

**COMMUNITY SERVICE SUPPORT AGREEMENT
BETWEEN
ATLANTIC HEALTH SYSTEM d/b/a
AHS HOSPITAL CORPORATION d/b/a
OVERLOOK HOSPITAL ASSOCIATION
AND
THE CITY OF SUMMIT**

This COMMUNITY SERVICE SUPPORT AGREEMENT (this "Agreement"), dated July 26th, 2017, is by and between **ATLANTIC HEALTH SYSTEM d/b/a AHS HOSPITAL CORPORATION d/b/a OVERLOOK HOSPITAL ASSOCIATION**, a nonprofit corporation under Title 15 of the New Jersey Statutes, having its principal office at 475 South Street, Morristown, New Jersey 07962 ("AHS"), and **THE CITY OF SUMMIT**, a municipal corporation of the State of New Jersey, having an office at 512 Springfield Avenue, Summit, New Jersey 07901 ("Summit").

RECITALS

WHEREAS, Summit has filed tax appeals under docket numbers 000889-2016, 000890-2016, 000892-2016, 000893-2016, 000895-2016, 000907-2016, 001186-2016, 010465-2016, 010466-2016 and 002681-2017, challenging the tax exemptions of AHS (the "Tax Appeals") for property owned by AHS in Summit and as further described in the complaints filed in the Tax Appeals (hereinafter the "Property"); and

WHEREAS, AHS claims that the Property is exempt from taxation for the appeal years 2014, 2015, 2016, 2017 and preceding years as hospital purpose property pursuant to N.J.S.A. 54:4-3.6; and

WHEREAS, Summit claims that the Property is taxable for the appeal years 2014, 2015, 2016, 2017 and preceding years as hospital purpose property pursuant to N.J.S.A. 54:4-3.6; and

WHEREAS, AHS and Summit have agreed to resolve their differences and settle the Tax Appeals; and

WHEREAS, notwithstanding AHS' claims that the Property is exempt from taxation and Summit's claims that the Property is taxable, in recognition of the public services provided by Summit that benefit the Property and its occupants, and more particularly, to offset some of the costs incurred by Summit to provide such public services during tax years 2017 through 2023, and, in part, settlement of the Tax Appeals, AHS desires to make the following contributions to Summit and work collaboratively with Summit to improve the health of the community subject to the terms and conditions set forth under this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions, the parties hereto hereby agree as follows:

1. The recitals set forth above are made part of this Agreement.
2. It is agreed that the parties will file mutual withdrawals of the Complaints and Counterclaims filed in the Tax Appeals, pursuant to New Jersey Court Rule 8:3-9, **without prejudice**, within fourteen (14) days of execution of this Agreement. The Parties also agree to withdraw any petitions pending before any County Board of Taxation on the properties subject to this Agreement within fourteen (14) days of execution of this Agreement. Further, Summit will not initiate or in any way support a challenge to the tax exempt status of the Property for tax years 2017 through and including 2023 and while this Agreement remains in effect. In the event of a breach and/or default in payment pursuant to the terms of this Agreement, then AHS agrees this Agreement shall constitute AHS' consent to Summit's application to the Tax Court to restore the Tax Appeals that were dismissed without prejudice pursuant to this paragraph.
3. In consideration for this Agreement, AHS agrees to pay Summit the sum of \$3,219,300.00. AHS agrees to pay the said sum pursuant to paragraph 4 of this Agreement below.

4. AHS agrees to pay the total amount of \$3,219,300 due pursuant to a payment schedule in annual amounts of \$459,900 per year, in twenty eight (28) quarterly payments commencing with and concurrent with the next quarterly tax payment due to Summit in 2017 after the date the Judgments in regard to the above captioned Tax Appeals are issued by the Court, and thereafter quarterly on the dates that taxes are due to be paid in Summit, or within ten (10) days thereof, (February 1, May 1, August 1 and November 1 of each year), until all payments are completed in the year 2023 (the "Settlement Payments"). The first payment shall include the cumulative total of payments due for the quarterly Settlement Payments past due for the 2017 year. In other words, if the first Settlement Payment is made on August 1, that payment shall include the February 1, May 1 and August 1 payments. The failure to make the Settlement Payments by these deadlines shall constitute a material default of this Agreement. In the event of such a default, Summit may restore all and/or any one or many of the above captioned Tax Appeals and this Agreement may be deemed null and void, and the respective Tax Appeals which were herein withdrawn without prejudice, may be reinstated.

5. If a challenge to the legal enforceability of any paragraph of this Agreement is raised by any third party, AHS agrees to indemnify Summit, defend the terms of this Agreement, and pay any and all reasonable legal fees, costs and expenses incurred by Summit. AHS and Summit agree to cooperate in the defense of the terms, provisions and assessments agreed to in this Agreement should any third party bring a challenge to any of the agreed upon terms and/or any provision of this Agreement. Nothing contained herein shall interfere with the choice of counsel by Summit, except as provided in this paragraph, in the event of the filing of a challenge pursuant to this paragraph.

6. Nothing contained in this Agreement shall be interpreted to interfere with the Constitutional obligations of the Tax Assessor of Summit to assess the Property and/or other properties in Summit, including, but not limited to, properties owned by AHS, and/or any entity

related to AHS in Summit, as taxable and/or as exempt, at the fair assessable value of the properties consistent with assessing practices generally applicable in the taxing district as required by law, including, but not limited to, the obligation to impose added, omitted and revised assessments as required by law, as well as deny and/or grant exemptions as required by law. Neither party admits nor denies the Property's status as taxable and/or exempt and the references to same in this Agreement merely represents AHS' and Summit's settlement and compromise of the Tax Appeals.

7. AHS and Summit acknowledge that the failure to comply with any paragraph of this Agreement may result in this Agreement being deemed null and void, and the respective Tax Appeals being reinstated.

8. In the event that the applicable real property tax exemption provision for not for profit hospitals pursuant to N.J.S.A. 54:4-3.6 is amended and/or replaced by legislation enacted subsequent to the date of this Agreement (the "Legislation") and as a result of the Legislation the total net revenue to Summit resulting from said Legislation as applicable to the Property will exceed the amounts to be paid pursuant to this Agreement for the years 2017 until completion of all payments in 2023, including the payment of the municipal share of taxes (excluding school and County tax shares) on any assessments for the Property, and the payments to be made pursuant to paragraphs 4, 10 and 11, then and in that event AHS agrees to pay to Summit the greater sum due to Summit. In the event the greater sum is the amount due to Summit as a result of this Agreement, Summit waives any right to collect any amount provided for as a result of the Legislation. In other words, AHS shall be required to pay the greater sum due to Summit notwithstanding any Legislation applicable to not for profit hospitals seeking real property exemptions in New Jersey.

9. The parties agree that if AHS is required to pay back taxes or other moneys that exceed the amounts already paid pursuant to this Agreement, then AHS will be entitled to

receive a credit for those payments already made pursuant to paragraphs 4, 10 and 11. By way of example, if in 2019 a Court orders AHS to pay Summit the taxes due on the Property that was exempt for the previous years 2014 through 2018, then AHS would be allowed to have a credit for the payments actually made pursuant to paragraphs 4, 10 and 11 against the Court ordered tax payments for those past years obligations pursuant to that 2019 order. The provisions of this paragraph shall be effective notwithstanding the fact that AHS shall be required to pay the greater sum due to Summit by this Agreement or Legislation, as provided in paragraph 8 above.

10. In addition to and not in substitution of any Settlement Payments required under the terms of this Agreement, and/or any payment of taxes on account of any assessments, AHS agrees to pay to Summit the total amount of \$948,500 over a period of seven (7) years for Summit to secure Public Health Support for Summit (the "PH Support"). AHS shall pay Summit the PH Support payments in annual installments of \$135,500. The first PH Support payment shall be due on the date coinciding with the first Settlement Payment herein and thereafter annually on February 1st of each year, or within ten (10) days thereof, until said amount of \$948,500 is paid in full no later than February 1, 2023. This amount shall constitute AHS' total Public Health Support contribution to Summit for tax years 2017 through and including 2023. The failure to make these PH Support payments prior to the deadlines shall constitute a material default of this Agreement, and may, at the option of Summit, result in the restoration of the above captioned Tax Appeals which will be withdrawn without prejudice. AHS will not be providing the services of a public health nurse during the term of this agreement, unless otherwise agreed to by the parties.

11. In addition to and not in substitution of any Settlement Payments required under the terms of this Agreement, and/or any payment of taxes on account of any assessments, AHS agrees to pay to Summit the total amount of \$1,400,000 over seven (7) years for payments to

Summit for Summit's Community Center and its programs for youth and senior populations (the "CC Support"). The CC Support payment shall be made in annual amounts of \$200,000 per year, in twenty-eight (28) quarterly payments commencing with and concurrent with the Settlement Payments due to Summit after the judgments in regard to the above-captioned Tax Appeals are issued by the Court as provided in paragraph 4 of this Agreement, and thereafter annually on the dates that taxes are due to be paid in Summit or within ten (10) days thereof (February 1, May 1, August 1 and November 1 of each year) until all payments are completed in the year 2023. The first payment shall include the cumulative total payments due for the quarterly CC Support payment past due for the 2017 year. In other words, if the first CC Support payment is made on August 1, that payment shall include the February 1, May 1 and August 1 payments. The failure by AHS to make the CC Support payment shall constitute a material default of this Agreement, and may, at the option of Summit, result in the restoration of the Tax Appeals which will be withdrawn without prejudice.

12. If judgments are not entered by the Tax Court **without prejudice** pursuant to this Agreement, the parties have the option to either (a) void this Agreement in its entirety and vacate any judgments that may be entered and proceed with the Tax Appeals' litigation; or (b) choose to proceed with the settlement for any of the tax years not effected pursuant to this Agreement, and litigate any other tax year(s) Tax Appeal(s).

13. During the first quarter of the 2023 tax year, the parties agree to meet to discuss the terms of future tax payments, municipal service fees, and/or if permitted by law, payments in lieu of taxation, by AHS to Summit for the extraordinary municipal services provided by and expenses incurred by Summit as a result of Overlook Medical Center and any successor medical center, or any AHS related entity, being located in Summit.

14. Except as otherwise provided in this Agreement, this Agreement constitutes the entire agreement of AHS and Summit with respect to the subject matter hereof and supersedes

any and all prior written or oral understandings, negotiations and agreements.

15. For the 2017 tax year, the Stipulation of Settlement entered into between AHS and Summit on Docket 002992-2010, regarding the allocation between the taxable and exempt portions of certain property within the City of Summit known as Block 3307, Lots 1.04, 1.04X, 1.06, and 1.06X, shall remain in effect. However, AHS reserves the right for tax year 2018, and any future year, to file an appeal in the appropriate court to contest the assessor's determination of the taxable nature of these properties and/or the aforementioned allocation.

16. This Agreement was jointly drafted by AHS and Summit and the language of this Agreement shall in all cases be construed as a whole according to its meaning and not strictly for or against any of the parties.

17. AHS and Summit agree that in the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unconstitutional or unenforceable in any respect, such invalidity, illegality, unconstitutionality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal, unconstitutional or unenforceable provision had never been contained herein or therein. If any provision of this Agreement is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court shall declare such provision of this Agreement to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of both parties that the remainder of this Agreement shall be construed as if such illegal, invalid, unlawful, void or unenforceable provision was not contained herein, and the rights, obligations and interests of the parties under the remainder of this Agreement shall continue in full force and effect. If as a result of an action contemplated by this paragraph of the Agreement, Summit is deemed to receive less than the sums contemplated by this Agreement, then and in that event, Summit may reinstate the above captioned Tax Appeals, and/or any one or many of these Tax Appeals,

and proceed with those Tax Appeals.

18. AHS and Summit agree to execute or cause its counsel to execute any additional documents and take any further action, which may reasonably be required to consummate this Agreement.

19. The parties and/or either one of the parties, may, **only in the event of default of this Agreement**, file this Agreement with the Tax Court and/or any other Court with competent jurisdiction, in all and/or any one of the above captioned Tax Appeals, in order to enforce the terms of, and or vacate the without prejudice dismissals of the Tax Appeal

20. This Agreement shall be interpreted pursuant to the laws of the State of New Jersey and the Tax Court shall continue to have jurisdiction of the Tax Appeals until the terms, conditions and payments hereunder are completed.

21. Any notices, statements, demands, consents, approvals or other communications required or permitted to be given or to be served upon either party hereto in connection with this Agreement, must be in writing and must be delivered personally, sent by a nationally recognized overnight delivery service or sent by United States certified or registered mail, return receipt requested, and will be deemed to have been given and received on the day delivered personally, or on the first business day after the day it is dispatched to a nationally recognized overnight delivery service, or on third business day after so mailed. Such notice must be given to the parties at their following respective addresses or at such other address as either party may hereafter designate to the other party in writing in the manner herein above provided:

If to AHS:

Atlantic Health System, Inc.
Southgate Office Complex
475 South Street
P.O. Box 1905
Morristown, NJ 07962-1905
Attention: Sheilah O'Halloran, Vice President,
Legal Affairs and General Counsel

and

Susan A. Feeney, Esq.
McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102

If to Summit:

City of Summit
512 Springfield Avenue
Summit, NJ 07901
Attention: Michael Rogers, City Administrator

and


Martin Allen, Esq.
DiFrancesco, Bateman, Kunzman, Davis, Lehrer,
Flaum, PC
15 Mountain Boulevard
Warren, NJ 07059

22. This Agreement is binding upon the successors and assigns of any and all of the parties hereto.

23. If a press release is required in response to press inquiries, any such release will be a joint statement agreed to by AHS and Summit.


IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

ATTEST:




Marsha Hoppe
Administrative Assistant to
Alan Lieber


ATTEST:



Rosalia M. Licatese, City Clerk

ATLANTIC HEALTH SYSTEM d/b/a
AHS HOSPITAL CORPORATION d/b/a
OVERLOOK HOSPITAL ASSOCIATION

BY: 
_____, President, omc
Alan Lieber, Vice President, AHS
CITY OF SUMMIT

BY: 

Nora G. Radest, Mayor

7/26/17