

AGREEMENT TO EXERCISE THE OPTION TO PURCHASE AS REQUESTED BY HABERSHAM COUNTY

This Agreement to Exercise the Option to Purchase as Requested by Habersham County ("Agreement") is dated as of January 10, 2023 and entered into by and among Habersham County, Habersham County Hospital Authority, and the Hospital Authority of Hall County and the City of Gainesville.

WHEREAS, effective November 18, 2019, Habersham County, Habersham County Hospital Authority (collectively "Habersham Parties"), and the Hospital Authority of Hall County and the City of Gainesville ("Hall County Authority") entered into an Option to Purchase Agreement ("Option to Purchase Agreement");

WHEREAS, Habersham Parties acknowledge a present financial condition of the Hospital, including without limitation, accounts payable being over 90 days in arrears and a monthly operational loss consistently exceeding \$1 million per month;

WHEREAS, in light of the present financial condition of the Hospital, Habersham County reached out to representatives of Hall County Authority requesting that Hall County Authority exercise its option to purchase assets of the Hospital ("Option") earlier than originally contemplated by the Option to Purchase Agreement; and

WHEREAS, Hall County Authority is willing to help with Habersham County's request and exercise its Option early if Habersham Parties (with enhanced financial support from Habersham County) apply best efforts to improve and sustain Hospital's financial condition and operation until the early closing date.

NOW THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows.

TERMS AND CONDITIONS

1. **Notice of Exercise of Option**. Pursuant to Section 4.2 of the Option to Purchase Agreement, Hall County Authority hereby exercises its Acquisition Option to acquire the Purchased Assets as defined in the Asset Purchase Agreement, attached as an Exhibit "A" to the Option to Purchase Agreement.
2. **New Closing Date**: Hall County Authority desires to facilitate the continuing availability of health care services to the communities served by the Hospital by accommodating the request by the Habersham Parties to accelerate the election of its Option, and to purchase the Hospital upon satisfaction by the Habersham Parties of the following conditions: 1) Habersham Parties signing this agreement on or before January 16, 2023; 2) Habersham Parties meeting pre-closing conditions listed in Section 6 of the Option to Purchase Agreement; and 3) the Habersham County Hospital Authority maintaining and applying best efforts to improve the Hospital's financial and operational condition until New Closing Date (collectively, the "Contingencies"). If each of the Contingencies is met to the reasonable satisfaction of Hall County Authority, the parties shall close on the purchase and sale of the Hospital on or before the binding date of July 1, 2023 (the "New Closing Date"). Assuming the Contingencies are satisfied and in exchange for the Hall County Authority agreement to purchase the Habersham Medical Center assets early, the Hall County Authority and Habersham Parties agree to waive the requirement for the Hall County Authority to close on the purchase within sixty (60) days of Hall County Authority's exercise of the Option and to permit the

closing to occur on New Closing Date. In the event the Contingencies are not satisfied to the reasonable satisfaction of the Hall County Authority to permit such Closing to occur on or before the New Closing Date, Hall County Authority's obligations hereunder shall terminate immediately.

3. **Consideration.** Hall County Authority has remitted payment of Twelve Million and no/100 Dollars (\$12,000,000.00) to Habersham Parties for capital expenditures and Hall County Authority shall remit the final payment of Three Million Dollars (\$3,000,000) on (or before as may be needed) the Closing Date to Habersham Parties ("Final Payment").

4. **Use of Funds.** Above notwithstanding, Habersham Parties agree to hold the Final Payment and \$2,400,000.00 of the previous payment made by Hall County Authority on or around November 25, 2022, in escrow and apply those funds to capital needs of the Hospital to support access to healthcare services, as further defined in Exhibit 1, subject to the coordination of the management services described in Section 6 below and the governance of the Habersham County Hospital Authority. The objectives of this provision shall survive the New Closing Date until the proceeds held in escrow are fully exhausted in furtherance of the purpose set forth in this Section 4.

5. **Habersham County and Habersham County Hospital Authority Obligations.**

(a) In exchange for the early exercise of Option and modified terms described herein Habersham County agrees to perform the obligations it undertook in the Option to Purchase Agreement as well as Habersham County agrees to provide additional financial support to Habersham County Hospital Authority and the Hospital in the form of a line of credit through the New Closing Date of **Six Million and no/100 Dollars (\$6,000,000.00)** to financially sustain Hospital operations up to the New Closing Date, it being agreed and acknowledged that such amount shall not be applied towards any paid time off of Seller employees accrued on or before the New Closing Date, which shall remain the responsibility of Habersham County Hospital Authority. Habersham County has advanced One Million Five Hundred Thousand and no/100 Dollars (\$1,500,000.00) as of the date of this Agreement towards the initial line of credit commitment of \$6,000,000.00. Furthermore, recognizing that sustaining the Hospital will likely require more than \$6,000,000.00 until New Closing Date, Habersham County Hospital Authority agrees to utilize the collections from accounts receivables, future Disproportional Share Hospital ("DSH") payments, government reimbursement program funding anticipated from the Upper Payment Limit ("UPL") and dedicated donations to support the Hospital compensation to employees, operations and the capital needs of Hospital to support access to healthcare services for the community and sustain the Hospital until the New Closing Date. Accounts Receivable will be utilized by the Habersham County Hospital Authority for the sole purposes of fulfilling its obligations within this Section 5. After the New Closing Date, Habersham Parties agree that to the extent such proceeds are received to remit to Hall County Authority or its successor future DSH payments, government reimbursement program funding anticipated from the Upper Payment Limit ("UPL"), Georgia Heart Hospital Program ("Georgia Heart") proceeds, and dedicated donations to support the Hospital's operations and the capital needs of the Hospital to support access to healthcare services for the community and sustain the Hospital or its successor as a hospital. Habersham Parties shall cooperate to support that the applicable and received DSH, UPL, Georgia Heart and dedicated donations are timely and properly transferred to Hall County Authority or its successor to support Hospital operations and ensure access to healthcare services in Habersham County.

(b) The payments made by Habersham County pursuant to subsection (a) above shall be and are conditioned upon application of all such funds to closing financial deficit that has accrued through the New Closing Date, including without limitation, operational and financial needs and accounts payable of

Habersham County Hospital Authority and the Hospital. The use of such funds is also subject to management oversight and recommendations to the Habersham County Hospital Authority described in Section 6 below. Habersham County Hospital Authority shall not unreasonably withhold, condition or delay approval of management recommendations made by NGHS pursuant to Section 6, provided such recommendations are supported by proper and sound due diligence and NGHS shall maintain related diligence materials accessible to the Habersham County Hospital Authority for review and consideration.

6. **Management Services Agreement.** To improve and sustain Habersham Medical Center financial condition before the New Closing Date, Habersham Parties in a separate agreement shall retain services of Northeast Georgia Health System ("NGHS") to provide management and operational oversight before New Closing Date. The preliminary scope of those services is attached in Exhibit 2. For clarity, any such arrangement does not eliminate the Habersham County Hospital Authority's duty and obligations to apply best efforts to improve and sustain Habersham Medical Center's financial and operation condition as a hospital until the New Closing Date and does not remove or alter the Habersham Hospital Authority's governance and control of its license and operational assets.

7. **Amended Terms to Asset Purchase Agreement.** In exchange for the County performing the obligations described in Section 6 of the Option To Purchase Agreement and to support the Parties' obligations under this Agreement, the Asset Purchase Agreement shall be amended as follows:

(a) Section 1.2 Excluded Assets shall be amended to delete section 1.2(n) in its entirety and replace it with the following language:

"(n) all accounts receivable, including, but not limited to patient receivables arising from rendering of services to patients at the Hospital, billed and unbilled, recorded or unrecorded, with collection agencies or otherwise, accrued and existing in respect of services rendered up to the Closing Date (the "Accounts Receivable") and shall remain an asset of the Seller; provided that Accounts Receivable shall not include proceeds remitted on or after the New Closing Date from DSH payments, government reimbursement program funding anticipated from the UPL, the Georgia Heart Hospital Program, and dedicated donations."

(b) Section 3.2(o) shall be deleted in its entirety and any references to the Escrow Agreement within the Asset Purchase Agreement shall be removed in its entirety.

(c) Section 10.8 of the Asset Purchase Agreement shall be deleted in its entirety and replaced with the following language:

"Employee Matters. Effective as of the Closing Date, Buyer or a Related Entity of Buyer shall offer employment to substantially all employees of Seller who provide services related to the Hospital (collectively, the "Seller Employees"), provided that such employee (i) meets all Buyer's or Buyer's Related Entity's employment qualifications, (ii) meets all federal and State of Georgia laws governing the hiring of employees, (iii) applies on-line for position and passes a pre-employment drug test, background check, interview, and physical exam, if applicable, and (iv) is not listed on any list of Excluded Individuals/Entities of the Office of Inspector General of the U.S. Department of Health and Human Services. Those Seller Employees who accept the initial terms and conditions of employment offered by Buyer or its Related Entity as of the Closing Date shall be designated on Schedule 10.8 as "**Transferring Employees**" and referred to hereinafter as such. Such offers of employment shall be for positions and at wages comparable to those enjoyed by such Transferring Employees immediately prior to the Closing Date. Seller will terminate the Employment of the Transferring Employees effective as of the Closing Date. Seller

recognizes and agrees that it is solely responsible for paying the Transferring Employees compensation and benefits accrued up to the Closing Date, including the potential accrued paid time off (“PTO”) which shall be addressed by and between the Seller and the Transferring Employee prior to the New Closing Date. Schedule 10.8 sets forth with respect to each of the Seller Employees such person's position, date of hire and current salary. Nothing herein shall obligate Buyer or a Related Entity of Buyer to employ the Transferring Employees for any specific time period. Nothing in this Section shall be construed to grant any employee any rights as a third party beneficiary. Buyer does, however, agree to negotiate in good faith with the Key Employees in an effort to agree on short term transition services contracts subject to extension upon mutual agreement of the parties thereto. In respect of the employees employed by Buyer, Buyer will honor prior service credit under current Seller welfare plans for purposes of satisfying pre-existing condition limitations in Buyer's welfare benefit plans. To the extent the Seller has maintained tax-qualified retirement plans for such employees, Buyer shall recognize the existing seniority of all such employees under the tax-qualified retirement plans maintained by Buyer (“**Buyer's Plans**”) and accordingly shall provide prior service credit under Buyer's Plans for the purposes of determining eligibility and vesting. Seller shall retain all liabilities with respect to any and all Seller Employees who are not Transferring Employees (including, but not limited to, workers’ compensation claims, resulting unemployment compensation, health insurance, and employment related litigation) and, unless specifically assumed herein, all liabilities associated with the Transferring Employees which may have accrued prior to the Closing Date (including, but not limited to, workers’ compensation claims, resulting unemployment compensation, health insurance, and employment related litigation). ”

(d) Section 11.3(a) shall be deleted in its entirety and any references to the DSF Escrow within the Asset Purchase Agreement shall be removed in its entirety.

(e) Section 11.3(b) shall be deleted in its entirety and any references to the A/R Escrow within the Asset Purchase Agreement shall be removed in its entirety.”

8. **Meet and Confer**. Habersham Parties and Hall County Authority, recognizing that sustaining Habersham Medical Center will most likely require more than \$6,000,000.00 until New Closing Date, agree to meet and confer regarding what each party can do pre-closing should \$6,000,000.00 be insufficient to maintain the Hospital in stable financial and operational condition as a hospital until New Closing Date.

9. **Miscellaneous**. Any and all terms of the Option to Purchase Agreement and the Asset Purchase Agreement that do not conflict with the terms and conditions of this Agreement and the amended terms shall remain in effect and binding upon the parties. Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to them within the Option to Purchase Agreement.

[Remainder of Page Left Intentionally Blank – Signature Page to Follow]

NOW THEREFORE, in exchange for the mutual covenants and consideration described herein the undersigned authorized representatives of each party agree to the terms described herein.

HABERSHAM COUNTY, GEORGIA	
BY: <i>Bass Palmer</i>	
TITLE: <i>Habersham County Board of Commissioners Chairman</i>	
DATE: <i>1/10/2023</i>	
HABERSHAM COUNTY HOSPITAL AUTHORITY	THE HOSPITAL AUTHORITY OF HALL COUNTY AND THE CITY OF GAINESVILLE
BY: <i>Duffy & Ritchie</i>	BY:
TITLE: <i>Chair</i>	TITLE:
DATE: <i>1-17-2023</i>	DATE:
Attest: <i>Kay Thompson</i>	Attest:
BY:	BY:
TITLE: SECRETARY <i>Chapman</i>	TITLE:
DATE: <i>1-18-2023</i>	DATE:

NOW THEREFORE, in exchange for the mutual covenants and consideration described herein the undersigned authorized representatives of each party agree to the terms described herein.

HABERSHAM COUNTY, GEORGIA	
BY:	
TITLE:	
DATE:	
HABERSHAM COUNTY HOSPITAL AUTHORITY	THE HOSPITAL AUTHORITY OF HALL COUNTY AND THE CITY OF GAINESVILLE
BY:	BY: <i>Marlene Fraz</i>
TITLE:	TITLE: <i>Chair</i>
DATE:	DATE: <i>1-10-23</i>
Attest:	Attest:
BY:	BY: <i>Carol A. Burrell</i>
TITLE: SECRETARY	TITLE: <i>Secretary</i>
DATE:	DATE: <i>01-10-2023</i>

Exhibit 1

Use of Funds for Final Payment and \$2,400,000.00 of the Previous Payment

- Imaging needs (MRI, CT, etc.)
- Medical Equipment needs
- Other capital needs

Exhibit 2

Management Services: January 10, 2023 – June 30, 2023

- **Administrative Support (4 hours on site with up to 4 hours virtual support per week)**
 - Day-to-day oversight and review of critical functions and services
 - Regular conference and update meetings with the Habersham Hospital Authority and the Habersham County representatives
 - Review operational decisions
 - Including any position eliminations, service reductions, or service eliminations
 - Recommendations for licensed service eliminations shall be made to the Habersham Hospital Authority for review and approval and shall include a business pro forma and a recommendation which approval shall not be unreasonably withheld in accordance with the Habersham Hospital Authority's governance responsibilities
 - Review spending decisions and capital projects and make recommendations or engage in activities with a goal not to adversely impact the financial sustainability of Habersham Medical Center prior to the New Closing Date
- **Financial Services Support (2 days per week on site)**
 - Oversight and review of key financial processes and statements
 - Provide financial reports and recommended financial metrics jointly to the Habersham Hospital Authority and Habersham County representatives no less than monthly
- **IT Services Support 12 hours per month**
- **Communicate with the Habersham Hospital Authority and Habersham County representatives on a regular basis to assess and establish an earlier New Closing Date, as feasibly determined by the Parties.**