

REQUEST FOR BOARD ACTION / CONTRACT CONTROL FORM

Tracking Number: 4.

Date of Request: November 19, 2007

Date Request Received: November 19, 2007

Board Meeting December 3, 2007

Board Meeting December 3, 2007

Date Requested:

Date Assigned:

Short Title: Presentation To The Pender County Board Of Commissioners: Pender Memorial Hospital And New Hanover Regional Medical Center: David Long, Ceo/Second Amended & Restated Operating Agreement Between Pender County, Pender Memorial Hospital & New Hanover Regional Medical Center.

Request Status:

- Request is proceeding to Board of Commissioners
- More information is needed – see attached
- Request on hold – no further information needed
- Other:

Background: Mr. Long has requested to make a presentation to update the Board on Pender Memorial Hospital and New Hanover Regional Medical Center and their relationship with Pender County.

(Administrative Use Only)

Specific Action Requested: Receive presentation and consider approval of Second Amended and Restated Operating Agreement .

CONTRACT TYPE

Requested by: Lori Brill
Department: County Manager
Title:
Contact Phone: 910-259-1200
Contact Fax:

- Renewal
- For Service(s)
- Intergovernmental – County as Grantee
 - Federal Grantor
 - State Grantor
 - Grant or
- County as Grantor
 - County Funds
 - Other Funds:
- Revision
- For Equipment

PURCHASING Budgeted Item: Yes No
Date Rec'd: Reviewed and Approved
 Comments on Reverse

Date Sent:

Signed:

ATTORNEY Reviewed and Approved
Date Rec'd: Legal Problem(s)
 Comments on Reverse

Date Sent:

Signed:

FINANCE Sufficient Funds Available
Date Rec'd Not Available
 Budget Amendment Necessary
 Budgeted Amendment is Attached
 Comments on Reverse

Date Sent:

Signed:

CLERK Signature(s) Required:
 Board Chairman/County Manager
 Other:

Date Rec'd Approved by Board: Yes No
At meeting on





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Pender Memorial Hospital
and
New Hanover Regional Medical Center

Strengthening Our Relationship

Presentation to the Pender County
Commissioners, December 2007



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Existing Lease Agreement

- Original Lease Agreement executed in July 1999 and provided PMH a cash contribution of \$980,000 from NHRMC
- Amended Lease Agreement in November 2004, which provided an additional \$2 million from NHRMC
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- Annual Management Services Fee of \$100,000 to NHRMC



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Current Services Provided

- Executive oversight/administration
- Medicare/Medicaid cost report preparation
- Strategic services support (market analysis, CONs, etc.)
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- Departmental operational assessments
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- Services provided that are not identified in the agreement:
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Track Record of Success

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- Serve as "in-house" consultants for enhancements for Information Technology and Home Health
- Improved response time for Vitalink transfers to NHRMC
- \$1,165,249 in funding from NHRMC to cover loss in FY06

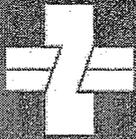


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Why Change Current Agreement

- Further align and strengthen the relationship between PMH and NHRMC
 - ❖ Gain additional operational efficiencies
 - ❖ Ability to pursue strategic opportunities by PMH limited due to current financial structure
 - ❖ Current agreement does not provide NHRMC any incentive or return on investment for capital expenditures at PMH
 - ❖ No return from investment of \$1.1 million in FY06
- Significant capital needs at PMH
 - ❖ Capital requests for FY2008 (excluding surgery) over \$1.5 million
 - ❖ Capital requests funded for FY2008 (excluding surgery) were \$203,414
 - ❖ Historical annual capital funds available of \$50K to \$60K
 - ❖ Capital needs over next four years of \$2.9 million



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Unfunded Capital Requests for FY08 & needs for FY09, FY10, FY11

Cost	Description
\$204,614	Replacement of hardware/Software upgrade for IS/IT
394,392	Upgrade for PACS system
150,000	Replacement of existing phone system
527,000	Installing Electronic Medical Record
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241,975	Purchase of 25 IP Acute Hill-Rom beds
100,000	Renovations to PMH Kitchen (floor, ceiling, serving line)
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\$113,000	Upgrade to X-Ray machine
12,297	New centrifuge for laboratory
114,000	6 Endoscopy scopes and processor
13,500	Bookwalter retractor
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\$350,000	Renovating patient rooms on 2W and rooms on 1W
500,000	Replacement of HVAC system
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10,000	Medical air system replacement
20,000	Medical vacuum system replacement
10,000	Alarm system upgrade
\$900,000	
\$2,850,778	Total



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Capital in FY06 and FY07

- In FY06 \$7,000 spent on HVAC compressors and replacement surgical equipment (scalpels)
- In FY07, \$12,636 spent on 1 ED stretcher, 1 replacement blanket warmer
- In FY07, \$11,244 spent to replace kitchen HVAC unit
- In FY07, \$18,500 to replace carpet and repair tile
- In FY07, \$1,743 to replace 15 wheelchairs
- Total for FY07 of approximately \$44,000



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Strategic Planning for Capital

- Under new agreement, PMH would request capital under established NHRMC capital request process
- Capital requests evaluated based on need, return on investment, and total cost
 - ❖ Detailed process involving research and extensive presentation of cost/benefit(s) to NHRMC VPs
 - ❖ Follow same process as NHRMC cost centers
 - ❖ Capital requests prioritized and presented by PMH Administrator, Finance Director, & Chief Nurse
 - ❖ Initial focus would be refurbishing patient rooms
- Capital requests finalized by NHRMC



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Proposed Changes to Agreement

- 2(e) – updated to allow mutual amendment of organizing/ governing documents
- 4(d) – corrected erroneous inclusion of NHRMC Articles of Incorporation
- 4(e)(4) – modified to reflect NHRMC would contribute capital dollars to PMH as part of the annual capital budget process
- 4(f) – modified to reflect that NHRMC would fund any operating deficit and retain any operating gain at PMH
- 4(h) – modified to allow employees working at PMH to remain NHRMC employees on a case-by-case basis
- 4(j) – deleted since all items relate to original commencement date and are completed
- 5(a) – updated to reflect current NHRMC employees working at PMH
- 5(b) – modified to reflect PMH participation in Service Excellence and Group Purchasing initiatives



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Proposed Changes to Agreement (cont'd)

- Revised to reflect this as 'second' amended an restated operating agreement
- Added 'whereas' clause acknowledging prior amended and restated operating agreement
- 2(d) – extended period of negative cash flow to five consecutive years and updated 'freeze period' through 2015
- 7 – eliminated Management Services Fee
- 8 (b) – modified Right of First Refusal to account for NHRMC investment upon sale or transfer



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Benefits of Proposed Changes

- PMH continues to be owned by Pender County and current governance structure remains unchanged
- Continue to improve access to and delivery of healthcare for residents of Pender County
- PMH and NHRMC maintain and strengthen their strategic relationship
- Current Board structure and representation continues
- PMH employees remain employed by PMH
- PMH maintains its own Medical Staff
- PMH able to receive capital infusion as part of NHRMC capital process and priorities



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Opportunities under new Agreement

- Access to capital to support equipment replacement, facility improvements and information systems
- Position Pender Home Health as the Network home care provider with expansion to serve the region
- Develop outpatient satellite facilities in key locations, including Rocky Point, Hampstead and Wallace
- Support for primary care and specialty physician recruiting
- Utilize Pender SNF (increase Average Daily Census to 43 patients) as Network facility as appropriate
- Enhance collaborative efforts between PMH and NHRMC with strategic planning and marketing
- Pursue additional operational efficiencies, such as:
 - ❖ Biomedical engineering services
 - ❖ Dietary outsourcing
 - ❖ Pharmacy outsourcing



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Proposed Timeline

- Conducted final affiliation discussion on November 14th at NHRMC
 - ❖ Initial presentations in closed session to PMH and NHRMC Boards has occurred
- Follow-up presentation occurred and unanimously approved PMH Board on November 19
- Presentation to Pender County Commissioners in December (12/3)
- Adoption of revised Agreement by NHRMC in December 2007 to be effective in January 2008



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Conclusion

- Considerable progress and improvements have been made since inception of relationship
- Amendments to Agreement in 2004 strengthened position of both hospitals
- The proposed modifications will further align and strengthen both organizations
- The new agreement will continue to ensure access to care for all Pender County residents and will continue to improve the quality care provided by PMH



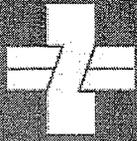
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SECOND AMENDED
AND RESTATED OPERATING AGREEMENT
BETWEEN
PENDER COUNTY,
PENDER MEMORIAL HOSPITAL
AND
NEW HANOVER REGIONAL MEDICAL CENTER

SECOND AMENDED AND RESTATED OPERATING AGREEMENT

THIS **SECOND AMENDED AND RESTATED OPERATING AGREEMENT** (the "Agreement" or "Second Amended and Restated Operating Agreement"), is made and entered into as of the 1st day of December, 2007 by and among PENDER COUNTY ("County"), PENDER MEMORIAL HOSPITAL, INCORPORATED ("PMH") and NEW HANOVER REGIONAL MEDICAL CENTER ("NHRMC").

WITNESSETH:

WHEREAS, County is the owner of the assets comprising the acute care general community hospital known as Pender Memorial Hospital (collectively, such assets and operations are hereinafter referred to as "Hospital");

WHEREAS, pursuant to a Second Amended and Restated Lease Agreement dated November 17, 2004, by and between County and PMH, a copy of which is attached hereto as Exhibit A (the "Lease") and incorporated herein by reference as if fully set forth herein, County has leased the Hospital to PMH, as described in the Lease;

WHEREAS, PMH is an 86-bed critical access hospital located in a medically-underserved area of Southeastern North Carolina;

WHEREAS, PMH provides basic primary care services to residents of Pender County;

WHEREAS NHRMC is tertiary care hospital that offers services not offered by PMH to patients from throughout Southeastern North Carolina;

WHEREAS, the parties entered into an Operating Agreement on or around July 19, 1999 (the "Original Operating Agreement") whereby NHRMC, as sole member of PMH, agreed to provide certain management, operational and financial support services to PMH for the operation of the Hospital;

WHEREAS, the parties entered into an Amended and Restated Operating Agreement on November 18, 2004 ("Amended and Restated Operating Agreement");

WHEREAS, the parties desire to modify and enhance the scope of management and administrative services offered by NHRMC to PMH in order to improve the quality and availability of patient care services offered by PMH to residents of Pender County and surrounding areas; and

WHEREAS, in consideration for the agreements, stipulations and covenants and other good and valuable consideration herein given, the parties do hereby agree to amend and restate the Amended and Restated Operating Agreement to reflect the expanded scope of management and administrative services offered by NHRMC to PMH.

NOW, THEREFORE, the Parties hereby covenant, contract and agree as follows:

1. DEFINITIONS. All capitalized terms, not otherwise defined, shall be defined as provided in the Lease.

2. TERM AND TERMINATION.

(a) This Agreement shall have a term commencing on July 18, 1999 (the "Commencement Date"), and ending on July 17, 2019 (the "Termination Date"), for a term of twenty (20) years ("Term"). The Term of this Agreement shall be identical in all respects to the term of the Lease. Provided NHRMC is not in default in its obligations under this Agreement including the achievement of the performance parameters set forth in Section 5(a) hereto, NHRMC shall have the option to renew the Term for an additional ten (10) years upon the terms and conditions set forth herein, by delivering notice of such intent at least ninety (90) days before the expiration of the then current Term.

(b) Termination of the Lease for any reason shall automatically terminate this Agreement.

(c) Any of the Parties may terminate this Agreement for cause based upon a material breach, after giving written notice to the breaching party and the latter's failure to cure the breach within one hundred eighty (180) days notice of the breach; provided, however, that a longer period shall be allowed if the breaching party has commenced to cure in good faith within one hundred eighty (180) days notice of the breach but the cure cannot be reasonably effectuated within that time period. The Parties may also terminate this Agreement by their mutual consent in writing at any time during the Term.

(d) NHRMC, at its sole option, may terminate this Agreement upon ninety (90) days prior written notice in the event of the following:

- (1) PMH experiences negative cash flow (without regard to contributions by NHRMC under Section 4(f) hereto) for five consecutive fiscal years, or
- (2) PMH shall fail to maintain positive annual operating margins for five consecutive fiscal years.

The foregoing performance parameters will not be measured until the beginning of the second fiscal year of the Hospital after execution of this Second Amended and Restated Operating Agreement (fiscal year 2009) so that no termination right shall be exercisable prior to fiscal year 2014.. During the ninety (90) day period following notice of termination described above, PMH and NHRMC will negotiate in good faith with the County to determine whether, and upon what terms and conditions, the notifying party may be willing to withdraw its notice of termination and continue this Agreement and Lease term.

(e) Upon termination of the Agreement for any reason (other than for a breach by PMH or the County), the parties agree to amend the Articles of Incorporation and Bylaws of PMH to remove NHRMC (as the sole member of PMH), to remove any restrictions on the authority of the Board of Trustees of PMH to operate the Hospital, and to remove the authority of NHRMC to elect members of the Board of Trustees of PMH. **Also upon termination for any reason (including breach by PMH and the County), the parties agree that upon approval of the New Hanover County Board of Commissioners as required, the Bylaws and any other organizing or governing documents of NHRMC will be amended to remove representatives of Pender County.**

(f) Upon termination of the Agreement for any reason, PMH will reimburse NHRMC for the unamortized value of equipment, furnishing and real estate improvements relating to the Hospital which will be acquired with funds provided by NHRMC from sources other than the Hospital's revenues; provided, however, that NHRMC shall not be reimbursed for its capital contribution to PMH described in Section 4(e)(1) through (3) or for funds advanced pursuant to Section 4(f) hereto. PMH will pay such amounts to NHRMC, in good funds, within ninety (90) days of the termination of this Agreement.

3. LEASE AGREEMENT. The Parties acknowledge and agree that neither would have entered into this Agreement but for the agreement of the other to enter into the Lease, which sets forth the terms of which the Premises owned and used by PMH in the conduct of the business of the Hospital shall be leased by PMH.

4. COVENANTS OF PMH AND NHRMC. PMH and NHRMC agree to comply with the following covenants:

(a) Use of Hospital. PMH shall use the assets comprising the Hospital for the operation of a general community acute care hospital and other reasonably related purposes. PMH shall operate an acute care hospital for the benefit of the community in accordance with the tax-exempt purposes of NHRMC and PMH, serving patients without regard to either ability to pay or payor source, and assuring the quality of care of services provided through the Hospital.

(b) Licensure, Certification and Accreditation. (i) PMH shall maintain in full force and effect at all times during the Term all necessary licenses, certifications, permits and other approvals required by applicable local, state and federal laws with respect to the Hospital, its personnel and all equipment used therein; (ii) the Hospital will, within three (3) years from the commencement of the Term, and at all times thereafter during the Term of this Agreement, be properly accredited by the Joint Commission on Accreditation of Healthcare Organization ("JCAHO"); (iii) PMH will provide to County copies of any such licenses, certifications, accreditations, permits or approvals upon request; (iv) PMH will promptly notify County of any revocation or suspension of, or the imposition of any material restriction to, any such licenses, certificates, accreditations, permits or approvals; (v) PMH will operate the Hospital at all times in material compliance with the terms of such licenses, certificates, accreditations, permits and approvals; and (vi) maintain Section 501(c)(3) status of PMH under the Internal Revenue Code of 1986, as amended.

(c) Governance and Organization of PMH. PMH will be governed by a nine member Board of Directors ("PMH Board") as follows:

- 5 members appointed by the Pender County Board of Commissioners
- 3 members appointed by NHRMC
- 1 member who is the Chief of the Hospital Medical Staff

(d) Governance of NHRMC. Subject to the approval of the New Hanover County Board of Commissioners, the Bylaws of NHRMC have been amended to add two representatives of Pender County. One such representative will be the Chief of the Hospital

Medical Staff and the other will be a member of the PMH Board chosen by the PMH Board.

(e) Capital Contribution.

- (1) Following the Commencement Date of the Original Operating Agreement, NHRMC provided PMH with a cash capital contribution in the amount of \$980,000 to be used by PMH for such capital expenditures and operational expenses as are agreed to by NHRMC and related to the enhancement and addition or programs and services of the Hospital.
- (2) NHRMC, has contributed an additional \$2,000,000 to be used by PMH for such capital expenditures and operational expenses as are agreed to by NHRMC and related to the enhancement and addition or programs and services of the Hospital.
- (3) The capital contributions to be infused under sections (1) and (2) above are provided in support of the mission of PMH and to improve the quality and availability of medical services to the residents of Pender County and surrounding areas. The capital contributions infused by NHRMC shall not be considered a loan and, notwithstanding termination of this Agreement for any reasons, neither PMH nor Pender County shall have any obligation to repay either capital contribution.
- (4) NHRMC shall infuse capital into PMH as part of the NHRMC capital budget process. Such infusion shall be based on priority, need and return on investment when factored in with NHRMC's overall considerations, goals and priorities..

(f) Operating Gains and Deficits.

- (1) NHRMC agrees to fund any annual operating deficit of the Hospital that occurs in any fiscal year in which this Agreement is in effect. Any such funds advanced by NHRMC will not be included in determining termination rights as set forth in Section 2(d) or required rental payments under the Lease.
- (2) All income generated through operations shall be returned to NHRMC on an annual basis, beginning the first quarter of the 2008 fiscal year.

(g) Medical Staff. PMH will maintain an independent medical staff and separate bylaws governing its medical staff. PMH will use reasonable efforts to encourage all Pender County physicians to become credentialed at PMH. In addition, NHRMC physicians will be apprised of the services that can be furnished by PMH if the needs of their respective patients are consistent with such use.

(h) Employees of PMH. All clinical and operational staff shall be employed by PMH, with the sole exception of the Administrator and Financial Officer, as set forth below, **provided however, that PMH and NHRMC may agree in writing to allow specific individuals on a case-by-case basis to work at PMH and remain NHRMC employees. Currently, these individuals include the Pharmacy Director and Director of Pender Home Health.** As of the Commencement Date, all employees of PMH retained their prior employment seniority for benefit purposes, subject to applicable performance and human resources policies of PMH. Within sixty (60) days after the Commencement Date, NHRMC conducted a market survey of pay and benefits of all PMH employees. NHRMC retains the right to reassign PMH personnel and eliminate jobs that are not necessary to the effective operation of PMH.

(i) Managed Care Contracts. NHRMC and PMH shall separately negotiate managed care contracts applicable to each hospital's relevant market and operating costs. Nothing in this Agreement requires NHRMC to include PMH in any managed care contracts that it negotiates.

(j) Home Health Agency. Home health services will remain PMH based. In the event of changes in federal law affecting reimbursement for home health services, NHRMC and PMH will negotiate in good faith regarding the proper structure and location for home health services to maximize reimbursement.

5. MANAGEMENT AND ADMINISTRATIVE SERVICES PERFORMED BY NHRMC.

(a) NHRMC shall provide administrative and management services to PMH (the "Management Services") including, but not limited to, the placement of a full-time hospital Administrator (the "Administrator") and Financial Officer to manage PMH and to serve as the primary liaison between PMH and NHRMC. The Administrator, Financial Officer and individuals serving in other positions as approved in Section 4(h) shall be employees of NHRMC and the salary and benefits costs of such employees shall be paid by PMH directly upon presentation of a monthly invoice by NHRMC. PMH shall pay such invoice within thirty (30) days of its receipt of such invoice. In no event is PMH's duty to pay such invoices contingent upon PMH's receipt of its payment from any third party. NHRMC shall have the right to appoint the Administrator and the Financial Officer PMH in its sole discretion.

(b) In addition to the services set forth above, NHRMC also shall provide a full range of Management Services, as needed or requested by PMH, such as the following: (1) Executive Oversight/Administration; (2) Medicare/Medicaid Cost Reports; (3) Professional Consultation; (4) Strategic Services Support; (5) Productivity Data; (6) Management Training/Continuing Education; (7) Risk Management; (8) Health Care Compliance Programs; (9) Marketing; (10) Physician Recruitment /Relations; (11) Medical Staff Education & Development; (12) Professional Services Relief Pool Administration; (13) JCAHO/Regulatory Support; (14) Departmental Operational Assessments; (15) Coding and Reimbursement; (16) Materials Management Support; (17) Business Office Services; (18) Legal Assistance; and (19) Information Systems Support/Information Technology Support. PMH agrees to participate in and remain a member of any service excellence initiative(s) and group purchasing organizations which are recommended by NHRMC.

6. PERFORMANCE PARAMETERS

(a) At each annual meeting of the PMH Board, based upon recommendations from PMH management and NHRMC management, the PMH Board will adopt performance parameters designed to achieve the following Goals of the Affiliation:

- (1) To meet the health care needs of the community, including convenient access to health care for all residents, regardless of ability to pay;
- (2) To improve the quality, efficiency and scope of health care provided by PMH;
- (3) To improve the financial strength of PMH;
- (4) To preserve the jobs and to improve the salaries, wages, benefits and working conditions of PMH employees in order to provide an appropriately trained and compensated work force consistent with Section 4(h) herein;
- (5) To retain local ownership;
- (6) To maintain PMH as an acute care community general hospital and a long-term care facility;
- (7) To achieve JCAHO accreditation consistent with Section 4(b) herein;
- (8) To improve the perception of PMH in the community;
- (9) To decrease the number of residents leaving Pender County for health care; and
- (10) To affiliate with a partner with a vested interest in the success of the Hospital.

Such performance parameters will be similar to those used by NHRMC for its New Hanover County hospitals. Such parameters may, without limitation, include: (1) a minimum annual operating margin; (2) an annual increase in the number of inpatient acute admissions; (3) an annual increase in the number of out patient surgical procedures; (4) an annual increase in emergency department procedures; and (5) an acceptable employee turnover rate.

(b) Such performance parameters approved by the PMH Board will be forwarded to the Board of Trustees of NHRMC for their approval. The respective Boards will negotiate in good faith to resolve any disagreements over annual performance parameters.

(c) The failure of PMH and NHRMC to achieve the foregoing performance parameters will not constitute an event of default under the Lease or this Agreement.

(d) The failure of PMH and NHRMC to achieve the following Goals of Affiliation set forth in Section 6(a) will constitute an event of default hereunder: Sections (1),

(4), (5), (6), (7) and (10); notwithstanding the foregoing, NHRMC will not be in default hereunder for failure to achieve Goal #(7) if such failure is due to JCAHO Required Statement of Conditions with respect to conditions existing at the Hospital as of the Commencement Date.

7. COMPENSATION. [Intentionally Deleted]

8. RIGHT OF FIRST REFUSAL.

(a) If the County receives a bona fide written offer to purchase the Hospital during the term of this Agreement, which County desires to accept, County shall notify NHRMC in writing of such offer and describe, in full, the terms and conditions of such offer, following which NHRMC shall have the option to purchase the Hospital and the purchase price shall be the amount of the bona fide purchase offer from the applicable third party. NHRMC's option to purchase the Hospital shall be exercised by written notice from NHRMC to the County within thirty (30) days from the receipt by NHRMC of County's notice of its sale of the Hospital. If NHRMC timely exercises its option to purchase, the transaction between the parties shall be consummated on the later of (1) the timeframe set forth in the bona fide written offer to purchase the Hospital from a third-party; (2) the completion of all necessary regulatory approvals to accomplish the transfer of the Hospital to NHRMC so long as NHRMC makes reasonable efforts to obtain such approvals; or (3) ninety (90) days.

(b) Upon a sale or other transfer of the Hospital, NHRMC shall be reimbursed from the proceeds of such sale or transfer an amount which is the greater of the market value of the amounts expended by NHRMC pursuant to Section 4(e)(4) and 4(f)(1) or the demonstrable increase in the value of the Hospital directly related to, and as a result of, NHRMC's contributions as described in Section 4(e)(4) and 4(f)(1), as evidenced by an independent third party valuation. If NHRMC exercises its option under this section to purchase the Hospital, said reimbursement will be in the form of a reduction of sales price.

9. DIVERSITY. NHRMC and PMH hereby reaffirm their commitment as equal opportunity employers consistent with current state and federal regulations.

10. INDEMNIFICATION.

(a) PMH shall indemnify and hold harmless NHRMC, its directors, officers, agents and employees from and against any and all claims, demands, actions, suits, judgments, costs and expenses (including reasonable attorney's fees actually incurred) which arise or result from (i) the gross negligent or intentional acts or omissions of PMH, its agents (including NHRMC) employees and independent contractors, (ii) the operations of PMH prior to the Commencement Date; (iii) the bad faith of PMH, (iv) the inaccuracy of any material representation or warranty made by PMH. herein, (v) the nonfulfillment of PMH or any of its material obligations hereunder, and (vi) any liability of PMH or the Hospital, including but not limited to liability for medical malpractice matters in excess of available insurance coverage and Medicare/Medicaid cost reporting liabilities, other than those liabilities caused by the gross negligence or intentional or willful misconduct of NHRMC, its agents, employees and independent contractors.

(b) NHRMC shall indemnify and hold harmless PMH, its directors, officers, agents and employees from and against any and all claims, demands, actions, suits, judgments, costs and expenses (including reasonable attorney's fees actually incurred) which arise or result from (i) the gross negligent or intentional acts or omissions of NHRMC, its agents, employees and independent contractors, (ii) the bad faith of NHRMC, (iii) the inaccuracy of all material

representation or warranty made by NHRMC herein, (iv) the nonfulfillment by NHRMC of any of its material obligations hereunder, and (v) any liability of NHRMC, including but not limited to liability for medical malpractice matters in excess of available insurance coverage, other than liabilities caused by the gross negligence or intentional or willful misconduct of PMH, its agents (excluding NHRMC), employees and independent contractors.

11. NOTICES. Each provision of this Agreement or of any applicable governmental laws, ordinances, regulations, or other requirements with reference to the sending, mailing, or delivery of any notice by the County to NHRMC and PMH with reference to the sending, mailing, or delivery of any notice by NHRMC and PMH to the County shall be deemed to be complied with, and any notice or document shall be deemed to be delivered whether actually received or not, when deposited in the United States Mail, postage prepaid, sent by Federal Express or other nationally recognized overnight courier, certified or registered mail, return receipt requested, addressed to the Parties hereto at the respective addresses set out below, or at other such addresses as they have heretofore specified by written notice delivered in accordance therewith:

COUNTY:	Pender County Administrative Building, Box 5 Burgaw, NC 28425
PMH:	Pender Memorial Hospital, Incorporated 507 East Fremont Street Burgaw, NC 28425
NHRMC:	New Hanover Regional Medical Center Attn: Jack Barto, CEO 2131 South 17 th Street Wilmington, NC 28402
	Copy: New Hanover Regional Medical Center VP Legal Affairs 2131 South 17 th Street Wilmington, NC 28402

County agrees that in the event it gives any notice to PMH under the Lease, it will also send a copy of such notice to NHRMC in accordance with the provisions of this Section 11.

12. ASSIGNMENT. This Agreement shall not be assigned, transferred or delegated, in whole or in part, to anyone other than the Parties by either the County or NHRMC and PMH without the prior written consent of the other Parties; provided, however, that NHRMC may transfer, assign or delegate any portion of its rights or obligations under this Agreement to any other parent, wholly controlled non-profit or charitable affiliate or subsidiary of NHRMC at any time without the consent of the County, but that NHRMC shall remain

ultimately responsible for its rights and obligations under this Agreement.

13. MISCELLANEOUS.

(a) Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

(b) The terms, provisions and covenants and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the Parties hereto and upon their respective heirs, legal representatives, successors and permitted assigns, except as otherwise herein expressly provided. Each party agrees to furnish to the others, promptly upon demand, a resolution, or other appropriate documentation evidencing the due authorization of such party to enter into this Agreement.

(c) The captions inserted in this Agreement are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

(d) This Agreement may not be altered, changed or amended except by an instrument in writing signed by all Parties hereto or their successors in interest.

(e) If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the Term of this Agreement, then and in that event, it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

(f) No party hereto shall have any liability for any incidental or consequential damages of another party hereto, or anyone claiming by, through or under a party hereto, for any reason whatsoever.

(g) This Agreement does not create the relationship of partner or joint venturer between the County and PMH and NHRMC. The County and PMH and NHRMC acknowledge that neither is the agent or employee of the other, and the relationship of independent contractors exists between them.

(h) The laws of the State of North Carolina shall govern the interpretation, the validity, performance and enforcement of this Agreement.

(i) No remedy conferred herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or thereunder or now or hereafter existing as law or in equity or by statute or otherwise.

[SIGNATURES TO FOLLOW ON SUCCEEDING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the day and year first above written.

COUNTY:

PENDER COUNTY:

ATTEST:

By:

Print Name:

Clerk

Title:

[CORPORATE SEAL]

PENDER MEMORIAL HOSPITAL, INC.

ATTEST:

By:

Print Name:

Clerk

Title:

[CORPORATE SEAL]

NEW HANOVER REGIONAL MEDICAL
CENTER

ATTEST:

By:

Print Name:

Clerk

Title:

[CORPORATE SEAL]