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COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

Legislative Session

1992

Resolution No. _____ CR-30-

1992

Proposed by The Chairman (by request - County Executive)

Introduced by Council Members Pemberton and Fletcher

Co-Sponsors

Date of Introduction April 14,
1992

RESOLUTION

A RESOLUTION concerning

Lease of County Hospital

FOR the purpose of approving an amendment to the Lease Agreement between Dimensions Health Corporation, formerly known as Community Hospital and Health Care Systems, Inc., and the County and an Assignment, Estoppel and Assumption Agreement relating to the amendment to the Lease Agreement.

WHEREAS, a Lease Agreement was entered into between Community Hospital and Health Care Systems, Inc., and the County effective July 1, 1983 (the "Lease Agreement"), which

Lease Agreement was approved by the County Council; and

WHEREAS, the Lease Agreement provides, in Section 22.05, for any amendment to the Lease Agreement to be approved by Resolution of the County Council; and

WHEREAS, amendments to the Lease Agreement were approved by Council Resolution CR-106-1985 adopted October 1, 1985, by Council Resolution CR- 14-1986 adopted January 21, 1986, and by Council Resolution CR-84-1987 adopted July 21, 1987; and

WHEREAS, there have been presented to the County Council for approval the form of (a) a Fourth Amended and Restated Lease Agreement (the "Amended Lease") providing for extension of the term of the Lease Agreement, modification of the rental payments to be made under the Lease Agreement and certain other matters arising in connection therewith and with the issuance of economic development revenue bonds by the County for the benefit of Dimensions Health Corporation (the "Bonds") and (b) an Assignment, Estoppel and Assumption Agreement (the "Assignment") relating to the Amended Lease and the issuance of the Bonds; and

WHEREAS, Dimensions Health Corporation in a letter dated April 21, 1992, a copy of which is attached hereto, has committed to pay to the County \$13,352,000 from the proceeds of the bonds in consideration of the amendments to the Amended Lease; and

WHEREAS, the County Executive has recommended the approval of the Amended Lease and the Assignment, as being in the best

interests of the citizens of the County;

NOW, THEREFORE, BE IT RESOLVED by the County Council of Prince George's County, Maryland, that the Fourth Amended and Restated Lease Agreement between Dimensions Health Corporation and the County and the Assignment, Estoppel and Assumption Agreement among Dimensions Health Corporation, the County, the Bond Trustee and the Master Trustee (as defined thereon), copies of which are attached hereto, be and the same are each hereby approved together with any other document or instrument which the officials of the County executing the Amended Lease deem necessary or desirable in order to effectuate the transactions contemplated by the Amended Lease and the Assignment.

AND BE IT FURTHER RESOLVED that the approvals of the Amended Lease and the Assignment contained herein are conditioned on the issuance of the Bonds and upon the payment to the County of \$13,352,000 by Dimensions.

Adopted this 5th day of May, 1992.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY:

Richard J. Castaldi
Chairman

ATTEST:

Joyce T. Sweeney
Acting Clerk of the Council

ASSIGNMENT, ESTOPPEL
AND ASSUMPTION AGREEMENT

This Assignment, Estoppel and Assumption Agreement, dated this ____ day of _____, 1992, by and among DIMENSIONS HEALTH CORPORATION (the "Corporation"), a nonprofit corporation incorporated and existing under the laws of the State of Maryland, THE FIRST NATIONAL BANK OF MARYLAND (the "Master Trustee"), a national banking association incorporated and existing under the laws of the United States, as master trustee under a Master Trust Agreement dated as of _____, 1992 by and between the Corporation and the Master Trustee (the "Master Trust Indenture"), PRINCE GEORGE'S COUNTY, MARYLAND (the "County"), a body politic and corporate and political subdivision of the State of Maryland, and THE FIRST NATIONAL BANK OF MARYLAND (the "Bond Trustee"), a national banking association incorporated and existing under the laws of the United States, as trustee under an Indenture of Trust dated as of _____, 1992 by and between the County and the Bond Trustee (the "Bond Indenture") relating to the Series 1992 Bonds (defined herein).

RECITALS

1. The Corporation leases from the County certain premises located in Prince George's County pursuant to a Fourth Amended and Restated Lease Agreement dated as of _____, 1992 (the "Lease") for the purposes of operating hospital and other health care facilities in such premises in accordance with the terms and conditions of the Lease. The premises subject to the Lease from time to time are referred to herein as the "Leased Premises."

2. The County has issued its Economic Development Revenue Bonds (Dimensions Health Corporation Project), Series 1992 (the "Series 1992 Bonds") in the aggregate principal amount of \$_____ pursuant to the Bond Indenture and has loaned the proceeds of the Series 1992 Bonds to the Corporation pursuant to a Loan Agreement (the "Loan Agreement") by and between the County and the Corporation.

3. The Corporation and the Master Trustee have entered into the Master Trust Indenture to secure Obligations (as defined in the Master Trust Indenture) of the Corporation and other Obligated Group Members (as defined in the Master Trust Indenture). The Corporation has issued its promissory note to the County in the principal amount of \$_____ (the "Series 1992 Note") to evidence its obligation under the Loan Agreement to repay the loan of the proceeds of the Series 1992 Bonds, and the Series 1992 Note has been endorsed by the Master Trustee as an Obligation under the Master Trust Indenture.

4. The Corporation desires to assign its interest as lessee

under the Lease to the Master Trustee, subject to the terms and conditions of this Agreement, in order to further secure its obligations under the Series 1992 Note and any other Obligations.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged by each of the parties, the Corporation, the Master Trustee, the Bond Trustee and the County, each intending to be legally bound hereby, DO HEREBY AGREE as follows:

1. The Corporation hereby grants, transfers, and assigns to the Master Trustee, its successors and assigns all of the right, title and interest of the Corporation in and to the Lease covering all or part of the Leased Premises, together with any modifications, amendments, renewals and extensions of any thereof, for the purpose of securing:

ONE: Payment of the indebtedness evidenced by any Obligation (including any modifications, amendments, replacements, substitutions, extensions or renewals thereof).

TWO: Payment of all other sums with interest thereon becoming due and payable to the Master Trustee under the provisions of the Master Trust Indenture.

THREE: Performance and fulfillment of each and every term, covenant and condition contained herein and in the Master Trust Indenture.

2. The County and the Bond Trustee hereby acknowledge and consent to the assignment contained in paragraph 1 hereof.

3. The Corporation covenants and agrees with respect to the Lease:

a. To faithfully abide by, perform and fulfil each and every term, covenant and condition of the Lease by the Corporation to be performed or fulfilled; at the sole cost and expense of the Corporation to enforce or secure the performance of each and every material term, covenant and condition of the Lease by the County to be performed or fulfilled; not to agree to modify, extend or in any way alter any term, covenant or condition of the Lease; not to agree to waive, excuse, condone or in any manner release or discharge the County thereunder of or from the terms, covenants or conditions by the County to be performed or fulfilled; and the Corporation does by these presents expressly release, relinquish and surrender unto the Master Trustee all the Corporation's right, power and authority to amend, modify, or in any way alter the terms or provisions of the Lease.

b. At the Corporation's sole cost and expense, to

appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the Lease or the obligations, duties or liabilities of the County or the Corporation under the Lease and to pay all costs and expenses of the Master Trustee, including attorney's fees in a reasonable sum in any action or proceeding in which the Master Trustee may appear.

c. That should the Corporation fail to make any payment or to do any act as herein or in the Lease provided, then the Master Trustee, but without obligation so to do and without notice to or demand on the Corporation and without releasing the Corporation from any obligation hereof, may make or do the same in such manner and to such extent as the Master Trustee may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights, privileges or powers of the Master Trustee, and also the right to perform and discharge each and every term, covenant and condition of the Corporation in the Lease contained; and in exercising any such powers to pay necessary costs and expenses, employ counsel and incur and pay reasonable attorney's fees.

d. To pay immediately upon demand all sums expended by the Master Trustee under the authority hereof, together with interest thereon at the rate of two (2%) per annum above the average rate from time to time payable under the Series 1992 Note.

4. So long as there shall exist no default beyond applicable grace periods by the Corporation in the payment of any indebtedness under any Obligation secured hereby and no Event of Default under the Master Trust Indenture and no default by the Corporation in the performance of any term, covenant or condition contained herein or in the Lease, the Corporation shall have the right to operate the Leased Premises and to retain, use and enjoy possession of the Leased Premises and any revenues derived therefrom.

5. The County and the Corporation further agree with the Master Trustee that:

a. The County shall give the Master Trustee prompt written notice of any defaults by the Corporation under the Lease. The Master Trustee shall have sixty (60) days from the date of receipt of such notice to cure any such default before the County takes any legal action against the Corporation; provided, however, that the Master Trustee assumes no obligation whatsoever to take any such steps to cure; and further provided that, if within such 60-day period (or, in the case of a default under the Lease resulting from delivery by the Master Trustee to the County of a notice of an Event of Default under the Master Trust

Indenture, within thirty (30) days of the date of delivery of such notice), the Master Trustee shall give written notice of its intention to assume the rights and obligations of the lessee under the Lease, the County shall upon the direction of the Master Trustee terminate the rights and privileges of the Corporation under the Lease and permit the Master Trustee to assume and enjoy the benefits of the Corporation's rights, privileges and obligations thereunder (or, at the option of the Master Trustee, the County shall terminate the Lease and enter into a new lease with the Master Trustee as lessee for the Leased Premises on terms and conditions substantially identical to those of the Lease with the Corporation). Upon such termination and assumption, then, and in any such event, at the option of the Master Trustee, the County shall attorn to such Master Trustee, its respective successors and assigns, without the requirement of the execution of any further instruments, and the County shall be bound unto Master Trustee or its successors and assigns under all of the terms, covenants and conditions of the Lease for the balance of the term thereof and any exercised extensions or renewals thereof with the same force and effect as if the Master Trustee or any such successor were the Corporation under the Lease. Without limiting the generality of the foregoing, any assignment of the Lease by the Master Trustee shall be governed by the provisions of Section 15.01 of the Lease.

b. The County shall make no changes in the Lease without the Master Trustee's consent.

c. The County acknowledges and consents to the provisions of paragraph 3d hereof.

6. If the Master Trustee shall succeed to the interest of the Corporation under the Lease, the Master Trustee shall not be (a) liable for any act or omission of the Corporation, or (b) subject to any offsets or defenses which the County might have against the Corporation, or (c) bound by any amendment or modification of the Lease made without the Master Trustee's consent.

7. Except as otherwise expressly provided herein, the Corporation's possession of the Leased Premises in accordance with the terms and conditions of the Lease shall not be disturbed, whether or not the Master Trust Indenture shall be in default beyond any grace periods and notwithstanding any action brought by the Master Trustee on or in connection with the Master Trust Indenture, and the terms and conditions of the Lease shall remain in full force and effect, except as specifically modified in a writing executed by the parties hereto, so long as the Corporation, its successors and assigns (including the Master Trustee, its successors and assigns) shall not be in default beyond any grace period in the performance of the terms, covenants and conditions of the Lease.

8. The Master Trustee may act upon any notice, request, consent, demand, statement, note or other paper or document believed by it to be genuine and to have been signed by the party or parties purporting to sign the same. The Master Trustee shall not be liable for any error of judgment, nor for any act done or step taken or omitted, nor for any mistake of law or fact, nor for anything which it may do or refrain from doing in good faith nor generally shall it have any accountability hereunder except for its own negligence or wilful default. Neither the termination of the Lease or the assumption by the Master Trustee of the Corporation's rights, privileges and obligations under the Lease shall cure or waive any default or waive, modify or affect any notice of default under the Master Trust Indenture or invalidate any act done pursuant to such notice.

Any default by the Corporation in the performance of any term, covenant or condition herein contained and not cured within any applicable cure period provided in the Master Trust Indenture shall constitute and be deemed to be a default under the terms of the Master Trust Indenture entitling the Master Trustee to every and all rights, privileges and remedies therein contained.

9. Except as otherwise expressly provided herein, the Master Trustee shall not be obligated to perform or fulfill, nor does it hereby undertake to perform or fulfill, any term, condition or covenant under the Lease, or under or by reason of this Assignment, and, with respect to any period prior to the assumption by the Master Trustee of the Corporation's rights and obligations under the Lease pursuant to paragraph 5a hereof, the Corporation shall and does hereby agree to indemnify and to hold the Master Trustee harmless of and from any and all liability, loss or damage which it may or might incur under the Lease or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertaking on its part to perform or discharge any of the terms, covenants or conditions contained in the Lease; should the Master Trustee incur any such liability, loss or damage under the Lease or under or by reason of this assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorney's fees, shall be secured hereby, and the Corporation shall reimburse the Master Trustee therefor immediately upon demand, with interest at the rate of two percent (2%) per annum above the average rate from time to time payable under the Series 1992 Note, and upon the failure of the Corporation so to do the Master Trustee may declare all sums secured hereby immediately due and payable.

10. Upon the payment in full of all indebtedness secured hereby and the discharge of the Master Trust Indenture, this Assignment shall become and be void and of no effect, but the

affidavit of the Master Trustee or any officer of the Master Trustee showing any part of said indebtedness to remain unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment as to third parties, and any person may and is hereby authorized to rely thereon. Any person may rely on an affidavit of the Master Trustee or any officer of Master Trustee stating a fact, including a statement that a default has occurred under the Master Trust Indenture or the Lease.

11. The Corporation covenants, warrants and represents as to the Lease (a) it has not done anything which might prevent the Master Trustee from or limit the Master Trustee in acting under any of the provisions hereof; (b) it has not breached any term, covenant or condition of the Lease; and (c) it has not previously assigned the Lease or sublet all or any part of the Leased Premises.

12. The County hereby represents and warrants that (a) the Lease is in full force and effect; (b) the Lease has not been modified, amended or assigned in any way; (c) the Corporation is not in default under any of its obligations under the Lease; and (d) the County has no offset or claim against the Corporation for any failure of performance by the Corporation under the Lease.

13. Any notice or demand upon any party which may be given or made hereunder or with reference to this Assignment shall be a sufficient notice or demand if (a) made in writing and delivered to the such party's address set forth below, or (b) deposited by first class mail with the United States postal service enclosed in a postpaid envelope, addressed to such party at such address or at such other address as may be designated by such party to the other parties from time to time in writing. Mailed notices shall be considered to have been given at the time they are deposited. Notwithstanding the aforesaid, any notice or demand upon any party that is in fact received shall be sufficient notice or demand.

If to the Corporation:

Dimensions Health Corporation
1801 McCormick Drive #500
Landover, Maryland 20785 Attention: Executive Vice President

with a copy to:

Meyers, Billingsley, Shipley, Curry, Rodbell & Rosenbaum, P.A.
6801 Kenilworth Avenue, Suite 400
Riverdale, Maryland 20737
Attention: Steven R. Smith

If to the Master Trustee of the Bond Trustee:

The First National Bank of Maryland
25 South Charles Street
Baltimore, Maryland 21201
Attention: Corporate Trust Department

If to the County:

Prince George's County, Maryland
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
Attention: Deputy County Administrative Officer for Budget and
Finance

with copies to:

Piper & Marbury
36 South Charles Street
Baltimore, Maryland 21201
Attention: Ronald B. Sheff
and

Public Advisory Consultants
117 Water Street, Suite 550
Baltimore, Maryland 21202
Attention: Lester B. Guthorn

14. The rights, powers, privileges and discretions specifically granted to the Master Trustee herein are not in limitation of but in addition to those to which the Master Trustee is entitled under the Master Trust Indenture or any general or local law in the State of Maryland, now or hereafter existing. The rights, powers, privileges and discretions (hereinafter collectively called the "rights") to which the Master Trustee may be entitled shall inure to the benefit of its successors and assigns. All the rights of the Master Trustee are cumulative and not alternative and may be enforced successively or concurrently. Failure of the Master Trustee to exercise any of its rights shall not impair any of its rights nor be deemed a waiver thereof, and no waiver of any of its rights shall be deemed to apply to any other such rights nor shall it be effective unless in writing and signed by the Master Trustee.

The terms and conditions agreed to by the parties hereto and the covenants of the parties shall be binding upon their respective personal representatives, successors and assigns and of each of them, but this provision does not waive any prohibition of assignment or any requirement of consent to an assignment under the other provisions of this Assignment; any consent to an assignment shall not be consent to any further assignment, each of which must be specifically obtained in writing. Wherever used

herein the singular shall include the plural and the plural the singular and the use of any gender shall include all genders.

Time is of the essence.

This Assignment shall be construed according to the law of Maryland.

IN WITNESS WHEREOF, each of the parties hereto have caused this Agreement to be duly executed on its behalf under seal as of the day and year first above written.

ATTEST:

DIMENSIONS HEALTH CORPORATION

By: _____

PRINCE GEORGE'S COUNTY, MARYLAND

By: _____
THE FIRST NATIONAL BANK OF
MARYLAND
as Master Trustee

By: _____
THE FIRST NATIONAL BANK OF
MARYLAND
as Bond Trustee

By: _____

NOTE: The attached lease agreement is available in hard copy only.