

**MONTEZUMA COUNTY HOSPITAL DISTRICT
SPECIAL MEETING
EMS Training Room, Southwest Health System
WEDNESDAY, May 20, 2026
Meeting Starts: 3:00pm**

AGENDA

3:00pm Call to Order

Roll Call

Changes or additions to agenda

Public Comment: *Public is invited to attend and provide comments please RSVP bjabour@swhealth.org as seating is limited.*

Joint MCHD/SHS Board Review of Lease Agreement

Adjournment

Mission Statement

It is the mission of the Montezuma County Hospital District to assure high quality healthcare facilities for the community, Montezuma County, and the surrounding areas and to provide support and assistance in a manner which is consistent with a high standard of healthcare.



**AMENDED AND RESTATED
HOSPITAL OPERATING LEASE AGREEMENT**

THIS AMENDED AND RESTATED HOSPITAL OPERATING LEASE AGREEMENT (the "Agreement"), entered into this 26th day of ~~June~~^{July}, 2023, by and between the Montezuma County Hospital District, a Colorado special hospital district incorporated under C.R.S. § 32-1-101, et seq. (the "District"), and Southwest Health System, Inc., a Colorado nonprofit corporation ("SHS").

PREAMBLE

The parties entered into a Hospital Operating Lease Agreement dated September 13, 1996, which agreement was amended February 10, 1999 (the "First Amendment"), October 28, 1999 (the "Second Amendment"), April 9, 2003 (the "Third Amendment"), November 10, 2004 (the "Fourth Amendment"), September 26, 2007 (the "Fifth Amendment"), and November 17, 2016 (the "Sixth Amendment") (together, the "Original Lease Agreement"); and

WHEREAS, the parties have determined that some of the provisions contained in the Original Lease Agreement require modification, deletion, or amendment; and

WHEREAS, the parties have concluded that an Amended and Restated Hospital Operating Lease Agreement as hereinafter set forth will permit the best continued relationship between the District and SHS in the interest of the beneficial operation of the Hospital and Leased Assets as described herein; and

WHEREAS, the District owns and operates a general acute care hospital known as Southwest Memorial Hospital, located in the City of Cortez, Colorado (the "Hospital"); and

WHEREAS, the District has determined that it is in the best interest of the delivery of health care to residents of its service area, both within and without its geographic boundaries, to lease the operation of the Hospital to a locally-controlled, Colorado nonprofit, non-governmental corporation subject to the terms and conditions of this Agreement; and

WHEREAS, the District has concluded, following many months of analysis, public input and consultation with nationally recognized health care experts, that the lease of hospital operations is likely to: (i) enhance Hospital operating efficiencies and effectiveness, (ii) enhance the Hospital's ability to form linkages with other health care institutions and providers to form an integrated delivery system offering an increased continuum of care to the residents of the District, (iii) improve the environment for physician and allied health professional recruitment and retention, and (iv) promote the Hospital's ability to maintain financial viability and adaptability to future changes and challenges in the health care environment, especially those posed by state and national health reform; and

WHEREAS, the District has concluded the best interests of the community served by the District and its Hospital will be best served by undertaking the transactions described in this Agreement; and

WHEREAS, the District has the statutory power and authority, pursuant to the Colorado Special District Act (the "Act") to lease certain assets to SHS; and

WHEREAS, SHS has the power and authority to accept the lease of certain assets from the District under the terms and conditions set forth herein; and

WHEREAS, SHS intends to assume responsibility to operate and maintain the Hospital in such a manner so as to provide residents of the District with health care services at a level at least comparable to the quality of care now provided at the Hospital.

NOW, THEREFORE, in consideration of the premises, covenants and agreements set forth herein, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

The following words, terms or phrases, when used in this Agreement, shall have the following meanings, unless the context clearly indicates a different meaning:

1.1 Intentionally Left Blank.

1.2 "Assigned Contracts" means the agreements of the District entered into in connection with Hospital Operations, listed on the attached Exhibit 1.2.

1.3 "Assumed Liabilities" means:

(a) All payment obligations, other obligations and liabilities arising under the Assigned Contracts listed on the attached Exhibit 1.2 after the Transfer Date;

(b) All payment obligations, other obligations and other liabilities arising in connection with the license agreements listed on the attached Exhibit 1.3(b) after the Transfer Date.

1.4 Intentionally Left Blank.

1.5 Intentionally Left Blank.

1.6 "Certificates of Title" means all certificates of title issued by the Colorado Secretary of State for motor vehicles owned by the District and used in Hospital Operations as of the Transfer Date.

1.7 "Excluded Assets" means those assets owned by the District as of the Transfer Date which shall be and remain the assets of the District and not leased to SHS pursuant to this Agreement, as such assets are more specifically identified on the attached Exhibit 1.7.

1.8 "Excluded Liabilities" means the Existing Bonds, and such other pre-Transfer Date liabilities of the District which are, and shall remain, the liability of the District and not part of the Assumed Liabilities hereunder, as such Excluded Liabilities are more specifically identified on the attached Exhibit 1.8.

1.9 "Intentionally Left Blank."

1.10 "Hospital Accounts Receivable" means all amounts owed to the District in connection with Hospital Operations as of the Transfer Date.

1.11 "Hospital Employees" means all of the District employees employed in connection with Hospital Operations (as defined in Section 1.13 below) as of the Transfer Date.

1.12 "Hospital Medical Staff" means all physicians, dentists, oral surgeons and podiatrists holding appointment to the Medical Staff of the Hospital as of the Transfer Date.

1.13 "Hospital Operations" means all health care, administrative and related or ancillary activities conducted as of the Transfer Date or in the past by the District, or during the Term by SHS, in connection with the operation of the Hospital.

1.14 "Hospital Service Area" means the primary, secondary, and tertiary service areas served by the Hospital.

1.15 "Inventories of Supplies" means all items of consumable Hospital-related personal property owned or held by the District as determined on substantially the same basis as that term was used in the audited financial statements of the District dated as of the fiscal year ending December 31, 1995.

1.16 "DNY" means Det Norske Veritas, Inc. (or an approved nationally recognized accrediting organization through the Centers of Medicare and Medicaid ("CMS")).

1.17 "Leased Hospital Assets" means:

(a) the real property commonly known as Southwest Memorial Hospital, 1311 North Mildred Road, Cortez, Colorado 81321 more particularly described as follows, to wit:

The N/2NE/4SE/4 and N/2S/2NE/4SE/4 of Section 23, Township 36 North, Range 16 West, N.M.P.M.
Montezuma County, Colorado.

Including:

(i) the Hospital building and surrounding parking areas, driveways, power station and other improvements, appurtenances, goods, fixtures, furnishings or other types of personal property incorporated into or affixed to any part of the Hospital building located as of the Transfer Date;

(ii) all contiguous additions and/or expansions thereof as may be constructed on the real property during the Term and used as part of the Hospital; and

(b) The machinery, furniture and equipment, including medical and office equipment, listed on the attached Exhibit 1.17;

(c) The motor vehicles listed on the attached Exhibit 1.17;

(d) The trademarks listed on the attached Exhibit 1.17;

(e) The Hospital Accounts Receivable listed on the attached Exhibit 1.12(d);

(f) The benefit, but not outright ownership, of the gifts, bequests, donations or other endowments specifically given for the benefit of or restricted to the use of the Hospital and listed on the attached Exhibit 1.12(e);

1.12(f); (g) The promissory notes signed by patients and listed on the attached Exhibit

(h) All rights to receive goods or services, to use and occupy personal and leased real property or to receive payment for goods or services rendered, or other benefits arising under the Assigned Contracts;

(i) All inventories of Supplies, as defined in Section 1.15 above;

(j) All trade secrets and other confidential information concerning the operation or use of the Hospital not in the public domain and in existence on the Transfer Date;

(k) All medical records of Hospital patients in existence on the Transfer Date;

(l) All business records arising from the operation or use of the Hospital in existence on the Transfer Date;

(m) Any prepaid expenses arising from the operation or use of the Hospital in existence on the Transfer Date;

(n) The right to any and all recovery from all collection cases in progress on the Transfer Date for goods furnished or services rendered by the Hospital;

(o) The name "Southwest Memorial Hospital";

(p) All rights under the assigned contracts listed on the attached Exhibit 1.2 and under the license agreements listed on the attached Exhibit 1.3(b);

and all of such other assets owned by the District, other than the Excluded Assets, as of the Transfer Date, as defined in Section 1.19 below.

1.18 "**Term**" means the period commencing on the Transfer Date and ending on September 30, 2051, subject to earlier termination pursuant to the termination provisions set forth in this Agreement.

1.19 "**Transfer Date**" means the date on which all of the conditions precedent set forth in Section 13.11 below have occurred and been satisfied, but not earlier than September 15, 1996.

ARTICLE II **ASSET LEASE**

2.1 **Lease of Leased Hospital Assets.** The District hereby leases the Leased Hospital Assets to SHS on the terms and conditions set forth herein, and SHS hereby leases such Leased Hospital Assets from the District on said terms and conditions, to have and to hold for the Tenn.

2.2 **Renewals.** The Term of this Agreement is not subject to renewal by the parties hereto, unless both parties mutually agree in writing to extend the Term of this Agreement beyond the date set forth in Section 1.18 above.

ARTICLE III **CONSIDERATION**

In consideration of the District's lease of the Leased Hospital Assets to SHS, and all other promises and responsibilities of the District set forth in this Agreement, SHS agrees as follows:

3.1 Rent. SHS shall pay rent to the District pursuant to the Schedule attached hereto as Exhibit 3.1, except as provided to the contrary in Articles VII and X hereof. SHS shall make all rental payments due hereunder to the District in the manner set forth in Section 13.1 hereof. The first payments due thereunder shall be prorated as of the Transfer Date.

3.2 Payment of Assumed Liabilities. SHS shall pay, or otherwise cause to be satisfied or discharged, all Assumed Liabilities when due under their terms. SHS may, at its expense and in its own name and behalf, or, to the extent lawful, in the name and behalf of the District, in good faith, contest the payment of any such Assumed Liabilities and, in the event of any such contest, permit any such Assumed Liabilities to remain unpaid during the period of such contest and any appeal therefrom. The District will cooperate fully with SHS, at SHS's expense, in any such contest.

The District shall continue to be responsible for its debts and obligations not specifically assumed hereunder as "Assumed Liabilities" prior to the Transfer Date. Following the Transfer Date, the parties agree that the District shall retain the services of an independent auditor to audit the accounts and obligations of the District and SHS. Overpayments and/or underpayments, as the case may be, shall be made between the parties so as to allocate the obligations and responsibilities of each party consistent with the terms of this Agreement.

3.3 SHS to Maintain Mission. At all times during the Term, SHS shall maintain its mission of managing, operating and/or maintaining this hospital and health care-related facilities, programs and services to further its mission of creating a healthy community.

3.4 Indemnification by SHS. Except as set forth on Exhibit 1.8 hereto, as of the Transfer Date, SHS shall assume responsibility for and shall defend, indemnify and hold harmless the District and its agents, with respect to: (i) all liabilities and duties of the District pursuant to the Assigned Contracts, which liabilities were as a result of actions taken by SHS after the Transfer Date, (ii) all claims for breach of contract resulting from SHS's action or failure to act after the Transfer Date, (iii) all claims related to SHS's errors and omissions, including but not limited to, medical malpractice, directors and officers liability, workers' compensation, automobile liability, and premises liability, completed operations and products liability, and (iv) all claims that might accrue between SHS employees and SHS related to their employment relationship after the Transfer Date. The terms and conditions of this Section 3.4 shall survive the expiration or any earlier or other termination of this Agreement.

3.5 Performance of Covenants and Other Obligations. SHS shall: (i) fully and continuously observe and perform all of the covenants described in Article IV below and its other obligations and responsibilities under this Agreement, (ii) operate and use the Hospital in a manner which will allow it to repay all its debts and satisfy all its obligations, (iii) not operate a medical facility outside of the District's boundaries without the written consent of the District; provided, however, the hospital service area may be expanded as far as SHS desires, and (iv) retain an independent hospital management and/or consulting company to provide resources and experience that guide, support and enhance the mission stated above.

3.6 Indemnification by the District. The District, except as specifically set forth herein, shall assume responsibility for and shall defend, indemnify and hold harmless SHS and its agents

with respect to: (i) all Excluded Liabilities as set forth in Exhibit 1.8, (ii) all claims for breach of contract resulting from the District's actions or failure to act prior to the Transfer Date, (iii) all claims related to the District's errors and omissions, including, but not limited to, medical malpractice, directors and officers liability, workers compensation, automobile liability, premises liability, completed operations and products liability, and (iv) all claims that might have accrued between the District and District employees related to the employment relationship prior to the Transfer Date. The terms and conditions of this Section 3.6 shall survive the expiration or any earlier or other termination of this Agreement.

ARTICLE IV **GENERAL COVENANTS OF SHS**

SHS hereby agrees and covenants with the District to take, at SHS's sole cost and expense, the following actions during the Term (or such other period as may be specified below):

4.1 Corporate Status. SHS shall maintain its corporate existence as a Colorado nonprofit corporation and its Board of Directors shall not, without first obtaining the affirmative vote of the Board of Directors of the District: (i) adopt a plan of merger or consolidation with another corporation, or (ii) authorize any transaction providing for the sale or other disposition of assets exceeding more than twenty-five percent (25%) of the total book value of SHS, except as provided in Section 6.3.

4.2 Tax-Exempt Status. SHS shall not take any action which would endanger its ability to obtain and maintain its status as an organization exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any successor or similar provision. SHS covenants that it will not operate the Hospital or engage in any activity that might reasonably be expected to cause any of the Existing Bonds to lose their tax-exempt status.

4.3 Hospital License. SHS shall obtain on or before the Transfer Date a license to operate the Hospital from the Colorado Department of Health and shall maintain such license in accordance with the provisions of C.R.S. § 25-3-101 et seq. or any successor or similar statute.

4.4 Medically Indigent Care. SHS agrees that during the term of this Agreement, it will provide all medically necessary services that are now provided by the Hospital to all District residents without regard to their ability to pay. Further, SHS agrees to use its best efforts to identify those residents for which it would create a financial hardship if Hospital were to attempt to collect its usual and customary charges. Hospital will establish its indigency determination for gross family income at an amount not less than 150% of the then most current Federal poverty guidelines. SHS shall establish minimum levels of documentation and proof of such indigency status as identified in Hospital policies and procedures which may be revised from time to time.

4.5 Accreditation. SHS shall maintain the Hospital's DNV accreditation.

4.6 Medical Staff. On or before the Transfer Date, SHS shall adopt the Bylaws, Rules and Regulations of the Hospital's Medical Staff in effect as of the Transfer Date and shall extend privileges to all members of the Hospital's Medical Staff and its allied health professional staff on identical terms as in effect as of the Transfer Date.

4.7 Transfer of District Employees. SHS recognizes the contributions made by the Hospital's current and former employees in providing care and services to patients. Accordingly, effective on the Transfer Date, SHS shall offer employment to Hospital Employees under the same

job title, responsibilities, salary and employee benefits in effect as of the Transfer Date. This covenant, however, shall not be construed to prohibit SHS's discharge of Hospital Employees for cause, nor shall this provision be construed as requiring continued employment for an indefinite period of time in the future, it being understood that SHS shall retain the right to make personnel changes consistent with the operating requirements of the Hospital.

4.8 Consents, Licenses and Approvals. SHS shall take all actions it deems necessary or appropriate to obtain and maintain in full force and effect any consents, licenses, permits and approvals necessary in connection with this Agreement, Hospital Operations, or the furtherance of SHS's corporate purposes.

4.9 Maintenance of Hospital. SHS shall: (i) maintain, preserve and keep the Leased Hospital Assets in good condition, repair and working order, (ii) purchase, repair or replace any and all equipment necessary to meet then-current state licensure and JCAHO accreditation standards, and (iii) take all other actions necessary to provide health care services at a level at least comparable to the quality of care provided at the Hospital as of the Transfer Date. The District acknowledges and agrees that SHS may, at its own expense, make or cause to be made any and all additions, alterations, and improvements in and to all or any part of the Leased Hospital Assets as SHS after consultation with the District deems necessary or appropriate; provided, however, that: (i) all additions and alterations shall be performed in a good and workmanlike manner, which means that the quality of workmanship and materials shall be at least equal to that existing on the Transfer Date, (ii) no permanent demolition of any substantial part of the Leased Hospital Assets, without replacement of such assets or construction of replacement space, shall be made without the prior written consent of the District, (iii) SHS shall not grant any lien, mortgage, security interest or other encumbrance on the Leased Hospital Assets other than the Leasehold Deed of Trust (defined in Section 6.1 hereof) in accordance with Section 6.1 hereof and any lien, mortgage, security interest or other encumbrance unless consented to in writing by the District, and (iv) SHS shall not sell, exchange or otherwise dispose of any part of the Leased Hospital Assets, except (a) during the normal course of business due to wear and tear or obsolescence, (b) in connection with the exercise of remedies under the Leasehold Deed of Trust in accordance with Section 6.1 hereof, or (c) with the prior written consent of the District.

4.10 Insurance. SHS shall carry such type and amount of insurance concerning the Leased Hospital Assets, including, but not limited to, public liability insurance, workers' compensation insurance and hospital professional liability insurance, as is customary in the case of similarly situated not-for-profit hospital corporations engaged in the same or similar activities, and to the extent reasonably necessary to protect the interests of the District, with respect to the revenue of the Hospital and the ability of SHS to meet its rent obligations to the District, as set forth in Section 3.1 of this Agreement

At a minimum, SHS shall carry with an insurance company or companies rated "A" or better by the A.M. Best Company, Inc.: (i) fire and extended coverage insurance on the Hospital (and any related facility controlled by SHS) in an amount not less than the replacement value of such assets, (ii) workers' compensation insurance on all eligible employees in such amounts as required by law, and employer's liability insurance, of not less than \$100,000 per each individual and \$300,000 per incident, (iii) property damage insurance of not less than \$50,000, (iv) a fidelity bond covering the Secretary/Treasurer of SHS, in an amount not less than \$200,000, and (v) a fidelity bond covering any person or person other than the Secretary/Treasurer having custody or control over SHS's funds, in an amount not less than \$5,000. SHS may elect to obtain such insurance as is required by this Section by means of policies issued by insurance companies, or, at SHS's election, partially by means of self-insurance in conjunction with other companies through an insurance trust or other arrangement, or

wholly by means of self-insurance. All insurance policies maintained pursuant to this Section shall name the District as an additional insured party. The proceeds of any property insurance on the Hospital (and any related facility) shall be applied to the necessary costs involved in the repair or replacement of such facility, and to the extent not so applied shall be payable to the District.

4.11 Operating Expenses and Taxes. SHS shall pay, or otherwise cause to be paid, all operating expenses incurred during the Term, provided that the District will reimburse SHS for any operating expenses incurred, but not billed, until after the Transfer Date and, further, that SHS will reimburse the District for any prepayments of operating expenses to the extent not accrued as of the Transfer Date. SHS shall also pay, as the same respectively become due, all taxes, assessments and governmental charges that may be lawfully assessed or levied against or otherwise attributable to the Leased Hospital Assets during the Term; provided, however, that with respect to taxes, assessments or governmental charges that may lawfully be paid in installments over a period of years, SHS shall be obligated to pay only such installments as are required to be paid during the Term. SHS may, at its expense and in its own name and behalf, or, to the extent lawful, in the name and behalf of the District, in good faith, contest any such taxes, assessments and governmental charges provided that such proceedings have the effect of preventing the forfeiture of the Leased Hospital Assets or any part thereof or interest therein to satisfy the same. The District will cooperate reasonably with SHS, at SHS's expense, in any such contest.

4.12 Participation and Reimbursement Agreements. SHS shall enter into such participation and reimbursement agreements with third party payors and insurers as SHS determines is in the best interests of the residents of the District, as SHS can reasonably determine at the time of entering into the contracts.

4.13 Government Grants. SHS shall comply with the terms of all government grants received by the District prior to the Transfer Date or received by SHS on or after the Transfer Date, including, but not limited to, grants made by the State of Colorado and the Federal Government.

4.14 Intentionally Left Blank.

4.15 Reporting Requirements. SHS agrees to provide to the District the following reports and notices:

(a) Audited annual financial statements, including a statement of income and expenses (including gross revenues, net revenues, all capital expenditures and profit and loss) and a balance sheet as of the end of the fiscal year, within one hundred twenty (120) days after the end of each fiscal year;

(b) Utilization statistics and reports within one hundred twenty (120) days after the end of each fiscal year; such statistics and reports shall include but not be limited to the following: beds in service, occupancy rate, admissions, average length of stay, outpatient visits, emergency room visits and surgical procedures;

(c) Notification within thirty (30) days of loss of or change in the Chief Executive Officer, Chief Operating Officer or Chief Financial Officer of SHS;

(d) Annual letter from SHS's Board of Directors and Chief Executive Officer to the effect that nothing has come to their attention to indicate that SHS is in default under the terms of this Agreement; or if such a default has occurred, such letter shall set forth the details thereof;

(e) Annual list of all insurance policies in force with respect to the Hospital (and any related facilities), and copies of certificates evidencing such insurance;

(f) The approved operating budget for the Hospital (and any related facilities), together with a certified copy of the resolutions adopted by the Board of Directors of SHS approving such budget, within twenty (20) days after the end of each fiscal year;

(g) Quarterly reports of income and expenses for the Hospital (and any related facilities), within thirty-one (31) days after the end of each fiscal quarter;

(h) IRS Form 990 within twenty (20) days of filing;

(i) SHS shall present to the District, monthly, an operating report including the previous month's itemized costs and expenses by major category. The financial expense and cost breakdown shall include salary information in the following categories: administrative, technical, nursing, aides, clerical and other support;

(j) SHS shall have a comprehensive facility plan (writing 1-year, 5-year, 10-year) with future needs submitted at the District annual meeting, and SHS shall give the District a quarterly report as to how said facility plan is being effectuated; and

(k) SHS shall have a Board member report to the District at all District regular Board meetings.

4.16 Capital Improvements or Acquisitions. All capital improvements or acquisitions of property, assets or businesses which cause expenditures in excess of \$250,000 shall be presented in advance to the District board. Notwithstanding the foregoing, SHS shall not acquire and hold any real property or facilities by conveyance on transfer of title without the prior written consent of the District, said consent from the District shall not be unreasonably withheld.

4.17 Additional Financial Reports and Corrective Actions. The District and SHS desire to make a part of this Agreement a mechanism whereby the District would be given, on an ongoing basis, information of a kind likely to indicate if the Hospital was in or was vulnerable to experiencing severe financial distress. The District and SHS further agree that certain customary financial ratios generally may be used as indicia of current or impending severe financial distress. The parties therefore agree as follows:

(a) No later than thirty-one (31) days after the end of each fiscal quarter, SHS shall provide to the District a report (the "Ratio Report") containing the three (3) financial ratios set forth below in Section 4.16(b), as of the end of the most recent fiscal quarter. Debt service coverage ratio, long term debt to asset ratio and average age of plant will be reviewed with the annual audit.

(b) The ratios to be contained in the Ratio Report are as follows:

(i) **Return on Assets Ratio.** This ratio shall be calculated by dividing (A) SHS's net income for the immediately preceding four (4) fiscal quarters by (B) the total SHS assets and the Leased Hospital Assets, expressing such total as a percentage.

(ii) **Acid Test Ratio.** This ratio shall be calculated by dividing (A) the sum of the cash, current cash equivalents and publicly traded stock and bond investments whether considered current or long term for accounting purposes which are held by SHS as of the end of the immediately preceding fiscal quarter, divided by (B) SHS's total current liabilities, as of the end of the same quarter.

(iii) **Current Ratio.** This ratio shall be calculated by dividing (A) the sum of SHS's total current assets and publicly traded stock and bond investments whether considered current or long term for accounting purposes as of the end of the immediately preceding fiscal quarter, by (B) SHS's total current liabilities as of the end of the same quarter.

(c) Whenever: (i) the Return on Assets Ratio and (ii) either the Acid Test Ratio or the Current Ratio for a fiscal quarter are below the seventy-fifth (75th) percentile, but above the fiftieth (50th) percentile for the Sole Community Provider category as set forth in the most recent Sourcebook, published by Deloitte & Touche (or any other publication thereof containing substantially the same information) (the "Comparable Hospital Category"), then, the District shall require that SHS give special attention to the areas which have substantially contributed to the applicable ratios being below the seventy-fifth (75th) percentile.

(d) Whenever: (i) the Return on Assets Ratio and (ii) either the Acid Test Ratio or the Current Ratio for a fiscal quarter are below the fiftieth (50th) percentile, but above the thirty-seven and one-half (37-1/2) percentile for the Comparable Hospital Category, then, the District shall request that SHS provide to the District a Memorandum of Understanding, which will require approval by the District, setting forth the actions that SHS must take to improve the areas which have substantially contributed to the applicable ratios being below the fiftieth (50th) percentile.

(e) Whenever: (i) the Return on Assets Ratio and (ii) either the Acid Test Ratio or the Current Ratio for a fiscal quarter are below the thirty-seven and one-half (37-1/2) percentile, but above the twenty-fifth (25th) percentile for the Comparable Hospital category, then, the District shall require that SHS provide to the District a corrective action plan, specifying the dates by which SHS will accomplish corrective actions to improve the areas which have substantially contributed to the applicable ratios being below the thirty-seven and one-half (37-1/2) percentile. This Agreement shall be terminable by the District if such corrective action is not taken by SHS as of the date specified in the corrective action plan.

(f) Whenever: (i) the Return on Assets Ratio and (ii) either the Acid Test Ratio or the Current Ratio for a fiscal quarter are below the twenty-fifth (25th) percentile for the Comparable Hospital Category, then, (A) the Ratio Report shall contain a detailed analysis of the financial health of SHS and the viability of Hospital operations, (B) the District shall determine, based on such analysis and any additional information which the District Board believes to be pertinent, whether the current and future health care needs of the residents of the District would be best served by the termination of the Agreement, and (C) if the District determines that such needs would be best served by termination of the Agreement, then the District shall terminate the Agreement; however, if the District determines that the current and future health care needs of the residents of the District would not be best served by the termination of the Agreement, then it shall communicate such decision, and the basis thereof, to the Montezuma County Commissioners (the "County Commissioners"), who shall independently decide, based on all the available evidence, whether the current and future health care needs of the residents of the District would be best served by the termination of the Agreement. If the County Commissioners concur with the District's decision to permit SHS to continue to operate the Hospital hereunder, this Agreement shall continue in full force and effect. If the County Commissioners disagree with the District's decision and decide that termination of the Agreement is appropriate pursuant to this Section, the Agreement shall be terminated effective as of the date of such decision or as of a later date agreed to by the County Commissioners and the District Board.

4.18 Provision of Resources to District. During the Term, SHS shall provide to the District such office space, clerical and financial personnel and other resources reasonably necessary for the District to conduct its operations on an ongoing basis. SHS and the District shall have at least two joint meetings annually.

4.19 Notice and Open Meetings. During the Term, SHS shall provide Notice of all regular meetings, and all SHS regular meetings shall be open to the public. SHS shall provide Notice to the public of any regular meetings by posting in at least two open and conspicuous places upon the Hospital premises Notice of any meetings at least twenty-four (24) hours prior to the holding of the meeting. The posting shall include specific agenda information where possible. In the event SHS determines that any issue must be discussed or determined outside the public presence, it may adjourn to a private meeting after properly advising any public then present of the nature or subject matter of materials to be discussed in private, or may discuss such business during work sessions.

4.20 Executive Committee. SHS may appoint an Executive Committee which shall be entitled to determine matters of an urgent or emergency nature during the periods between regular SHS board meetings. Provided, however, all determinations or resolutions made or passed by the Executive Committee shall be subject to ratification by the SHS Board of Directors at the next regularly scheduled board meeting.

ARTICLE V

GENERAL COVENANTS OF THE DISTRICT

The District hereby agrees and covenants with SHS to take the following actions during the Term (or such other period as may be specified below):

5.1 Consents and Notices. The District, prior to the Transfer Date, shall obtain any consents and give any notices required in connection with the assignment to SHS of the Assigned Contracts and the assumption by SHS of the Assumed Liabilities under the terms and conditions thereof. The District shall provide SHS with satisfactory evidence on or before the Transfer Date that all such consents have been obtained and notices have been given.

5.2 Cooperation with SHS. The District, at SHS's expense, shall cooperate reasonably with SHS in any manner necessary to enable SHS to fulfill SHS's obligations and exercise SHS's rights under this Agreement. Subject to Article VI below, the District grants SHS the right to issue bonds and to incur other indebtedness, from time to time, related to its tax-exempt purposes as the law may so allow; however, SHS shall not encumber the Leased Hospital Assets except pursuant to the Leasehold Deed of Trust in accordance with Section 6.1 hereof or as otherwise consented to in writing by the District.

5.3 Liens and Encumbrances. The District shall not suffer or permit any liens or encumbrances (other than any liens or encumbrances which may exist on the Transfer Date) to be filed or exist against the Leased Hospital Assets.

5.4 Quiet Enjoyment. The District shall take any and all action necessary or appropriate to enable SHS to take and enjoy peaceful, quiet and undisputed possession of the Leased Hospital Assets.

5.5 Eminent Domain. The District shall take no action to exercise the power of eminent domain or to cause any other governmental authority or person, firm or corporation acting under governmental authority to exercise such power over any of the Leased Hospital Assets.

5.6 Right of First Refusal. The District grants SHS a right of first refusal with regard to a sale of any part of the Leased Hospital Assets. If, at any time during the Term, the District determines that a sale of the Leased Hospital Assets would be in the best interest of the residents of Montezuma County and solicits and receives a bona fide offer to purchase the Leased Hospital Assets (an "Offer"), and wishes to accept the Offer, the District shall, but only if SHS is not then in default of any of its obligations under this Agreement, first allow SHS the opportunity to purchase the Leased Hospital Assets upon the same terms and conditions contained in the Offer. The District shall submit such Offer to SHS, and SHS shall have sixty (60) days from the date of receipt of such Offer in which to decide whether to purchase the Leased Hospital Assets. If SHS decides to purchase the Leased Hospital Assets, it shall notify the District in writing of such intent prior to the expiration of such sixty (60) day period. SHS shall then be obligated, within sixty (60) days of such notice to the District, to enter into an agreement for the purchase of the Leased Hospital Assets on terms substantially identical to those contained in the Offer, and shall then be bound to consummate and close the purchase of the Leased Hospital Assets under such terms and within the same time period as was specified for closing the transaction in the Offer. If SHS does not elect to purchase the Leased Hospital Assets within the sixty (60) day period, the District may then sell it to the third party on the terms and conditions contained in the Offer. However, if the sale has not closed within one hundred twenty (120) days after the closing date specified in the original Offer, any subsequent sale will be subject to the provisions of this section.

Any sale of the Leased Hospital Assets shall be in accordance with the statutory and constitutional provisions then in effect. Approval of this Agreement by the Montezuma County Commissioners does not constitute approval of any sale of the Hospital by the District, and any sale of a substantial portion of the Leased Hospital Assets shall constitute a material modification hereof.

5.7 Capital Infrastructure Committee. There shall be a Capital Infrastructure Committee consisting of the engineer, and representatives of the District and SHS. The Committee will have two voting members one (1) Board member from the District and one (1) Board member from SHS. This committee shall make recommendations as to capital improvement projects (defined as a project for the construction, repair, or improvement of buildings or grounds as to the Leased Hospital Assets). All capital improvement projects shall be jointly approved and overseen by the District and SHS. In the event there is a tie among the two voting Committee members, the Engineer shall cast a tie breaking project vote. All draws shall be made from a "Capital Improvement Account" approved by both Boards. Design and construction of capital improvement projects shall be carried out in accordance with the quiet enjoyment provisions of this Agreement and, to the extent necessary, state procurement laws.

The parties have entered into a separate formal agreement regarding the funding of the above-referenced Capital Improvement Account. SHS's compliance with its obligations to fund the Capital Improvement Account shall be a material obligation under this lease. Any default of SHS's obligation to fund the Capital Improvement Account shall be considered a breach of this Lease.

ARTICLE VI

SALE, ASSIGNMENT, MORTGAGING AND SUBLETTING

6.1 Leasehold Deed of Trust. SHS shall have the right, with the District's consent, which is hereby granted, to mortgage its interest in this Agreement to Zions Bank, A Division of ZB, National Association, Denver, Colorado, as Trustee (the "Trustee") under the Indenture of Trust, dated as of November 1, 2016, between the Trustee and Montezuma County, Colorado (the "Indenture"), pursuant to the terms of the Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated as of November 17, 2016, from SHS, as grantor, to The Public Trustee in and for Montezuma County, Colorado, for the benefit of the Trustee (the "Leasehold Deed of Trust").

(a) Until the Leasehold Deed of Trust shall be satisfied of record, the District agrees that it shall not, except in the event of uncured default by SHS or the Trustee as provided herein, without the prior consent of the Trustee:

- (i) terminate, amend or modify the Agreement;
- (ii) consent to, acquiesce in or accept the termination of this Agreement or surrender of all or part of the Leased Hospital Assets;
- (iii) consent to the assignment or other transfer of all or part of SHS's estate and interest in this Agreement (the "Leasehold Interest");
- (iv) consent to any further encumbrance of SHS's Leasehold Interest;
- (v) create or permit a sale or an assignment or any further encumbrance of the District's interest in the real property described in this Agreement or in the District's interest in this Agreement.

(b) Until the Leasehold Deed of Trust shall be satisfied of record: Trustee shall have and be subrogated to any and all rights of SHS with respect to the curing of any default under this Agreement; the District shall give to Trustee, simultaneously with the serving of the same on SHS, a copy of each notice or demand ("Notice") which it gives to SHS, including all Notices of a default by SHS (which shall specify the default), each Notice to be sent to the address designated by Trustee, by registered or certified mail, return receipt requested, and the same shall be effective upon receipt by such addressee; Trustee shall have the right, but not the obligation, to perform any covenant or agreement under this Agreement to be performed by SHS, and the District shall accept such performance by Trustee as though the same had been performed by SHS; Trustee shall have the right (but not the obligation) to cure any default by SHS in the payment of rent and all other charges provided for in this Agreement and the District shall accept such performance by the Trustee as though the same had been performed by SHS; and SHS may assign its Leasehold Interest to Trustee (or its assignee, designee or nominee) with the District's express written consent and approval. Any notice or demand given by the District in derogation hereof shall be deemed of no effect.

(c) SHS agrees that there shall be no merger of this Agreement, or of the Leasehold Interest, or of any interest in any building, building service equipment or other improvement now or hereafter located on the Leased Hospital Assets, with the fee estate of the District, by reason of the fact that this Agreement or the Leasehold Interest or any interest in any such building, equipment or other improvements may be held by or for the account of the District, unless and until the District and all persons, including the Trustee, at the time having an interest in this Agreement, the Leasehold Interest, any building, building service equipment or other improvement shall join in a written instrument effecting such merger and shall duly record the same.

(d) With respect to the rights granted to SHS to assign or otherwise transfer its interest under this Agreement, upon consent and approval by the District, the granting of the Leasehold Deed of Trust to Trustee shall not cause Trustee to be deemed an assignee or transferee of this Agreement or of the leasehold estate thereby created so as to require it, as such, to assume the performance of any of the terms, covenants or conditions on the part of SHS to be performed thereunder, but the purchaser at any sale of this Agreement and of the leasehold estate thereby created in any proceedings for the foreclosure of the Leasehold Deed of Trust, or the assignee or transferee of this Agreement and of the leasehold estate thereby created under any instrument or

assignment or transfer in lieu of foreclosure of the Leasehold Deed of Trust, or the assignee or transferee of this Agreement and of the leasehold estate thereby pursuant to any other right granted to Trustee under the Leasehold Deed of Trust, shall be deemed to be an assignee or transferee within the meaning of this Agreement and shall be deemed to have assumed the performance of all of the terms, covenants and conditions on the part of SHS to be performed thereunder from and after the date of such purchase and assignment.

(e) If Trustee or any purchaser at a foreclosure sale shall acquire SHS's Leasehold Interest, and cure all defaults of SHS which affect the Leased Hospital Assets and are susceptible of being cured (other than requirements of this Agreement which are no longer applicable or have already been performed), then said party shall be entitled to exercise any options or rights contained in this Agreement, such other defaults which are not susceptible of being cured by Trustee or by such purchaser no longer shall be defaults thereunder, and notwithstanding any provision in this Agreement to the contrary, Trustee or such purchaser or any of their designees or nominees shall have the further right to assign the Leasehold Interest, subject to the District consenting to such assignment after the District has had reasonable opportunity to analyze the fitness of the proposed Assignee's ability to operate the District's Hospital under the Agreement.

(f) The District hereby agrees that any and all liens, distraints and other rights against SHS's inventory, equipment, machinery, personal property and fixtures located on the Leased Hospital Assets which the District has or may have under applicable law or agreement for the payment of rent and other sums due pursuant to this Agreement or otherwise are fully subordinate to Trustee's now existing and hereafter arising security interests and liens in such property which secure SHS's obligations and indebtedness to Trustee.

(g) Notwithstanding any provision in this Agreement to the contrary, in the event of any casualty to or condemnation of the Leased Hospital Assets, any other improvements on the Leased Hospital Assets or any portion thereof, Trustee shall be entitled to receive insurance proceeds and/or condemnation awards otherwise payable to SHS and shall have the right (but not the obligation except as provided in the next sentence) to apply the proceeds in accordance with the Indenture. In addition, if Trustee (by reason of its acquiring SHS's Leasehold Interest) shall be obligated under this Agreement to restore the Leased Hospital Assets in such event, then such obligation shall be limited to the amount of such proceeds or award.

(h) The District recognizes the Trustee as a third-party beneficiary of this Agreement and represents to the Trustee that the District: (i) is the owner of record of the Leased Hospital Assets, and (ii) has the necessary power and authority to execute this Agreement and has obtained all the consents or approvals of any party necessary to effectuate the terms of this Agreement.

(i) The rights accorded to the Trustee hereunder shall bind and inure to the benefit of its successors, assignees, nominees and designees.

(j) SHS may sublease the Leased Hospital Assets in whole or in part with the District's express written consent, but the making of any sublease shall not release Lessee from, or otherwise affect in any manner, any of SHS's obligation under this Agreement.

6.2 Right to Sell or Mortgage. Except as set forth in Section 6.1 hereof, SHS shall have no authority or power to sell or convey any of the Leased Hospital Assets or to cause or permit any lien or encumbrance of any kind to be attached to or be placed upon the District's title or interest in the Leased Hospital Assets, and any and all liens and encumbrances created by SHS shall attach to SHS's leasehold interest only.

6.3 Right to Assign and Sublet. Except as set forth in Section 6.1 hereof and subject to Section 4.2 above, SHS shall have the right to assign or sublet its interest in and to: (i) up to twenty-five percent (25%) of the total floor area of the Hospital building, and (ii) up to twenty-five percent (25%) of Leased Hospital Assets in each instance without the consent of, or notice to, the District, provided that:

(a) such assignments or subleases shall be for operating purposes and in furtherance of the health care purposes of SHS; and

(b) no such assignments or subleases shall extend beyond the Term; and

(c) no assignment or sublease of twenty-five percent (25%) or more of the total floor area of the Hospital buildings or twenty-five percent (25%) or more of the Lease Hospital Assets, shall be undertaken without the express written consent of the District, which consent shall not be unreasonably withheld.

(d) Further provided, however, no assignment or sublease of any portion of the unimproved real property shall be undertaken without the express written consent of the District, which consent shall not be unreasonably withheld.

6.4 Restrictions on Assignments and Subleases. In the event that SHS should assign or sublet any part of its rights and obligations hereunder, subject to Section 6.1 and Section 6.3 above, with respect to less than all of the Leased Hospital Assets:

(a) SHS shall continue to be liable to the District for the performance of all obligations and duties which are the responsibility of SHS under the terms hereof; and

(b) SHS shall impose such restrictions and obligations upon such assignee(s) or sublessee(s) as are consistent with the provisions of this Agreement and appropriate under the circumstances.

6.5 Effect of Early Termination. In the event that this Agreement is terminated prior to the natural expiration of the Term for any reason, the rights of the District shall be subject to: (i) the remaining unsatisfied provisions of the Assigned Contracts and the Assumed Liabilities, and (ii) such assignments, indebtedness or subleases, as have been consented to by District pursuant to this Article VI, and the District shall succeed to all rights of SHS under the terms of such assignments or subleases as if the District had entered into such assignments or subleases with the other parties thereto.

ARTICLE VII

DAMAGE, DESTRUCTION AND EMINENT DOMAIN

7.1 Damage and Destruction. If during the Term any significant portion of the Leased Hospital Assets shall be damaged or partially or totally destroyed by fire, flood, windstorm or other casualty, SHS shall notify the District within thirty (30) days of such casualty. Subject to Section 6.1, SHS may, upon such notice, at its option, elect to either:

(a) Terminate this Agreement effective as of the date of such casualty, pay no further rental payments hereunder, and pay all proceeds of the property insurance on the damaged or destroyed assets to the District within thirty (30) days after such proceeds are received; or

(b) Proceed with all due diligence to restore, repair or replace the damaged or destroyed assets using the proceeds of the property insurance on such assets; provided, however, that if SHS fails: (i) to substantially restore, repair or replace such assets within 180 days after such casualty, or (ii) with respect to restoration, repair or replacement which cannot with due diligence be completed within said 180-day period, SHS fails to take all actions necessary to complete such restoration, repair or replacement with all due diligence, the District shall have the right to terminate this Agreement by notifying SHS of such termination (i) as of the expiration of said 180-day period, or (ii) with respect to restoration, repair or replacement which cannot with due diligence be completed within said 180-day period, after allowing a reasonable time for the completion of such restoration, repair or replacement. In the event that SHS elects to restore, repair or replace the damaged or destroyed assets under this Section, the District shall promptly execute and deliver to SHS any and all documents necessary to waive any and all rights on claims which the District has or may have in and to all insurance proceeds. In the event that the District elects to terminate this Agreement under this Section, SHS shall promptly pay to the District all remaining insurance proceeds.

7.2 Eminent Domain. Subject to 6.1 hereof, if during the Term either title to or the temporary use of the Leased Hospital Assets shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, any proceeds received from any award made in any related eminent domain proceedings (after the payment of any expenses incurred in connection with such proceedings) shall be paid to SHS on the express condition that SHS use all such proceeds for the sole purpose of acquiring new land and facilities to be used for the provision of health care services to the residents of the District. If any part of such proceeds are used for any purpose not authorized under this Section, the District may demand the return of all proceeds, in which event SHS shall within three (3) days of such demand pay to the District all proceeds not used for an authorized purpose. SHS and the District further agree that:

(a) If only the temporary use of all or substantially all of the Leased Hospital Assets is taken, SHS shall not be obligated to pay rent with respect to such period; and

(b) If title to all or substantially all of the Leased Hospital Assets is taken, this Agreement shall be terminated and SHS shall not be obligated to pay any further amount as rent hereunder or be bound in any way by the terms of this Agreement effective as of the date of such taking.

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES OF THE DISTRICT

The District hereby represents and warrants to SHS that the following representations and warranties are true and accurate as of the date hereof and as of the Transfer Date:

8.1 Authority. The District has power and authority to execute and deliver this Lease Agreement, and to carry out the transactions contemplated hereby and therein, respectively. The Board of Directors of the District, acting on behalf of the District in connection with this Agreement is the properly appointed, acting, and duly authorized representative of the District, and is acting in accordance with the provisions of the Act, or any successor or similar statute.

8.2 No Conflicts. The Lease Agreement is duly executed and delivered and is a valid and legally binding obligation of the District enforceable in accordance with its respective terms. The execution and delivery of this Lease Agreement, does not, and the consummation of the transactions contemplated hereby will not result in the creation of any lien, charge or encumbrance or the acceleration of any indebtedness or other obligation of the District or the Hospital, and are

not prohibited by, in violation of or in conflict with any provisions of, and will not result in a default under or a breach of: (i) any constitutional provision affecting the District or the Hospital, (ii) any contract, agreement or other instrument to which the District or the Hospital is a party or is bound, (iii) any ordinance, law or regulation, or (iv) any order, decree or judgment of any court or governmental agency to which the District or the Hospital is a party or is bound.

8.3 Bonds. The Existing Bonds are the only bonds authorized and issued by the District which are outstanding as of the Transfer Date which are applicable to the Hospital or long-term indebtedness.

8.4 Rent. The rent payable to the District under Section 3.1 hereof is deemed by the District to be an appropriate amount in view of the purposes of the parties set forth in the Preamble hereof.

8.5 Condition. To the District's knowledge: (i) the Hospital has been and is being used in material compliance with all zoning, environmental, health code and other similar laws, ordinances and regulations and with all covenants, conditions and restrictions affecting the Hospital, (ii) no underground storage tanks, as defined in the Resource Conservation and Recovery Act ("RCRA") or under applicable state law, are present on the Leased Hospital Assets or were previously abandoned or removed therefrom, and (iii) no hazardous substances, as defined in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") or under applicable state law, have ever been generated, treated or stored at, or disposed or released from, the Leased Hospital Assets, except in compliance with legal requirements.

ARTICLE IX **REPRESENTATIONS AND WARRANTIES OF SHS**

SHS hereby represents and warrants to the District that the following representations and warranties are true and accurate as of the date hereof and as of the Transfer Date:

9.1 Organization. SHS is a nonprofit corporation duly organized and in good standing under the laws of the State of Colorado. SHS has the power to lease and to own assets and to carry on its business as contemplated under this Agreement.

9.2 Authority. SHS has the power to execute and deliver this Lease Agreement and to carry out the transactions contemplated hereby. All corporate actions required to be taken by SHS to authorize the execution, delivery and performance of this Agreement and all transactions contemplated hereby have been duly and properly taken.

9.3 No Conflicts. This Agreement is duly executed and delivered and is a the valid and legally binding obligation of SHS, enforceable under its respective terms. The execution and delivery of this Lease Agreement does not, and the consummation of the transactions contemplated hereby will not result in the creation of any lien, charge or encumbrance, or the acceleration of any indebtedness or other obligation of SHS, and are not prohibited by, in violation of, or in conflict with any provision of, and will not result in a default under, or a breach of: (i) any contract, agreement or other instrument to which SHS is a party or is bound, (ii) any ordinance, law or regulation, or (iii) any order, decree or judgment of any court or governmental agency to which SHS is a party or is bound.

9.4 Bylaw Requirements. SHS shall adopt and maintain provision in its Bylaws which shall provide the following:

(a) No SHS board member may be removed except for cause and then only by a two-thirds (2/3) vote of the Board of Directors.

ARTICLE X
DEFAULT AND TERMINATION

10.1 Effect of Default by SHS. If: (i) SHS fails to perform any of its obligations under the terms of this Agreement, including its obligation to abide by the covenants set forth in Article IV, and such failure continues for sixty (60) days after written notice of such default from the District (provided, however, that if the nature of the default is such that more than sixty (60) days are reasonably required for its cure, then SHS shall not be deemed to be in default if SHS commences such cure within said sixty (60) day period and thereafter diligently prosecutes such cure to completion, and provided, further, if the default involves a hazardous condition, SHS shall immediately after written notice commence, and with diligence thereafter, to cure such default), or (ii) SHS adopts a plan of dissolution or files for bankruptcy, liquidation or receivership of SHS, or (iii) SHS defaults in the payment or performance of its obligations and such default continues beyond the applicable grace period, if any, provided in the operative documents for such transaction, then the District shall have the right either to terminate this Agreement upon written notice at any time after expiration of the applicable cure period, if any, or enforce the terms of this Agreement by invoking any other right or remedy allowed at law or in equity, including without limitation an action for specific performance. Notwithstanding anything to the contrary in this Section, and subject to Article VII hereof and the other sections of this Article X, SHS's failure to pay the rent under Section 3.1 above within five (5) business days after the due date thereof shall be an immediate event of default hereunder.

10.2 Effect of Default by the District. If the District fails to perform or pay, in a full and timely manner, any of its obligations under the terms of this Agreement and such failure continues for sixty (60) days after written notice of such default from SHS (provided, however, that if the nature of the default is such that more than sixty (60) days are reasonably required for its cure, then the District shall not be deemed to be in default if the District commences such cure within said sixty (60) day period and thereafter diligently prosecutes such cure to completion, and provided, further, if the default involves a hazardous condition the District shall immediately after written notice commence, and with diligence thereafter, to cure such default), then SHS shall have the right either to: (i) terminate this Agreement upon written notice at any time after expiration of the applicable cure period, if any, or (ii) enforce the terms of this Agreement by invoking any other right or remedy allowed at law or in equity, including without limitation an action for specific performance.

10.3 Early Termination. Except as set forth in Section 4.16, Article VII hereof and otherwise in this Article X, this Agreement may not be terminated by either party prior to the end of the Term without the written consent of the other party.

10.4 Surrender of Leased Hospital Assets Upon Termination. Upon the termination of this Agreement for any reason, SHS shall, on the date of termination, surrender the Leased Hospital Assets to the District and shall transfer the following items to the District:

(a) All Leased Hospital Assets, wheresoever then located as of the effective date of termination, including property acquired by SHS, or any of its affiliates or subsidiaries, after the Transfer Date to further its nonprofit, charitable purposes;

(b) All normal and customary liabilities incurred by SHS in its day to day operation of the Hospital (including the Assumed Liabilities); and

(c) All rights of SHS in any assignment, sublease entered into by SHS pursuant to Section 6.2.

Notwithstanding the foregoing, the District, in its sole option, may decide whether to accept any of the assets described in Subsection (a) above upon the effective date of such termination. Upon such date the District shall have the full right and authority to assume operation of the Hospital, to collect as its own revenue all revenues from operation of the Hospital, and to establish, maintain and enforce a schedule of rates and charges which, together with the tax levies of the District, and all other revenue of the District, shall be sufficient to pay the costs of operation and maintenance expenses of the District and the payment of principal and interest on the Existing Bonds, if then outstanding.

ARTICLE XI IMPOSSIBILITY

11.1 Impossibility of Performance. Neither party hereto shall be liable for any delay in performance or failure to perform when fire, flood, explosion, accident, unavailability of equipment, supplies, parts or materials, energy shortage, war, weather, casualty, act of God, sabotage, law or government regulation, or any other cause reasonably beyond such party's control makes performance impossible despite the best efforts to perform by the party from whom performance is required.

ARTICLE XII TRANSFER DATE DELIVERIES

12.1 SHS's Deliveries to the District. SHS shall deliver the following to the District on or before the Transfer Date:

- (a) Certificate of Good Standing from the Colorado Secretary of State;
- (b) A certificate executed by the Chairman of SHS, dated as of the Transfer Date, stating that, to the best of his knowledge, all representations and warranties of SHS set forth herein are accurate and true as of the Transfer Date; and
- (c) A certified copy of resolutions adopted by the Board of Directors of SHS, authorizing and approving the execution and performance of this Lease Agreement.

12.2 The District's Deliveries to SHS. The District shall deliver the following to SHS on or before the Transfer Date:

- (a) A certificate executed by the Chairman of the District, dated as of the Transfer Date, stating that, to the best of his knowledge, all representations and warranties of the District set forth herein are accurate and true as of the Transfer Date;
- (b) The Certificates of Title, properly assigned to SHS; and
- (c) Evidence of all consents and notices required by Section 5.1.

The District also shall take any and all additional actions which may be necessary in order to effectuate this Lease Agreement.

12.3 Failure to Deliver. In the event that either party hereto fails to make any delivery required under this Article, the non-defaulting party may, at its option, declare this Agreement to be null and void as of the Transfer Date, in which case all deliveries shall immediately be returned to the party making the delivery.

ARTICLE XIII **MISCELLANEOUS**

13.1 Notices and Payments. All notices, requests, demands, payments and other communications to be made hereunder shall be in writing and shall be deemed to have been duly given if either mailed by certified mail, return receipt requested, postage prepaid, or hand delivered and with such delivery evidenced by a signed receipt, as follows:

(a) If to the District:

1311 North Mildred Road
Cortez, Colorado 81321
Attention: Chairperson of the Board

(b) If to SHS:

1311 North Mildred Road
Cortez, Colorado 81321
Attention: Chairperson of the Board

or to such other address as either party hereto may request by such written notice. Any notice given in accordance with this Article shall be deemed to have been received either three (3) days after it was mailed or upon delivery, whichever first occurs.

13.2 Severability. If any provision of this Lease or the application thereof is held invalid, such invalidity shall not affect other provisions or applications of this Lease that can be given effect without the invalid provisions or application, and to this end the provisions of this Lease are declared to be severable.

13.3 Entire Agreement. This Agreement, together with the Exhibits attached hereto, in accordance herewith, contains the entire understanding of the District and of SHS with respect to the transactions contemplated hereby and supersedes all other agreements and understandings between the District and SHS.

13.4 Amendment. This Agreement may be amended only by a written agreement authorized by the affirmative vote of the governing body of both SHS and the District and executed by the authorized representatives of both parties; provided, however, that in the event the parties hereto desire to make a material modification to this Agreement, the material modification shall be presented to the Board of County Commissioners for their review and approval.

13.5 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado.

13.6 Counterparts. This Agreement may be executed simultaneously in two (2) or more counterparts, all of which together shall constitute one and the same Agreement.

13.7 Permission and Consent. Wherever in this Agreement the permission or consent of either the District or SHS is required or requested, such permission and consent shall not be unreasonably withheld or delayed.

13.8 Accounting Determinations. All accounting determinations required to be made under this Agreement shall be made in accordance with generally accepted accounting principles.

13.9 Successors and Assigns.

(a) With respect to the Hospital, each provision hereof shall be a covenant running with the land and shall extend to and shall bind and inure to the benefit of the District and SHS and their respective legal representatives, successors in interest and assigns of their respective rights and obligations with respect to the Hospital.

(b) With respect to the Leased Hospital Assets other than the Hospital:

(i) each provision hereof shall extend to and shall bind and inure to the benefit of the District and its legal representatives, successors and assigns; and

(ii) each provision hereof shall be a continuing obligation of SHS and its legal representatives and shall be binding upon the possessor in interest, assignee or sublessee of SHS.

13.10 Authorization of SHS to Act. Notwithstanding any other provisions of this Agreement, the District hereby authorizes SHS, at the sole discretion of SHS, to obtain any and all zoning and/or building permits, tax divisions and certifications of tax exempt status, filing plats of subdivisions, negotiated agreements with public and private utilities, and any and all other documents and/or approvals required by or from any governmental authority exercising jurisdiction over all or any part of the Leased Hospital Assets, as SHS, in its sole discretion, shall from time to time deem necessary or appropriate in order to carry out the health care purposes of SHS. Nothing in this Article shall be deemed or construed as in any way limiting or amending the obligations of the District under Section 5.4 to cooperate with SHS in any way necessary in order to enable SHS to exercise its rights hereunder, including without limitation, the obligation to sign any and all documents and to take any and all other steps necessary to accomplish any of the actions set forth in this Article.

13.11 Conditions Precedent to Closing. The obligations of the parties under this Agreement are subject to the satisfaction, on or prior to the Transfer Date, of the following conditions:

(a) There shall have been no material breach by either party in the performance of any of their respective covenants herein, each of the representations and warranties of each of them contained or referred to in this Agreement shall be true and correct in all material respects on the Transfer Date as though made on the Transfer Date, and there shall have been delivered to each party their respective deliveries as described in Article XII above;

(b) No order shall have been entered in any action or proceeding before any court or governmental agency, and no preliminary or permanent injunction by any court shall have been issued which would have the effect of: (i) making the transactions contemplated by this Agreement illegal, or (ii) otherwise preventing consummation of such transactions; and there shall have been

no federal or state statute, rule or regulation enacted or promulgated that could reasonably, directly or indirectly, result in any of the consequences referred to in clauses (a) or (b) of this Section;

(c) All necessary federal, state and local governmental approvals and consents, including the approval of the Montezuma County Board of Commissioners, shall have been obtained, without the imposition of any material conditions or restrictions and without the loss of any existing material waivers arising out of the closing of the transactions contemplated hereby;

(d) If any governmental agency seeks to preliminary enjoin the transactions contemplated hereby, either party may decide not to proceed further with the transactions; provided, however, that if both of the parties agree to contest such preliminary injunction, each party shall bear its own costs and expenses associated therewith; and


(e) All third party consents or waivers required to be obtained with respect to the proposed transactions shall have been obtained.

IN WITNESS WHEREOF, the parties have caused their authorized representatives to executed this Agreement in their respective names on the day and year first above written.

Montezuma County Hospital District

ATTEST:

By:


Secretary of the Board

By:


Chairperson of the Board



Southwest Health System, Inc.

ATTEST:

By:


Secretary of the Board

By:


Chairperson of the Board

