

North Carolina Department of Health and Human Services
Division of Health Service Regulation
Certificate of Need Section

2704 Mail Service Center • Raleigh, North Carolina 27699-2704
<http://www.ncdhhs.gov/dhst/>

Drexdal Pratt, Director

Beverly Eaves Perdue, Governor
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Craig R. Smith, Section Chief
Phone: (919) 855-3873
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April 30, 2012

CORRECTED

Doug Whitman, Development Director
Liberty Healthcare Management
2334 South 41st Street
Wilmington, NC 28403

RE: No Review/ Springwood Care Center of Forsyth/ Liberty Commons Nursing and Rehabilitation Center of Springwood, LLC, sublease agreement with Novant Health Inc., and Forsyth County/ Forsyth County

Dear Mr. Whitman:

The Certificate of Need (CON) Section received your letter of April 13, 2012 regarding the above referenced proposal. Based on the CON law **in effect on the date of this response to your request**, the proposal described in your correspondence is not governed by, and therefore, does not currently require a certificate of need. However, please note that if the CON law is subsequently amended such that the above referenced proposal would require a certificate of need, this determination does not authorize you to proceed to develop the above referenced proposal when the new law becomes effective.

It should be noted that this determination is binding only for the facts represented by you. Consequently, if changes are made in the project or in the facts provided in your correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by the Certificate of Need Section. Changes in a project include, but are not limited to: (1) increases in the capital cost; (2) acquisition of medical equipment not included in the original cost estimate; (3) modifications in the design of the project; (4) change in location; and (5) any increase in the number of square feet to be constructed.

In addition, you should contact the Construction Section to determine if they have any requirements for development of the proposed project. Please contact the CON Section if you have any questions. Also, in all future correspondence you should reference the Facility I.D.# (FID) if the facility is licensed.

Sincerely,

Lisa Pittman,
Project Analyst

Craig R. Smith, Chief
Certificate of Need Section

cc: Construction Section, DHSR





Liberty Healthcare Management



2334 South 41st Street • Wilmington, NC 28403
(910) 512-2988 • FAX: (910) 815-3111

April 13, 2012

Craig Smith, Section Chief
Lisa Pittman, Analyst
NC Department of Health and Human Services
Division of Health Service Regulation
Certificate of Need Section
2704 Mail Service Center
Raleigh, NC 27699-2704

RE: Exempt from Review / Springwood Care Center of Forsyth, License #NH0423, Medicare #34-5039, located in Winston Salem, Forsyth County; Liberty Commons Nursing and Rehabilitation Center of Springwood, LLC (Liberty) entering into a sublease agreement with Novant Health, Inc. (Novant) and Forsyth County (Forsyth)

Dear Mr. Smith and Ms. Pittman:

I am writing to request a letter from the Certificate of Need Section acknowledging that the above referenced proposal is exempt from certificate of need review. We believe that this proposal falls outside the scope of a requirement for a certificate of need.

The details of our proposal are as follows: The Springwood Care Center is licensed for 200 skilled beds. The bed count in this proposal will remain the same. The nursing home is currently owned by Forsyth County (this proposal does not change the ownership), and is leased by Forsyth County to Novant Health Inc. (this proposal does not change the lease to Novant), and is managed under a management contract by Liberty Commons Nursing and Rehabilitation Center of Springwood, LLC (this proposal would move Liberty from a management contract operator to a sublease operator).

Specifically, we propose to enter into a Sublease agreement (attached unsigned copy as **Exhibit 1**) between Novant Health, Inc., a North Carolina not-for-profit corporation (Sub-lessor), Liberty Commons Nursing and Rehabilitation Center of Springwood, LLC, a North Carolina limited liability company (Sub-lessee), and Forsyth County, North Carolina, a body politic and corporate in the State of North Carolina (Lessor) effective May, 1, 2012.

Liberty currently operates Springwood Care Center of Forsyth pursuant to a management agreement entered into between Liberty and Novant on May 1, 2011. Today's proposal is to


execute a Sublease agreement allowing Liberty to assume full operational responsibility for Springwood Care Center of Forsyth. Liberty has received approval (attached as **Exhibit 2**) from the Forsyth Board of County Commissioners to execute the proposed Sublease agreement.

We believe that the proposal falls outside the scope of a requirement for a certificate of need and respectfully request that the Certificate of Need Section provide a letter recognizing the project as being exempt from a certificate of need requirement.

For your additional information, the above Sublease agreement is the first phase of a two-phase process. According to the terms of the agreement among the three parties (Liberty, Novant, and Forsyth County), the parties will apply within the next five years to the appropriate state agencies to (a) replace and relocate the current facility, and (b) allow Liberty to acquire the license for the 200 skilled nursing beds from Forsyth.

Thank you for your consideration of this matter. We would like to close this sublease agreement on 5-1-2012. Would it be possible to ask for your consideration of this request for a no review letter prior to May 1st? If you should have any further questions regarding our proposal, please feel free to contact me.

Sincerely,



Doug Whitman
Development Director
DWhitman@LibertyHCare.com
910.512.2988

SUBLEASE AGREEMENT

This SUBLEASE AGREEMENT (the "Sublease") is made and entered into as of the ____ day of _____ 2012 by and between Novant Health, Inc., a North Carolina not-for-profit corporation ("Sublessor"), Liberty Commons Nursing and Rehabilitation Center of Springwood, LLC, a North Carolina limited liability company and successor to Long Term Care Management Services, LLC, which submitted a proposal for sublease, purchase and transfer of the Springwood Care Center Beds and Equipment pursuant to the provisions of N.C.G.S. 131E-13 ("Sublessee"), and Forsyth County, North Carolina, a body politic and corporate in the State of North Carolina (hereinafter referred to as "Lessor" or the "County"), (Sublessor, Sublessee, and County will hereinafter be collectively referred to as the "Parties").

WITNESSETH:

WHEREAS, County and Sublessor (as successor by merger and name change to Carolina Medicorp, Inc.¹) are parties to that certain Lease Agreement dated as of July 1, 1991 (the "Overlease") which Overlease is attached hereto and incorporated herein as Exhibit A, and this Sublease, which Sublease supplements and amends certain terms of the Overlease; and

WHEREAS, pursuant to the terms of the Overlease, Sublessor is leasing from the County certain real property, and improvements located thereon, located at 5755 Shattalon Drive, Winston-Salem, North Carolina 27105, (the "Premises"), and certain County-owned personal property defined as the "Personal Property" in the Overlease (referred to in this Sublease as the "Personal Property"), all as more particularly described in the Overlease, and;

WHEREAS, Sublessee desires to purchase the Personal Property and certain other furniture, fixtures, and leasehold improvements set out in Exhibit B, attached hereto and incorporated herein, (the Personal Property and property set out in Exhibit B are collectively referred to herein as the "County Property") from the County, the County desires to sell the same to Sublessee pursuant to a separate Asset Purchase Agreement between Sublessee or its affiliates and County (the "County APA"), and to facilitate this, Sublessor desires to release the County Property from the provisions of the Overlease; and

WHEREAS, a skilled nursing facility licensed to operate 200 beds, known as Springwood Care Center, is operated from the Premises (as further described in the Overlease, the "Facility"), and

WHEREAS, as a replacement for the Facility, Sublessee intends to relocate the licensed beds of the Facility to two or more new skilled nursing facilities to be built by Sublessee in Forsyth County (each a "Replacement Facility" and together the "Replacement Facilities"), with the aggregate bed count of all Replacement Facilities being at least 200 beds; and

¹ The original lessee is Carolina Medicorp, Inc.; Presbyterian Health Services Corp. is the successor by merger of Carolina Medicorp, Inc., and Presbyterian Health Services Corp. changed its name to Novant Health, Inc.

WHEREAS, Sublessor desires to sublease to Sublessee the entire Premises, and Sublessee desires to sublease the entire Premises from Sublessor, all upon the terms and subject to the conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the Premises, the mutual covenants contained herein, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged by the Parties, the Parties, intending to be legally bound, hereby covenant, acknowledge, represent and agree as follows:

1. Grant of Sublease. Sublessor hereby demises and sublets the Premises to Sublessee, and Sublessee hereby subleases and accepts the Sublease Premises from Sublessor, subject to the terms, covenants, conditions, limitations and reservations of this Sublease. County consents to this Sublease, as is required under Section 11.1 of the Overlease, and Sublessor commits to remain legally liable to Lessor under the surviving terms of the Overlease. as provided in Section 5.1 of said Overlease, as modified by this Sublease.

2. Condition of Premises. Sublessee acknowledges that it has fully inspected the Premises, is satisfied with the condition thereof and is taking the Premises in an "AS-IS" and "WHERE-IS" condition, "WITH ALL FAULTS," and Sublessor makes no representations or warranties (either express or implied) of habitability, merchantability or fitness for a particular purpose, and Sublessor expressly disclaims the same. Without limiting the generality of the foregoing, neither Sublessor nor any employee, agent or representative of Sublessor has made any promise to alter, remodel or improve the Premises or any portion thereof or any representation (either express or implied) respecting the condition of the Sublease Premises. Sublessee's taking of possession of the Sublease Premises shall constitute an unconditional acceptance by it of the condition thereof.

3. Term. The term of this Sublease (the "Term") shall commence on the first (1st) day of May 2012 (the "Commencement Date") and shall expire on the earlier of: (a) the day that the Replacement Facility containing the two hundredth (200th) licensed bed is Completed ("Completed" or "Completion" meaning, with respect to a Replacement Facility, thirty [30] days after the latter of the issuance of a final certificate of occupancy, and all required move-in approval being granted by the North Carolina Department of Health and Human Services, Division of Health Service Regulation); or (b) the thirtieth (30th) day of April 2017 (the earlier of (a) or (b) being the "Expiration Date"). Anything contained in this Sublease to the contrary notwithstanding, in the event the Overlease is terminated, then this Sublease shall terminate coincidentally therewith without any further liability between the Parties. Sublessee agrees and acknowledges that nothing in this Sublease shall obligate Sublessor to exercise any extension option under the Overlease. In the event that Sublessee is in full compliance with the terms of this Sublease and is proceeding in good faith and due diligence to Complete the Replacement Facilities, but one or more of the Replacement Facilities will not be Complete by April 30, 2017 through no fault of Sublessor or its affiliates, Sublessee may request in writing a reasonable period in advance that the County and Sublessor extend the Term for a period of up to six (6) months, which extension request shall not be unreasonably denied. The County and Sublessor agree that the term of the Overlease shall terminate at the same time as the Sublease, in order that

the County may regain full, unencumbered possession of the Premises upon termination of the Sublease.

4. Permitted Use of Premises. Sublessee covenants and agrees that it shall use the Premises solely and exclusively for the purposes permitted in the Overlease, and that it shall operate the Facility in strict compliance with the requirements of the Overlease. In its operation of the Facility, Sublessee shall establish, maintain, and equally apply policies and practices regarding patient admission, transfer, discharge, and the provision of patient services to all patients and prospective patients without discrimination based on race, sex, creed, color, or national origin and without regard to the source or prospective source of payment for the individual's care, and in a manner consistent with the terms of the applicable section of the Proposal for Springwood Care Center submitted by Sublessee's affiliate to the County (which section, being the response to the query "*Evidence of willingness and plan to be obligated to assist in placement of difficult to place patients,*" is incorporated herein by reference), the provisions of the Overlease relating to patient care and treatment, and applicable federal regulations defining the obligations of purchasers and operators of skilled nursing care beds and facilities under Equal Access to Quality Care provisions.

5. Rent and Financial Obligations of Sublessee.

(a) Base Rent; Additional Rent. For and during the Term, Sublessee shall pay to Sublessor, annual rent for the Sublease Premises (the "Base Rent"), in the amount of Ten and No/100 Dollars (\$10.00) per year. Base Rent shall be payable to Sublessor in advance commencing on the Commencement Date and thereafter in advance on the first day of each anniversary of the Commencement Date during the Term. For purposes of this Sublease, all sums due under this Sublease or the Overlease, other than Base Rent, shall be collectively referred to herein as "Additional Rent", and all Base Rent and Additional Rent shall be collectively referred to herein as "Rent".

(b) Utilities and Services. In addition to Base Rent, Sublessee shall pay, as Additional Rent, directly to the third-parties providing the same (including, if applicable, the County), prior to the same becoming delinquent, the cost of any and all utilities or other services serving the Premises during the Term, including, without limitation, those set out in Section 8.1 of the Overlease. Sublessee shall cause the bills for all utilities or other services serving the Premises to be transferred from Sublessor's account to Sublessee's, and Sublessor shall cooperate with Sublessee to effect such transfer. Sublessor and Sublessee shall equitably prorate any such charges incurred before or after the Term.

(c) Taxes and Fees. Sublessee shall pay, as Additional Rent, directly to the taxing authorities, prior to the same becoming delinquent, all real property, personal property, business, franchise, or other taxes or impositions relating to the Premises, the Facility, Sublessee's personal property, or Sublessee's activities on the Premises, and shall provide Sublessor evidence of the payment of the same. Sublessee acknowledges that Sublessee, as an entity owned and managed on a for-profit basis, will not enjoy the property or other tax exemptions that have been available to Sublessor as a not-for-profit

entity. Sublessee may challenge tax assessments as described in Section 8.1 of the Overlease, provided that Sublessee's right to do so shall not relieve it of liability to pay the tax as finally determined, or any interim payment to be made pending appeal. Sublessor and Sublessee shall equitably prorate any such taxes or fees incurred before or after the Term.

(d) Absolute Net Rent. In addition to the Base Rent and other financial obligations set out in this Sublease or the Overlease, Sublessee shall pay to Sublessor as Additional Rent any and all additional rent and all other sums that Sublessor is obligated to pay to the County or any third party under the Overlease and arising during the Term, no later than five (5) days prior to the due date of Sublessor for the payment of such additional rent or other sums under the Overlease. The Parties intend that all financial responsibilities arising under Overlease during the Term shall be the sole and absolute obligation of Sublessee, and, as an Additional Rent obligation, Sublessee hereby assumes and covenants to satisfy all such financial responsibilities, as and when due. The obligations of Sublessee to pay such Additional Rent for matters arising during the Term shall survive the expiration or earlier termination of this Sublease.

(e) Satisfaction of Delinquencies. Notwithstanding anything to the contrary in this Sublease, Sublessor, at Sublessor's option, may, but is not obligated to, pay any delinquent charge on behalf of Sublessee and bill Sublessee for the same as Additional Rent .

(f) Payment of Rent. All Rent payments due to be paid to Sublessor shall be paid without previous demand therefor and without right of set-off, abatement, credit or deduction, in good and immediate funds to Novant Health, Inc., P.O. Box 751773, Charlotte, NC 28275-1773, or at such other address as Sublessor may from time to time designate by notice to Sublessee.

6. Waivers and Releases of Overlease Provisions.

(a) The Parties hereby agree to waive, and release the County and Sublessor from the provisions of Section 5.2(1) of the Overlease, which provide that the County will cooperate with Sublessor to keep the property tax-exempt.

(b) The Parties hereby agree to waive, and release the Sublessor from any provisions or requirements of the Overlease that contemplate that Sublessor and any sublessee of Sublessor will be not-for-profit entities, or that the Facility will be operated on a not-for-profit basis.

(c) The Parties hereby agree to release the County Property from the provisions of the Overlease, in order to enable the County to convey such property to the Sublessee via the County APA free and clear of any leasehold rights of Sublessor.

7. The Overlease.

(a) Incorporation of Overlease. All of the terms, covenants, provisions, conditions, rights, remedies, and definitions of the Overlease are hereby incorporated in and made a part of this Sublease with the same force and effect as though set forth at length herein, except to the extent: (i) inconsistent with the express provisions of this Sublease or expressly excluded from this Sublease; or (ii) to the extent inapplicable to the subleasing of the Premises. By virtue of such incorporation: the terms "County," "Lessor," and words of similar import, when used in the Overlease, shall be construed, for the purposes of this Sublease, to refer to Sublessor; and the terms "CMI," "Lessee," and words of similar import, when used in the Overlease, shall be construed, for the purposes of this Sublease, to refer to Sublessee. Notwithstanding anything to the contrary in this Sublease, the provisions of the Overlease contained in Sections 3.1, 3.2, 5.2, 9.2, and 30.10 of the Overlease shall not apply to Sublessee and shall not be incorporated into this Sublease. The Parties hereby agree to waive, release and remove the provisions of Section 29.3 of the Overlease and any portions of Section 10 of the Overlease to the extent they would require the Sublessor or the County to repair or reconstruct the Premises. In the event of damage and destruction to, as provided under Section 10 of the Overlease, or a taking of (under eminent domain, as provided under Section 29 of the Overlease, or otherwise), the Premises, the duties and obligations of the County and the Sublessee pursuant to the County APA shall remain in full force and effect, to the extent performance under the County APA is not rendered impossible by the damage and destruction to, or taking under eminent domain of, the Premises.

(b) Sublessee Rights and Obligations. All the rights and obligations conferred and imposed by the Overlease upon Sublessor, as lessee under the Overlease, are hereby conferred and imposed upon Sublessee and accepted and assumed by Sublessee with respect to the Premises, except as otherwise expressly set forth in this Sublease. Sublessee shall, duly, fully and strictly keep, observe and perform each and every term and covenant on Sublessor's part to be observed and performed as lessee under the Overlease, except as such terms and covenants are expressly modified by the terms of this Sublease. Notwithstanding the anything to the contrary in this Sublease, Sublessee shall not: (i) take any action or fail to take any action which is or would be inconsistent with the terms of the Overlease, (ii) do or permit to be done anything prohibited to Sublessor as the Lessee under the Overlease, or which would constitute, with or without the giving of notice or the passage of time, or both, a default under the Overlease, or (iii) take any action, fail to take any action, or do or permit anything which would result in any additional cost or liability to Sublessor as Lessee under the Overlease. Also notwithstanding anything to the contrary in this Sublease, Sublessor shall have no liability for the acts or failure to act of the County under the Overlease, but Sublessor shall use its commercially reasonable efforts to require the County to fully perform and discharge its obligations set forth in the Overlease. Any inconsistency between the Overlease and this Sublease which relates to obligations of, or restrictions on, Sublessee shall be resolved in favor of that obligation which is more onerous to Sublessee or that restriction which is more restrictive of Sublessee, as the case may be, and such obligations and restrictions contained in the Sublease and Overlease shall be read as cumulative except to the extent inconsistent. In the event of any other inconsistency

between the Overlease and this Sublease, the terms of this Sublease shall control between Sublessor, Sublessee, and the County.

(c) County Obligations. Sublessor shall not be obligated to perform and shall not be liable for the performance by the County of any of the obligations of the County under the Overlease. Without limiting the generality of the foregoing, Sublessor shall have no obligation to render any services to Sublessee in or to the Premises, to construct any improvements or make any alterations on the Premises, nor shall Sublessor have any obligation to repair or restore the Premises following a casualty or condemnation. Sublessor shall not be liable with respect to any representations or warranties of the County contained in the Overlease, nor shall Sublessor be deemed to have made any representations or warranties to Sublessee by virtue of the incorporation of the Overlease into this Sublease. Sublessee shall have no claim against Sublessor by reason of any default on the part of the County, and Sublessee hereby waives and relinquishes any and all such claims Sublessee might have, whether known or unknown, matured or contingent, foreseeable or unforeseeable. In furtherance of the foregoing, Sublessee shall not make any claim against Sublessor for any damages which may arise by reason of any act or omission, whether intentional or negligent, of the County. Nothing in this Sublease shall be deemed to authorize Sublessee to represent Sublessor in connection with any suit or claim by or against the County. Sublessee agrees to look solely to the County for the furnishing of any services to which Sublessee may be entitled under the Overlease. Provided Sublessee is not in default under this Sublease, Sublessor agrees to cooperate with Sublessee and to use reasonable efforts (without, however, incurring any liabilities or expenses, other than those liabilities or expenses which Sublessee unconditionally agrees in writing to reimburse) to enforce, for the benefit of Sublessee, the obligations of the County to Sublessor under the Overlease insofar as they relate to the Premises. All reasonable out-of-pocket expenses of Sublessor arising from Sublessor's action taken pursuant to this subsection shall be reimbursed by Sublessee as Additional Rent, which shall be due within ten (10) days after receipt of written demand therefor in reasonable detail. The foregoing covenant shall not be deemed to require that Sublessor commence legal action to enforce the obligations of the County. The County is a Party to this Sublease for the limited purposes stated in this Sublease.

(d) Elections and Consents Reserved to Sublessor. The terms of this Sublease shall not include the discretionary elections and consents provided to Sublessor, as lessee, under the Overlease. The right to make all such elections and provide all such consents shall be reserved to Sublessor, and Sublessor shall in no event be liable to Sublessee for any loss or damage occasioned by or resulting from any elections made or not made or consents given or not given by Sublessor, as lessee under the Overlease. In the event of any inconsistency between the terms and provisions of this subsection and the other terms and provisions of this Sublease, the terms and provisions of this subsection shall control.

(e) Sublease Subject and Subordinate to Overlease. This Sublease, at all times, shall be subject and subordinate to the terms and conditions of the Overlease, and all matters to which the Overlease is subject or subordinate.

8. Repairs and Maintenance. Sublessee, during the Term of this Sublease, shall, at its sole cost and expense: (a) make all repairs and maintenance as shall be reasonably necessary to keep the Sublease Premises in good condition, working order and repair, normal wear, loss by fire or other casualty not caused by Sublessee or the Sublessee Parties, and condemnation excepted; and (b) make all other repairs and maintenance as shall be required of Sublessor under the Overlease. Sublessee further agrees that all damage or injury of whatever nature done to the Premises by the Sublessee, Sublessee Parties (as that term is defined below), or by any other person in or upon the Premises (except the Sublessor, and Sublessor's affiliates, agents, servants and employees) shall be repaired by Sublessee at its sole cost and expense.

9. Alterations. Sublessee shall not make any alterations or improvements to the Premises unless Sublessee shall have first obtained the prior written consent of Sublessor, which consent shall not be unreasonably withheld, but shall be expressly conditioned upon County consent. Any alterations or improvements permitted under this Sublease shall be: (a) made by Sublessee in compliance with the relevant provisions of the Overlease; (b) made by Sublessee in a good, workmanlike and lien-free manner using new materials; and, (c) upon completion, such alterations and improvements shall remain a part of the Premises and be surrendered along with the rest of the Sublease Premises at the expiration or earlier termination of the Term of this Sublease, all without any compensation to Sublessee therefor, and all such alterations and improvements shall be such that they shall not reduce the fair market value of the Sublease Premises upon completion.

10. Indemnity.

(a) Non-Liability. Neither Sublessor nor the County shall be liable for any loss, damage, injury (including death) to person or property, liability, cost, expense, claim, demand or cause of action of any kind or character to any person or property arising from, related to or caused by (i) use, occupation, operation, maintenance, repair, or construction of the Premises or the Facility (whether or not in compliance with the terms of this Sublease) including any loss, damage, injury, liability, cost, expense, claim, demand or cause of action arising from, related to, or caused by (1) any use of the Premises or any part thereof, (2) any defect in the condition, design, construction of or material in the improvements located on the Premises, (3) any act or omission of Sublessee, Sublessee's affiliates or its or their, agents, servants, employees, patients, guests, or invitees (each a "Sublessee Party," and collectively the "Sublessee Parties"), (4) any accident on the Premises or any fire or other casualty thereon, except, as it relates to Sublessor only, to the extent the same is the result of the gross negligence or willful misconduct of Sublessor, (5) Sublessee's failure to maintain the Premises in safe condition, (6) any accident off the Premises caused by acts or occurrences on the Premises, (7) any act or failure to act by Sublessor in enforcing this Sublease, (8) any violation or alleged violation by any Sublessee Party of any law, rule, regulation,

ordinance, or the like, (9) any physical condition affecting the Premises, except, as it relates to Sublessor only, to the extent the same is the result of the gross negligence or willful misconduct of Sublessor, or (10) any work of design, construction, engineering or other work with respect to the Premises provided or performed by or for Sublessor or County before the Commencement Date; or (ii) the breach by Sublessee of any of its obligations under this Sublease; or (iii) any speculative, consequential, collateral, special, punitive, or indirect damages (collectively "Claims"). Sublessee, as a material part of the consideration of this Sublease, waives on its behalf all claims and demands against Landlord for any such Claims.

(b) Indemnification of Sublessor and County. Sublessee shall indemnify, defend (by counsel chosen by Sublessee and reasonably acceptable to Sublessor) and hold Sublessor, the County and the affiliates, employees, officers, directors, agents, or representatives of either of them (individually and collectively, the "Indemnified Parties") harmless from and against any and all costs, claims, actions, damages, demands, expenses (including, without limitation, reasonable attorneys' and consultants' fees), injuries (including death) to person or property, judgments, settlements, liabilities, penalties, losses, suits, or causes of action of any kind or character (individually and collectively, "Losses") suffered, sustained, or incurred, directly or indirectly, by any of the Indemnified Parties arising from, related to, or caused (whether arising, related or caused directly or indirectly) by: (i) use, occupation, operation, maintenance, repair, or construction of the Premises or the Facility during the Term (whether or not in compliance with the terms of this Sublease), including, without limitation, (1) any use of the Premises or any part thereof, (2) any act or omission of Sublessee, or any Sublessee Party, (3) any accident on the Premises or any fire or other casualty thereon, (4) Sublessee's failure to maintain the Premises in a safe condition, (5) any accident off the Premises caused by acts or occurrences on the Premises, except, as it relates to Sublessor only, to the extent the same is the result of the gross negligence or willful misconduct of Sublessor, (6) any violation or alleged violation by any Sublessee Party of any law, rule, regulation, ordinance, or the like, or (7) any physical condition affecting the Premises, except, as it relates to Sublessor only, to the extent the same is the result of the gross negligence or willful misconduct of Sublessor; or (ii) the breach by Sublessee of any of its obligations under this Sublease. The scope of this indemnification shall, at Sublessor's option, include, but not be limited to, defending or resisting, with attorneys reasonably satisfactory to Sublessor, any action, suit, claim, demand, or proceeding that may be filed, instituted, or brought in connection with any Losses. The indemnification obligations contained in this section are in addition to and not in lieu of the indemnification obligations which Sublessee incurs by virtue of the incorporation by reference herein of the Overlease.

11. Insurance.

(a) Insurance Required by Overlease. Sublessee shall carry, at its sole cost and expense, the insurance that Sublessor is required to maintain pursuant to Section 9 of the Overlease and as may appear elsewhere in the Overlease, upon the same terms and

conditions set out therein. Any reference to "Lessee" in Section 9 of the Overlease shall be read to refer to "Sublessee" and any reference to "County" or "Lessor" in Section 9 of the Overlease shall be read to refer to "Sublessor and County." Section 9.1(b)(v) of the Overlease shall not apply to Sublessee.

(b) Additional Insurance. In addition to the insurance required under subsection (a), above:

(i) Fire and Extended Coverage Insurance. Throughout the Term, Sublessee shall purchase and maintain, for the mutual benefit of Sublessor, Sublessee, and the County, insurance policies insuring against the following risks with respect to the Premises and all improvements located thereon:

- (1) Loss or damage by fire, vandalism and malicious mischief, extended coverage perils commonly known as special form perils, sinkhole and windstorm in an amount not less than the insurable value on a replacement cost basis (as defined below) and including a building ordinance coverage endorsement and without deduction for depreciation;
- (2) Loss or damage by explosion of steam boilers, pressure vessels or similar apparatus, now or hereafter installed in the Premises, if any, in such limits with respect to any one accident as may be reasonably requested by Sublessor from time to time;
- (3) Flood (when and if the Premises is located in whole or in part within a designated 100-year flood plain area) and such other hazards and in such amounts as may be customary for comparable properties in the area; and

(ii) Public Liability Insurance. Throughout the Term, Sublessee shall purchase and maintain, for the benefit of Sublessor, Sublessee, and the County, commercial general or comprehensive general public liability insurance against claims and liability for personal injury, death or property damage arising from the use, occupancy, misuse or condition of the Premises or adjoining areas or ways, providing protection (1) of at least One Million Dollars (\$1,000,000.00) combined single limit each occurrence for bodily injury or death and property damage resulting from any one accident or occurrence, (2) of at least Three Million Dollars (\$3,000,000.00) in the aggregate, and (3) with umbrella liability insurance with limits of liability of not less than Fifteen Million Dollars (\$15,000,000.00) per occurrence that applies on a "following form" basis and is in excess of the underlying commercial general liability insurance and automobile liability insurance required by this Sublease.

(iii) Workers' Compensation Insurance. Throughout the Term, Sublessee shall maintain adequate workers' compensation coverage and any other insurance coverage required by law, rule, or regulation for all persons employed by Sublessee or any affiliate of Sublessee on the Premises.

(iv) Professional Liability Insurance. Throughout the Term, Sublessee shall purchase and maintain for the benefit of Sublessor, Sublessee, and the County, professional liability insurance providing protection of at least One Million Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) in the aggregate.

(v) Automobile Liability Insurance. Throughout the Term, Sublessee shall purchase and maintain, for the benefit of Sublessor, Sublessee, and the County, automobile liability insurance against claims and liability from personal injury, death or property damage arising from the operation of vehicles used in the scope of employment by the employees of Sublessee and any affiliate of Sublessee, providing protection of at least One Million Dollars (\$1,000,000) combined single limit each occurrence for bodily injury or death and property damage resulting from any one accident or occurrence, or Three Million Dollars (\$3,000,000.00) in the aggregate.

(vi) Additional Coverage. In addition to the insurance described above, at any time during the Term, Sublessee may procure and maintain any insurance not required by this Overlease, but all such insurance shall be subject to all provisions hereof pertaining to insurance and shall be for the mutual benefit of Sublessor, Sublessee, and the County.

(vii) Policy Form, Content, Insurer. All insurance policies required herein shall be carried only in insurance companies licensed to do business in North Carolina, with an A.M. Best rating of at least A-VII, and otherwise reasonably acceptable to Sublessor. All such policies shall name Sublessor and the County as additional insureds, and all property and loss of rental type insurance policies shall name Sublessor as loss payee thereunder. Each insurance policy shall be non-assessable and shall contain language to the effect that (1) any loss shall be payable notwithstanding any act or negligence of Sublessor or the County that might otherwise result in the forfeiture of the insurance, (2) the insurer waives the right of subrogation against Sublessor, the County and their agents and representatives, (3) the policy is primary and noncontributing with any insurance that may be carried by Sublessor or the County, (4) the policy cannot be canceled or materially changed except after thirty (30) days' prior written notice by the insurer to Sublessor, (5) any loss adjustment shall require the written consent of Sublessor and Sublessee, and (6) shall contain contractual liability and indemnity coverage and shall recognize this Sublease as an insured contract. Sublessee's liability shall be primary and not be limited by that which is recoverable by insurance.

(viii) Delivery of Policies. Before the Commencement Date, Sublessee shall furnish Sublessor with copies of all policies of insurance required under this Sublease, or with certificates evidencing such insurance, together with proof of payment of the premiums therefor. At least thirty (30) days prior to the expiration

of each insurance policy required hereunder, Sublessee shall deliver to Sublessor copies of or certificates for the renewal of such insurance policy, together with proof of payment of the premium for such renewal policy.

(ix) Replacement Cost. The amount of the insurance coverage required to be maintained by Sublessee pursuant to this Sublease shall be sufficient to prevent either Sublessor or Sublessee from becoming a coinsurer under the provisions of the policies. As used in this Sublease, replacement cost means the actual replacement cost of the insured property from time to time with new materials and workmanship of like kind and quality.

(x) Failure to Maintain Insurance. If Sublessee fails to procure or maintain any insurance required hereunder, Sublessor shall have the right, but not the obligation, to procure and maintain such insurance on Sublessee's account, at Sublessor's election and without any notice to Sublessee. Sublessor shall give Sublessee prompt written notice of the payment of any insurance premiums by Sublessor, stating the amounts paid and the names of the insurer or insurers under such insurance policies. Any sums paid by Sublessor hereunder shall be immediately due and payable as Additional Rent.

(c) Waiver of Claims. Sublessee hereby waives any claim which may arise against Sublessor or the County or the affiliates, employees, officers, directors, agents, or representatives of either of them for any loss, or damage to any of Sublessee's property or the property of any Sublessee Party, located upon or constituting a part of the Premises, or for any liability relating to personal injury or death in or about the Premises, which loss, damage or liability is covered by insurance policies. Inasmuch as the aforesaid waiver will preclude the assignment of any such claim by way of subrogation or otherwise to an insurance company or any other person, Sublessee agrees to give each insurance company which has issued fire and extended coverage, personal property, property or public liability coverage, written notice of the terms of said waiver immediately and shall have said insurance policies properly endorsed with a waiver of subrogation. Evidence of said waiver shall be forwarded to Sublessor within thirty (30) days after the execution of this Sublease

(d) Cooperation. In the event of loss or damage, Sublessor shall reasonably cooperate with Sublessee, at Sublessee's cost and expense, to secure the optimal recovery from the insurer(s).

(e) Sublessee Personal Property. Sublessee acknowledges and agrees that it is solely responsible for any damage to its personal property from any cause whatsoever, and Sublessee waives and releases any and all rights it may have against Sublessor or County for such damage, except, as it relates to Sublessor only, to the extent the same is the result of the gross negligence or willful misconduct of Sublessor.

12. Assignment and Subletting. Sublessee will not sublet the Premises, or any portion thereof, or assign this Sublease in whole or in part, for collateral purposes or otherwise, or permit

use or occupancy of the Premises, or any portion thereof, by others without the prior written consent of both Sublessor and County in each instance being first obtained pursuant to applicable statutory and regulatory requirements.

13. Sublessee Default and Sublessor Remedies. In the event Sublessee shall breach or default in the fulfillment of its covenants, agreements and obligations under this Sublease, Sublessor shall have available to it all remedies available to the County under the Overlease in the event of a like default on the part of the Sublessor as lessee thereunder, and in addition Sublessor shall have all other remedies available to Sublessor at law or in equity. In addition to the foregoing, and not in limitation thereof, Sublessor shall have the right, but shall not be obligated, to cure any breach or default of Sublessee under this Sublease, or under the Overlease, and all costs incurred by Sublessor in connection with the curing of any such breach or default shall become immediately due and payable to Sublessor as Additional Rent. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

14. Interest. To the extent that any Rent due hereunder is not paid when due, the past due amount shall accrue interest at the lesser of twelve percent (12%) per annum or the highest non-usurious amount permitted by law from the first day the same becomes past due through the date the same is paid in full together with interest thereon as required hereby. Any payment default shall not be deemed to have been cured unless and until all accrued and unpaid interest due thereon is paid in full together with all outstanding amounts due hereunder.

15. Surrender. Upon expiration of the Term, or if, at any time prior to expiration of the Term, this Sublease shall be terminated as a result of Sublessee's default, or otherwise, Sublessee shall immediately quit and surrender up to Sublessor possession of the Premises in broom-clean condition and in good and working order and repair, ordinary wear and tear excepted, and Sublessee shall remove all of its property therefrom. To the extent Sublessee fails to remove all of its property from the Premises on or before the expiration or earlier termination of the Term, then such of its property remaining thereon thereafter shall be conclusively deemed to have been abandoned by Sublessee. Sublessee shall not be entitled to hold over pursuant to Section 24 of the Overlease or otherwise without first receiving the advance consent of Sublessor, which consent shall be in Sublessor's sole discretion. Sublessee's obligation to observe and perform the covenants set forth in this section shall survive the expiration or termination of this Sublease.

16. Notices. All notices, requests, demands, waivers, consents, approvals, and other communications under this Sublease shall be in writing and shall be deemed given when delivered personally (with signed receipt), or by nationally recognized courier service (receipt requested), or by confirmed facsimile transmission, or three (3) days after mailing by registered or certified U.S. Mail (return receipt requested), postage prepaid, to the parties at the following addresses (or at such other address for a party as shall be specified by like notice; provided that notices of a change of address shall be effective only upon receipt thereof):

To Sublessor:

Novant Health, Inc.
2085 Frontis Plaza Boulevard
Winston-Salem, NC 27103
Attn: Paul Grosswald
Fax: (336) 277-9440

with copy to:

Novant Health, Inc.
2085 Frontis Plaza Boulevard
Winston-Salem, NC 27103
Attn: General Counsel
Fax: (336) 277-9440

To Forsyth County:

Forsyth County Government Center
201 N. Chestnut Street, Winston-Salem, N.C. 27101
Attn: County Manager of Forsyth County
Tel: (336) 703-2020
Fax: (336) 727-8446

with copy to:

Forsyth County Attorney
Forsyth County Government Center
201 N. Chestnut Street, Winston-Salem, N.C. 27101
Tel: (336) 703-2030
Fax: (336) 727-8241

To Sublessee:

Liberty Commons Nursing and Rehabilitation Center of Springwood, LLC
2334 South 41st Street
Wilmington, NC 28403
Attn: Jeffrey S. Wilson & Yoel Balter
Tel: (910) 592-5400
Fax: (910) 815-3114

17. Miscellaneous.

(a) This Sublease constitutes the entire agreement of the Parties relative to the subject matter hereof, and all prior negotiations, conversations, representations, agreements and understandings are specifically merged herein and superseded hereby; provided, however, the County APA and the Asset Purchase Agreement between Sublessee or its affiliate and Sublessor or its affiliate with respect to certain assets useful to the Facility, may contain provisions relevant to this Sublease as between the parties to those certain Asset Purchase Agreements. This Sublease may be modified only by written instrument executed by the Parties.

(b) TIME IS OF THE ESSENCE OF THIS SUBLEASE.

(c) This Sublease shall be construed in accordance with and governed by the laws of the State of North Carolina, without regard to the conflicts of laws provisions thereof.

(d) The paragraph headings used in this Sublease have been inserted for convenience of reference only and should not be construed to limit or restrict the terms and provisions, covenants and conditions hereof. When the context requires, any gender includes all others, the singular number includes the plural, and vice-versa.

(e) If any term or provision of this Sublease or the application thereof to any person or circumstance shall, to any extent, be deemed invalid or unenforceable, the remainder of this Sublease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Sublease shall be valid and be enforced to the fullest extent permitted by law. To that end, each of the terms and provisions of this Sublease are hereby declared to be severable.

(f) In the event either Party retains the services of an attorney to enforce any provision of this Sublease, the non-prevailing party shall be obligated to reimburse the other Party for its reasonable attorneys' and paralegals' fees and expenses actually incurred in connection therewith.

(g) The Parties acknowledge and agree that neither has engaged the services of or is liable to any real estate agent, broker, finder, or the like for any brokerage or finder's fee, commission, or other similar liability with respect to this Sublease. Sublessor and Sublessee each agree to indemnify, defend and hold the other harmless against all losses, liabilities and expenses, including, without limitation, reasonable attorneys' and paralegals' fees and costs, suffered by either Party due to a breach of the foregoing representation, covenant and warranty.

(h) This Sublease may be executed in two or more counterparts, each of which shall be deemed an original and which together shall constitute one and the same instrument.

(i) The Parties, with the advice and participation of their counsel, jointly participated in the negotiation and preparation of this Sublease, and they agree that no provision of this Sublease shall be construed against or interpreted to the disadvantage of either Sublessor or Sublessee by reason of such party's having or being deemed to have structured, written, drafted, or dictated such provision.

(j) Any provision to the contrary contained in this Sublease notwithstanding, Sublessee's obligations to indemnify Sublessor and County hereunder shall survive the expiration of the Term hereof or any earlier termination of this Sublease.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed and delivered this Sublease, under seal, as of the date first set forth above.

SUBLESSOR:

NOVANT HEALTH, INC.,
a North Carolina not-for-profit corporation

By: _____
Name: _____
Title: _____

SUBLESSEE:

LIBERTY COMMONS NURSING AND
REHABILITATION CENTER OF SPRINGWOOD, LLC,
a North Carolina limited liability company

By: _____
Name: _____
Title: _____

LESSOR-COUNTY:

FORSYTH COUNTY, NORTH CAROLINA,
a body politic and corporate in the State of North Carolina

By: _____
Name: _____
Title: _____

EXHIBIT A

The Overlease

[See Attached]

EXHIBIT B

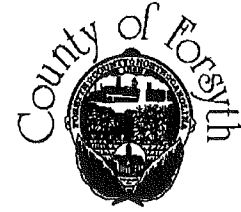
Schedule of Furniture, Fixtures, and Leasehold Improvements

[See Attached]

BOARD OF COMMISSIONERS

RICHARD V. LINVILLE
Chairman
DEBRA CONRAD
Vice Chair
WALTER MARSHALL
DAVID R. PLYLER
GLORIA D. WHISENHUNT
BILL WHITEHEART
EVERETTE WITHERSPOON

Agenda Summary



April 9, 2012 – Government Center – 6:00 P.M.

Pledge of Allegiance led by Commissioner Whiteheart

1.
 - A. **Public Hearing in Connection With the Financing of Additional Improvements to the Former Phillips Building for Use as Public Safety, Criminal Justice and Law Enforcement Facilities by the County**
 - B. **Resolution Making Certain Findings and Determinations Regarding the Proposed Financing of Additional Improvements to the Former Phillips Building for Use as Public Safety, Criminal Justice and Law Enforcement Facilities by the County and Requesting the Local Government Commission to Approve the Financing Arrangement**
 - C. **Resolution Approving and Authorizing the Execution and Delivery of a Second Supplemental Trust Agreement and Related Documents in Connection With the Financing of Additional Improvements to the Former Phillips Building for Use as Public Safety, Criminal Justice and Law Enforcement Facilities by the County**

After Paul Fulton, the County's Chief Financial Officer, summarized the financing of improvements to the new Public Safety, Criminal Justice and Law Enforcement Facility, Chairman Linville opened the public hearing. With no one coming forward to speak, Chairman Linville declared the public hearing closed.

Motion for Approval:
Second:
Unanimously Approved

Commissioner Whisenhunt
Commissioner Whiteheart

2. PUBLIC SESSION

Persons who wish to speak concerning items on this agenda, or who wish to speak about a matter relating to County Government (other than a public hearing matter on this agenda), should complete a speaker card and hand it to the Clerk before the meeting begins. It is not necessary to complete a card if you are going to speak about a public hearing matter on this agenda. The Chairman may limit the number of speakers on a topic relating to future

advertised public hearing matters. Speakers are limited to three (3) minutes each. The public session will be limited to 30 minutes.

No speaker cards

3. Amendment to 2007 Schools Capital Projects Ordinance (Ibrahim Elementary School Replacement Project)

Motion for Approval:
Second:
Unanimously Approved

Commissioner Plyler
Commissioner Whisenhunt

4. Amendment to 2009 Educational Facilities Capital Projects Ordinance

Motion for Approval:
Second:
Unanimously Approved

Commissioner Plyler
Vice Chair Conrad

5. Resolution Authorizing Execution of Necessary Documents to Receive Grant Funds from the Kate B. Reynolds Charitable Trust to Implement and Operate a Nurse Family Partnership Program at the Forsyth County Department of Public Health

Motion for Approval:
Second:
Unanimously Approved

Commissioner Whisenhunt
Commissioner Plyler

6. Ordinance Amending Chapter 3 of the Forsyth County Code Entitled, Air Quality Control, and Amending the Forsyth County Air Quality Technical Code

Motion for Approval:
Second:
Unanimously Approved

Commissioner Plyler
Commissioner Whisenhunt

7. Resolution Approving the Sublease of the Springwood Care Center and the Sale and Transfer of Its Skilled Nursing Beds and Related Equipment to Liberty Healthcare and the Construction of Two or More New Skilled Nursing Facilities in Forsyth County to House the 200 Beds by Liberty Healthcare

Motion for Approval:
Second:

Commissioner Plyler
Vice Chair Conrad

Approved by a vote of six (6) to one (1), with Commissioner Witherspoon voting in opposition to the motion.

8. Resolution Awarding Contract for Purchase of One Trailer Mounted Water Filtration System (Forsyth County Emergency Management Department)

Motion for Approval:
Second:
Unanimously Approved

Commissioner Whiteheart
Commissioner Whisenhunt

9. Resolution Requesting the North Carolina General Assembly to Reinstate the Original Appropriation Level of Education Lottery Funds to Counties for School Construction Costs

Motion for Approval:
Second:
Unanimously Approved

Commissioner Plyler
Commissioner Marshall

10. Reports:

A. Human Resources Report for Month of February 2012

**B. Report of North Carolina Property Tax Commission Order
- John H. & Donna M. Taylor – 11 PTC 385**

Motion to Receive Reports:
Second:
Unanimously Approved

Commissioner Plyler
Commissioner Whisenhunt

ADJOURNMENT

Motion to Adjourn:
Second:
Unanimously Approved
Approximate Time:

Commissioner Plyler
Commissioner Witherspoon

6:06 p.m.

**Assistance for Disabled Persons will be Provided with 48 hours Notification
to the Clerk to the Board at (336) 703-2020
Forsyth County Government Center, Winston-Salem, NC 27101**