

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: June 2, 2025

SUBJECT: Henderson County Hospital Corporation Promissory Note

PRESENTER: Charles Russell Burrell

ATTACHMENT(S): Draft Promissory Note

SUMMARY OF REQUEST:

Henderson County has received the proceeds of the first tranche of lending under the “State Cashflow Loans for Disaster Response Activities to Local Governments” program. This item proposes to further loan those proceeds to Henderson County Hospital Corporation, on substantially the same terms the funds were loaned to the County.

Henderson County Hospital Corporation was the only public hospital that remained open throughout the Hurricane Helene disaster event. As a result, due to flooding and damage to and the shutdown of the Hospital’s primary intravenous fluid supplier, the Hospital suffered significant financial losses as it could not perform nearly the normal quantity of surgeries. Those surgeries, primarily non-emergent, typically provide the necessary revenues to enable the Hospital to function fiscally.

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

The Board is requested to approval of the proposed arrangement

Suggested Motion:

I move that the Board use the County's proceeds from the State Cashflow Loans for Disaster Response Activities to make a further loan to Henderson County Hospital Corporation.

THIS NOTE HAS NOT BEEN REGISTERED FOR SALE UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY OTHER APPLICABLE SECURITIES LAWS. THIS NOTE MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO THE SECURITIES UNDER SAID ACT OR OTHER APPLICABLE SECURITIES LAWS OR, IN THE ABSENCE THEREOF, AN OPINION OF COUNSEL IN FORM, SUBSTANCE AND SCOPE CUSTOMARY FOR OPINIONS OF COUNSEL IN COMPARABLE TRANSACTIONS, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT, OR UNLESS SOLD PURSUANT TO RULE 144 UNDER SAID ACT. THIS NOTE IS SUBJECT TO THE TRANSFER RESTRICTIONS SET FORTH HEREIN.

PROMISSORY NOTE

Note No. 1

Principal Amount: Not to exceed **\$4,197,972.83**

Date: June 2, 2025

Hendersonville, NC

FOR VALUE RECEIVED, HENDERSON COUNTY HOSPITAL CORPORATION, a North Carolina non-profit corporation (the “**Company**”), hereby promises to pay to the order of the **COUNTY OF HENDERSON**, a body corporate and politic of the State of North Carolina, with an address at 1 Historic Courthouse Square, Suite 1, Hendersonville, North Carolina 28792 (“**Lender**”), or its permitted assignees, in lawful money of the United States of America and in immediately available funds, the principal amount not to exceed **FOUR MILLION ONE HUNDRED NINETY-SEVEN THOUSAND NINE HUNDRED SEVENTY-TWO AND 83/100s DOLALRS (\$4,197,972.83)** (the “**Principal Amount**”), as set forth below in this note (this “**Note**”). This Note does not bear interest except as is stated below.

1. Background; Source of Funds; Definitions.

- a. The Lender is a beneficiary of North Carolina’s “Hurricane Helena Cashflow Loan Program”, as a part of the Disaster Recovery Act of 2024 (the “**Program**”). The Lender has chosen to sub-lend the funds it has been allocated under the program, net of any funds required to be provided to other entities, to the Company, on the terms stated herein.
- b. The Company is wholly owned by the Lender, and is a discreetly reported component unit thereof.
- c. “Loan Agreement” shall mean the “Loan Agreement between the State of North Carolina (by and through the Department of State Treasurer) and The County of Henderson, North Carolina”, dated May 5, 2025. A copy of the Loan Agreement is attached hereto as an Exhibit.
- d. “FEMA Public Assistance Worksheets” shall have the same meaning as in the Loan Agreement.

2. Payment of Loan Funds to Company. The Company may draw and the County will loan up to the full Principal Amount upon the Company providing to the Lender the documentation required of the County under the Program, with the amount of such draw(s) as shown in the “FEMA Public Assistance Worksheets” submitted to FEMA (as those terms are used in the Loan Agreement).

3. Repayment of Principal. Except as otherwise provided herein, the Company will repay the outstanding principal amount of this Note the earlier of: (1) two business days prior to the date by which the Lender must repay the sums the Lender receives from the Program; or (2) upon the date upon which repayment is demanded by the Lender (the “**Maturity Date**”). This Note does not bear interest.

4. Events of Default. The occurrence of any one or more of the following events shall be deemed an “**Event of Default**”:

- a. The failure to pay any amounts when due hereunder.
- b. The Company shall (i) admit in writing its inability to pay its debts generally as they become due, (ii) make an assignment for the benefit of its creditors or (iii) consent to the appointment of a receiver of itself or of the whole or any substantial part of its property.

c. The Company shall file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States or any state or district or territory thereof.

d. A court of competent jurisdiction shall enter an order, judgment or decree appointing, without the consent of Company, a receiver for Company or of the whole or any substantial part of its property, or approving a petition filed against the Company seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state or district or territory thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within thirty (30) days from the date of the entry thereof.

e. Under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Company or of the whole or any substantial part of their property, and such custody or control shall not be terminated or stayed within thirty (30) days from the date of assumption of such custody or control.

f. A final judgment or order for the payment of money, or any final order granting equitable relief, shall be entered against the Company, and such judgment or order has or will have a materially adverse effect on the financial condition of the Company.

g. Any determination by the State of North Carolina that the sub-loan as contemplated herein does not comply with the provisions of the Program.

5. Governing law. THE LAWS OF THE STATE OF NORTH CAROLINA, EXCLUDING THEIR CONFLICTS OF LAWS PROVISIONS, SHALL GOVERN THIS NOTE IN ALL RESPECTS, INCLUDING CONSTRUCTION, VALIDITY, TERMS, PERFORMANCE AND WAIVER.

6. Successors and Assigns. All of the covenants, stipulations, promises and agreements in this Note contained by or on behalf of the Company shall bind its successors and assigns, whether so expressed or not. The Company may not assign this Note without the prior written consent of the Lender.

7. Headings; Construction. The headings of the sections of this Note are inserted for convenience only and shall not be deemed to constitute a part hereof. Words used herein of any gender shall be construed to include any other gender where appropriate, and words used herein that are either singular or plural shall be construed to include the other where appropriate.

8. Notices. Any notices required or permitted to be given under this Note by the Company to Lender or by Lender to the Company, as the case may be, shall be given in writing and shall be deemed received (a) when personally delivered to Lender at the address set forth below or to the Company at the address set forth below; or (b) if sent by mail, on the third (3rd) Business Day following the date when deposited in the United States mail, certified or registered mail, postage prepaid, to Lender at the address set forth below.

9. Waiver and Amendments. Except as expressly provided in this Note, the Company does hereby waive presentment and demand for payment, protest, notice of protest and nonpayment, and notice of the intention to accelerate, and agrees that its liability on this Note shall not be affected by any renewal or extension in the time of payment hereof, by any indulgences, or by any release or change in any security for the payment of this Note. No provision of this Note may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by the Company and the Lender.

[Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned has executed this Note as of the date first written above.

HENDERSON COUNT HOSPITAL CORPORATION

By: JAMES KIRBY, CHIEF EXECUTIVE OFFICE

Address: 800 North Justice St.
Hendersonville, NC 28791