

FORSYTH COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: NOVEMBER 10, 2014 AGENDA ITEM NUMBER: 13

SUBJECT: RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT CONSENTING TO A GROUND LEASE AND LEASEHOLD DEED OF TRUST ON A PORTION OF THE FORSYTH MEMORIAL HOSPITAL PROPERTY

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS: Recommend Approval

SUMMARY OF INFORMATION:

See attached

ATTACHMENTS: YES NO

SIGNATURE: *J. Dudley Watts, Jr.* DATE: November 6, 2014
COUNTY MANAGER

**RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT CONSENTING
TO A GROUND LEASE AND LEASEHOLD DEED OF TRUST ON A PORTION
OF THE FORSYTH MEMORIAL HOSPITAL PROPERTY**

WHEREAS, Novant Health, Inc. is the successor to Carolina Medicorp, Inc. and the current owner of 76.608 acres known as Forsyth Memorial Hospital Property, which was conveyed by Forsyth County to Carolina Medicorp, Inc. on January 31, 1984, for the operation of a community general hospital open to the public and free of discrimination; and

WHEREAS, under the terms of the deed from the County, Novant covenants and agrees that it will not create or cause any mortgage, deed of trust or other encumbrance on the hospital real property or any part thereof without the approval of Forsyth County; and

WHEREAS, the failure to comply with this provision of the deed could result in reversion of all ownership rights in the hospital property to the County; and

WHEREAS, Novant Health, Inc. entered into a 99-year Ground Lease with Liberty Healthcare Properties of the Oaks, LLC (“Liberty”) dated May 1, 2011, on a 5.363 acre portion of the hospital property for the operation of a skilled nursing facility; and Liberty now proposes to obtain a federally insured loan through the U.S. Department of Housing and Urban Development as a Leasehold Deed of Trust on the Ground Lease of the subject property and requests the consent of the County to the transactions by executing the attached Consent and Recognition Agreement; and

WHEREAS, 95% of the patients at the Liberty nursing facility are Forsyth County residents and Liberty has a policy against discrimination.

NOW, THEREFORE, BE IT RESOLVED that the Forsyth County Board of Commissioners hereby authorizes the Chairman and Clerk to the Board to execute, on behalf of Forsyth County, the Consent and Recognition Agreement for the benefit of Liberty Healthcare Properties of the Oaks, LLC consenting to the Ground Lease and Leasehold Deed of Trust on 5.365 acres of the Forsyth Memorial Hospital Property, subject to a pre-audit certificate thereon by the County Chief Financial Officer and approval as to form and legality by the County Attorney.

Adopted this the 10th day of November 2014.

Return to:
Wyrick Robbins Yates & Ponton LLP (CFL)
4101 Lake Boone Trail, Suite 300
Raleigh, North Carolina 27607

CONSENT AND RECOGNITION AGREEMENT

THIS CONSENT AND RECOGNITION AND ATTORNMENT AGREEMENT ("Agreement") is made effective as of the ____ day of _____, 2014 ("Effective Date") by and between Liberty Healthcare Properties of the Oaks, LLC, a North Carolina limited liability company, and its successors and assigns ("Liberty"), and Forsyth County, a political subdivision of the State of North Carolina ("Forsyth County") acting by and through its duly elected Board of County Commissioners.

RECITALS:

A. Novant Health, Inc., a non-profit North Carolina corporation ("Novant") is the owner of certain real property located in Forsyth County, North Carolina described on Exhibit A attached hereto and made a part hereof ("Property").

B. Liberty is the holder of a leasehold estate in the Property pursuant to that certain Ground Lease dated May 1, 2011 by and between Liberty and Novant ("Ground Lease"), a memorandum of which is recorded at Book 2999, Page 4325, Forsyth County Registry.

C. Liberty operates a licensed skilled nursing facility upon the Property (the "Approved Use") and intends to obtain government insured mortgage financing ~~and~~ through a loan in the amount of \$8,761,700.00 ~~from~~with Capital Funding, LLC, a Maryland limited liability company as lender ("Lender") and the United States Department of Housing and Urban Development ("HUD") as insurer, and in connection therewith shall execute a note and certain agreements, instruments, and documents as may be required by its Lender or HUDlender (collectively, "Loan Documents"), including without limitation a leasehold deedDeed of trustTrust encumbering the Ground Lease and Property ("Deed of Trust").

D. Forsyth County has agreed to recognize the Ground Lease, ~~and~~ the lien of the Deed of Trust and the Approved Use, and to grant non-disturbance to Liberty, Lender, HUD and their respective successors and ~~its~~ assigns, under the Loan Documents, on the terms and conditions hereinafter set forth.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned parties do hereby mutually covenant and agree as follows:

1. Recitals. The recitals above are true and accurate and are incorporated herein by this reference.
2. Consent to Ground Lease and Leasehold Deed of Trust. Forsyth County hereby consents to the Ground Lease, ~~and~~ the Deed of Trust and the Approved Use. Further, Forsyth County hereby confirms, represents and covenants that as of the Effective Date, the Ground Lease and Deed of Trust and the Approved Use are deemed ~~do not to~~ constitute a violation of the terms and conditions set forth in the Deed (hereinafter defined) including without limitation, any use restriction term or other condition that ~~would trigger~~ a right of re-entry or termination or a reversion of title as set forth in the Deed.
3. Non-Disturbance; Recognition. Forsyth County agrees that if any action or proceeding is taken or commenced by Forsyth County against Novant, its successors or assigns (a "Reverter Action") for the termination or re-entry onto the Property pursuant to its rights and the terms set forth in the Deed recorded on January 31, 1984 at Book 1427, Page 1568, Forsyth County Registry ("Deed"), none of Liberty, Lender, nor HUD shall ~~not~~ be named as a party therein unless such joinder shall be required by law; provided, however, Forsyth County agrees that in any such Reverter Action Forsyth County such joinder shall not seek or secure result in the termination of the Ground Lease or Deed of Trust, nor ~~or~~ disturb Liberty's possession or use of the Property, ~~and The~~ reversion from Novant, its successors or assigns to Forsyth County of fee of title to the Property in any such action or proceeding to Forsyth County shall be accomplished ~~made~~ subject to (i) all rights of Liberty under the Ground Lease and (ii) all rights of Lender Cap Funding and HUD, and their respective successors and assigns, under the Deed of Trust and other Loan Documents, including any purchaser at foreclosure of the Deed of Trust, provided Liberty or its successor as tenant under the Ground Lease remains in full compliance with the terms, covenants and conditions thereof.
4. Attornment. Liberty agrees that if Forsyth County shall become the owner of the Property by reason of Forsyth County's exercise of rights of termination and re-entry as provided for in the Deed, Liberty shall attorn to and recognize the County of Forsyth as the property owner ~~lessor~~ under the Ground Lease, and the Ground Lease shall not be terminated or affected thereby but shall continue in full force and effect, provided Liberty or its successor remains in full compliance with the terms, covenants and conditions thereof.
5. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Forsyth County:

Forsyth County Manager
Forsyth County Government Center
201 North Chestnut Street
Winston-Salem, NC 27101

With a copy to:

Formatted: Font: Not Bold

Forsyth County Attorney
Forsyth County Government Center
201 North Chestnut Street
Winston-Salem, NC 27101

If to Liberty:

Liberty Healthcare Properties of the Oaks, LLC
2334 41st Street
Wilmington, NC 28403
Attn: Yoel Balter, General Counsel

With a copy to:

Wyrick Robbins Yates & Ponton LLP
4101 Lake Boone Trail, Suite 300
Raleigh, NC 27607
Attn: Carolyn F. Lang, Esq.

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 5 the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in New York, New York. Any party by notice to the other parties may designate additional or different addresses for subsequent notices or communications.

6. Miscellaneous

- (a) Binding Agreement. This Agreement shall be binding upon and inure to the benefit of Forsyth County, Liberty, LenderCapFunding and HUD.
- (b) Definitions. The term "LenderCapFunding" as used herein shall include the successors and assigns of LenderCapFunding. The term "Novant" as used herein shall mean and include the present landlord under the Ground Lease and such landlord's predecessors and successors in interest under the Lease. The term "Property" as used herein shall mean the real property described in Exhibit A and the estates therein encumbered by the Deed of Trust. The term "Liberty" as used herein shall mean and include the present tenant under the Ground Lease and its permitted successors in interest under the Ground Lease.
- (c) No Oral Modifications. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto.
- (d) Governing Law. This Agreement shall be deemed to be a contract entered into pursuant to the laws of the state where the Property is located and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the state where the Property is located.

- (e) Inapplicable Provisions. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.
- (f) Duplicate Originals: Counterparts. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement.
- (g) Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.
- (h) Recording. This Agreement shall be recorded in the office of the Register of Deeds of Forsyth County.

[Signatures appear on the following page(s)]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement effective as of the date first above written.

LIBERTY HEALTHCARE PROPERTIES OF THE OAKS, LLC

By: Liberty Real Properties, LLC, its manager

By: _____
Ronald B. McNeill, its manager

STATE OF NORTH CAROLINA

COUNTY OF _____

I certify that the following person(s) personally appeared before me this day, each acknowledging that he or she voluntarily signed the foregoing document for the purpose stated therein: Ronald B. McNeill, Manager of Liberty Real Properties, LLC, Manager of Liberty Healthcare Properties of the Oaks, LLC

Date: _____, 2014

Official Signature of Notary

Insert name of Notary, printed or typed

My Commission Expires: _____

(OFFICIAL SEAL)

FORSYTH COUNTY

Attest:

By: _____
Name: _____
Title: Chairman of the Board of
County Commissioners

STATE OF NORTH CAROLINA

COUNTY OF _____

I certify that _____ personally appeared before me this day, acknowledging that he/she is the Clerk to the Board of Commissioners of Forsyth County, and that by authority duly given and as the act of the said Board of Commissioners, the foregoing instrument was signed in its name by its Chairman, sealed with its Common Seal, and attested by him/herself as its Clerk.

Witness my hand and notarial seal, this the ____ day of _____, 2014

Official Signature of Notary

Insert name of Notary, printed or typed

My Commission Expires: _____

(OFFICIAL SEAL)

EXHIBIT A

That certain 5.363 acre, more or less, tract identified on Minor Subdivision Plat entitled "Lease Area for: Novant Health, Inc." prepared by W. Max Brady, Jr., Brady Surveying Company, P.A., and recorded in Plat Book 58, Page 143 of the Forsyth County Register of Deeds Office.

Return to:
Wyrick Robbins Yates & Ponton LLP (CFL)
4101 Lake Boone Trail, Suite 300
Raleigh, North Carolina 27607

CONSENT AND RECOGNITION AGREEMENT

THIS CONSENT AND RECOGNITION AND ATTORNMENT AGREEMENT (“Agreement”) is made effective as of the ____ day of _____, 2014 (“Effective Date”) by and between Liberty Healthcare Properties of the Oaks, LLC, a North Carolina limited liability company, and its successors and assigns (“Liberty”), and Forsyth County, a political subdivision of the State of North Carolina (“Forsyth County”) acting by and through its duly elected Board of County Commissioners.

RECITALS:

- A. Novant Health, Inc., a non-profit North Carolina corporation (“Novant”) is the owner of certain real property located in Forsyth County, North Carolina described on Exhibit A attached hereto and made a part hereof (“Property”).
- B. Liberty is the holder of a leasehold estate in the Property pursuant to that certain Ground Lease dated May 1, 2011 by and between Liberty and Novant (“Ground Lease”), a memorandum of which is recorded at Book 2999, Page 4325, Forsyth County Registry.
- C. Liberty operates a licensed skilled nursing facility upon the Property (the “Approved Use”) and intends to obtain government insured mortgage financing through a loan in the amount of \$8,761,700.00 from Capital Funding, LLC, a Maryland limited liability company as lender (“Lender”) and the United States Department of Housing and Urban Development (“HUD”) as insurer, and in connection therewith shall execute a note and certain agreements, instruments, and documents as may be required by its Lender or HUD (collectively, “Loan Documents”), including without limitation a leasehold deed of trust encumbering the Ground Lease (“Deed of Trust”).
- D. Forsyth County has agreed to recognize the Ground Lease, the lien of the Deed of Trust and the Approved Use, and to grant non-disturbance to Liberty, Lender, HUD and their respective successors and assigns, on the terms and conditions hereinafter set forth.

A G R E E M E N T:

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned parties do hereby mutually covenant and agree as follows:

1. Recitals. The recitals above are true and accurate and are incorporated herein by this reference.
2. Consent to Ground Lease and Leasehold Deed of Trust. Forsyth County hereby consents to the Ground Lease, the Deed of Trust and the Approved Use. Further, Forsyth County hereby confirms, represents and covenants that as of the Effective Date, the Ground Lease and Deed of Trust and the Approved Use are deemed not to constitute a violation of the terms and conditions set forth in the Deed (hereinafter defined) including without limitation, any use restriction term or other condition that triggers a right of re-entry or termination or a reversion of title as set forth in the Deed.
3. Non-Disturbance; Recognition. Forsyth County agrees that if any action or proceeding is taken or commenced by Forsyth County against Novant, its successors or assigns (a “**Reverter Action**”) for the termination or re-entry onto the Property pursuant to its rights and the terms set forth in the Deed recorded on January 31, 1984 at Book 1427, Page 1568, Forsyth County Registry (“**Deed**”), none of Liberty, Lender, nor HUD shall be named as a party therein unless such joinder shall be required by law; provided, however, Forsyth County agrees that in any such Reverter Action Forsyth County shall not seek or secure the termination of the Ground Lease or Deed of Trust, nor disturb Liberty’s possession or use of the Property. The reversion from Novant, its successors or assigns to Forsyth County of fee title to the Property in any such action or proceeding shall be accomplished subject to (i) all rights of Liberty under the Ground Lease and (ii) all rights of Lender and HUD, and their respective successors and assigns, under the Deed of Trust and other Loan Documents, including any purchaser at foreclosure of the Deed of Trust, provided Liberty or its successor as tenant under the Ground Lease remains in full compliance with the terms, covenants and conditions thereof.
4. Attornment. Liberty agrees that if Forsyth County shall become the owner of the Property by reason of Forsyth County’s exercise of rights of termination and re-entry as provided for in the Deed, Liberty shall attorn to and recognize the County of Forsyth as the property owner under the Ground Lease, and the Ground Lease shall not be terminated or affected thereby but shall continue in full force and effect, provided Liberty or its successor remains in full compliance with the terms, covenants and conditions thereof.
5. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Forsyth County:

Forsyth County Manager
Forsyth County Government Center
201 North Chestnut Street
Winston-Salem, NC 27101

With a copy to:

Forsyth County Attorney
Forsyth County Government Center
201 North Chestnut Street
Winston-Salem, NC 27101

If to Liberty:

Liberty Healthcare Properties of the Oaks, LLC
2334 41st Street
Wilmington, NC 28403
Attn: Yoel Balter, General Counsel

With a copy to:

Wyrick Robbins Yates & Ponton LLP
4101 Lake Boone Trail, Suite 300
Raleigh, NC 27607
Attn: Carolyn F. Lang, Esq.

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 5 the term “Business Day” shall mean a day on which commercial banks are not authorized or required by law to close in New York, New York. Any party by notice to the other parties may designate additional or different addresses for subsequent notices or communications.

6. Miscellaneous

- (a) Binding Agreement. This Agreement shall be binding upon and inure to the benefit of Forsyth County, Liberty, Lender and HUD.
- (b) Definitions. The term “Lender” as used herein shall include the successors and assigns of Lender. The term “Novant” as used herein shall mean and include the present landlord under the Ground Lease and such landlord’s predecessors and successors in interest under the Lease. The term “Property” as used herein shall mean the real property described in Exhibit A and the estates therein encumbered by the Deed of Trust. The term “Liberty” as used herein shall mean and include the present tenant under the Ground Lease and its permitted successors in interest under the Ground Lease.
- (c) No Oral Modifications. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto.
- (d) Governing Law. This Agreement shall be deemed to be a contract entered into pursuant to the laws of the state where the Property is located and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the state where the Property is located.
- (e) Inapplicable Provisions. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

- (f) Duplicate Originals: Counterparts. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement.
- (g) Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.
- (h) Recording. This Agreement shall be recorded in the office of the Register of Deeds of Forsyth County.

[Signatures appear on the following page(s)]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement effective as of the date first above written.

LIBERTY HEALTHCARE PROPERTIES OF THE OAKS, LLC

By: Liberty Real Properties, LLC, its manager

By: _____
Ronald B. McNeill, its manager

STATE OF NORTH CAROLINA

COUNTY OF _____

I certify that the following person(s) personally appeared before me this day, each acknowledging that he or she voluntarily signed the foregoing document for the purpose stated therein: Ronald B. McNeill, Manager of Liberty Real Properties, LLC, Manager of Liberty Healthcare Properties of the Oaks, LLC

Date: _____, 2014

Official Signature of Notary

Insert name of Notary, printed or typed

My Commission Expires: _____

(OFFICIAL SEAL)

FORSYTH COUNTY

Attest:

By: _____

Name: _____

Title: Chairman of the Board of
County Commissioners

STATE OF NORTH CAROLINA

COUNTY OF _____

I certify that _____ personally appeared before me this day, acknowledging that he/she is the Clerk to the Board of Commissioners of Forsyth County, and that by authority duly given and as the act of the said Board of Commissioners, the foregoing instrument was signed in its name by its Chairman, sealed with its Common Seal, and attested by him/herself as its Clerk.

Witness my hand and notarial seal, this the ____ day of _____, 2014

Official Signature of Notary

Insert name of Notary, printed or typed

My Commission Expires: _____

(OFFICIAL SEAL)

EXHIBIT A

That certain 5.363 acre, more or less, tract identified on Minor Subdivision Plat entitled "Lease Area for: Novant Health, Inc." prepared by W. Max Brady, Jr., Brady Surveying Company, P.A., and recorded in Plat Book 58, Page 143 of the Forsyth County Register of Deeds Office.