

**NOTICE OF AND AGENDA FOR
SPECIAL MEETING OF
FORT SCOTT CITY COMMISSION
CITY HALL
CITY COMMISSION MEETING ROOM
123 SOUTH MAIN STREET
JULY 22, 2021
12:00 P.M.**

K. Allen P. Allen R. Nichols L. Watts J. Jones

- I. Approval of contract with Noble Health Care
- II. Adjournment

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT ("Agreement"), made this __ day of _____, 2021 (the "Effective Date"), by and among the Board of County Commissioners of Bourbon County, Kansas, a governmental entity in the State of Kansas (the "County"), The City of Fort Scott, a Municipal Corporation and Access Medical Advisors, LLC, a Missouri limited liability corporation and Noble Health Corp, Inc., a Missouri corporation, together with its successors and assigns ("Developer").

Recitals

WHEREAS, Developer desires to redevelop and operate an acute care hospital (the "Project") at that certain real property commonly known as 2801 Jayhawk Road, Fort Scott, Kansas, as more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Development Property"); and

WHEREAS, the County and City believe that the development of the Project pursuant to this Agreement, and fulfillment generally of the terms of this Agreement, are in the vital and best interests of the County, City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws under which the development and redevelopment are being undertaken and assisted; and

WHEREAS, the County, City and Developer desire to enter into this Agreement in order to set forth their respective agreements, obligations and commitments with respect to the Project; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter expressed, the parties mutually agree as follows:

Agreement

1. Feasibility Study; Plan Decision. The County and City hereby agree to provide Developer, its agents, employees, and contractors, the right to enter the Development Property to investigate the condition of title to the Development Property, the physical condition of the Development Property, the zoning of the Development Property, the economic feasibility of the Project, and all matters relevant to the acquisition, usage, operation, valuation and marketability of the Development Property and the Project, as Developer deems appropriate (collectively the "Feasibility Study"). Furthermore, the County hereby agrees to grant the Developer up to Eight Hundred Thousand Dollars (\$800,000,) and the City hereby agrees to grant the Developer up to Two Hundred Thousand Dollars (\$200,000) for the costs and expenses incurred by the Developer in connection with the Feasibility Study (the "Feasibility Grant"). In the event that Developer is not satisfied with the feasibility of the Project, as determined by Developer in its sole discretion, Developer shall have the right to terminate this Agreement upon written notice to the County and the City on or before _____ () days after the Effective Date (the "Feasibility Period") and the parties shall be released from all further obligations hereunder except for the County's and City's obligation to pay the Feasibility Grant and those obligations which expressly survive termination of this Agreement.

2. Obligations of the County and City if the Project is determined to be feasible. If the Developer is satisfied with and notifies the County and City in writing on or before the expiration of the Feasibility Period (the "Notice to Proceed"), the feasibility and suitability of the Project and Development Property, the County hereby agrees as follows:

2.1. County Financial Contributions; Possible Public Financing. The County agrees to contribute at least \$2,000,000.00 (the "Development Grant") to finance certain costs and expenses related to and associated with the Project. The County shall develop a public financing package for the Project, which financing package shall provide some level of public financing for the Project for a term no less than ten (10) years following Developer's acquisition of the Development Property.

2.2. Conveyance of the Development Property. The County shall convey the Development Property to Developer within ___ () days of the County's receipt of the Notice to Proceed. The purchase price paid to the County by Developer in exchange for the Development Property shall be \$10.00, due and payable in full at Closing (as defined hereinafter). At closing on the conveyance of the Development Property to Developer (the "Closing"), the County shall deliver to Developer a special warranty deed, bill of sale and/or such other documents, in such form as reasonably requested by Developer.

2.3. Reversionary Right. Notwithstanding anything contained in this Agreement to the contrary, if Developer fails to complete the redevelopment of the Project within two (2) years of acquiring the Development Property, the County shall have the right to re-enter and take possession of the Development Property and upon such event, the fee interest conveyed by the County to Developer shall revert to and re-vest in the County (the “Reversionary Right”). Provided no legal action or proceeding has been commenced in dispute of this provision within ninety (90) days of the County’s exercise of the Reversionary Right, Developer shall execute and deliver to the County a quit claim deed re-conveying Developer’s interest in the Development Property. This Reversionary Right shall terminate if Developer has substantially completed the Project within two (2) years of acquiring the Development Property.

3. Representations and Warranties of Developer. Developer represents and warrants to the County as follows:

3.1. Organization. Developer is a corporation duly formed and validly existing under the laws of the State of Missouri . Developer is duly authorized to conduct business in all jurisdictions in which the nature of its properties or its activities requires such authorization. Developer shall (1) preserve and keep in full force and effect its corporate or other separate legal existence and (2) remain qualified to do business and conduct its affairs in the State of Kansas and each jurisdiction where ownership of its property or the conduct of its business or affairs requires such qualification.

- 3.2. Authority. The execution, delivery and performance by Developer of this Agreement is within Developer's powers and have been duly authorized by all necessary action of Developer.
- 3.3. No Conflicts. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein contemplated, nor compliance with the terms and provisions hereof, will contravene the organizational documents of Developer or any provision of law, statute, rule or regulation to which Developer is subject, or to any judgment, decree, license, order or permit applicable to Developer, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of any indenture, mortgage, deed of trust, agreement or other instrument to which Developer is a party, by which Developer is bound, or to which Developer is subject.
- 3.4. No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the performance by Developer of this Agreement or the consummation of the transactions contemplated hereby except for zoning, building and other customary permits to be obtained from the County or other governmental units.
- 3.5. Valid and Binding Obligation. The provisions of this Agreement are the legal, valid and binding obligations of Developer, enforceable against Developer in accordance with the terms hereof.

4. Representations and Warranties of the County. The County and City represent and warrant to the Developer as follows:

4.1. Authority. The execution, delivery and performance by the County and City of this Agreement is within its powers and has been duly authorized by all necessary action.

4.2. No Conflicts. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein contemplated, nor compliance with the terms and provisions hereof, will contravene the ordinances, rules, regulations of the County or City or the laws of the State nor result in a breach, conflict with or be inconsistent with any terms, covenants, conditions or provisions of any indenture, agreement or other instrument by which the County and City are bound or to which the County and City are subject.

4.3. No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the due execution and delivery by the County and City of this Agreement.

4.4. Valid and Binding Obligation. The provisions of this Agreement are, to the fullest extent permitted by applicable law, the legal, valid and binding obligation of the County and City enforceable against the County and the City in accordance with the terms hereof and thereof, subject to the Kansas cash basis law and the limited ability of the current Board of Commissioners to bind future governing bodies.

5. Default by Developer. Developer shall be in default under this Agreement if: (a) Developer fails to keep or perform any material covenant or obligation herein contained on the Developer's part to be kept or performed, and the Developer fails to remedy the same within sixty (60) days after the Developer has been given written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by the Developer within such period and diligently pursued until the default is corrected; or (b) the Developer materially breaches the representations and warranties set forth in this Agreement and fails to cure or correct same within thirty (30) days following written notice. In the event of such default, the County may take such actions, or pursue such remedies, as exist hereunder or at law or in equity, and the Developer covenants to pay and to indemnify the County and the City against all reasonable costs and charges, including attorneys' fees, lawfully and reasonably incurred in connection with the enforcement of such actions or remedies. Notwithstanding the foregoing, the Developer's liability for monetary amounts shall be limited to the actual amount, if any, in question, and under no circumstances shall Developer be liable for any remote or consequential damages.

6. Default by County and City. The County and the City shall be in default under this Agreement if: (a) the County or City fails to keep or perform any material covenant or obligation herein contained on the County's and City's part to be kept or performed, and the County or City fail to remedy the same within sixty (60) days after the County and the City have been given written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by the County or the City within such period and diligently pursued until the default is corrected; or (b) the County or the City materially breaches the representations and warranties set forth in this Agreement and fails to cure or correct same within thirty (30) days following written notice. In the event of such default, the Developer may take such actions, or pursue such remedies, as exist hereunder or at law or in equity, and the County or City covenants but only to the extent permitted by the Kansas Cash Basis Law to pay and to indemnify Developer against all reasonable costs and charges, including attorneys' fees, lawfully and reasonably incurred in connection with the enforcement of such actions or remedies. Notwithstanding the foregoing, the County's and City's liability for monetary amounts shall be limited by the Kansas Cash Basis Law and to the actual amount, if any, in question, and under no circumstances shall the County or the City be liable for any remote or consequential damages.

7. Notices. Any notices or other communications required or permitted to be given hereunder shall be in writing and shall be deemed given when delivered personally or deposited in the United States mail, either certified or registered mail, postage prepaid, return receipt requested or by facsimile, addressed as follows:

If to the County: _____

with a copy to: _____

If to the City: Jeremy Frazier,
City Manager
P.O. Box 151
Fort Scott, Kansas 66701

With a copy to: Robert L. Farmer,
Nuss & Farmer
P.O. Box 630
Fort Scott, Kansas 66701

If to Developer: Noble Health Corp, Inc.
Attn: Drew Solomon
11350 Tomahawk Creek Parkway, Suite 200
Leawood, KS 66211

With a copy to: Husch Blackwell LLP
Attn: Charles Renner
4801 Main Street, Ste. 1000
Kansas City, MO 64112

8. Miscellaneous.

8.1. Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the non-defaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults which were in existence at the time such payment or payments or performance were accepted by it.

8.2. Cooperation. The parties agree to exercise good faith and cooperate with each other to finalize and execute all documents and agreements necessary to complete the Project as contemplated herein and as required by County code or state law.

8.3. Personal Liability. No member of the governing body, official or employee of the County or the City shall be personally liable to Developer, or any successor in interest to Developer, pursuant to the provisions of this Agreement or for any default or breach of the Agreement by the County or the City. No shareholder, director, employee, affiliate or representative of Developer shall be personally liable or obligated to perform the obligations of the Developer, pursuant to the

provisions of this Agreement or for any default or breach of the Agreement by the Developer.

8.4. Amendments. This Agreement may be amended, changed or modified only by a written agreement duly executed by the County, the City and the Developer.

8.5. Construction and Enforcement. This Agreement shall be construed and enforced in accordance with the laws of the State of Kansas.

8.6. Invalidity of Any Provisions. If for any reason any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

8.7. Headings. The Article and Section headings shall not be treated as a part of this Agreement or as affecting the true meaning of the provisions hereof.

8.8. Execution of Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

8.9. Time. Time is of the essence in this Agreement.

8.10. Consents and Approvals. Wherever in this Agreement it is provided that the County, the City or the Developer shall, may or must give its approval or consent, the County, the City or the Developer shall not, unless specifically herein provided otherwise, unreasonably withhold, condition, delay or refuse to give such approvals or consents. It is agreed, however, that the sole right and remedy for the

Developer, the County or the City in any action concerning the other's reasonableness will be action for declaratory judgment and/or specific performance, and in no event shall either such party be entitled to claim damages of any type or nature in any such action.

8.11. Entire Agreement. Together with the Exhibits hereto, this Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces all prior oral or written agreements concerning the subject matter hereof.

[The Remainder of this Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement
the day and year as indicated below.

COUNTY:

THE BOARD OF COUNTY COMMISSIONERS OF BOURBON COUNTY, KANSAS

By: _____

Name: _____

Title: _____

ATTEST:

By: _____
County Clerk

By: _____
County Attorney

CITY:

City of Fort Scott

By: _____
Josh Jones, Mayor

ATTEST

Susan Bancroft, Acting City Clerk

DEVELOPER:

NOBLE HEALTH SERVICES, INC.,

Access Medical Advisors, LLC.

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

EXHIBIT A

DEVELOPMENT PROPERTY