

# FORSYTH COUNTY

## BOARD OF COMMISSIONERS

MEETING DATE: JULY 13, 2017

AGENDA ITEM NUMBER: 23-A, B, C

- SUBJECT:**
- A. RESOLUTION AUTHORIZING AN AMENDMENT TO THE GROUND LEASE OF THE COUNTY OWNED PROPERTY LOCATED AT 650 N. HIGHLAND AVENUE, WINSTON-SALEM, N.C. FOR A BEHAVIORAL HEALTH URGENT CARE AND FACILITY-BASED CRISIS CENTER TO EXPAND THE USE OF THE PREMISES**
  
  - B. RESOLUTION CONSENTING TO THE ASSIGNMENT OF THE LEASE OF A PORTION OF COUNTY OWNED PROPERTY LOCATED AT 650 N. HIGHLAND AVENUE, WINSTON-SALEM, N.C. BY CARDINAL INNOVATIONS HEALTHCARE TO FORSYTH COMMUNITY PCC, LLC**
  
  - C. RESOLUTION AUTHORIZING EXECUTION OF THE GROUND LEASE NON-DISTURBANCE AGREEMENT BETWEEN FORSYTH COMMUNITY PCC, LLC, CARDINAL INNOVATIONS HEALTHCARE, AND FORSYTH COUNTY**

**COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:** Recommend Approval

**SUMMARY OF INFORMATION:** See Attached

**ATTACHMENTS:**  YES  NO

**SIGNATURE:**

*J. Andrew Watts, Jr./cdh*  
COUNTY MANAGER

**DATE:** July 13, 2017

**RESOLUTION AUTHORIZING AN AMENDMENT TO THE GROUND LEASE OF THE COUNTY OWNED PROPERTY LOCATED AT 650 N. HIGHLAND AVENUE, WINSTON-SALEM, N.C. FOR A BEHAVIORAL HEALTH URGENT CARE AND FACILITY-BASED CRISIS CENTER TO EXPAND THE USE OF THE PREMISES**

**WHEREAS**, Cardinal Innovations Healthcare has negotiated with various providers to expand the use of the premises located at 650 Highland Avenue, Winston-Salem, N.C. to include: (i) a 24-hour Behavioral Health Urgent Care Clinic; (ii) a Behavioral Health Outpatient Clinic; (iii) an integrated primary care clinic that provides integrated physical and behavioral health services and/or other related direct treatment services; (iv) a community wellness center; and (v) administrative office space to facilitate the delivery of publicly funded health services, including any other related ancillary use thereto; subject to Forsyth County's authorization of the proposed amendment to the Ground Lease and further subject to the County's consent to the assignment of the lease of a portion of County owned property located at 650 N. Highland Avenue, Winston-Salem, N.C. by Cardinal Innovations Healthcare;

**NOW, THEREFORE, BE IT RESOLVED** that the Forsyth County Board of Commissioners hereby authorizes an amendment to the Ground Lease of the County owned property located at 650 N. Highland Avenue, Winston-Salem, N.C. for a behavioral health urgent care and facility-based crisis center to expand the use of the premises to include: (i) a 24-hour Behavioral Health Urgent Care Clinic; (ii) a Behavioral Health Outpatient Clinic; (iii) an integrated primary care clinic that provides integrated physical and behavioral health services and/or other related direct treatment services; (iv) a community wellness center; and (v) administrative office space to facilitate the delivery of publicly funded health services, including any other related ancillary use thereto; subject to a pre-audit certificate thereon by the County Chief Financial Officer, where applicable, and approval as to form and legality by the County Attorney.

Adopted this 13<sup>th</sup> day of July 2017.

## AMENDMENT NUMBER ONE TO GROUND LEASE AGREEMENT

This Amendment Number One to the Ground Lease Agreement (“Amendment”) is made and entered into as of the \_\_\_\_ day of July, 2017 (“Effective Date”) by and between Forsyth County, a political subdivision of the State of North Carolina, with an address at 201 N. Chestnut Street, Winston-Salem, North Carolina 27101 (“Landlord”), and Cardinal Innovations Healthcare, a North Carolina Managed Care Organization, with an address at 550 South Caldwell Street, Suite 1500, Charlotte, North Carolina 28202 (“Tenant”) (collectively, the “Parties” and each a “Party”).

**WHEREAS**, Landlord entered into a Ground Lease Agreement (“Ground Lease”) dated September 24, 2015 with CenterPoint Human Services (“CenterPoint”), a North Carolina Managed Care Organization, for a certain 4.1+/- acre tract of land located at 650 N. Highland Avenue, Winston-Salem, North Carolina (“Demised Premises”);

**WHEREAS**, pursuant to that certain Notice of Assignment dated June 14, 2016, CenterPoint assigned its rights and obligations under the Ground Lease, as tenant, to Tenant, effective July 1, 2016; and

**WHEREAS**, the Parties hereto mutually desire to amend the Ground Lease, on the terms and conditions herein, to clarify that the Tenant is no longer responsible for constructing a Facility-Based Crisis Center as part of its Tenant’s Improvements and to articulate further allowable uses of the Demised Premises, including the operation of a Behavioral Health Outpatient Clinic.

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the Ground Lease.
2. Amendments to the Ground Lease. As of the Effective Date, the Ground Lease is hereby amended or modified as follows:
  - (a) The definition of “Tenant’s Intended Uses” now appearing in Section B of the Recitals of the Ground Lease is hereby amended in its entirety to read as follows:

“In general accordance with the preliminary site plan attached hereto as Exhibit A, the Tenant proposes and may construct and occupy upon and use the Demised Premises for one or more of the following: (i) a 24-Hour Behavioral Health Urgent Care Clinic, (ii) a Behavioral Health Outpatient Clinic, (iii) an integrated primary care clinic that provides integrated physical and behavioral health services and/or other related direct treatment services, (iv) a community wellness center, and (v) administrative office space to facilitate the delivery of publicly funded health services, including any other related ancillary use thereto (collectively, the “Tenant’s Intended Uses” and each a “Permitted Use”). The Tenant may use and occupy the Demised Premises solely for the purpose of

carrying out a Permitted Use and for all other related or ancillary uses thereto. The Tenant shall not use the Demised Premises for any other use without first obtaining the Landlord's written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

- (b) The definition of "Tenant's Improvements" now appearing in Section 2.1(a) of the Ground Lease is hereby amended in its entirety to read as follows:

Tenant proposes and may construct upon the Demised Premises one or more of the following: (i) a 24-Hour Behavioral Health Urgent Care Clinic, (ii) a Behavioral Health Outpatient Clinic, (iii) an integrated primary care clinic that provides integrated physical and behavioral health services and/or other related direct treatment services, (iv) a community wellness center, and (v) administrative office space to facilitate the delivery of publicly funded health services, including any other related ancillary use thereto (referred to collectively as "Tenant's Improvements").

3. Date of Effectiveness; Limited Effect. This Amendment will be deemed effective as of the Effective Date. Except as expressly provided in this Amendment, all of the terms and provisions of the Ground Lease are and will remain in full force and effect and are hereby ratified and confirmed by the Parties.
4. Representations and Warranties. Each Party hereby represents and warrants to the other Party that: (i) it has the full right, power, and authority to enter into this Amendment and to perform its obligations hereunder and under the Ground Lease as amended by this Amendment, and (ii) the execution of this Amendment by the individual whose signature is set forth at the end of this Amendment on behalf of such Party, and the delivery of this Amendment by such Party, have been duly authorized by all necessary action on the part of such Party.
5. Governing Law. This Amendment shall be construed under and governed by the laws of the State of North Carolina, without giving effect to principles of conflict of laws.
6. Entire Amendment. This Amendment constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.
7. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereby execute and deliver this Amendment to the Ground Lease as of the Effective Date set forth above.

LANDLORD:  
FORSYTH COUNTY

TENANT:  
CARDINAL INNOVATIONS HEALTHCARE

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**RESOLUTION CONSENTING TO THE ASSIGNMENT OF THE LEASE OF A  
PORTION OF COUNTY OWNED PROPERTY LOCATED AT 650 N. HIGHLAND  
AVENUE, WINSTON-SALEM, N.C. BY CARDINAL INNOVATIONS HEALTHCARE  
TO FORSYTH COMMUNITY PCC, LLC**

**WHEREAS**, on June 22, 2015, the Forsyth County Board of Commissioners adopted a Resolution Authorizing Execution of a forty-year Lease Agreement Between Forsyth County and CenterPoint Human Services for County Owned Property Located at 650 North Highland Avenue, Winston-Salem, N.C. on 3.49 acres for the purpose of providing mental health treatment and administrative programs to the citizens of Forsyth County; and

**WHEREAS**, CenterPoint Human Services ceased operations effective June 30, 2016 and requested the County's consent to assign the above-described Lease Agreement to Cardinal Innovations Healthcare; and

**WHEREAS**, on June 12, 2017, the Forsyth County Board of Commissioners adopted a Resolution Consenting to the Assignment of the Lease of County Owned Property Located at 650 N. Highland Avenue by CenterPoint Human Services to Cardinal Innovations Healthcare; and

**WHEREAS**, Cardinal Innovations Healthcare now requests the County's consent to the assignment of the lease of a portion of the County owned property located at 650 N. Highland Avenue by Cardinal Innovations Healthcare to Forsyth Community PCC, LLC for use as an integrated primary care clinic that provides integrated physical and behavioral health services and other related direct treatment services effective July, 2017 and continuing for a term of seven (7) years; and

**WHEREAS**, the provisions of the Ground Lease Agreement authorize the tenant to assign the said Lease upon obtaining the prior consent of Forsyth County, which consent shall not be unreasonable withheld or denied by Forsyth County;

**NOW, THEREFORE, BE IT RESOLVED** that the Forsyth County Board of Commissioners hereby determines that the portion of 650 N. Highland Avenue is described as 8,339 square feet, designated as Suite 120, located on the first floor of the said building, which is the subject of the proposed assignment of lease, will not be needed for County purposes during the assigned lease term.

**BE IT FURTHER RESOLVED** that the Chairman or County Manager and the Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, necessary documents consenting to an assignment by Cardinal Innovations Healthcare to Forsyth Community PCC, LLC of a portion of the Ground Lease Agreement of the property described as 8,339 square feet, designated as Suite 120, located on the first floor of said building, located at 650 North Highland Avenue, Winston-Salem, N.C., subject to a pre-audit certificate thereon by the County Chief Financial Officer, if applicable, and approval as to form and legality by the County Attorney.

Adopted this 13<sup>th</sup> day of July 2017.

**RESOLUTION AUTHORIZING EXECUTION OF THE GROUND LEASE  
NON-DISTURBANCE AGREEMENT BETWEEN FORSYTH COMMUNITY PCC, LLC,  
CARDINAL INNOVATIONS HEALTHCARE, AND FORSYTH COUNTY**

**BE IT RESOLVED** by the Forsyth County Board of Commissioners that the Chairman or County Manager and Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, the Ground Lease Non-Disturbance Agreement between Forsyth Community PCC, LLC, Cardinal Innovations Healthcare, and Forsyth County relating to the applicable portions of the seven (7) year lease by Forsyth Community PCC, LLC of a portion of the property located at 650 N. Highland Avenue, Winston-Salem, N.C., more specifically identified as 8,339 square feet, designated as Suite 120 on the first floor of the building, subject to a pre-audit certificate thereon by the County Chief Financial Officer, where applicable, and approval as to form and legality by the County Attorney.

Adopted this 13<sup>th</sup> day of July 2017.

## GROUND LEASE NON-DISTURBANCE AGREEMENT

This Ground Lease Non-Disturbance Agreement (this "Agreement") is made and entered into effective as of \_\_\_\_\_, 2017, by and between **FORSYTH COMMUNITY PCC, LLC**, a North Carolina limited liability company ("Tenant"), **CARDINAL INNOVATIONS HEALTHCARE**, a managed care organization ("Landlord") and **FORSYTH COUNTY**, a political subdivision of the State of North Carolina ("Ground Lessor").

### RECITALS:

A. Ground Lessor, as landlord, and Landlord, as successor in interest, as tenant, have entered into a Ground Lease Agreement dated as of September 24, 2015 ("Ground Lease"), for certain real property more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference ("Ground Premises").

B. Landlord and Tenant have entered into a Lease Agreement ("Lease") dated \_\_\_\_\_, 2017, as evidenced by that certain Memorandum of Lease recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ of the Forsyth County Register of Deeds, covering a portion of the Ground Premises, more particularly described on **Exhibit B** attached hereto and incorporated herein by this reference ("Sub-Premises").

C. The parties desire to assure Tenant's possession and control of the Sub-Premises under the Lease, upon the terms and conditions contained in the Lease; and

NOW, THEREFORE, for and in consideration of the mutual promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. In the event the Ground Lease is terminated for any reason other than the reasons set forth in Article XV (Destruction of Premises) or Article XVI (Eminent Domain) of the Ground Lease, Ground Lessor hereby agrees that the rights of Tenant under the Lease shall remain in full force and effect and its possession of the Sub-Premises thereunder shall remain undisturbed during the term of the Lease (as the same may be extended pursuant to the terms of the Lease), subject to the terms of the Lease. In such event, and provided that such termination is not a termination in accordance with Article XV (Damages of Premises) or Article XVI (Eminent Domain) of the Ground Lease, Ground Lessor agrees that it, and its successors and assigns, shall perform and be bound by all of the obligations imposed on the Landlord by the Lease for the balance of the term of the Lease and any extensions or renewals thereof, provided, however, that Ground Lessor shall not be bound by any modification of the Lease not previously approved in writing by the Ground Lessor.

2. All notices which may or are required to be sent pursuant to this Agreement shall be in writing, effective upon delivery or refusal to accept delivery, and shall be sent by certified U.S. mail, postage prepaid, return receipt requested, or by receipted overnight carrier, to the address appearing below or such other address as shall be provided in writing to the other parties:

If to Tenant: Forsyth Community PCC, LLC

c/o Novant Health, Inc.  
2085 Frontis Plaza Boulevard  
Winston-Salem, NC 27103  
Attn: Lease Administration

*With Copy To:* Wake Forest University Baptist Medical Center  
c/o Wake Forest University Legal Department  
P.O. Box 7656, Reynolda Station  
Winston-Salem, NC 27109  
Attn: George Hollodick

*With Copy To:* Blanco Tackabery & Matamoros, P.A.  
110 South Stratford Road, Suite 500  
Winston-Salem, NC 27104  
Attn: George Hollodick

*If to Landlord:* Cardinal Innovations Healthcare  
4855 Milestone Avenue  
Kannapolis, NC 28081  
Attn: General Counsel

*If to Ground Lessor:* Forsyth County  
201 N. Chestnut Street  
Winston-Salem, NC 27101  
Attn: County Manager

3. This Agreement shall inure to the benefit of and be binding upon the parties, their successors in interest, heirs and assigns and any subsequent owner of the Premises or any portion thereof.

4. Should any action or proceeding be commenced to enforce any of the provisions of this Agreement, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, including, but not limited to, taxable costs, and reasonable attorneys' fees.

5. Each party hereto hereby represents and warrants that it has obtained all necessary consents to the execution, delivery, performance and recordation of this Agreement.

6. Ground Lessor agrees that nothing contained herein shall be construed as an assumption by Tenant of any obligations of Landlord under the Ground Lease.

**[SEPARATE SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the day and year first above written.

**GROUND LESSOR:**

**FORSYTH COUNTY,**  
a political subdivision of the State of North  
Carolina

By: \_\_\_\_\_  
Name:  
Title:

STATE OF SOUTH CAROLINA

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_, either being personally known to me or proven by satisfactory evidence (said evidence being \_\_\_\_\_), who is the \_\_\_\_\_ of FORSYTH COUNTY, a North Carolina limited liability company, personally appeared before me this day and acknowledged that (s)he is \_\_\_\_\_ of FORSYTH COUNTY and that as \_\_\_\_\_ being duly authorized to do so, voluntarily executed the foregoing instrument on behalf of said company for the purposes stated therein.

**WITNESS** my hand and notarial seal this the \_\_\_\_ day of \_\_\_\_\_, 2017.

Notary Public

My Commission Expires:

\_\_\_\_\_

[Affix Notarial Seal]

[Additional Signature Pages to Follow]

**LANDLORD:**

**CARDINAL INNOVATIONS HEALTHCARE,**  
a managed care organization

By: \_\_\_\_\_

Name:

Title:

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_, either being personally known to me or proven by satisfactory evidence (said evidence being \_\_\_\_\_), who is the \_\_\_\_\_ of CARDINAL INNOVATIONS HEALTHCARE, a North Carolina limited liability company, personally appeared before me this day and acknowledged that (s)he is \_\_\_\_\_ of CARDINAL INNOVATIONS HEALTHCARE and that as \_\_\_\_\_ being duly authorized to do so, voluntarily executed the foregoing instrument on behalf of said company for the purposes stated therein.

WITNESS my hand and notarial seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Notary Public

My Commission Expires:

\_\_\_\_\_

[Affix Notarial Seal]

[Additional Signature Pages to Follow]

**TENANT:**

**FORSYTH COMMUNITY PCC, LLC,**  
a North Carolina limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_, either being personally known to me or proven by satisfactory evidence (said evidence being \_\_\_\_\_), who is the \_\_\_\_\_ of FORSYTH COMMUNITY PCC, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged that (s)he is \_\_\_\_\_ of FORSYTH COMMUNITY PCC, LLC and that as \_\_\_\_\_ being duly authorized to do so, voluntarily executed the foregoing instrument on behalf of said company for the purposes stated therein.

**WITNESS** my hand and notarial seal this the \_\_\_\_ day of \_\_\_\_\_, 2017.

Notary Public

My Commission Expires:

\_\_\_\_\_

[Affix Notarial Seal]

**EXHIBIT A**

Attach legal description of Ground Premises

**EXHIBIT B**

Attach legal description of Sub-Premises