

AGREEMENT

THIS AGREEMENT (this "Agreement") is made and entered into effective as of the 22 day of May, 2012 (the "Effective Date") by and among **WAKEMED**, a North Carolina nonprofit corporation; **THE UNIVERSITY OF NORTH CAROLINA HEALTH CARE SYSTEM**, an affiliated enterprise of The University of North Carolina; **THE UNIVERSITY OF NORTH CAROLINA HOSPITALS AT CHAPEL HILL**, a component of UNCHCS (the UNC entities collectively shall be referred to as "UNCHCS"); **REX HEALTHCARE, INC.**, a North Carolina nonprofit corporation; and **REX HOSPITAL, INC.**, a North Carolina nonprofit corporation (the Rex entities collectively shall be referred to herein as "Rex") (each party hereinafter may be sometimes individually referred to as a "Party," and collectively referred to as the "Parties.")

Recitals:

A. The Parties have agreed to resolve current disputes and commit to various agreements in support of improved communications between the Parties, an ongoing relationship, including a commitment to address behavioral health needs in Wake County, a commitment to transparency in operations, and a commitment to principles of constructive collaboration in their future dealings.

B. In so doing, the Parties collectively have agreed upon certain principles upon which they base their agreements as summarized above, including the following:

(1) *Behavioral Health*

(a) The Parties together recognize and agree that Wake County presently has insufficient resources to provide all necessary and appropriate psychiatric, mental, and behavioral health services to residents of the local community;

(b) The closure of Dorothea Dix Hospital has resulted in increased demand for crisis and emergency department services for behavioral health patients, which has resulted in many North Carolina hospitals reporting very high utilization of emergency department services for patients with behavioral health crises;

(c) Wake County, the North Carolina Department of Health and Human Services and UNCHCS have completed an analysis of the behavioral health needs of Wake County, which revealed the need to improve crisis and emergency behavioral health services;

(d) Each Party desires to arrange for the provision of additional services to local residents in need of behavioral health services, both community and facility based;

- (e) The Parties together desire to provide adults, children, and seniors with an environment in which they can better access vital psychiatric, mental, and behavioral health resources with a goal to promote stability and life coping skills that will improve community stability;
- (f) WakeMed is currently the predominant provider of Medicaid and uncompensated care in Wake County, which includes monitoring, supervision, and protection of patients in need of psychiatric treatment and services in its emergency department;
- (g) UNCHCS is well qualified to participate in the development and operation of the behavioral health services needed by Wake County and the local community; and
- (h) It is in the Parties' interests, and in the interests of the local community, to arrange for the provision of sufficient psychiatric, mental, and behavioral health services, by collaborative agreement, in order to attempt to meet the needs of the local community and to carry out the commitments of each Party as part of its missions, and to promote the general health of the community.

(2) *Transparency in Operations*

- (a) It is in the public interest that organizations described under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") make public certain information regarding their operations, financial status, and governance, because such organizations are granted an exemption from federal income taxation; and
- (b) The Parties concur that the public interest in transparency in the operation of charitable health care entities is served if entities that are instrumentalities of the government and entities that are not instrumentalities of the government make such information public.

(3) *Constructive Collaboration*

- (a) The Parties have agreed to resolve current disputes and commit to various covenants and agreements set forth herein in support of an on-going relationship, including a commitment not to disparage each other; and
- (b) The Parties desire to govern their relationship during the term of this Agreement in accordance with the principles, covenants, and agreements set forth herein, and subject to the terms and conditions set forth herein.

C. The Parties have elected to reduce their overall agreement to writing as set forth in this Agreement.

NOW, THEREFORE, in consideration of the Recitals stated above, which Recitals are descriptive and not substantive provisions of this Agreement, the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties do hereby agree as follows:

ARTICLE 1

BEHAVIORIAL HEALTH

1.1 UNCHCS Responsibilities.

1.1.1 As part of its mission to improve the health of the citizens of North Carolina, UNCHCS will use its best efforts to undertake the efforts in this Article 1 to reduce the demand for emergency department services at Wake County hospitals and provide appropriate behavioral health services to the residents of Wake County. UNCHCS will use its best efforts to continue to partner with Wake County, Durham-Wake MCO, the North Carolina Department of Health and Human Services, and community organizations, including all licensed hospitals and Wake County community organizations providing behavioral health services.

1.1.2 In order to meet the behavioral health needs of the citizens of Wake County and reduce the burden of such patients on Wake County hospitals, UNCHCS shall develop and operate, or arrange for the operation of, the following facilities and services within Wake County, unless the Parties otherwise agree in writing due to a change in market conditions or community circumstances:

(a) Inpatient Psychiatric Facility. UNCHCS shall invest such sums as necessary, but in no event more than Thirty Million Dollars (\$30,000,000.00) to develop and operate a minimum of twenty-eight (28) inpatient psychiatric beds within Wake County. This facility shall provide emergency care and short-term inpatient psychiatric care and shall be open at all times. As promptly as feasible after execution of this Agreement, but in no event later than June 2013, UNCHCS shall in good faith apply for any necessary certificates, licenses, and/or permits necessary to plan, construct, and operate this inpatient psychiatric facility. If so approved, the facility: shall operate as a "24-hour facility" as that term is defined by N.C.G.S. § 122C-3(14)(g) and used in Chapter 122C; shall have the capacity to accept patients who are involuntarily committed under North Carolina law, specifically N.C.G.S. § 122C-261 *et seq.* and § 122C-281 *et seq.*; and shall be required to accept transfers of patients from all Wake County hospitals whenever the facility has the necessary resources to provide appropriate treatment for the individual. The Parties understand and agree that the necessary certificates, licenses, and/or permits required are subject to the approvals of various governmental entities not within the control of any Party.

(b) ACTT and Other Behavioral Health Services. UNCHCS shall invest Ten Million Dollars (\$10,000,000.00) over the next five (5) years to develop and operate an Assertive Community Treatment Team ("ACTT") service and other behavioral health services to decrease the unnecessary use of emergency room, crisis, and inpatient services within Wake County. The ACTT service, as defined by Division of Medical Assistance Clinical

Coverage Policy 8A, shall offer community-based treatment and support to adults who are homeless or at risk for homelessness, who abuse alcohol and drugs, and who have a history of incarceration or hospitalization. The ACTT program shall offer individuals professional support while they continue to live and work or volunteer in their community.

1.1.3 All services provided pursuant to this Article 1 will be operated for the betterment of the community and the benefit all hospitals in Wake County.

1.2 WakeMed Responsibilities. WakeMed shall participate actively in the planning for the development of the services outlined in this Article 1 and shall assist with the coordination of care among community services as these new services become operational. If reasonably requested by UNCHCS, WakeMed agrees to assist UNCHCS in obtaining any required certificates, permits, or licenses under Section 1.1.2(a). WakeMed agrees, if requested, to meet regularly with UNCHCS to discuss changes to, expansion of, and opportunities for improvement of any psychiatric, mental, and behavioral health services offered within Wake County by UNCHCS. In the event that market conditions or community needs change substantially, upon request by UNCHCS, WakeMed shall use good faith efforts to modify this Agreement to meet then-current community needs for psychiatric, mental, and behavioral health.

ARTICLE 2

TRANSPARENCY IN OPERATIONS

2.1 Public Disclosure Obligations.

2.1.1 UNCHCS and Rex agree that, during the term of this Agreement, it shall cause its related organizations described below to file such information with the Internal Revenue Service as such organizations would be required to report on Internal Revenue Service Form 990, or its successor form, including all relevant schedules (including such information relating to other components, subsidiaries, and affiliates of the filing organization as would be required by the Internal Revenue Service to be aggregated and reported on the annual information return of any Section 501(c)(3) entity required to file Form 990), as if such organizations are not subject to an exception to the requirement of filing such annual information returns. Such Forms 990 shall be filed consistent with Internal Revenue Service filing deadlines.

2.1.2 The Parties hereto acknowledge and agree that any legal or regulatory exceptions to disclosure of such information as described in Section 2.1.1 above that apply to WakeMed shall also apply to the disclosure obligation of UNCHCS and Rex organizations under this Article 2, it being the intent of the Parties that the obligations of UNCHCS and Rex under this Article 2 shall be equal to but not greater than those of WakeMed under the Internal Revenue of 1986, as amended (the "Code"), applicable Treasury Regulations, and binding published guidance from the Internal Revenue Service.

2.1.3 The Parties hereto further acknowledge and agree that UNCHCS and Rex may make such information public via any means permitted to organizations described under Section 501(c)(3) of the Code. The obligations stated under this Article 2 shall apply jointly and

severally to any component, subsidiary, or affiliate controlled by UNCHCS that is an organization described under Section 501(c)(3) of the Code, including Rex Healthcare, Inc.; Rex Hospital, Inc.; Chatham Hospital, Incorporated; Triangle Physician Network, LLC (if and when such entity receives its determination letter); and any future organization described under Section 501(c)(3) of the Code that is a component, subsidiary, or affiliate controlled by UNCHCS; provided, however, the obligations stated under this Article 2 shall not apply to state entities subject to public audit and the public records law.

2.2 Public Disclosure Obligations of WakeMed. WakeMed agrees that, during the term of this Agreement, WakeMed shall comply with those provisions of the Code, applicable Treasury Regulations, and binding published guidance from the Internal Revenue Service that relate to public disclosure of its annual information returns.

ARTICLE 3

CONSTRUCTIVE COLLABORATION

3.1 General Conduct Proscribed. Except as otherwise may be required by law or as may be necessary in the ordinary course of any legal proceeding in a tribunal of competent jurisdiction, during the term of this Agreement no Party shall authorize its employees, officers, directors, agents, or representatives to make any public statement in any forum, whether in written, oral or electronic form:

3.1.1 Criticizing or demeaning any other Party with respect to the merger, sale or disposition of any asset, affiliate or unit of any other Party; the growth or expansion of operations by any Party (including, without limitation, acquisitions, affiliations, joint ventures, management arrangements, or similar arrangements); the following practices or activities of any Party: strategic planning, payment mechanisms, revenue or funding sources, research grants, appropriations, funding arrangements between affiliated entities, and employee compensation or benefits; the provision of charity or indigent care by any Party; any Party's education and research missions; the quality of health care provided by any Party; or the "transparency" of the structure or business operations of any Party;

3.1.2 Criticizing or demeaning the executive leadership, governing board, or management of any other Party, or any individual member thereof, with respect to the merger, sale or disposition of any asset, affiliate or unit of any other Party; the growth or expansion of operations by any Party (including, without limitation acquisitions, affiliations, joint ventures, management arrangements, or similar arrangements); the following practices or activities of any Party: strategic planning, payment mechanisms, revenue or funding sources, research grants, and appropriations, funding arrangements between affiliated entities, and employee compensation and benefits; the provision of charity or indigent care by any Party; any Party's education and research missions; the quality of health care provided by any Party; or the "transparency" of the structure or business operations of any Party;

3.1.3 Advocating the merger, sale or disposition of any asset, affiliate or unit of any other Party;

3.1.4 In no event shall any of the prohibited activities in this Section 3.1 prevent or restrict either party from engaging in lobbying as permitted under Section 3.4.

3.2 Illustrative Proscribed Conduct. By way of illustration, but not by limitation, the Parties agree that during the term of this Agreement:

3.2.1 WakeMed will add no new content to the weblog, “WakeMed X-Ray,” or similar posting, website, or weblog;

3.2.2 UNCHCS and Rex will add no new content to the UNC-Rex Partnership weblog, or similar posting, website, or weblog;

3.2.3 No Party will issue bulletins, newsletters, or communiqués in print or electronic form that include content violating the terms of Section 3.1 above;

3.2.4 No Party will publish or cause to be published, in any format, advertisements critical of any other Party;

3.2.5 No Party will make speeches, presentations or public comments critical of any other Party as defined in Section 3.1 above; and

3.2.6 No Party will allow signage, buttons, T-shirts or posters in its facilities that disparage any other Party.

3.3 Certificate of Need and Related Matters. The terms of this Agreement shall not apply to statements made in any documents filed with the North Carolina Division of Health Service Regulation in support of or opposition to any certificate of need applications (as a sole applicant or as a co-applicant), any no review or exemption requests, or any declaratory ruling requests made or initiated by any Party, as well as documents filed in any appeals or other legal proceedings arising therefrom.

3.4 Lobbying. During the term of this Agreement, no Party, through its employees, officers, directors, agents or representatives, shall engage in any lobbying or other efforts to initiate, amend or influence legislation, local ordinances, or decisions by state agencies or government officials that has the intent or the effect of: changing the oversight, governance structure or the business operations of a Party; changing any state appropriations provided to the UNC School of Medicine in Chapel Hill for medical education; limiting or regulating any Party’s right to expand its operations (including, without limitation, acquisitions, affiliations, joint ventures, management arrangements, or similar arrangements) as such rights exist as of the Effective Date, and except to the extent permitted in Section 3.3; limiting or restricting any Party’s rights to use its funds, control its assets or enter into funding, compensation and/or reimbursement arrangements with affiliated or third party entities as such rights exist as of the Effective Date; altering the rights of any other Party with respect to payments or reimbursements from Medicare, Medicaid, or insurance as such rights exist as of the Effective Date; limiting, restricting or altering any rights granted to the UNCHCS pursuant to NCGS § 116-37, § 116-36.1 § 116-37.2 as such rights exist as of the Effective Date; controlling or regulating the provision of charity or indigent care by any Party; or altering the “transparency” obligations of the structure or business operations of any Party as such obligations exist as of the Effective

Date. Provided, however, no Party shall be prohibited from engaging in lobbying related to policy issues that are not proposed or known by the Parties and in existence on the Effective Date, and no Party shall be prohibited from responding to questions from public officials in the normal course of business. Both Parties shall be authorized to ask questions of and provide information to the Joint Legislative Commission on Governmental Operations with respect to UNCHCS' compliance with the terms of Section 4.1. Further, UNCHCS and Rex shall not lobby Wake County or the Wake County Board of Commissioners regarding WakeMed's rights and obligations to Wake County, including the Transfer Agreement, as amended, and the Restated Articles of Incorporation of WakeMed, as such rights and documents exist as of the Effective Date.

3.5 Intention of the Parties. It is not the intent of the Parties to sequester or otherwise inhibit the First Amendment rights of its employees, officers, directors, agents or representatives. Accordingly, this Article 3 is intended to limit and prevent negative public comments about a Party that bear the imprimatur of the other Party. Each Party agrees that it will act in good faith to control such negative publicity, including but not limited to actions or comments not specifically enumerated herein but, in the good faith judgment of a Party, have the effect of violating the terms of Section 3.1 above.

3.6 Compliance. Each Party shall undertake its best efforts to ensure that persons or entities who are not employed by that Party but who are agents, independent contractors, consultants, advisors or affiliates of that Party shall comply with the provisions of this Agreement. The provisions of this Agreement shall not apply to statements made by one Party about another Party that it controls, is controlled by, or with which it is under common control.

ARTICLE 4

GENERAL TERMS

4.1 UNCHCS Report. During the term of this Agreement, UNCHCS shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations with respect to the status of its compliance with the terms and conditions of Articles 1 and 2 of this Agreement.

4.2 WakeMed Withdrawal. As of the Effective Date, WakeMed shall withdraw its proposal to purchase Rex.

4.3 Mutual Withdrawal of Public Records Requests. As of the Effective date, both WakeMed and UNCHCS shall withdraw their pending public records requests. During the term of this Agreement, neither Party shall file public records requests for the purpose of harassing the other Party.

4.4 Term and Termination. This Agreement shall be effective on the Effective Date and shall continue in full force and effect for a term of ten (10) years, unless earlier terminated as provided herein. If either Party believes that the other Party has acted or failed to act in a manner that constitutes a breach of this Agreement, the non-breaching party shall give the other Party written notice specifying the alleged breach. Within seven (7) days of receipt of such notice by the non-breaching Party to the other Party, the chief executive officers of the Parties shall discuss

the alleged breach in an attempt to resolve the dispute. In the event that a resolution by the chief executive officers of the Parties is unattainable following good faith efforts, the Parties shall submit the dispute to mediation by a mediator mutually acceptable to the Parties involved. If a mediator cannot be mutually agreed upon within ten (10) days of any Party's request, then UNCHCS and WakeMed each shall select a mediator, which two (2) mediators shall, in turn, select another mediator to mediate the dispute. If upon completion of the mediation, the mediator agrees that there has been a breach of this Agreement, and the non-breaching Party so chooses, this Agreement shall then be terminated, and all obligations of the Parties pursuant to this Agreement also shall then terminate.

4.5 No Third Party Beneficiaries. The Parties expressly disclaim the intention to benefit any specific third party individual or entity by virtue of the obligations set forth herein. No individual or entity that is not a party to this Agreement shall have standing or any right to enforce the provisions of this Agreement.

4.6 Independent Contractor. Nothing herein shall be deemed to create the relationship of partner, principal and agent, or joint venturer between the separate, unrelated Parties. Neither Party has any right or authority to incur obligations of any kind in the name of, or for the account of the other, nor to commit or bind the other Party to any contract or other obligation.

4.7 Governing Law. This Agreement shall be construed in accordance with the laws of the State of North Carolina. Each of the Parties hereto hereby consents to personal jurisdiction in and by the State of North Carolina and voluntarily submits to the jurisdiction of the courts of the State of North Carolina in any action or proceeding with respect to this Agreement, including the federal district courts located in the State of North Carolina.

4.8 Miscellaneous. No provision of this Agreement may be waived or amended except by written consent of each Party. No failure or delay by any Party or any of its representatives in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise of any right, power or privilege hereunder. In case any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

[SIGNATURE PAGES FOLLOW]