

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

ORDINANCE NO. 2019-1625

AN ORDINANCE

TO AUTHORIZE THE EXECUTION AND DELIVERY OF THE FIRST AMENDMENT TO LEASE AGREEMENT, BY AND BETWEEN LANCASTER COUNTY AND ALLEGIANCE HEALTHCARE CORPORATION, NOW KNOWN AS CARDINAL HEALTH 200, LLC.

Be it ordained by the Council of Lancaster County, South Carolina:

Section 1. Findings.

The Council finds that:

(a) Lancaster County, South Carolina (the "County"), is a body politic and corporate and a political subdivision of the State of South Carolina (the "State") and is authorized and empowered by the provisions of Title 4, Chapter 12 of the Code of Laws of South Carolina 1976, as amended (the "Act"), to enter into arrangements pursuant to which it acquires title to a project for the purpose of leasing the project to an industry and pursuant to which fee-in-lieu of tax ("FILOT") payments are made to the lessor, all as provided in the Act for the purpose of promoting industrial development and trade in the State by inducing new industries to locate in the State and by encouraging industries now located in the State to expand their investments and thus utilize and employ the workforce and other resources of the State;

(b) Pursuant to the Act, the County and Allegiance Healthcare Corporation (after a name change and conversion to a limited liability company, now Cardinal Health 200, LLC) (the "Company") entered into an Inducement and Millage Rate Agreement, dated July 27, 1998 ("1998 IMRA") and a Lease Agreement, dated as of October 1, 1999 ("1999 Lease Agreement");

(c) Pursuant to the 1998 IMRA and the 1999 Lease Agreement, the Company has made significant investments in the County (the "Project"), and has exceeded the investment and job requirements set forth in the 1998 IMRA and the 1999 Lease Agreement;

(d) The 1998 IMRA, at Section 4.02(a)(ii), and the 1999 Lease Agreement, at Sections 4.3 and 4.5(c)(iii), provide for a 20-year period ("Exemption Period") during which Project property will receive FILOT benefits provided thereunder, and Section 4.3 of the 1999 Lease Agreement provides for a maximum term ending not later than December 31, 2026;

(e) The Company has requested that the County approve a 10-year increase of the Exemption Period, from 20 to 30 years, under the 1998 IMRA and the 1999 Lease Agreement, with the maximum term ending not later than December 31, 2036 (the "Extension");

(f) The 1998 IMRA, at Section 4.04, and the 1999 Lease Agreement, at Section 4.5(c)(i), set the millage rate used to calculate FILOT payments during the Exemption Period at 235.5;

(g) The County and the Company have agreed to increase the millage rate that would be used during the Extension by increasing the rate by 50 mills, from 235.5 mills to 285.5 mills; and

(h) The Company has caused to be prepared and presented to the Council the form of an amendment to the 1999 Lease Agreement and it appears that the amendment, which is attached to this ordinance, is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended.

Section 2. Approval of Amendment.

Subject to the provisions of Section 4 of this ordinance, and, in order to promote industry, develop trade, and utilize and employ the workforce, products, and natural resources of the State by assisting the Company to expand or locate an industrial facility in the State, the First Amendment to Lease Agreement is authorized, ratified, and approved.

Section 3. Statutory Findings.

Council makes the following additional findings:

(a) The County's actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the Act.

(b) The Project and the First Amendment to Lease Agreement are anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally and the Extension is of substantial public benefit in that it encourages the Company to remain in the County and to make additional investments in the County.

(c) The Project and the First Amendment to Lease Agreement give rise to no pecuniary liability of the County or any incorporated municipality or a charge against the general credit or taxing power of either.

(d) The purposes to be accomplished by the Project and the First Amendment to Lease Agreement, *i.e.*, economic development and addition to the tax base of the County, are proper governmental and public purposes.

(e) The inducement of the retention or expansion of the Project within the County and State is of paramount importance.

(f) The benefits of the Project and the First Amendment to Lease Agreement to the public will be greater than the costs to the public.

Section 4. Approval and Execution of Amendment.

The form, terms, and provisions of the First Amendment to Lease Agreement, attached hereto as Exhibit A, is approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the First Amendment of Lease Agreement was set out in this ordinance in its entirety. The Council Chair and Council Secretary are authorized, empowered, and directed to execute and acknowledge the First Amendment to Lease Agreement in the name of and on behalf of the County, and thereupon to cause the

First Amendment to Lease Agreement to be delivered to the Company. The First Amendment to Lease Agreement is to be in substantially the form as attached to this ordinance and hereby approved, with such changes therein as shall not be materially adverse to the County and as shall be approved by the officials of the County executing the same, upon the advice of counsel to the County, such officer's execution thereof to constitute conclusive evidence of such officer's approval of any and all changes or revisions therein from the form of the First Amendment to Lease Agreement attached to this ordinance.

Section 5. Authority to Act.

The Council Chair, Council Secretary, Clerk to Council, County Administrator, County Attorney and all other appropriate officials of the County are authorized and directed to do any and all things necessary to effect the execution and delivery of the First Amendment to Lease Agreement and the performance of all obligations of the County under and pursuant to the First Amendment to Lease Agreement.

Section 6. Severability.

If any section, subsection or clause of this ordinance is held to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected.

Section 7. Controlling Provisions.

To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Lancaster County Code or other County ordinances, resolutions or orders, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

Section 8. Effective Date.

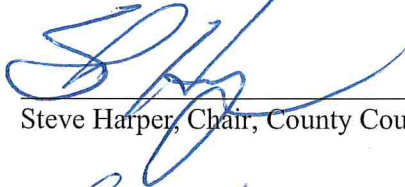
This ordinance is effective upon Third Reading.

SIGNATURES FOLLOW ON NEXT PAGE.

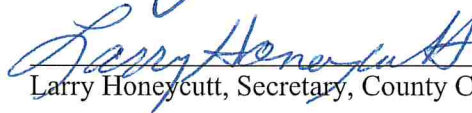
AND IT IS SO ORDAINED

Dated 25th day of November, 2019.

LANCASTER COUNTY, SOUTH CAROLINA

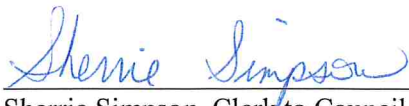


Steve Harper, Chair, County Council



Larry Honeycutt, Secretary, County Council

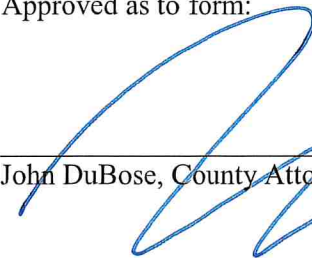
ATTEST:



Sherrie Simpson, Clerk to Council

First Reading: October 28, 2019
Second Reading: November 12, 2019
Public Hearing: November 25, 2019
Third Reading: November 25, 2019

Approved as to form:



John DuBose, County Attorney

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Exhibit A to Ordinance No. 2019-1625

First Amendment to Lease Agreement

See attached.

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FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this "Amendment") is dated this 25th day of November, 2019, by and between LANCASTER COUNTY, SOUTH CAROLINA (the "County"), a body politic and corporate and political subdivision of the State of South Carolina (the "State"), acting by and through its County Council (the "County Council") as governing body of the County, and CARDINAL HEALTH 200, LLC, a Delaware limited liability company (the "Company").

WITNESSETH:

WHEREAS, Allegiance Healthcare Corporation (after a name change and conversion to a limited liability company, now Cardinal Health 200, LLC) (the "Company") has made significant prior investments in the County and, in connection therewith, the Company and the County entered into an Inducement and Millage Rate Agreement, dated July 27, 1998 ("1998 IMRA") and a Lease Agreement dated as of October 1, 1999 ("1999 Lease Agreement");

WHEREAS, the 1998 IMRA, at Section 4.02(a)(ii), and the 1999 Lease Agreement, at Sections 4.3 and 4.5(c)(iii), provide for a 20-year period ("Exemption Period") during which property placed in service under the 1998 IMRA and the 1999 Lease Agreement will receive the fee-in-lieu of tax ("FILOT") benefits provided thereunder, and Section 4.3 of the 1999 Lease Agreement provides for a maximum term ending not later than December 31, 2026;

WHEREAS, the Company has exceeded the investment and job requirements set forth in the 1998 IMRA and the 1999 Lease Agreement;

WHEREAS, the Company has requested that the County approve a 10-year increase of the Exemption Period, from 20 to 30 years, under the 1998 IMRA and the 1999 Lease Agreement, with the maximum term ending not later than December 31, 2036 (the "Extension");

WHEREAS, the 1998 IMRA, at Section 4.04, and the 1999 Lease Agreement, at Section 4.5(c)(i), set the millage rate used to calculate FILOT payments during the Exemption Period at 235.5;

WHEREAS, the County and the Company have agreed to increase the millage rate that would be used during the Extension by increasing the rate by 50 mills, from 235.5 mills to 285.5 mills; and

WHEREAS, by enactment of Ordinance No. 2019-1625, the County Council has authorized the County to enter into this Amendment.

NOW, THEREFORE, in view of the respective agreements contained in this Amendment and other consideration, the parties hereby agree as follows:

SECTION 1. EXTENSION OF LEASE TERM.

Section 4.3 of the 1999 Lease Agreement, relating to Lease Term, is amended to read:

“The County agrees to deliver to the Company sole and exclusive possession of each item of the Facilities on the same date that title to each such item vests in the County pursuant to Section 3.4, and to grant the Company such sole and exclusive possession of each such item for the term beginning on such vesting date and continuing until the end of the 30 years after the 31st day of December in the year of such vesting date; provided that the maximum term hereof shall not be later than December 31, 2036. The Company shall have sole and exclusive possession of the Facilities during the term hereof. This Agreement shall terminate with respect to the Facilities or any part thereof upon the earliest to occur of (a) payment of the final installment of Payments-in-Lieu-of-Taxes pursuant to Section 4.5(b) hereof, or (b) exercise by the Company of its option to purchase and terminate pursuant to Section 11.1 hereof.”

SECTION 2. MILLAGE RATE INCREASE.

The opening paragraph of Section 4.5(c)(i) of the 1999 Lease Agreement, relating to Payments-in-Lieu-of-Taxes, is amended to read:

“The Company has agreed to make an annual Payment-in-Lieu-of-Taxes with respect to the Project in an amount not less than the property taxes that would be due with respect to such property, if it were taxable, but using an assessment ratio of 6%; a millage rate of 235.5 except that for the period exceeding 20 years following the year that any Project property was placed in service during the Project Acquisition Period, a millage rate of 285.5; and a fair market value estimate determined by the DOR as follows:”

SECTION 3. EXTENSION OF PERIOD FOR CALCULATING PAYMENTS.

Section 4.5(c)(iii) of the 1999 Lease Agreement, relating to Payments-in-Lieu-of-Taxes, is amended to read:

“Any property placed in service as part of the Project during the Project Acquisition Period shall be included in the calculation of payments pursuant to paragraphs (c)(i) and (ii), above, for a period not exceeding 30 years following the year in which such property was placed in service. Replacement Property shall be included (using its income tax basis) in the calculation of payments pursuant to paragraphs (c)(i) and (ii), above, but only up to the original income tax basis of property which is being disposed of in the same property tax year. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the property which it is replacing, the portion of such property allocable to the excess amount shall represent a Non-FILOT Asset and be subject to payments as provided in subsection (a) above. Replacement Property is entitled to the fee payment pursuant to this paragraph (c) for the period of time remaining on the 30-year fee period for the property which it is replacing; provided, however, that where a single item of property replaces two or more items of property, the fee period for such Replacement

Property shall be measured from the earliest date on which any item of property it replaces first became subject to Payments-in-Lieu-of-Taxes.”

SECTION 4. JOBS REQUIREMENT.

Section 4.5(c) of the 1999 Lease Agreement, relating to Payments-in-Lieu-of-Taxes, is amended by adding at the end:

“(v) Notwithstanding the provisions of Section 4.5(c)(i), in any year during the period exceeding 20 years following the year that any Project property was placed in service during the Project Acquisition Period, if the Company fails to have employed in full-time jobs (*i.e.*, at least thirty (30) hours per week and all with health care benefits) an average of not less than 375, the Company agrees to pay to the County an additional fee equal to the difference between the total amount of Payment-in-Lieu-of-Taxes actually made by the Company pursuant to Section 4.5(c)(i) and a Payment-in-Lieu-of-Taxes calculated using the then current millage rate and the assessment ratios that would be applicable if Project property were subject to *ad valorem* property taxes.”

SECTION 5. NOTICE ADDRESSES.

Section 12.1 of the 1999 Lease Agreement, relating to Notices, is amended to read:

“All notices, approvals, consents, requests and other communications hereunder shall be in writing and may be delivered personally, or may be sent by facsimile or certified mail, return receipt requested, to the following addresses, unless the parties are subsequently notified of any change of address in accordance with this Section 12.1:

If to the Company:

Cardinal Health 200, LLC
7000 Cardinal Place
Dublin, Ohio 43017
Attention: Planning Manager, State and Local Tax

If to the County:

Lancaster County, South Carolina
PO Box 1809 (29721-1809)
101 N. Main St. (29720)
Lancaster, South Carolina
Attention: County Administrator

With a copy to (which shall not constitute notice):

Lancaster County, South Carolina
PO Box 1809 (29721-1809)

Lancaster, South Carolina
Attention: Economic Development Director

Any notice shall be deemed to have been received as follows: (1) by personal delivery, upon receipt; (2) by facsimile, 24 hours after transmission or dispatch; and (3) by certified mail, 3 business days after delivery to the U.S. Postal authorities by the party serving notice.”

SECTION 6. CONTROLLING PROVISIONS.

To the extent that the terms of the 1999 Lease Agreement, as amended by this Amendment, differ from, or are inconsistent with, the terms of the 1998 IMRA, County and Company agree that the 1999 Lease Agreement, as amended by this Amendment, supersedes and controls over any term of the 1998 IMRA that differs from or is inconsistent with, the terms of the 1999 Lease Agreement as amended by this Amendment, and the County and Company agree that to the extent of any difference or inconsistency, the 1998 IMRA is hereby amended to be consistent with the terms of the 1999 Lease Agreement, as amended by this Amendment. Every provision of the 1999 Lease Agreement not amended or modified by the terms of this Amendment shall remain unchanged and in full force and effect.

SECTION 7. COUNTY AND COMPANY REPRESENTATIONS.

A. The County represents that it has approved this Amendment by adoption of Ordinance No. 2019-1625 and in accordance with the procedural requirements of the County Council and any other applicable law.

B. Company represents that the execution, delivery and performance by the individual or entity signing this Amendment on behalf of Company has been duly authorized and approved by all requisite action on the part of Company.

SECTION 8. COUNTERPARTS.

This Amendment may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument.

SECTION 9. COST REIMBURSEMENT.

Company agrees to reimburse the County its administrative expenses related to this Amendment promptly upon written request therefore, but in no event later than thirty (30) days after receiving the written request from the County; provided, however, that in no event shall Company be responsible for reimbursing the County in excess of \$3000 for any administrative expenses incurred in the form of attorneys’ fees or otherwise with respect to any matter relating in any way to the preparation, review, approval and execution of this Amendment. The written request shall include a description of the nature of the administrative expenses.

SECTION 10. FILING WITH DEPARTMENT OF REVENUE.

In addition to any filing requirement applicable by law to the Company relating to this Amendment, the County Administrator, or the County Administrator's designee, shall deliver, or cause to be delivered, a copy of this Amendment to the South Carolina Department of Revenue within thirty (30) days of the date first above written.

SECTION 11. EFFECTIVE DATE.

This Amendment is effective as of the date first above written.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

LANCASTER COUNTY, SOUTH CAROLINA

By: _____
Steve Harper, Chair, County Council

By: _____
Larry Honeycutt, Secretary, County Council

ATTEST:

Sherrie Simpson, Clerk to Council

CARDINAL HEALTH 200, LLC

By: _____

Name: _____

Title: _____