets will revert or be transferred to the corporation or the County Board in an amount proportional to the corporation's ownership interest in the subsidiary;

(e) make any investment of its funds in any investments or securities not permitted for the investment of funds of the County or for investment of funds of a public hospital pursuant to N.C.G.S. 159-39.

ARTICLE XII

The Board of Directors shall have the power to alter, amend and rescind only the following provisions contained in these Articles: Article III; Article IV; Article X; Article XIV; and, Article XVI. Otherwise, these Articles may only be amended with the consent of both the Board of Directors and the Board of Commissioners of Henderson County.

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 September 4, 2013.

This the _____ day of _____, 2013.

HENDERSON COUNTY HOSPITAL CORPORATION

President, Board of Directors

CHARLES D. MESSER
Chairman
Henderson County Board of Commissioners

EXTRACTS FROM MINUTES OF BOARD OF COMMISSIONERS

The Board of Commissioners (the "Board") of the County of Henderson, North Carolina (the "County") held a special meeting in the County Administration Building, 1 Historic Courthouse Square, Hendersonville, North Carolina on August 28, 2013, at 9:00 a.m. The following Commissioners were:

Present: _____

Absent: _____

The Chairman of the Board introduced the following bond order, the title of which was read and copies of which had been previously distributed to the Board:

BOND ORDER AUTHORIZING THE ISSUANCE AND SALE BY THE COUNTY OF HENDERSON, NORTH CAROLINA OF NOT TO EXCEED \$9,545,000 HOSPITAL REVENUE REFUNDING BOND (MARGARET R. PARDEE MEMORIAL HOSPITAL PROJECT), SERIES 2013 OF THE COUNTY AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH

BE IT ORDERED by the Board of Commissioners (the "Board") of the County of Henderson, North Carolina (the "County"):

Section 1. The Board does hereby find and determine as follows:

(a) The filing of an application with the North Carolina Local Government Commission (the "Commission") requesting approval of the issuance of not to exceed \$9,545,000 Hospital Revenue Refunding Bond (Margaret R. Pardee Memorial Hospital Project), Series 2013 (the "2013 Bond") of the County for the purpose of providing funds to refund the County's Hospital Revenue Bond (Margaret R. Pardee Memorial Hospital Project), Series 2008 (the "2008 Bond") and its Hospital Revenue Bond (Margaret R. Pardee Memorial Hospital Project), Series 2010 (the "2010 Bond"), is hereby ratified and confirmed in all respects.

(b) The County, by resolution, also requested the Commission to sell the 2013 Bond at private sale without advertisement.

(c) The Commission has approved the application of the County for the issuance of the 2013 Bond in an aggregate principal amount not to exceed \$9,545,000 in accordance with N.C.G.S. 159-86.

(d) The County has determined to issue the 2013 Bond in an aggregate principal amount not to exceed \$9,545,000 for the purpose of providing funds, together with other available funds, to (1) refund the 2008 Bond and the 2010 Bond in advance of their maturities, and (2) pay certain costs and expenses incurred in connection with the issuance of the 2013 Bond.

(e) The County proposes to sell the 2013 Bond to First-Citizens Bank & Trust Company (the “*Purchaser*”).

(f) There have been presented to the County at this meeting copies of the following documents relating to the issuance and sale of the 2013 Bond:

(1) Master Trust Indenture dated as of September 1, 2001 (the “*Master Indenture*”) between the County and First-Citizens Bank & Trust Company, the successor to which is U.S. Bank National Association, as trustee (the “*Trustee*”); and

(2) A draft of the Fourth Supplemental Trust Indenture dated as of August 15, 2013 between the County and the Trustee (the “*Fourth Supplemental Indenture*”).

(g) The County has determined that the issuance and sale of the 2013 Bond in the manner provided in this Bond Order is in the best interests of the County.

Section 2. Capitalized words and terms used in this Bond Order and not defined herein have the same meanings given such words and terms in the Master Indenture and the Fourth Supplemental Indenture.

Section 3. Pursuant to the provisions of The State and Local Government Revenue Bond Act, as amended (the “*Act*”), particularly N.C.G.S. 159-88, the County hereby authorizes the issuance of the 2013 Bond in an aggregate principal amount not to exceed \$9,545,000. The 2013 Bond will be issued as a fixed-rate, fully registered bond maturing in annual installments at such times and in such amounts as set forth in the Fourth Supplemental Indenture, subject to the provisions of this Bond Order and the Master Indenture.

Section 4. The 2013 Bond is subject to optional redemption at the times, on the terms and conditions, and at the price as set forth in the Fourth Supplemental Indenture.

Section 5. The proceeds of the 2013 Bond will be applied as provided in the Fourth Supplemental Indenture.

Section 6. The 2013 Bond, together with any additional Bonds hereafter issued under the Master Indenture, is secured on a parity basis by a pledge, charge and lien on the Net Revenues of the Hospital System to the extent set forth in the Master Indenture. The 2013 Bond is additionally secured by a pledge, charge and lien on the funds in the 2013 Bond Fund to the extent set forth in the Fourth Supplemental Indenture.

Section 7. The form, terms and conditions of the Fourth Supplemental Indenture are hereby approved, and the Chairman and Vice Chairman of the Board are hereby authorized to execute and directed to deliver, or cause to be delivered, the Fourth Supplemental Indenture together with such changes, additions and deletions as the Chairman and Vice Chairman of the Board, with the advice of counsel, may deem necessary and appropriate, including, without limitation, changes, additions and deletions necessary to incorporate the final terms of the 2013 Bond as set forth in the Fourth Supplemental Indenture, such execution and delivery to be conclusive evidence of the approval and authorization in all respects of the form and content thereof and the Clerk or the Deputy Clerk are hereby authorized to attest to the same.

Section 8. The Chairman and Vice Chairman of the Board and the County Manager and the Finance Director of the County, or any of them or their deputies, are authorized and directed without

limitation except as may be expressly set forth in this Bond Order to take such action and to execute and deliver such certificates, agreements, instruments, opinions or other documents as they, with the advice of counsel, may deem necessary or appropriate to effect the transactions contemplated by this Bond Order, the Master Indenture and the Fourth Supplemental indenture.

The officers of the County and the agents and employees of the County are hereby authorized and directed to do all acts and things required of them by the provisions of this Bond Order, the 2013 Bond, the Master Indenture and the Fourth Supplemental Indenture for the full, punctual and complete performance of the terms, covenants, provisions and agreements of the same.

Section 9. The issuance and private sale without advertisement of the 2013 Bond are hereby approved, subject to the terms and conditions set forth in this Bond Order.

Section 10. This Bond Order is effective immediately on its passage.

On motion of Commissioner _____, seconded by Commissioner _____, the foregoing Bond Order entitled "**BOND ORDER AUTHORIZING THE ISSUANCE AND SALE BY THE COUNTY OF HENDERSON, NORTH CAROLINA OF NOT TO EXCEED \$9,545,000 HOSPITAL REVENUE REFUNDING BOND (MARGARET R. PARDEE MEMORIAL HOSPITAL PROJECT), SERIES 2013 OF THE COUNTY AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH**" was passed by the following vote:

AYES: _____

NAYS: _____

ABSTAIN: _____

Adopted this the ____th day of August, 2013.

HENDERSON COUNTY BOARD OF COMMISSIONERS

[SEAL]

By: _____
Chairman

ATTESTED BY:

Clerk to the Board



**Memorandum of Understanding and Agreement
Among
Henderson County Hospital Corporation,
The University of North Carolina Health Care System,
and
The County of Henderson**

I. Purpose

Henderson County Hospital Corporation ("HCHC"), the University of North Carolina Health Care System ("UNCHCS"), and the County of Henderson ("the County") enter into this Memorandum of Understanding and Agreement ("MOU") in order to provide for an extended and revised Management Services Agreement. UNC Hospitals at Chapel Hill ("UNCH"), which is part of UNCHCS, currently provides management services to HCHC under an existing agreement. This new understanding and agreement, replacing the existing agreement, will replace UNCH with UNCHCS, thus enabling more flexibility for the provision of services, extend past the duration of the existing agreement, and allow UNCHCS greater direct involvement with HCHC's clinical, business, and financial operations. It will provide for the potential for investment in HCHC facilities and operations by UNCHCS, and the maintenance and expansion of clinical facilities at HCHC.

II. Background

The County is the owner of the physical facilities (real estate) of Margaret R. Pardee Memorial Hospital and other affiliated facilities ("Pardee"). HCHC leases these facilities and operates Pardee on a not-for-profit basis. UNCH provides management services for Pardee pursuant to a 2011 agreement among the parties. The parties are pleased with this arrangement, and wish to extend and strengthen this relationship.

III. Future Action

The parties agree that future documentation of the terms of this MOU will be forthcoming, including but not limited to a new Management Services Agreement, modifications to HCHC's Articles of Incorporation, modifications to HCHC's By-laws, and revisions to the Lease Agreement by and between the County and HCHC. The parties further agree that they will cooperate in obtaining other approvals and permissions as required or advisable, including but not limited to opinions of bond counsel for HCHC and agreements of HCHC's affiliates or joint venture partners. As used herein, "MOU" shall include this document as well as any other future documentation required by or undertaken in accord with this document.

IV. Ownership and Corporate Structure under this MOU

A. The County and HCHC shall continue to own and control Pardee's physical facilities (except as is otherwise agreed regarding UNCHCS's future investment), consistent with the lease agreement between the County and HCHC.

B. HCHC shall continue to lease all the real property of Pardee from the County and operate the same subject to the management of UNCHCS. HCHC's leases of Pardee's real property from the County shall extend for the full duration of the Management Services Agreement resulting from this MOU. If necessary, HCHC and the County will execute an amendment to the Lease Agreement between HCHC and the County so that the term of the Lease is consistent with the term of the revised Management Services Agreement.

C. The corporate documents of HCHC will be revised to provide for a Board of Directors (also known as Trustees) for a structure of fifteen (15) Directors, the appointment and terms of which are as follows:

1. Ex Officio Members with full voting rights and full rights to be members of all Committees as assigned by the Chair of the Board of Directors:

- (a) President of UNCH or his/her designee
- (b) A designated Henderson County Commissioner
- (c) Chief Executive Officer of HCHC
- (d) Chief of Medical Staff of HCHC

2. The following additional full members:

<u>SEAT DESIGNATION</u>	<u>TERM IN YEARS (Initial, full)</u>	<u>BODY NOMINATING</u>
Seat No. 1	One year initially, then three	UNCHCS
Seat No. 2	One, then three	BOC
Seat No.3	One, then three	HCHC
Seat No.4	One, then three	HCHC
Seat No. 5	Two, then three	UNCHCS
Seat No. 6	Two, then three	BOC
Seat No. 7	Two, then three	HCHC
Seat No. 8	Two, then three	UNCHCS
Seat No. 9	Three, then three	BOC
Seat No. 10	Three, then three	HCHC
Seat No. 11	Three, then three	HCHC

For seats to be nominated by UNCHCS, UNCHCS shall present its nominees to the County, who shall appoint such nominees to the Board of Directors, without the requirement for consent or approval by the County or HCHC.

Nominees for seats designated to be nominated by HCHC shall be presented to UNCHCS for review and approval as a slate. Should UNCHCS fail to approve the slate of nominees within a reasonable period of time, HCHC shall present a new slate to UNCHCS for review and approval. This process shall continue until UNCHCS approves a complete slate of nominees. The slate of nominees approved by UNCHCS shall then be presented to the County for review by the Board of Commissioners. The County shall either approve and appoint the slate as a whole, or reject the

entire slate. If the County rejects the slate, the process shall repeat itself until an entire slate of nominees is appointed.

UNCHCS shall provide the initial slate of nominees, including the HCHC recommended candidates, to the County on or before June 1, 2013, to allow for installation at the July 1, 2013 meeting of the Board of Commissioners.

No HCHC Board Member or nominee shall serve concurrently or within one year after service on the Board of Trustees on any other Board for any entity which would be deemed to be in competition with HCHC.

The terms of the Directors, other than the Pardee chief executive officer and the chief of the medical staff of Pardee, shall be three years, and no such Director may serve more than two consecutive terms without an intervening period of at least one year. At least seventy-five percent (75%) of the Directors shall be residents of Henderson County.

During the term of the revised Management Services Agreement, removal of any HCHC Board member may be done only with the consent of both the County and UNCHCS.

UNCHCS's appointment and removal authority of the HCHC Board of Directors shall terminate immediately upon termination of the Management Services Agreement between HCHC and UNCHCS, unless the parties mutually agree otherwise.

V. Term

The revised Management Services Agreement shall be for an initial term of twenty-five years, and may be extended by mutual agreement for up to three additional periods of ten years each.

VI. Management of Pardee

The chief executive officer of Pardee will be an employee of UNCHCS, contracted to HCHC at UNCHCS's actual cost. UNCHCS may employ other members of the management staff, as appropriate.

VII. Management Services

UNCHCS will add significantly more resources to the day-to-day management of Pardee, as compared to the existing Management Services Agreement. The new Management Services Agreement will increase UNCHCS's direct involvement in Pardee's operations, including direct responsibility of business, financial, and clinical operations, with financial terms to reflect this enhanced relationship. HCHC will appoint UNCHCS as its managing agent and will delegate to UNCHCS the authority to control and direct its assets and operations, including Pardee Hospital and any and all affiliated enterprises except Pardee Hospital Foundation.

VIII. Management Fee

HCHC will contract with UNCHCS to provide existing and enhanced management services to Pardee for an annual management fee, with metrics built in for incentive payments to UNCHCS based on operating performance.

In consideration for additional services and enhanced management oversight, HCHC shall pay to UNCHCS a mutually agreeable percentage of Gross Operating Margin (the definition of which shall be agreed upon by the parties), or some other mutually agreed upon metric. The minimum Management Services Fee due to UNCHCS in any given year shall not fall below \$210,000, increased in each subsequent year by the Consumer Price Index-U, Medical Care Services, with any such annual increases not to exceed 5% of the then current fees.

Additionally, HCHC may pay a leasing fee to the County, as agreed by the parties and subject to legal and regulatory approval. Any leasing fee shall be treated by the County as a restricted fund used solely for capital improvements at Pardee.

IX. Termination Provisions

Either party may terminate the revised Management Service Agreement without cause at any time after one (1) year from the effective date, upon provision of one-year (twelve [12] months) written notice.

Either HCHC or UNCHCS may terminate the revised Management Service Agreement immediately if changes to the governance documents of either HCHC or UNCHCS, or to the lease between the County and HCHC, are made that, in the opinion of either party, alter the ability of either party to fulfill the terms of the Management Services Agreement or any other agreement. The revised Management Services Agreement shall contain other termination provisions, including termination in the case of a material breach and failure to cure by either party.

X. Other Matters

A. To the extent the transactional documents related to the joint venture between HCHC and Mission Health require notice and/or consent by Mission Health to the revised Management Services Agreement and/or amendment of HCHC's corporate documents, HCHC shall obtain from Mission Health, in writing, such acknowledgment and/or consent.

B. The parties hereto anticipate that, at some future date, UNCHCS may desire to make capital investments in Pardee or HCHC. The parties agree that, at such time as UNCHCS is ready, willing and able to make such investment, the parties shall amend any and all necessary documents to accommodate said investment.

C. UNCHCS shall partner with HCHC for health care teaching and educational opportunities and the provision of health care services in western North Carolina. To the extent UNCHCS plans to undertake such activities in western North Carolina, UNCHCS shall utilize HCHC's services and facilities to the maximum extent possible, including reasonably expanding HCHC's and/or Pardee's physical facilities to accommodate such activities, if mutually agreed upon by UNCHCS and HCHC.

D. Should Western Carolina University, the University of North Carolina at Asheville, or Appalachian State University be designated and developed as a medical school that is a constituent institution of the University of North Carolina, UNCHCS shall take all reasonable actions to sponsor Pardee as a teaching hospital in accordance with all relevant statutory, regulatory, and accreditation criteria, including but not limited to reasonably expanding HCHC's and/or Pardee's physical facilities to accommodate such designation, if mutually agreed upon by UNCHCS and HCHC.

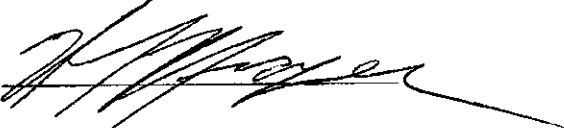
E. With regard to the potential that UNCHCS may make an investment interest in HCHC, either as a part of an expansion of services by UNCHCS in western North Carolina, or related to the designation of Pardee as a teaching hospital, or for any other reason or purpose, the parties agree that any such investment interest shall comply with all applicable laws and regulations, including but not limited to NC General Statutes Chapter 131E, and will result in UNCHCS obtaining an equity interest in HCHC that is proportionate to the investment as a percentage of the total value of HCHC.

F. Within six months after the effective date of the revised Management Services Agreement, the parties shall explore the creation of a health maintenance organization centered on HCHC's facilities, with membership restricted to the employees of the County, HCHC, UNCHCS, and the Henderson County Board of Public Education, unless the parties mutually agree otherwise.

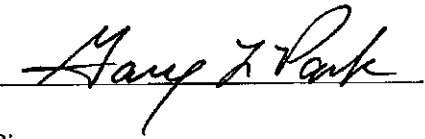
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The terms of this MOU are agreed to and accepted this ___ day of _____, 2013.

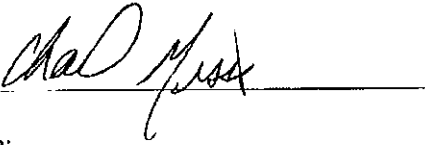
HENDERSON COUNTY HOSPITAL CORPORATION

By: 
Title: _____

UNIVERSITY OF NORTH CAROLINA HEALTH CARE SYSTEM

By: 
Title: _____

COUNTY OF HENDERSON

By: 
Title: _____